



Ministry  
of Justice

# **The Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague 2019)**

## **Response to Consultation**

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Response to consultation

**Response to consultation carried out by the Ministry of Justice.**

**This information is also available at <https://consult.justice.gov.uk/>**

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# Introduction and contact details

This document is the UK Government (hereafter “the Government”) response to the consultation paper, Consultation on the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.

It will cover:

- the background to the consultation
- a summary of the responses to the consultation
- a detailed response to the specific questions raised in the consultation
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting **Private International Law Strategy and Implementation Team** at the address below:

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## **Complaints or comments**

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

# Background

The Government published the consultation on the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (“Hague 2019”) on 15 December 2022, which closed on 9 February 2023. The consultation sought views on plans for the UK to become a Contracting Party to Hague 2019 by ratifying the Convention and implementing it into domestic law.

Hague 2019 is designed to provide a global framework of common rules to facilitate the recognition and enforcement of judgments from one jurisdiction to another. The Convention aims to contribute to a positive national and international environment for multilateral trade, investment and mobility by reducing transactional costs for parties in cross-border matters as well as enhancing access to justice.

The Convention requires Contracting Parties to recognise and enforce civil and commercial judgments within its scope. While most countries have domestic rules which allow judgments from other countries to be recognised and enforced in certain circumstances, these rules differ and can often involve relitigating certain aspects of a case. Hague 2019 seeks to provide a uniform approach to increase legal certainty.

The UK joining Hague 2019 would provide a set of common rules for the recognition and enforcement of civil and commercial judgments between the UK and the other Contracting Parties, including the EU. The Government believes that the Convention would therefore benefit both businesses and consumers operating and living across borders, between the UK and other countries. It would provide assurance that UK judgments in scope will be recognised and enforced in current and future Contracting Parties to the Convention, and vice versa, which will in turn encourage trade and investment.

This document summarises the written responses to the consultation questions and sets out the Government’s views on the issues discussed. In parallel with the consultation, the Government engaged in round-table discussions with stakeholders across the legal sector and academia, particularly those with expertise on cross border litigation, including one with the Lord Chancellor’s Advisory Committee on Private International Law as indicated in the Consultation document. Although the views expressed by stakeholders at the engagement sessions have not separately been quantified or explicitly discussed in this document, they have been taken into account to inform the Government’s decision on this matter in particular because many of the participants in these roundtables had submitted written responses which are summarised in this Response.

UK Government officials have also engaged with counterparts in the Scottish Government and in Northern Ireland throughout the consultation process and will continue to do so on

implementation of the Convention. Northern Ireland is currently without Executive Ministers and a fully functioning Assembly. In the event that implementation is required before the Executive and Assembly are restored, the UKG will work with the Department of Justice (NI) to consider the legislative options for implementing the Convention in Northern Ireland.

# Summary of responses

1. A total of 39 responses were received from across the UK's legal sector, including professional associations, law firms, individual practitioners, and academics. A list of respondents is provided in **Annex A**.
2. The main consultation questions asked respondents to consider potential benefits, downsides and impacts of Hague 2019 and to indicate whether they think the UK should join the Convention at this time. The consultation also sought views on whether the UK should make any declarations under Hague 2019 and how the Convention should be implemented if the UK were to join. The following paragraphs provide a high-level summary of the main themes discussed in the consultation responses which will be considered in greater detail in the 'Response to specific questions' section.
3. Whilst most respondents noted certain aspects of Hague 2019 which they considered to be possible downsides, respondents were all unequivocal in their assessment that the UK should join Hague 2019 and that any potential benefits of joining the Convention outweigh any such downsides.
4. Respondents said that by providing uniform rules for the recognition and enforcement of judgments between the UK and other Contracting Parties, including the EU Member States, Hague 2019 would provide greater legal certainty, and could promote the UK as a preferred forum for dispute resolution since it would facilitate recognition and enforcement abroad of judgments from UK courts. Respondents were also of the view that the Convention would allow UK businesses to have greater confidence when operating across borders in the knowledge that there would be effective mechanisms in place to enforce UK judgments in other jurisdictions and vice versa.
5. In relation to the UK making declarations under the relevant provisions of Hague 2019, respondents noted that this would restrict the Convention's application and could invite reciprocal actions from other Contracting States which would further limit its scope. Therefore, respondents were largely of the view that the UK should not make any declarations at this time.
6. Respondents considered that if the UK was to join Hague 2019, the Convention should extend to all UK jurisdictions to ensure consistency and ensure that all jurisdictions can benefit from the advantages of the Convention. Respondents expressed strong support for the proposal in the Consultation of implementing Hague 2019 using a registration model, which would require foreign judgments to be registered prior to their enforcement in the UK.



# Responses to specific questions

## Joining Hague 2019

This section considers the responses received to questions 1, 2 and 5 with a view to determine whether the UK should join Hague 2019 and whether now would be the right time for the UK to join the Convention, based on the potential merits and downsides identified by respondents.

7. **Question 1** asked respondents to indicate whether they think the UK should join Hague 2019 and to identify the potential benefits of the UK joining the Convention. There were 39 responses to this question, and all of the respondents were of the view that the UK should join Hague 2019. The potential benefits of joining Hague 2019 identified by respondents included that the Convention would:
- Provide uniform rules for the recognition and enforcement of judgments between the UK and other Contracting Parties;
  - Help to promote the UK as a forum for dispute resolution by providing greater legal certainty that judgments from UK courts will be recognised and enforced in other states;
  - Increase access to justice in the UK and abroad by facilitating recognition and enforcement of judgments;
  - Support international trade and business, and thereby increasing revenue within the UK economy, by offering reassurance to UK businesses that effective mechanisms are in place to secure redress in other jurisdictions. UK businesses will be more inclined to operate across borders and enter into cross-border contracts and investment relationships;
  - Facilitate more cost-efficient resolution of disputes by reducing the informational cost of determining whether a judgment obtained from one court is enforceable elsewhere;
  - Allow parties to agree non-exclusive or asymmetric jurisdiction clauses in the knowledge any judgments from courts chosen by these clauses will be enforceable under Hague 2019. Whilst the 2005 Hague Choice of Courts Convention ("Hague 2005") already provides for recognition and enforcement of judgments deriving from exclusive choice of court clauses, Hague 2019 will now facilitate recognition and enforcement for a wider set of choice of court clauses.
8. Many respondents said that the provisions of Hague 2019 would provide a welcome framework for the recognition and enforcement of judgments in civil and commercial

matters between the UK and EU Member States now that the UK is no longer applying the “Brussels” instruments that the UK applied during its membership of the EU. Moreover, a number of respondents noted the potential for Hague 2019’s global reach to expand as more countries join Hague 2019, which would amplify the benefits to the UK. It was noted that the EU and Ukraine have both ratified Hague 2019 and that several other countries, including the US, have signed and are due to ratify the Convention in the near future.

