



Law Society
of Scotland

Law Society of Scotland Response

To the Ministry of Justice Consultation on the Hague
2019 Convention on the Recognition and
Enforcement of Foreign Judgments in Civil or
Commercial Matters

February 2023



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Public Policy Committee and the Society's International Private Law Reference Group welcome the opportunity to consider and respond to the Ministry of Justice consultation on the Hague 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. The Committee and Group have the following comments to put forward for consideration.

General Comments

Question 1: Should the UK accede to Hague 2019? Please provide your reasoning. What do you expect the added value to be for the UK upon accession?

We take the view that the UK should accede to the Hague Convention of 2019 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (Hague 2019).

Our reasons are:

- a. Prior to Brexit we supported the creation of a new civil judicial cooperation regime with the EU. We were disappointed when the Trade and Cooperation Agreement did not contain any such provision. Hague 19 will however provide legal clarity in this area and may reduce costs.
- b. The Convention has limitations in scope but applies to many categories of disputes, including consumer and employment issues.
- c. UK accession to the Convention would help to ensure that UK businesses can trade across borders in the knowledge that if there is a dispute they can obtain redress in other appropriate jurisdictions and get the judgment enforced in the UK more often than they can under the current law.

Question 2: Is this the right time for the UK to consider Hague 2019? Are there any reasons why you consider now would not be the right time for the UK to become a Contracting State to the Convention?

Yes. It is important that the UK is an early adopter of Hague 19. The earlier the commencement provisions are engaged the earlier the Convention will become effective in the UK. Furthermore, the EU has formally ratified and acceded to the Convention in August 2021 meaning that it will come into effect on 1 September 2023. It will be increasingly problematic if the UK delays in acceding to the Convention as a number of UK

judgments will not be enforced in the EU Member States or getting them enforced will be more problematic and expensive than it will be under the 2019 Convention.

Accession by the UK will also encourage other states to accede.

Question 3: What impact do you think becoming a Contracting State to the Convention will have for UK parties dealing in international civil and commercial disputes?

The UK becoming a contracting state would ensure that UK parties dealing in cross-border civil and commercial disputes will have certainty that judgments from courts in any UK jurisdiction will be easily enforceable in all other Contracting States.

After accession, if a UK litigant obtains a judgment in another Contracting State (eg an EU Member State apart from Denmark) it will be able to get the judgment enforced in the UK, even if under the current common law no such enforcement would be possible (eg where the indirect basis of jurisdiction relied on is the place of performance of the contract).

Question 4: What legal impact will becoming a Contracting State to the Convention have in your jurisdiction (i.e. in England and Wales, in Scotland or in Northern Ireland)?

The Convention will have no intra-UK application. It should make judgments from Scottish Courts more easily recognised and enforced in other Contracting States.

One benefit for Scotland is that the “contract jurisdiction” in the Convention is more aligned to our contract jurisdiction based on the place of performance of the obligation in question under schedule 8 of the Civil Jurisdiction and Judgments Act 1982.

Question 5: What downsides do you consider would result from the UK becoming a Contracting State to the Convention? Please expand on the perceived severity of these downsides.

We perceive no downsides from acceding to the Convention.

Question: 6: Are there any aspects or specific provisions in the Convention that cause concern or may have adverse effects from a UK perspective?

Declarations made under Articles 14, 17, 18, 19 and 25 which limit the Convention’s application between the UK and another contracting state could have an adverse effect on the recognition or enforcement of judgments from Scottish Courts in other Contracting States.

We see no need for the UK to make any declarations or reservations.

Question 7: Do you have a view on whether the Convention should be implemented using a registration model for the purpose of recognition and enforcement of judgments from other Contracting States?

The Convention should be implemented using as simple a registration model as possible. The precedent of automatic registration followed in the implementation of the 2005 Hague Choice of Court Convention by the Civil Jurisdiction and Judgments Act 1982 works. Consistency with that scheme will provide confidence to litigants and practitioners alike.

Question 8: Do you have a view on how the Convention should be implemented for the purposes of establishing how indirect jurisdictional grounds should be established by the relevant domestic court?

We take the view that this is a matter for implementation through the Rules of the Court of Session or the Sheriff Court.

Question 9: In your view, are there any declarations which the UK should make? If so, why?

We take the view that the UK should not make declarations under Articles 14,17,18,19 and 25.

Question 10: What do you consider would be the legal or practical implications of the UK applying the reservation suggested in relation to the Russian Federation (paragraph 4.22)? It should be noted that it would always be possible to repeal such a reservation in the future.

In our view there is no need for any action at this time. The EU Council in ratifying convention made no reservation in respect of Russia [pdf \(europa.eu\)](https://europa.eu) nor did Ukraine [HCCH | Print](#).

Question 11: While both Hague 2019 and the 2007 Lugano Convention provide a framework for recognition and enforcement of civil and commercial judgments, what drawbacks, if any, do you foresee if the UK were to apply only Hague 2019 with EU/EFTA States, given its narrower scope and lack of jurisdiction rules? Please provide practical examples of any problems.

We take the view that the UK Government should focus exclusively on the UK's accession to and ratification of the Hague 2019 Convention.

Question 12: Do you consider that the UK becoming party, or not becoming party, to the Hague 2019 Convention would have equalities impacts in regards to the Equalities Act 2010?

No.

Question 13: Would you foresee any intra-UK considerations if the Hague 2019 was to be implemented in only certain parts of the UK?

Implementation of the Convention should apply across all jurisdictions in the UK. However, if the Convention is implemented for only some parts of the UK this should not affect the way in which judgments are recognised and enforced between parts of the UK under sections 18 and 19 and schedules 6 and 7 of the Civil Jurisdiction and Judgments Act 1982. A foreign judgment recognised and enforced in one part of the UK on the basis of the 2019 Convention should not become recognisable and enforceable in other parts of the UK through sections 18 and 19 and schedules 6 and 7 of the 1982 Act.



Question 14: What other comments, if any, do you have?

We have no further comments to make.



For further information, please contact:

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