

EXPLANATORY MEMORANDUM TO
THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS (2019 HAGUE
CONVENTION ETC.) REGULATIONS 2024

2024 No. 713

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.

2. Declaration

2.1 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, 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 Jurisdiction and Judgments Act 1982 (the 1982 Act) in order to incorporate the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague 2019)¹ into domestic law and make further provision for its implementation.

4.2 This instrument also makes adjustments to the existing implementing provisions in the 1982 Act for the Hague Convention of 30 June 2005 on Choice of Court Agreements (Hague 2005)².

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland, and Northern Ireland.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland, and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 As set out in the response to the public consultation on the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or

¹ <https://assets.hcch.net/docs/806e290e-bbd8-413d-b15e-8e3e1bf1496d.pdf>

² <https://assets.hcch.net/docs/510bc238-7318-47ed-9ed5-e0972510d98b.pdf>

Commercial Matters³, the UK Government has decided that the UK should become a Contracting Party to Hague 2019. The Convention was signed by Lord Bellamy on behalf of the UK in The Hague on 12 January 2024 and laid before Parliament for treaty scrutiny under the Constitutional Reform and Governance Act 2010 on 25 March 2024.

- 5.2 Hague 2019 is a multilateral private international law treaty that provides an international framework of common rules to facilitate the recognition and enforcement of judgments from one Contracting Party in another. It covers civil and commercial judgments, with a number of matters excluded from its scope, including insolvency, privacy and carriage of passengers and goods.⁴ The UK being party to the Convention will provide greater certainty and predictability for citizens and businesses dealing in cross-border civil and commercial disputes, about when judgments from courts in the UK will be recognised and enforced in the courts of other Contracting Parties to the Convention, and when judgments from those parties can be recognised and enforced in the UK. The Convention provides a uniform set of rules for a wide range of judgments between the UK and other Contracting Parties and in doing so is designed to increase confidence in the UK legal system; support international trade, investment and cross-border mobility; enhance access to justice and reduce the costs for litigants of determining whether a judgment obtained from one court is enforceable in another Contracting Party.
- 5.3 This instrument incorporates Hague 2019 into domestic law and ensures that the necessary domestic legislation is in place for the rules of the Convention to apply between the UK and all the existing Contracting Parties to this Convention, including the EU and Ukraine. It will also allow the UK to operate Hague 2019 with future Contracting Parties to this Convention. Further implementing provision is being made in rules of court in each part of the UK.
- 5.4 For reasons of clarity, and for consistency of approach to the implementation of both Hague 2019 and Hague 2005, this instrument also makes adjustments to the implementing provisions for Hague 2005 as set out in the 1982 Act.
- 5.5 The key elements of the instrument are as follows:
 - 5.5.1 **Registration model:** The instrument creates a registration requirement in the 1982 Act for parties seeking recognition and enforcement of foreign judgments in the UK under Hague 2019. The party seeking registration will only need to provide limited evidence at this stage, and the relevant UK court will make a registration decision based on a limited initial consideration of this evidence, including as to whether the conditions for recognition and enforcement as set out in the Convention have been met. The party against which enforcement of the judgment is sought will not be entitled to make representations on the registration application. This registration model is consistent with the approach taken for the implementation of the 2005 Hague Convention under the 1982 Act, and for specified countries under the Administration of Justice Act 1920 and the Foreign Judgments (Reciprocal Enforcement) Act 1933. It is a proven model that is familiar, effective and well understood, and will help to ensure consistency within the UK's private international law framework and provide users with greater clarity and certainty.

³ <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>

⁴ Further information about the context, aims and provisions of the Convention can be found in the Explanatory Report on Hague 2019: <https://assets.hcch.net/docs/a1b0b0fc-95b1-4544-935b-b842534a120f.pdf>

- 5.5.2 **A ‘set aside’ route of challenge:** This instrument provides, as the route of challenge, the right for either party to apply to set aside a registration decision made under Hague 2019. The ‘set aside’ remedy is typically provided or available where the court, due to the particular process that led to the decision, is considered not to have had all the requisite facts or arguments before it in order to reach the correct decision. This is especially common for uncontested judgments, which includes registration decisions as per the registration requirement above.
- 5.5.3 In the case of Hague 2005 the route to challenge has also been amended from a right to appeal to a right to set aside, and the current limitation on further appeals has been removed, for consistency with the provisions adopted for Hague 2019. These decisions are in line with the views of the majority of respondents to a targeted consultation on a number of Hague 2019 and Hague 2005 implementation.
- 5.5.4 Whilst this instrument provides an explicit right to apply to have the registration decision set aside on particular grounds, and whilst the Government envisages that this will be the most appropriate route of challenge in most circumstances, the instrument does not remove any ordinary grounds of challenge against the decisions provided for within it.
- 5.5.5 **Intra-UK recognition and enforcement:** This instrument excludes judgments registered under both Hague 2019 and Hague 2005 from the intra-UK recognition and enforcement provisions in the 1982 Act. Sections 18 and 19 of the 1982 Act, supplemented by Schedules 6 and 7, contain a regime that allows judgments given within one jurisdiction of the UK to be recognised and enforced within other parts of the UK. This will not apply to judgments registered under Hague 2019 and Hague 2005. In line with the conventional treatment of foreign judgments, the question of whether a foreign judgment should be recognised or enforced in one of the UK jurisdictions should be a decision for the relevant court in that jurisdiction. Registering a foreign judgment under Hague 2019 and Hague 2005 in one UK jurisdiction will therefore not give rise to its recognition and enforcement in another under these sections of the 1982 Act.
- 5.5.6 A transitional provision has also been included for where an application was made to register a judgment under Hague 2005 before the date on which these Regulations came into force. In such a scenario, sections 4B, 6B and 18 of the Act shall continue to apply to the application for registration and any related proceedings, including any appeal, as if the amendments made to those sections by this instrument had not been made.