9. **Question 2** sought views on whether it was the right time for the UK to join Hague 2019. All 37 responses received indicated that the UK should seek to join Hague 2019 as soon as practicable, highlighting some of the potential benefits of joining the Convention discussed above.
10. Several respondents said that with the EU having ratified Hague 2019 in August 2022, the Convention would provide a firm basis for future recognition and enforcement of judgments between the UK and EU Member States, with this being particularly important in view of the UK’s outstanding application to re-join the Lugano Convention.
11. One respondent questioned whether it would be better to delay signature and ratification until there has been more case law on Hague 2019 to clarify the meaning of its terms. This respondent nonetheless favoured joining the Convention, noting a point made by another respondent which was that early membership of the Convention would enable UK judges to contribute to the development of the Convention’s case law, in particular the interpretation and clarification of its terms.
12. **Question 5** asked respondents to identify any potential downsides that they think could result from the UK joining the Convention and to indicate the perceived severity of such downsides. There were 34 responses to this question.
13. Whilst several respondents identified some downsides to Hague 2019, none of the respondents considered that the downsides that they had identified were severe enough to prevent signature of Hague 2019. Respondents also noted features within the Convention that they said would mitigate some of the downsides identified.
14. Respondents were of the view that downsides to the UK joining the Convention included the following:
  - Courts in the UK may be obliged to recognise and enforce foreign judgments in circumstances where under the common law, or other reciprocal arrangements, they would not. It was however recognised that there are safeguards under Hague 2019 to ensure judgments can be refused in certain circumstances (Article 7), including if recognition or enforcement of the foreign judgment would be manifestly incompatible with relevant public policy in the UK.
  - A potential concern may arise if a state which does not have a reliable or fair judicial system, for example because judges are subject to improper political (or other)

influence, became a party to the Convention, or if a state that was party to the Convention experienced a deterioration in the independent functioning of its judicial system or no longer upheld the rule of law. Whilst there are safeguards under Article 29 permitting a state to make a notification preventing the Convention from applying with another Contracting State, the notification can only be made at the time of ratification of the other state, and not subsequently, meaning this safeguard would not be available in the latter instance.

- Potential complexity and uncertainty where judgments which may not be capable of recognition and enforcement under the Convention are capable of recognition and enforcement under the common law or under another regime. Since the Convention does not displace domestic law of recognition and enforcement, the Convention would not remove entirely the need to understand each of the existing regimes in order to consider fully the possibility of a foreign judgment being recognised and enforced.
- As a new source of rules, the Convention would inevitably introduce some initial uncertainty into the law, because it is yet to be subject to significant interpretation and clarification by the courts.
- Potential complications about how mixed issue litigation, where only certain elements are in scope of Hague 2019, would be handled. For example, where there are employment or commercial issues (within scope) combined with insolvency or non-competition issues outside of scope it may be uncertain if the judgments can be recognised and enforced under Hague 2019.
- Under Hague 2019, parties with assets in the UK could have an incentive to participate in proceedings in another Contracting State (where one of the Article 5 jurisdiction grounds is met) knowing their judgment will be recognised and enforced in the UK. This could reduce the jurisdictional protection that parties enjoy, from non-appearance in certain circumstances in the foreign proceedings, under existing rules in England and Wales.

15. A number of respondents, while in favour of the UK joining Hague 2019, noted the Convention's limitations in scope compared to the Lugano Convention and highlighted certain elements that they considered to be relative merits of Lugano. Some expressed concerns that the UK joining Hague 2019 could potentially impact the UK's application to re-join the Lugano Convention as an independent contracting party.

### **The Government Response**

16. It is clear from the responses received for questions 1, 2 and 5 that respondents consider the merits of Hague 2019 to outweigh any potential downsides. This corresponds with the feedback that the Government received from stakeholders during round-table engagement sessions on this matter.

17. Having carefully considered the responses received and wider stakeholder feedback, the Government has decided that the UK will sign Hague 2019 as soon as practicable.

As set out in the consultation paper and echoed by many respondents, the UK joining Hague 2019 stands to benefit both businesses and consumers operating and living across borders, by providing greater legal certainty about the mutual recognition and enforcement of judgments given in the UK and in another Contracting State. Joining Hague 2019 should also increase the attractiveness of the UK for dispute resolution, given how the Convention will facilitate recognition and enforcement of judgments from UK courts. The Convention's already considerable global reach is set to expand over the coming years, with the US, Israel and a number of other countries having already signed Hague 2019. Joining Hague 2019 now will allow the UK not only to secure the benefits of the Convention but also to play a role in driving the development of the Convention as judges in the UK will be amongst the first to apply and interpret its terms.

