

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT NO. 2) RULES 2024
2024 No. 595 (L. 10)

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

- 2.1 Lord Bellamy KC, Parliamentary Under-Secretary of State at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Kristen Tiley, Deputy Director for International Justice Policy Division at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Yinni Hu at the Ministry of Justice Telephone: 07514736818 or email: pil@justice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 This instrument amends the Civil Procedure Rules 1998 (S.I. 1998/3132) (the CPR), which govern practice and procedure in the Civil Division of the Court of Appeal, the High Court, and the County Court. The amendments, together with amendments made in a statutory instrument entitled The Recognition and Enforcement of Judgments (2019 Hague Convention etc.) Regulations 2024 (S.I. 2024/[xxx]) (the “2024 Regulations”), facilitate the implementation of the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague 2019 or the Convention). This instrument also makes amendments to some of the existing implementing rules for the Hague Convention of 30 June 2005 on Choice of Court Agreements (Hague 2005).

Where does the legislation extend to, and apply?

- 4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

- 5.1 These Rules form part of the implementing provision for Hague 2019, which is a multilateral private international law treaty that provides a common set of rules to facilitate the recognition and enforcement of judgments between Contracting Parties.¹ It covers civil and commercial judgments and judicial settlements, with a number of matters excluded from its scope. The UK signed Hague 2019 on 12 January 2024 and it was laid before Parliament for treaty scrutiny under the Constitutional Reform and Governance Act 2010 on 25 March 2024.²
- 5.2 When laid before Parliament for treaty scrutiny, the text of Hague 2019 was accompanied by an Explanatory Memorandum which can be referred to for further detail about the Convention and its operation in the UK.³
- 5.3 The 2024 Regulations amend the Civil Jurisdiction and Judgments Act 1982 (the 1982 Act) to give Hague 2019 force of law in the UK and make certain implementing provision. The amendments these Rules make to Part 74 of the CPR complement the 2024 Regulations and are necessary for the implementation of Hague 2019 in England and Wales.
- 5.4 These Rules also make amendments to CPR Part 74 for Hague 2005, for reasons of clarity and consistency.
- 5.5 Hague 2005 is a multilateral treaty aimed at ensuring the effectiveness of exclusive choice of court agreements between parties to international commercial transactions.⁴
- 5.6 The main features of the rule amendments are highlighted below.

Hague 2019

Registration

- 5.7 The amendments include rules to complement the requirement contained in the 2024 Regulations for parties seeking recognition and enforcement of foreign judgments in the UK under Hague 2019 to apply to the High Court to register the judgment.
- 5.8 Applications for registration will be non-contentious and the registering court will decide based on limited information whether the requirements for recognition and enforcement under Hague 2019 have been met.
- 5.9 As the court will not be required to consider the discretionary grounds to refuse recognition and enforcement or grounds to permit postponement under the Convention at this stage, the rules do not require information to be provided on this at the point of the application to register.
- 5.10 The Rules amend the CPR to reflect this registration model as follows.
- 5.11 CPR rules 74.1 (scope and interpretation) and 74.3 (applications for registration) are amended to define the Hague 2019 Convention for the purposes of Part 74 and bring registration applications under the Convention within scope of Section I of that Part.

¹ Text of Hague 2019: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=137>

² Statement from Lord Bellamy KC: <https://hansard.parliament.uk/Commons/2024-01-16/debates/24011636000015/HagueConventionOf2019ForeignJudgementsInCivilAndCommercialMatters>

³ <https://www.gov.uk/government/publications/convention-on-the-recognition-and-enforcement-of-foreign-judgments-in-civil-or-commercial-matters-ms-no72024>

⁴ Text of Hague 2005: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=98>

- 5.12 Rule 74.4 (evidence) as amended specifies the information that must be provided as part of an application for registration under Hague 2019. Specifically, the applicant must confirm that the judgment meets: the condition in article 4(3) of the Convention, that it has effect in the state of origin (or for enforcement that it is enforceable there); one of the bases of indirect jurisdiction in either article 5 or 6; and otherwise meets the requirements of the Convention, such as the scope provisions of articles 1 and 2 of the Convention, temporal scope (article 16) and the fact that the definition of ‘judgment’ in article 3 excludes interim measures of protection. Applications also need to include any other evidence required by article 12 of the Convention.
- 5.13 Rule 74.10 (recognition), as amended, provides that registration of a judgment on an application made under Hague 2019 serves as a decision that the judgment is recognised for the purposes of the Convention and clarifies that registration applications for the purpose of recognition only are governed by the same rules as for registration applications for the purposes of recognition and enforcement, with certain modifications to the evidence required in support. Rule 74.11 (authentic instruments and court settlements) has been amended to extend to Hague 2019 and provides that the rules governing the registration of judgments apply as appropriate and with any necessary modifications for the enforcement of court settlements subject to Article 11 of the Convention.