What was the previous policy, how is this different?

- 5.6 As an EU member, the UK applied a number of private international law Regulations with other EU member states, as well as the 2007 Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments covering private international law relations with the European Free Trade Association countries of Switzerland, Norway and Iceland. These arrangements ceased to apply, other than for certain legacy cases, at the end of the Transition Period following the UK’s departure from the EU (31 December 2020).
- 5.7 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, which currently includes the EU, its member states and Ukraine.

5.8 The implementing provisions for Hague 2005 previously provided for an appeal process as the route to challenge a registration decision and was silent on whether the intra-UK provisions of the 1982 Act applied to foreign judgments registered under Hague 2005. This instrument adjusts these aspects of the Hague 2005 implementing framework for clarity and for consistency between the approaches taken to the implementation of both Hague 2019 and Hague 2005.

6. Legislative and Legal Context

How has the law changed?

- 6.1 This instrument is made using the powers provided by section 2 of the Private International Law (Implementation of Agreements) Act 2020 ('the 2020 Act'). That section allows the appropriate national authority to make regulations to apply any international agreement so far as it relates to private international law, and for certain related purposes. Under section 2(12) of the 2020 Act, the Secretary of State is the appropriate national authority for England and Wales, and also for Scotland (with the consent of the Scottish Ministers) and for Northern Ireland (with the consent of a Northern Ireland Department). The Regulations extend to England and Wales, Scotland and Northern Ireland, and are made with the consent of the Scottish Ministers and the Department of Justice for Northern Ireland.
- 6.2 This instrument amends the 1982 Act principally for the purposes of implementing Hague 2019. The 1982 Act has been the principal legislation implementing multilateral conventions on private international law since it was originally enacted to implement the 1968 Brussels Convention. It has subsequently been amended over the years to implement other conventions, and during the period of time when the UK was a member of the EU, it also implemented some EU PIL instruments. It is therefore appropriate to implement Hague 2019 through the 1982 Act. Further implementing provision is being made in amendments to court procedure rules in each of the UK's jurisdictions. The key provisions are explained in the following paragraphs.
- 6.3 This instrument inserts a new section 3F into the 1982 Act which gives Hague 2019 the force of law in the UK and inserts the Convention's text into the Act as new Schedule 3H.
- 6.4 A new section 4C is inserted, which makes provision for the registration of judgments which a party seeks to have recognised or enforced under Hague 2019.
- 6.4.1 A party seeking registration must apply to the court specified in this section in the manner set out in rules of court.
- 6.4.2 The court must register the judgment if it considers that a number of specified requirements are met in relation to the judgment, such as the applicant having provided the documents required by Article 12 of the Convention and the judgment meeting one or more of the grounds for recognition and enforcement under the Convention. The judgment also must otherwise meet the requirements of Hague 2019, including having been made in proceedings initiated at a time when the Convention was in force between that party and the UK, and not being excluded from the scope of the Convention under its provisions (particularly Articles 1 and 2).
- 6.4.3 In order to ensure that the registration process is as straightforward as possible, the court hearing the application must not consider at this stage whether any grounds exist for refusing recognition or enforcement under Hague 2019, and the party against whom enforcement is sought is not entitled to make submissions at this stage. Grounds for refusal, or other bases for refusal or postponement of recognition or

enforcement, can be raised by way of a set-aside application, and no enforcement can occur until the time for such an application has elapsed.