18. The Government has acknowledged the potential downsides raised by respondents. These include the risks regarding courts in the UK being obliged to recognise and enforce foreign judgments under Hague 2019 when there would not have been such an obligation under the common law or existing arrangements. It also includes where there are concerns in respect of procedural fairness and rule of law in the Contracting Party from which the judgment originates, either from the point at which that State has ratified, or subsequently. However, the Government considers that there are adequate safeguards under Hague 2019. Firstly, Article 29 permits a state to make a notification preventing the Convention applying with another Contracting State at the time of ratification of that state. Second, if the UK is already applying the Convention with a Contracting State, the recognition and enforcement of judgments can be refused if one of the grounds in Article 7 can be established, including if certain procedural fairness requirements have not been met and where recognition or enforcement would be manifestly incompatible with the public policy of the UK. There are additional safeguards, such as the Article 5 indirect jurisdiction grounds, which, whilst providing for wider possibilities for recognition and enforcement in some circumstances, do provide clear thresholds that parties must meet. These possibilities also provide benefits, and should help to provide certainty for parties.
19. While the Government notes the concerns raised regarding Hague 2019's more limited scope compared to the Lugano Convention, it is the Government's view that Hague 2019 is the right choice for the UK at this time. While, unlike the Lugano Convention, Hague 2019 does not include jurisdiction rules, it offers uniform rules for the recognition and enforcement of civil and commercial judgments between the UK and other Contracting Parties, which include the EU Member States. Articles 5 and 6 of the Convention will also play an indirect role in jurisdiction choices by parties when litigating disputes, since judgments will only be enforceable under Hague 2019 in accordance with those rules. Joining Hague 2019 does not prohibit the UK from joining Lugano in future. It also does not change or remove existing recognition and enforcement mechanisms provided by domestic law in the UK and other Contracting

States, on which parties can continue to rely for the recognition and enforcement of cases not covered by Hague 2019.

## Potential impact of Hague 2019

This section assesses the potential impacts of the UK joining Hague 2019, based on the responses to questions 3, 4, 6, 11, and 12. This group of questions sought more detailed reflections on how joining Hague 2019 could affect UK litigants and how such impacts might vary across the different UK jurisdictions. They also asked for stakeholders' views about the Convention's relative limitations and any potential impacts that the Convention might have in relation to the Equality Act 2010.

20. **Question 3** asked respondents to consider the impact, on UK parties dealing in international civil and commercial disputes, of the UK becoming a Contracting State to Hague 2019. There were 29 responses to this question, and most respondents indicated that the impacts would be positive.
21. There were several potential positive impacts identified by respondents, including:
- The UK joining Hague 2019 would provide greater legal certainty and reduce complexity and costs for civil and commercial litigants seeking to enforce foreign judgments in the UK, or UK judgments in other Contracting States.
  - The ability to enforce and recognise judgments under Hague 2019 with greater ease, is likely to increase the attractiveness of courts in the UK, and in turn the number of parties initiating proceedings in the UK.
  - Hague 2019 would give parties involved with cross-border commercial agreements greater freedom regarding dispute resolution provisions. Hague 2019 provides for recognition and enforcement of judgments deriving from asymmetric and non-exclusive choice of court agreements, and is therefore not restricted, as Hague 2005 is, to judgments which stem from an exclusive choice of court of agreement.
  - Hague 2019's uniform set of rules would be helpful to persons seeking to enforce judgments in other Contracting States without recourse to the various domestic enforcement rules in these states.
  - Hague 2019 would go some way to disincentivise parallel proceedings, even if this is not as far as the jurisdictional protections under Hague 2005, since Hague 2019 gives the option to refuse recognition and enforcement in a case where a court in the enforcing state had already been seised on the same subject matter *before* the court that gave the judgment given for R&E, if there is a close connection between the dispute and the enforcing state.
22. One respondent, however, noted that the extent of any positive impact would likely vary depending on the industries and legal issues concerned. The respondent highlighted

that Hague 2019 would have limited impact on industries such as commercial shipping or aviation, since the carriage of goods and persons is outside the scope of the Convention. On the other hand, the respondent suggested that financial services could benefit greatly from Hague 2019 which would ensure the reciprocal effectiveness of non-exclusive choice of court agreements, a common feature in financial services agreements. The fact that judgments from non-exclusive choice of court agreements, which are excluded from the scope of Hague 2005, are enforceable under Hague 2019, is likely to increase the attractiveness of the UK financial services industry.

23. Another respondent highlighted that Hague 2019's Article 5 grounds on which judgments would be enforceable do not match the grounds on which the courts of England and Wales can take jurisdiction. The respondent suggested that consideration might therefore be given to amendments to the jurisdiction grounds currently found in Practice Direction 6B to ensure the courts of England and Wales have jurisdiction in all circumstances in which judgments would be enforceable in other State parties under the Convention.
24. **Question 4** sought views on the legal impact that becoming a Contracting State to Hague 2019 could have in the different UK jurisdictions (England and Wales, Scotland and Northern Ireland). There were 26 responses to this question. Many respondents stated that the legal impact of the UK becoming a contracting state to the Convention would be positive due to the reasons covered in question 1 and 3. For this question, analysis of the responses is split by UK jurisdiction.
25. 17 respondents answered the question in relation to England and Wales. One respondent stated that signing and ratifying Hague 2019 would have a positive legal impact in England and Wales for consumers, employees, businesses, and legal services. Another respondent expressed that certainty and reduced complexity in the enforceability of judgments was likely to improve access to justice and remove chances of delay, confusion and language barriers for consumers.
26. Many respondents were of the view that joining Hague 2019 would enhance the reputation of England and Wales as a jurisdiction of choice for international dispute resolution by ensuring the enforceability of judgments made in England and Wales in the other Contracting Parties. One respondent specifically raised the advantage of the reciprocal enforcement of judgments with EU Member States. It was overall considered that the greater enforceability of judgments made in England and Wales would increase confidence in and encourage the use of the courts of England and Wales.
27. Five respondents answered this question in relation to Scotland. They all stated that Hague 2019 would make Scotland a more attractive jurisdiction due to the increased ease of recognition and enforcement of judgments, enhancing confidence in the

Scottish legal system. One respondent thought that this would help remove a current deterrent to parties from litigating in a Scottish court, where they also have the option to litigate in a Lugano Convention State as there will be a uniform set of rules between the UK and EU States. Another respondent stated that whilst there is a mechanism in Scottish common law for enforcement of foreign judgments, any international instrument which eases recognition and enforcement of judgments in other Convention States would be welcome.