Application to set aside a registration decision or order

- 5.14 Under the 2024 Regulations, either party will be able to apply to challenge the registration order or decision by way of an application to set aside before it is enforced.
- 5.15 The Rules make amendments to reflect this approach. Rule 74.6 (registration orders) which, among other things, sets out information to be included in a registration order in respect to a right to set aside, has been amended to extend to applications made under Hague 2019. Rule 74.7 (applications to set aside a registration decision), as amended, specifies, among other things, the time period in which an application to set aside a registration order or decision in respect to recognition or enforcement of a judgement under Hague 2019 can be brought. Rule 74.11 (authentic instruments and court settlements) has been amended to extend to Hague 2019 and provides that the rules governing the registration of judgments apply as appropriate and with any necessary modifications for the enforcement of court settlements subject to Article 11 of the Convention.

Enforcement and Recognition of judgments under Hague 2019 in other Contracting States

- 5.16 The 2024 Regulations will amend section 12 of the 1982 Act to extend it to apply to the 2019 Hague Convention, and as a consequence Section II of CPR Part 74 will apply. These provisions are provided to enable any interested party wishing to secure the recognition or enforcement of a judgment given by a court in England and Wales in another contracting state under Hague 2019 to obtain the necessary documents to do so.

Hague 2005

- 5.17 As noted above in paragraph 5.3, to ensure clarity and for consistency between the approaches taken to implement both Hague 2019 and Hague 2005, the Rules make certain changes to some of the implementing provisions for Hague 2005, as the 2024 Regulations are doing for the 1982 Act.

- 5.18 In particular, since the route of challenge (which is currently by way of appeal) for Hague 2005 registration decisions is being amended by the 2024 Regulations to a ‘set aside’ process, the amendments in these Rules remove or change references in a number of places from an appeal process to a ‘set aside’ process: rules 74.5 (security for costs); 74.6 (registration orders); 74.7 (applications to set aside registration); 74.8 (appeals); and 74.9 (enforcement).
- 5.19 Rule 74.4 (evidence) has also been amended to clarify the information that must be provided as part of an application for registration under Hague 2005. Specifically, the applicant must confirm that the judgment meets: the condition in article 8(3) of Hague 2005, that it has effect in the state of origin (or for enforcement that it is enforceable there); and, otherwise meets the requirements for recognition or enforcement of Hague 2005, such as the scope provisions of articles 1 and 2 of the Convention, temporal scope (article 16) and the fact that the definition of ‘judgment’ in article 3 excludes interim measures of protection. Applications also need to include any other evidence required by article 13 of Hague 2005.
- 5.20 By virtue of Rule 1 of this instrument, the proposed amendments to Part 74 in respect to Hague 2005 will come into force at the same time as the proposed Hague 2019 rule amendments.

Saving Provision

- 5.21 These Rules also include a saving provision, which provides that if an application has been made to register a judgment or judicial settlement under Hague 2005 before these Rules come into force, Part 74 will continue to have effect as though the amendments made by these Rules had not been made in proceedings relating to that application.

What was the previous policy, how is this different?

- 5.22 The UK becoming a Contracting Party to Hague 2019 will provide an internationally agreed framework for recognition and enforcement of many civil and commercial judgments between the UK and other Contracting Parties.
- 5.23 The rules being made for registration of judgments under Hague 2019 are broadly consistent with the rules in place under CPR Part 74 for registering judgements under existing recognition and enforcement regimes, namely Hague 2005 and for specified countries under the Administration of Justice Act 1920 (the 1920 Act) and the Foreign Judgments (Reciprocal Enforcement) Act 1933 (and the 1933 Act). Similarly, the Rule amendments made for the ‘set aside’ route of challenge for Hague 2019 decisions as well as Hague 2005 decisions are broadly consistent with the rules in place under CPR Part 74 for registration decisions under the 1920 and 1933 Acts.

6. Legislative and Legal Context

- 6.1 The Civil Procedure Rule Committee (CPRC), has a power under section 2 of the Civil Procedure Act 1997 to make rules under section 1 of and Schedule 1 to that Act. Section 2(6) of the Civil Procedure Act 1997 requires the CPRC, before making or amending rules, to meet (unless inexpedient to do so) and consult such persons as they consider appropriate. The CPRC meets nine times a year. The CPRC considered the amendments these Rules make at three meetings since December 2023 and approved them at their meeting on 12 April 2024. Consultation is addressed in section 7 of this memorandum.

- 6.2 These Rules amend the CPR Part 74 to make procedure rules for the operation of Hague 2019 in England and Wales as part of the implementation of that Convention; and amend certain rules which make provision for the operation of Hague 2005 in England and Wales to make them consistent with the provisions being adopted for the 2019 Convention and to reflect changes made in the 2024 Regulations.
- 6.3 The 2024 Regulations amend the 1982 Act to incorporate Hague 2019 into UK domestic law and set out principal implementing provisions. These CPR amendments complement the 1982 Act amendments and are necessary to complete implementation of Hague 2019 in England and Wales.

Why was this approach taken to change the law?