- 6.5 This instrument inserts a new section 6C, which allows either party to apply to set aside a decision to register or not to register a judgment under section 4C. The application to set aside is made to the same court that considered the registration application. Where the court sets aside the original decision, it does not remit the decision for further consideration; rather, it makes the determination whether to register or not based on the evidence provided by both parties at this stage. At this stage, as well as considering whether the conditions for registration set out in section 4C have been met, the court must consider whether any grounds set out in the Convention for refusing or postponing the recognition or enforcement of a judgment are met, and if so, whether they should be applied to refuse or postpone recognition or enforcement.
- 6.6 New section 11C is inserted, which makes provision about evidential requirements in relation to judgments and related documents under Hague 2019.
- 6.7 Regulation 19 is a standalone provision which provides that judicial settlements to which Hague 2019 applies can be recognised and enforced as if they are judgments. Judicial settlements are a form of settlement used in some countries, in which the parties to a legal dispute reach a settlement which is legally binding on them, but which is not formalised by the court into a judgment. This implements an obligation contained in Article 11 of Hague 2019.
- 6.8 Further amendments are made to the 1982 Act to align the implementing regime for Hague 2005 with the new provision made for Hague 2019, as discussed above:
- 6.8.1 Some changes are made to the wording of section 4B, which makes provision for the registration of judgments under Hague 2005. These changes are made for consistency with the new section 4C and to improve clarity.
- 6.8.2 As explained above, this instrument changes the route by which a party can challenge a decision under section 4B, providing for this to be done through an application to set the decision aside rather than through an appeal. The instrument does this by replacing section 6B of the 1982 Act with provision that aligns with that in the new section 6C.

Why was this approach taken to change the law?

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

7. Consultation

Summary of consultation outcome and methodology

- 7.1 The UK Government published a public consultation on the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters on 15 December 2022, which closed on 9 February 2023⁵. The consultation sought views on the UK becoming a Contracting Party to Hague 2019 as well as on certain proposals for how to implement the Convention in domestic law, such as the registration model discussed above. In parallel with the public consultation, the Government engaged in round-table discussions with stakeholders across the legal sector and academia, particularly those with expertise on cross border

⁵<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/consultation-on-the-hague-convention-of-2-july-2019-on-the-recognition-and-enforcement-of-foreign-judgments-in-civil-or-commercial-matters-hague-2019>

litigation, including one with the Lord Chancellor’s Advisory Committee on Private International Law. UK Government officials have also engaged with counterparts in the Scottish Government and in Northern Ireland throughout the consultation process.

- 7.2 Responses to the consultation were overwhelmingly in favour of the UK’s accession to Hague 2019. On 23 November 2023, the UK Government published its response to the public consultation confirming its intention to join Hague 2019.⁶ Following the closure of the public consultation, the UK Government sought formal consent from the Northern Ireland Executive and the Scottish Government to legislate on behalf of their jurisdictions to incorporate Hague 2019 into domestic law. Consent was provided by the Permanent Secretary in Northern Ireland on behalf of the Secretary of State for Justice in Northern Ireland, and is expected to be provided by Scottish Government upon consideration by the Scottish Parliament in May 2024.
- 7.3 Further, targeted consultation took place in January 2024 with legal sector experts across the three jurisdictions of the UK, as well as with the Lord Chancellor’s Advisory Committee on Private International Law, to seek input on details of proposals for implementation of the Convention. The UK Government has taken on board the views provided at consultation by industry experts and reflected these in its implementation policy decisions. These include the decision to implement Hague 2019 using a registration model; the decision to use a ‘set aside’ route of challenge for a registration decision under Hague 2019 and Hague 2005; and the decision to exclude judgments registered under Hague 2005 and Hague 2019 from the intra-UK recognition and enforcement provisions of the 1982 Act.

8. Applicable Guidance

- 8.1 This instrument does not implement or require guidance.

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 the SI, it will be beneficial for businesses by promoting increased business confidence, reduced transaction costs, and enhanced access to justice.
- 9.3 The impact on business, charities or voluntary bodies derives 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 the UK will be recognised and enforced in the courts of other parties to Hague 2019, and when judgments from those parties can be recognised and enforced in the UK. Becoming party to Hague 2019 will increase confidence in the UK 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.

⁶https://assets.publishing.service.gov.uk/media/6554c926046ed400148b992a/The_Hague_Convention_Response_to_Consultation_web.pdf

- 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 operation of this SI, and the application of Hague 2019 in the UK, will be kept under review by the Ministry of Justice, the Scottish Government and the Northern Ireland Department of Justice

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 As a matter of policy, the UK cannot ratify Hague 2019 until all the necessary legislation for its implementation is in place. This instrument amends the Civil Jurisdiction and Judgments Act 1982 in order to incorporate Hague 2019 into the UK's domestic law and set out implementing measures that will extend to the whole UK.
- 11.2 These Regulations come into force on the day on which Hague 2019 enters into force for the UK. By virtue of Articles 28, 29 and 32 of Hague 2019, this will be 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.
- 11.3 The relevant court procedure rules and Practice Directions must also be amended in each jurisdiction in order to complete implementation. Private international law is a devolved matter with regards to Scotland and Northern Ireland, so the implementation of Hague will also include Scotland and Northern Ireland amending their court rules and practice directions. In order to accommodate different implementation processes across the UK, the Government's intention is that upon ratification the UK 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 The Parliamentary Under Secretary of State has made the following statement regarding Human Rights:

“In my view the provisions of the Recognition and Enforcement of Judgments (2019 Hague Convention etc.) Regulations 2024 are compatible with the Convention rights.”

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.