28. There were two responses with specific reference to Northern Ireland. Both respondents stressed that Northern Ireland is the only jurisdiction in the UK that has a land border with the European Union and that cross-border trade and co-operation are common between Northern Ireland and the Republic of Ireland. Both responses expressed that the uniform recognition and enforcement rules under Hague 2019 will enhance commercial confidence to trade across borders and litigate disputes and reduce the current practical difficulties in cross-border matters due to the absence of reciprocal rules. The Convention would also have a positive impact in providing more clarity for those involved in legal proceedings with a cross-border dimension.
29. **Question 6** asked respondents to highlight any specific provisions in the Convention that cause concern or may have adverse effects from a UK perspective. There were 36 responses to this question, 18 of which did not identify any provisions within the Convention that cause concern.
30. Of the concerns expressed by the remaining responses, the main ones were:
- The exclusion from scope of the carriage of passengers and goods (under Article 2(1)(f) of the Convention) could disadvantage serious injury victims who, falling under this exclusion as a passenger, would not be able to rely on Hague 2019 to enforce their judgment.
  - Parties who might rely in the courts of England and Wales on the jurisdiction ground deriving from the Supreme Court’s judgment of *Brownlie*<sup>1</sup> to obtain damages for a serious injury sustained outside of the UK based on ongoing harm and/or loss in England and Wales, would not be able to have their judgment enforced under Hague 2019, at least under the Article 5(1)(j) indirect jurisdiction ground. This is because that jurisdiction ground requires the “act or omission” to have occurred in the state of origin of the judgment, regardless of whether the claimant suffered indirect, ongoing consequences of the act or omission in the state that gave the judgment.
  - Interpretations by courts of the phrase “act or omission *directly causing such harm*” under Article 5(1)(j) Hague 2019 could exclude enforcement of a judgment obtained by a claimant for financial loss following a fatal accident, where the claimant was financially dependent on the deceased, on the basis this is an indirect loss.

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<sup>1</sup> *FS Cairo (Nile Plaza) LLC v Brownlie* [2021] UKSC 45

However, the respondent noted the potential counter-argument that as the claim for financial dependency “arises from the death” such a judgment would fall within Article 5(1)(j). The Explanatory Report to Hague 2019<sup>2</sup> recognised this issue and left the interpretation to national courts. The definition of “judgment” in Article 3(1)(b) which excludes interim measures from the scope of Hague 2019 could disadvantage serious injury victims who may rely on interim awards of damages to help with funding care costs and rehabilitation and would not be able to have the award recognised and enforced in another Hague 2019 Contracting State.

- Serious injury victims who have obtained a judgment from courts in the UK with a conditional fee arrangement (i.e. the unsuccessful defendant to pay damages and most of the legal costs) could be refused enforcement on public policy grounds by certain Contracting States under Article 7 of Hague 2019, where those states oppose conditional fee arrangements.
- Any declarations made by the UK or another Contracting State under Articles 14, 17,18,19 and 25 have the potential to restrict the application of the Convention and therefore could have an adverse limiting effect.

31. **Question 11**, which received 33 responses, sought views on any drawbacks respondents could foresee if the UK were to apply only Hague 2019 with EU/EFTA States (given its narrower scope and lack of direct jurisdiction rules) as opposed to the Lugano Convention. Many responses stated that whilst they support the Government’s proposal for the UK to join Hague 2019, the Lugano Convention is the preferred framework for the recognition and enforcement of judgments, noting that it also provides rules for determining jurisdiction between the UK and EU/EFTA states. A small number of respondents expressed the view that the UK Government should focus exclusively on joining Hague 2019, while many others were of the view that the UK should continue to pursue accession to the Lugano Convention in addition to joining Hague 2019. The main reason cited in the responses was Hague 2019’s more limited scope of application in comparison to the Lugano Convention in relation to the type of judgments eligible for recognition and enforcement. A number of respondents also observed that there were more grounds to refuse enforcement of judgments under Hague 2019 than under the Lugano Convention. Some respondents expressed concerns that this could mean that enforcement of judgments would be less certain or streamlined under Hague 2019 than under the Lugano Convention.

32. Others, however, considered this to be a particular merit of Hague 2019, giving the example of the discretion to refuse a judgment that was made contrary to a choice of court agreement between the parties, which is not a discretion that courts in the UK have under the Lugano Convention. Some respondents also said there were other benefits to applying Hague 2019 instead of the Lugano Convention, while most

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<sup>2</sup> Explanatory Report on the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters



respondents shared the view that the absence of the Lugano Convention was further reason for the UK to join Hague 2019 as soon as possible.

33. **Question 12** asked respondents to consider whether applying Hague 2019 would have any equalities impact with regards to the Equality Act 2010. There were 26 responses to this question, with the majority of respondents of the view that there were no adverse equality impacts to the UK applying Hague 2019. Two of these respondents identified that this was assisted by safeguards within the Convention itself, such as Article 7(1)(c) which allows for recognition and enforcement to be refused if it would be manifestly incompatible with the public policy of the requested State. Some respondents expressed the view that applying Hague 2019 may have a positive equality impact through increasing access to justice and the potential for the recognition and enforcement of discrimination case judgments. There were, however, two respondents who expressed concerns that the scope of Hague 2019 may not provide adequate provision for seriously injured people following cross-border injury. It was said that those who are injured abroad as a result of negligence could, as a result, be disabled for the purposes of the Equality Act 2010, and that therefore the limitations in respect of personal injury cases under Hague 2019 (as discussed under Question 6 above) could amount to indirect discrimination of persons with this protected characteristic.

### **The Government Response**

34. Building on responses to questions 1 and 2, responses to questions 3 and 4 provided additional evidence of the potential benefits of Hague 2019 for litigating parties dealing in international civil and commercial disputes, including the reduction in costs and increased efficiency of proceedings, and the increased attractiveness of the UK for dispute resolution if judgments from its courts are enforceable abroad under the Convention. A key further benefit highlighted by respondents to question 3 was the fact that Hague 2019 now provides for recognition and enforcement of judgments deriving from asymmetric and non-exclusive choice of court agreements, whereas Hague 2005 only provides for recognition and enforcement of judgments deriving from exclusive clauses. The suggestion to amend the jurisdiction grounds currently found in Practice Direction 6B, so that the courts of England and Wales have jurisdiction in all the circumstances set out in Article 5 of Hague 2019, will be passed onto the Master of the Rolls and the Civil Procedure Rule Committee for consideration.
35. The Government specifically acknowledges the benefits Hague 2019 is likely to bring if extended to Scotland and Northern Ireland, including the enhanced confidence in trading across borders and the increased attractiveness of all three jurisdictions of the UK for dispute resolution if judgments are enforceable outside the UK under the Convention. The Government agrees that the Convention should apply across all UK jurisdictions. It is also evident that applying Hague 2019 in all three jurisdictions is important to maintain consistency for parties.