- 6.4 The reasons for the approach taken are set out above.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 The UK Government's decision to sign the Hague 2019 Convention followed public consultation from 15 December 2022 to 9 February 2023. Responses were overwhelmingly in favour of the UK joining Hague 2019. The Government response to the consultation set out the intention for amendments to rules of court to form part of the UK's implementation of Hague 2019.⁵
- 7.2 Targeted consultation was also conducted in January 2024 with legal sector experts and the Lord Chancellor's Advisory Committee on Private International Law to seek input on details of proposals for implementation of Hague 2019. These included the decision to implement Hague 2019 using a registration model and the decision to use a 'set aside' route of challenge for a registration decision under Hague 2019 and Hague 2005.
- 7.3 Further, the Civil Procedure Rule Committee must, before making or amending Civil Procedure Rules, consult such persons as they consider appropriate (section 2(6)(a) of the Civil Procedure Act 1997). On 17 February 2024, the CPRC published a consultation on CPR amendments, which ran until 13 March 2024. Five responses were received, four from legal practitioners and one from a professional body. Responses were discussed with a CPRC sub-committee and the CPRC in the April 2024 Committee meeting.⁶ The views provided in the consultation responses were taken into account and were reflected in a number of further rule amendments that were made to rules 74.7, 74.10 and the saving provision.

8. Applicable Guidance

- 8.1 This instrument does not implement or require guidance.
- 8.2 Amendments to the CPR are drawn to the attention of participants in the civil justice system by correspondence addressed by the Civil Procedure Rule Committee secretariat to members of the judiciary, to other relevant representative bodies (for example the Law Society, Bar Council, advice sector) and to the editors of relevant

⁵ Consultation response is available here: <https://www.gov.uk/government/consultations/hague-convention-of-2-july-2019-on-the-recognition-and-enforcement-of-foreign-judgments-in-civil-or-commercial-matters-hague-2019/outcome/government-response-to-the-hague-convention-of-july-2019-on-the-recognition-and-enforcement-of-foreign-judgements-in-civil-or-commercial-matters-hagu>

⁶ Minutes of CPRC meetings are published here: <https://www.gov.uk/government/organisations/civil-procedure-rules-committee/about>

legal publications; as well as by publicity within HM Courts and Tribunals Service. News of changes to the rules, together with the consolidated version of the rules, are published on the Ministry of Justice website at [Civil - Civil Procedure Rules \(justice.gov.uk\)](https://www.justice.gov.uk/civil-civil-procedure-rules).

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument because the SI is not classed as a regulatory provision and does not impose any additional requirements on businesses or charities.

Impact on businesses, charities and voluntary bodies

- 9.2 Although it is not possible to quantify the cost and benefits of the impact of this SI, it will facilitate the application of Hague 2019 in England and Wales which will be beneficial for businesses by providing increased business confidence, reduce transaction costs and enhanced access to justice.
- 9.3 The impact of this SI on business, charities or voluntary bodies comes from a greater degree of certainty and predictability for citizens and businesses dealing in cross-border civil and commercial disputes about when judgments from courts in England and Wales will be recognised and enforced in the courts of other parties to the Convention, and when judgments from those parties can be recognised and enforced in the England and Wales. In turn, by facilitating the cross-border recognition and enforcement of judgments it will increase confidence in the English and Welsh legal system; support international trade, investment and cross-border mobility; and enhance access to justice and reduce the costs for litigants, many of which may be businesses involved in commercial disputes with a cross-border element.
- 9.4 The impact on the public sector is limited to the recognition and enforcement of judgments for or against a public body where the dispute is considered a civil or commercial matter (e.g. commercial dealings of the state).

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring of this legislation is for the amendments to form part of the Civil Procedure Rules which are kept under continuous review by the Civil Procedure Rule Committee and may be subject to amendment accordingly.
- 10.2 The Ministry of Justice will ensure that the operation of Hague 2019 and Hague 2005 is kept under review as appropriate.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 The UK cannot ratify Hague 2019 until the necessary legislation for its implementation is in place. These Rules, together with the 2024 Regulations, form part of the implementing framework in England and Wales for Hague 2019.
- 11.2 Private international law is a devolved matter with regards to Scotland and Northern Ireland.

- 11.3 The implementation of Hague 2019 will therefore also include Scotland and Northern Ireland making amendments to their respective court rules.
- 11.4 By virtue of Articles 28, Article 29 and 32 of Hague 2019, the Convention will enter into force for the UK on the first day of the month following the expiration of a 12-month period, which begins upon the notification by the depositary for the Convention to existing Contracting Parties of the UK's ratification of the Convention. This date will also be notified in the London, Edinburgh and Belfast Gazettes. In order to accommodate different implementation processes across the UK, the Government's intention is that when the UK ratifies the Convention, it will declare the territorial extent of the treaty to be England & Wales, with further declarations being lodged to extend the Convention to Scotland and Northern Ireland in time for simultaneous application UK-wide upon entry into force of the Convention for the UK.

12. European Convention on Human Rights

- 12.1 As the instrument does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023.