36. The Government recognises the concerns raised by respondents in questions 6 and 11 regarding Hague 2019's limitations for serious injury victims in that the Convention excludes recognition and enforcement of interim measures, does not provide for recognition and enforcement of damages based on Brownlie jurisdiction grounds or where the victim was a passenger, and carries a risk that courts in certain states might refuse to enforce judgments flowing from conditional fee arrangements. The Government also acknowledges the limitations presented by other exclusions from scope. However, as many respondents noted, whilst these limitations exist, these do not outweigh the many benefits of joining Hague 2019.
37. The concerns raised in relation to the scope of Hague 2019 not providing adequate provision for serious injury victims have been discussed in more detail in the Equality Impact Assessment below. Whilst serious injury victims may not benefit in certain circumstances from the Hague 2019 framework, joining the Convention would not worsen the situation compared to the status quo and still provides potential benefits. Hague 2019 will facilitate the recognition and enforcement of a range of judgments that could assist many who share protected characteristics including, but not limited to, those with disabilities, and will generally help facilitate access to justice. The respondents who raised these concerns were still in favour of the UK joining Hague 2019.
38. Additionally, although Hague 2019 does not provide a complete set of recognition and enforcement rules for all cases and currently applies to a limited number of countries, it offers a strong multilateral framework of uniform rules across a considerable number of subject areas which could provide significant benefits to many UK sectors, including financial and legal services. Additionally, Hague 2019 will not change or remove existing recognition and enforcement possibilities under domestic law in the UK and other Contracting States. Parties will be able to continue relying on domestic mechanisms for the recognition and enforcement of cases not covered by Hague 2019.
39. The Government notes that many respondents discussed the relative merits of Hague 2019 compared to the Lugano Convention. As set out above, joining Hague 2019 does not prevent the UK joining the Lugano Convention in future. The Government will take account of the detailed comments raised by respondents in this regard.
40. By facilitating the mutual recognition and enforcement of judgments by courts in the UK and other Contracting States, Hague 2019 will not only provide greater legal certainty and reduce complexities for litigating parties, and not only enhance confidence in cross-border commercial activities and the UK's attractiveness as a forum for dispute resolution, but it will also improve access to justice. Whilst there are potential concerns related to the limitations in scope, the benefits of the Convention outweigh the potential downsides.

## Declarations and notifications

The following section discusses the responses to questions 9 and 10 which consider whether there should be any specific restrictions placed on Hague 2019's application in the UK, including with regards to the subject matters in scope and the Contracting Parties with whom the Convention will have effect.

41. There were 30 respondents who addressed one or both of these linked questions regarding whether the UK should clarify or limit the application of Hague 2019 in the UK.
42. **Question 9** asked respondents if any declarations should be made by the UK under Hague 2019 (Articles 14, 17, 18, and 19). Declarations can be made under these Articles at the point of signature, ratification or any time thereafter. Overall, respondents were of the view that the UK should not make any declarations. Several respondents expressed concerns about the limitations on Hague 2019's scope that declarations would cause, and about the inconsistencies that would be created in the application of the Convention where other Contracting States have not made the same declarations. Making declarations could also incentivise other Contracting States to make their own reciprocal declarations, thereby further reducing the scope of recognition and enforcement of UK judgments. Respondents added that declarations reduce uniformity of application and therefore could reduce the clarity as to whether judgments are in scope in particular Contracting States.
43. Respondents were unanimous in their view that the UK should not make any declarations under Article 17 or 19. Article 17 allows a state to declare that its courts may refuse to recognise or enforce a foreign judgment if the specified connections of the case are entirely internal to the state in which enforcement is sought. It was noted that neither common law nor Hague 2005 as implemented in the UK prevents the enforcement of foreign judgments on the sole basis that the specified connections of the case were wholly internal to the UK jurisdiction in which enforcement is sought. Article 19 allows the UK to exclude the application of the Convention to judgments on proceedings to which the UK Government, or Government agency, or a natural person acting on its behalf, is a party. Respondents considered that this is not necessary given the Convention's scope limitation to civil and commercial matters, and that there are sufficient safeguards in the Convention to protect the UK's interests.
44. No respondents were in favour of a declaration under Article 14, which would allow the UK to require security for costs on the sole ground that the party seeking enforcement is a foreign national or foreign resident/domiciliary. A small number of respondents noted that the law of England and Wales contains a similar restriction, and the potential negative impacts of such differential treatment or on access to justice. However, one

respondent said that future consideration could be given to such a declaration depending, in particular, on the legal and costs regimes in place in future contracting states, and the complexity and costs of proceedings.

45. Many who answered question 9 commented specifically on Article 18, which allows a State to declare that it will not apply the Convention to a specific subject matter where it has a “strong interest” in not doing so. The majority were against making a declaration under Article 18, noting that this would limit the scope of the Convention and hence its usefulness to litigating parties. Respondents also expressed the view that an Article 18 declaration could create additional complexities, rendering the Convention more difficult to apply. A small number of respondents noted that the UK had made a declaration under the equivalent provision in Hague 2005 to remove insurance from scope, subject to certain exceptions. However, none suggested that the UK should make a similar declaration under Hague 2019, and two respondents opposed such a declaration under Hague 2019.
46. One respondent suggested making a declaration limiting the Convention’s application in mixed litigation cases (i.e. where a judgment is on a matter that is in scope of Hague 2019 but also on a matter that is outside of scope) in order to avoid difficulties arising about the extent to which the judgment is enforceable under the Convention.
47. **Question 10** sought views on whether the UK should decline to apply the Convention with Russia. In the event Russia ratifies Hague 2019, it would be possible to ensure that the Convention does not have effect between the UK and the Russian Federation via a notification under Article 29.
48. Many respondents generally condemned Russia’s invasion of Ukraine. They also made clear that if and when Russia takes steps to ratify the Convention, the UK should consider its position in respect of application of the Convention.

### **The Government Response**

49. Declarations under Articles 14, 16, 18 and 19 can be made upon signature, ratification, or at any time thereafter, and may be subsequently modified or withdrawn at any time. Having carefully considered the responses to question 9, the Government is of the view that there were no sufficiently strong policy reasons raised by respondents to this Consultation to warrant the UK making declarations under the relevant articles of Hague 2019 at this time.
50. In particular, regarding a declaration under Article 14, no respondents urged this, and such a declaration would run counter to the approach at least of procedure rules in England and Wales which do not permit orders for security for costs in cross-border enforcement matters on the sole ground of foreign nationality or foreign residence/domicile.

51. Further, as to Article 18 declarations, as set out in the consultation document and noted by many respondents, applying declarations in respect of specific subject matters would restrict Hague 2019's scope of application in the UK and could lead to reciprocal declarations from other Contracting States, undermining the Convention's purpose and objectives. The Government is of the view that there is no need to make a declaration similar to that made under the 2005 Hague declaration to remove insurance matters from scope. There are a number of indirect jurisdiction grounds on which both insurers and insured parties can base enforcement claims under the Convention, and although these might not include some jurisdiction grounds on which insured parties might seek judgments in some states, a declaration excluding insurance matters would depriving these parties from the enforcement benefits of Hague 2019. Additionally, the Government is not inclined to make a declaration at this time to exclude mixed issue judgments from scope, as this could have wide-ranging consequences and unnecessarily limit the judgments that could benefit from recognition and enforcement under the Convention.
52. The Government will keep questions of declarations under review as it proceeds to signature and implementation, and in future as the Convention comes into force between the UK and current and future Contracting States.
53. The Government has considered the concerns in relation to the Russian Federation having signed Hague 2019 and considers that UK should sign the Convention with the understanding that a future notification in relation to the Russian Federation under Article 29 would be available to prevent the Convention applying between the UK and Russia, should there be any development in the latter's ratification of Hague 2019.

## Implementation of Hague 2019

This section considers the responses received for questions 7, 8 and 13 which sought views on aspects of how Hague 2019 should be implemented. In particular, it addresses the suitability of the registration model, how indirect jurisdiction grounds should be established, and whether there would be any intra-UK issues should the Convention be implemented in only one jurisdiction of the UK.

54. **Question 7** asked for views on whether the Convention should be implemented using the registration model for the purpose of recognising and enforcing judgments from another Contracting State. This would involve creating a requirement for creditors to register their judgments in a similar way to registration requirements that currently exist under domestic law, including for the 2005 Hague Convention under the Civil and Jurisdiction and Judgments Act 1982 (the "1982 Act"), and for specified countries under the Administration of Justice Act 1920 (the "1920 Act") and the Foreign Judgments

(Reciprocal Enforcement) Act 1933 (the “1933 Act”). This model also involves creating a possibility for challenge by the judgment debtor following registration and before enforcement. An alternative would be to use a non-registration model, such as that used for the EU Regulation known as Brussels I Recast when the UK was part of the EU, which allowed judgment creditors to proceed directly to the enforcement stage in the requested state without the need to register the judgment, and with the judgment debtor having the possibility of challenge at the enforcement stage. 31 responses were received for this question, and all were supportive of the suggestion to implement Hague 2019 using a registration model.

55. All of the respondents responded to this question and supported a registration model for Hague 2019. Most of these respondents suggested that it should be based on the one found in the 1982 Act for the purpose of recognising and enforcing judgments from other contracting states under Hague 2005, or under the 1920 or 1933 Acts. These respondents supported the general approach of a registration model, which imposes a requirement for parties to register their judgment with the appropriate court in the UK, with the court needing to be satisfied that the conditions for recognition under the Convention, including in particular the indirect jurisdiction grounds, were met. Parties objecting to the recognition of the foreign judgment in question could appeal against the registration before it became enforceable on various grounds, including on the basis that indirect jurisdiction grounds had not been met or that one of the grounds of refusal was satisfied.
56. Respondents expressed the view that using a proven registration model that is familiar, effective and well understood for Hague 2019 would help to ensure consistency and provide users greater clarity and certainty. In addition, many respondents noted that using a registration process would be an effective way to monitor the number of requests made under the Convention and suggested that this data could help inform future policy decisions regarding the implementation of similar recognition and enforcement frameworks.
57. **Question 8**, which received 27 responses, sought views on how indirect jurisdiction grounds should be established by the relevant domestic courts under Hague 2019 in order for a judgment to be capable of recognition and enforcement. Since current domestic models for enforcement contain requirements for judgment creditors to confirm or show at registration stage that certain conditions for recognition and enforcement are met, a possibility mentioned in the consultation paper was that the applicant would have to show at registration stage (if that model were to be adopted) that one of the indirect jurisdiction grounds in Articles 5 or 6 of the Convention had been met.
58. Except for two who did not express a specific view, respondents all expressed the view that a procedure for establishing whether an indirect jurisdictional ground has been met

should be part of the proposed registration process, where the party seeking registration of a judgment under Hague 2019 would be required to set out the applicable ground and provide the necessary evidence. After registration, as discussed in relation to Question 7, the other party would then be notified and given a period of time to provide contrary argument as to whether the indirect jurisdiction grounds had been satisfied. Respondents said that the details of this procedure should be made clear in the relevant rules of court.

59. Some respondents said that courts could face potential complexity in some cases when seeking to determine whether an indirect jurisdiction ground had been met. For example, a court in another Contracting State may have taken jurisdiction on a different basis under its national law to the grounds set out in Article 5, but an Article 5 ground could still be met by other connections of the case. Questions arise therefore as to how the applicant would show this at registration stage, and how onerous the task could be for the court at that stage to work out whether one of the grounds of Article 5 had been met. This could be particularly difficult in the case of default judgments i.e. judgments in undefended cases.
60. Some respondents also expressed concerns that the complexity of some of the Convention terms may render the question whether a judgment is entitled to recognition uncertain. One respondent gave the term ‘purposeful and substantial connection to that State’ in Art.5(1)(g) as an example of a term that could be open to interpretation. This respondent also raised the concern that, in some cases, classification problems may arise (e.g. what do “contractual obligation” or “non-contractual obligation” in Article 5 mean, particularly where a court is faced with a judgment from the courts of another Contracting State concerning concepts with no domestic law equivalent; or a claim is made e.g. to recover payments pursuant to an allegedly void contract.
61. **Question 13** asked if respondents could foresee any intra-UK considerations if the Hague 2019 Convention were to be implemented only in certain parts of the UK.
62. Of the 24 responses to this question, some indicated that there would not be any significant intra-UK implications of the Convention being implemented in only certain parts of the UK. However, the majority of respondents were of the view that if the UK were to join Hague 2019, the Convention should be implemented in all three UK jurisdictions. Respondents noted the following as potential risks that they considered could arise if Hague 2019 were to be implemented in only certain UK jurisdictions:
- Since parties could only seek recognition and enforcement of foreign judgments under Hague 2019 in those jurisdictions of the UK to which Hague 2019 extended, and vice versa, the resulting disparity in legal recourse available could render one jurisdiction more attractive than another, incentivising intra-UK jurisdiction shopping;

- There could be disputes about whether proceedings for the original judgment should happen in the part of the UK in which Hague 2019 applies (so that the judgment coming out of the proceeding could be enforceable abroad under Hague 2019); The Government would need to consider whether existing intra-UK rules in the Civil Jurisdiction and Judgments Act 1982, which prevent registrations of foreign judgments in one UK jurisdiction from being recognised in the another, would apply, and how it might need to be amended;
- This could undermine the positive messaging about the UK’s commitment to participating in and developing this global framework and the UK’s image as an outward looking country that is open for business.

### **The Government Response**

63. The Government recognises the need for Hague 2019 to be implemented in a way that is clear, consistent, and accessible to users. The Government notes the respondents’ strong endorsement of the Government’s suggestion to use a registration model to implement Hague 2019 and their clear preference for the process of establishing whether an indirect jurisdiction ground has been met to be a part of this registration, whilst also noting potential challenges in how this process will work.

64. In particular, the Government agrees that a registration model for Hague 2019 is more appropriate than a model that would allow judgment creditors to proceed directly to the enforcement stage as if the foreign judgment were a domestic one, given the potential breadth of Hague 2019 membership as an international convention.

65. The Government envisages that a registration model similar to that which is used for Hague 2005 or other statutory models could be used to implement Hague 2019 for the purpose of recognition and enforcement of judgments from other Contracting Parties, though this is a devolved matter in respect of Scotland and Northern Ireland. In practice, this could mean that parties seeking to have a foreign judgment recognised and enforced in the UK under Hague 2019 would be required to submit an application to the court, setting out the applicable indirect jurisdiction ground, amongst other things and provide the necessary evidence. Parties objecting to the recognition and enforcement of the foreign judgment would then have an opportunity to challenge the registration before enforcement takes place, by way of appeal against or setting aside of the registration. As part of its implementation work, the Government will further consider the details of such a model particularly with respect to the challenges highlighted by respondents for the indirect jurisdiction aspects of the procedures.

66. The Government notes the potential risks of implementing Hague 2019 in only certain parts of the UK as identified by respondents and agrees that the Convention should extend to Scotland and Northern Ireland, as well as England and Wales. This will help to prevent inconsistencies between the UK jurisdictions and ensure parties seeking to



enforce foreign judgments in the UK and other Contracting Hague 2019 States can benefit equally from the Convention rules.

67. The operation of private international law, and therefore the implementation of Hague 2019, is a devolved matter in Scotland and Northern Ireland. UK Government officials will continue to work closely with their counterparts in the Scottish Government and in Northern Ireland to ensure implementing frameworks are in place in all 3 jurisdictions ahead of ratification of the Convention.

68. The Government will work with the Crown Dependencies and the Overseas Territories to determine if the Convention should extend to these territories.

# Impact Assessment, Equalities and Welsh Language

## Impact Assessment

69. It is not possible at this stage to quantify the impact, of the UK becoming a party to the Hague 2019 Convention, on businesses, charities, the voluntary sector, or the public sector. The Convention is not intended to impose any burden, regulatory or financial, on business or other entities. Instead, it provides a new route to recognise and enforce cross-border judgments should parties decide to use it.

70. Given the responses received and summarised above, the Government estimates there will be a positive impact on businesses that operate across borders, because they will have a further, and more certain and uniform, way to enforce judgments that they might need to seek to resolve disputes. The Government also estimates that there will be a positive impact on the litigation sector i.e. for legal representatives that advise on and assist in cross-border commercial activity and enforcement of judgments, particularly since, as noted by a number of respondents, parties will have more confidence in choosing UK courts for dispute resolution if the resulting judgments will be enforceable across borders under Hague 2019. The Government will undertake further work to quantify the impact and issue guidance when implementing the Convention.

## Equalities

71. As Hague 2019 is a relatively new Convention and has not operated in the UK before, there is no quantitative data to demonstrate the likely impact of its application in the UK in relation to the Equality Act 2010. The Government's consideration of potential equality impacts of applying the Convention will continue as it proceeds with implementation, but in the meantime, this section summarises and considers responses received.

72. As referenced in paragraph 32, the majority of respondents were of the view that there were no adverse equality impacts to the UK applying Hague 2019. Some respondents indicated that Hague 2019 could advance equality of opportunity through increasing access to justice and, of particular relevance to persons with protected characteristics, the potential recognition of judgments in discrimination cases in other Contracting States.

73. Two respondents expressed concerns that the scope of Hague 2019 may not provide adequate provision for seriously injured people following cross-border injury and that this could indirectly discriminate against those with disabilities as a result of injuries suffered abroad. This is a reflection of particular Hague 2019 rules (as outlined in the summary of responses to Q6 above), in particular that the Convention prevents recognition and enforcement of judgments where the act or omission leading to the harm did not occur in the jurisdiction of the court giving the judgment, which might prevent those with disabilities arising from injuries abroad from having a judgment from a UK court for damages or costs in their favour recognised and enforced under Hague 2019.
74. The Government recognises this limitation in the benefits that Hague 2019 provides, but does not consider that such a limitation in the benefits of the Convention amounts to indirect discrimination, in particular because any potential negative impact on equality is proportionate to the legitimate aims of providing a new mechanism for, and certainty of rules, in respect of the recognition and enforcement of judgments which can include judgments in personal injury cases or otherwise that could benefit those with disability or other protected characteristics.
75. The Government will continue to consider the equality implications as it proceeds with implementation of Hague 2019.

## **Welsh Language Impact Test**

76. Given the legal and specific nature of this Consultation, a Welsh language translation will be provided on request.

# Conclusion and next steps

## Decision and Rationale

77. Having considered the responses received and wider stakeholder feedback, the Government has concluded that it is the right time for the UK to join Hague 2019 and will seek to do so as soon as practicable.
78. The Convention offers a strong multilateral framework of uniform rules for the recognition and enforcement of a wide range of judgments between the UK and other Hague 2019 Contracting Parties, which currently include the EU and Ukraine. This is particularly important in the present absence of a comprehensive private international framework between the UK and the EU covering civil and commercial matters. Joining Hague 2019 will provide businesses and consumers greater confidence when conducting cross-border transactions in the knowledge there will be clear and effective mechanisms in place to recognise and enforce UK judgments in other jurisdictions and vice versa. It will help to strengthen the UK's position as a preferred forum for dispute resolution.
79. Hague 2019's already considerable global reach is set to expand over the coming years, with the US, Israel and a number of other countries having already signed the Convention. Joining Hague 2019 now will allow the UK to not only secure the benefits of the Convention but to also play a leading role in driving the development of this global framework as judges in the UK will be amongst the first to apply and interpret its terms. This will build on the UK's longstanding commitment to the development of private international law frameworks through international collaboration and cooperation.
80. The Government notes the downsides expressed by some respondents, certain of which centred around the Convention's limitations in scope particularly by contrast with the Lugano Convention. However, as both the consultation responses and stakeholders' feedback have all clearly highlighted, the benefits of joining the Hague 2019 far outweigh any of its downsides.
81. Joining Hague 2019 does not prevent the UK from joining the Lugano Convention in future, nor does it change existing domestic law, on which parties can continue to rely for the recognition and enforcement of judgments not covered by Hague 2019. Hague 2019 also includes provisions which would allow the UK to decline to apply the terms of the Convention with another State party should it be considered to go against UK policy.

## Next Steps

### Signature, Ratification and Entry into Force

82. The Government will move to sign the Convention as soon as possible, as an important signal of its commitment to multilateral Private International Law instruments and to help improve legal certainty for businesses and consumers involved in cross-border litigation. The Convention will enter into force for the UK 12 months after the date it deposits its instrument of ratification.
83. Ratification will take place once all of the necessary implementing legislation and rules have been put in place to facilitate the Convention's smooth operation in the UK.
84. The Government will lay the Convention in Parliament ahead of ratification and will ensure that implementing legislation is in place for the three jurisdictions ahead of doing so. Hague 2019 would be implemented in UK domestic law principally using powers in the Private International Law (Implementation of Agreements) Act 2020, subject to appropriate parliamentary scrutiny.
85. The Government also intends to work with the Crown Dependencies and the Overseas Territories to determine if the Convention should extend to these territories.

### Implementation and Declarations

86. The Government has concluded that the Convention should have UK-wide extent based on the benefits to all three of the UK jurisdictions expressed by respondents.
87. The Government intends that Hague 2019 will be implemented via powers in the Private International Law (Implementation of Agreements) Act 2020, as well as via rules of court in all 3 jurisdictions of the UK.
88. The Government intends that Hague 2019 will be implemented using a registration model, as it is clear and consistent with previous approaches taken to foreign judgments including in particular the 2005 Hague Convention model. It would also allow for the UK to monitor the number of requests under the Convention.
89. The Government has concluded that there were no sufficient policy reasons raised by respondents to the consultation to warrant the UK making a declaration under Articles 14, 16 or 19 at this time. In particular, the Government has concluded that it will not make a declaration to remove insurance matters or exclude mixed litigation issues from scope under Article 18 of Hague 2019 at this time. Making a declaration is likely to restrict the scope of Hague 2019, which could in turn solicit reciprocal declarations by other Contracting States, undermining the Convention's purpose and objectives. The UK will, however, be able to make a declaration up until the ratification stage of Hague 2019 or at any time thereafter. The Government will therefore continue to keep the need for declarations under review as it proceeds to signature and implementation of

Hague 2019, and as the Convention comes into force between the UK other Contracting States.

## Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/691383/Consultation\\_Principles\\_\\_1\\_\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1__.pdf)

## **Annex A – List of Respondents**

Allen & Overy LLP

Association of Consumer Support Organisations

Association of Personal Injury Lawyers

Bar Council England and Wales

Bar of Northern Ireland

Bird & Bird

Centre for Private International Law at the University of Aberdeen

City of London Corporation

City of London Law Society

Clifford Chance LLP

Clyde and Co LLP

Commercial Bar Association

DAC Beachcroft LLP

DWF Law LLP

Faculty of Advocates

Forum of Insurance Lawyers

Herbert Smith Freehills LLP

Law Society of England and Wales

Law Society of Northern Ireland

Law Society of Scotland

Linklaters LLP

London Solicitors Litigation Association



Motor Insurers Bureau

Plexus Legal LLP

Senators of the College of Justice (Scotland)

Society of Trust and Estate Practitioners

Stewarts

Swansea University

Taylor Wessing

The City UK

University College London

University of Glasgow

University of Manchester

University of Oxford

University of Stirling Law School's Research Cluster in Private International Law

Ward Hadaway LLP

Two people responded independently.



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