

<b>Title: Implementation of the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance</b>  <b>IA No:</b> MoJ166  <b>Lead department or agency:</b> Ministry of Justice  <b>Other departments or agencies:</b> HMRC, DWP	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 26 July 2012		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> EU		
	<b>Type of measure:</b> Secondary Legislation		
<b>Contact for enquiries:</b> Arnjali Rowe 0203 334 3192, Jo Shepherd 0203 334 3285			
<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> RPC Opinion Status		

**Cost of Preferred (or more likely) Option**

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£m	£m	£m	No	NA
			No	NA

**What is the problem under consideration? Why is government intervention necessary?**

The UK along with all EU Member States is working to implement the 2007 Hague Convention in matters relating to family maintenance obligations. The aim of this convention is to provide a quicker and simpler process for the establishment and enforcement of family maintenance orders and other decisions on maintenance between the UK and Contracting States (ratified) outside the EU. A separate EU instrument, European Regulation (EC) 4/2009 came into force on 18 June 2011 and is very similar in scope to the 2007 Hague Convention. The UK is required by the EU to have all mechanisms in place by 10 December 2012.

**What are the policy objectives and the intended effects?**

The UK policy objective is to meet our legal and international obligations by implementing the 2007 Hague Convention. The intended effect is to ensure the effective international recovery of child support and other forms of family maintenance in line with EU policy, as well as directly supporting the Government's own Green Paper proposals to reform the domestic maintenance services in England and Wales. These propose that government should use mechanisms to encourage and support parents to fulfil their responsibilities by the payment of child maintenance.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Two options have been considered:

Option 0: Do nothing – This is not feasible because the 2007 Hague Convention is directly binding on the UK as a matter of EU law and therefore must be implemented. If the UK was not ready to implement the 2007 Hague Convention by the EU set date of 10 December 2012 the UK could be issued with infraction proceedings.

Option 1: Fully implement the 2007 Hague Convention. This is the preferred option. UK citizens would enjoy the benefits brought about by the Convention in that it should provide a quicker and simpler process for establishing and enforcing a maintenance order in cases between the UK and Contracting States outside the EU who have ratified the 2007 Hague Convention. The provisions are similar to those within the European Regulation (EC) 4/2009.

**Will the policy be reviewed? It will be reviewed. If applicable, set review date: EU date of 2019**

<b>Does implementation go beyond minimum EU requirements?</b>			No		
<b>Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.</b>	Micro No	< 20 No	Small No	Medium No	Large No
<b>What is the CO<sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO<sub>2</sub> equivalent)</b>			Traded: N/A		Non-traded: N/A

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.*

**Signed by the responsible Minister:** \_\_\_\_\_ **McNally** **Date:** \_\_\_\_\_ **16/08/2012**

# Summary: Analysis & Evidence

# Policy Option 1

Description: Fully Implement the Convention

## FULL ECONOMIC ASSESSMENT

Price Base Year n/a	PV Base Year n/a	Time Period Years n/a	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	n/a	n/a	n/a

Description and scale of key monetised costs by 'main affected groups'

It has not been possible to monetise the potential costs of implementing the Convention as data on administrative/adjustment costs is unavailable, which are the main costs that might arise. This is explained in the costs & benefits section. All costs are expected to be low based on the low volume of maintenance claims that might be affected by the reforms (around 180 based on current volumes).

Other key non-monetised costs by 'main affected groups'

- One-off costs to adapt to the changes and ongoing costs for the Central Authority (CA) in England & Wales (REMO) who will have a larger work remit in future.
- One-off costs for HMCTS and other public bodies to adapt to the changes. Public bodies might also incur costs from additional information provision.
- Potential costs to debtors if they repay child maintenance payments faster in future, or if they are subject to sanctions from non-compliance. These costs would not arise if debtors complied initially. Debtors might also incur additional travel costs.
- Potential costs to the legal aid fund in England & Wales.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	n/a	n/a	n/a

Description and scale of key monetised benefits by 'main affected groups'

It is not possible to provide monetised benefits due to a lack of data on cases under the existing international maintenance agreements including the time and resources to enforce child maintenance agreements where one party is outside of the EU.

Other key non-monetised benefits by 'main affected groups'

- Improved coordination across contracting states should allow for efficiency benefits to the CA in England and Wales (REMO).
- The Convention should allow for a more streamlined process in courts in England & Wales and other public authorities involved in international child maintenance cases.
- Better coordination across contracting states should lead to a better flow of cross border maintenance, benefitting creditors.

Key assumptions/sensitivities/risks

Discount rate (%) n/a

- For child maintenance proceedings where one party lives outside of the EU, it is assumed they will be carried out according to the provisions in the 2007 Hague Convention rather than existing arrangements, on the basis that the new process will be more efficient and more effective.
- It is assumed that there will be no change in claimant behaviour in terms of volumes of cases brought, compared to currently. The scale of the impacts is sensitive to the volumes of cases between the UK and other non EU states who have ratified the Convention.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0m	Benefits: £0m	Net: £0m	No	n/a

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	UK and Gibraltar				
From what date will the policy be implemented?	TBC by the EU				
Which organisation(s) will enforce the policy?	Ministry of Justice				
What is the annual change in enforcement cost (£m)?	-				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	Traded: n/a		Non-traded: n/a		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: n/a		Benefits: n/a		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <a href="#">Statutory Equality Duties Impact Test guidance</a>	Yes	Separate document
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	16
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	16
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	16
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	16
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	16
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	16
Justice system <a href="#">Justice Impact Test guidance</a>	Yes	16
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	16
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	16

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, and Enactment)

No.	Legislation or publication
1	<b>Maintenance Orders (Facilities for Enforcement) 1920</b>
2	<b>Maintenance Orders Act 1950</b>
3	<b>Maintenance Orders Act 1958</b>
4	<b>Administration of Justice Act 1970</b>
5	<b>Attachment of Earnings Act 1971</b>
6	<b>Matrimonial Causes Act 1973</b>
7	<b>Domicile and Matrimonial Proceedings Act 1973</b>
8	<b>Domestic Proceedings and Magistrates' Courts Act 1978</b>
9	<b>Magistrates Court Act 1980</b>
10	<b>Matrimonial and Family Proceedings Act 1984</b>
11	<b>Children Act 1989</b>
12	<b>Child Support Act 1991</b>
13	<b>Social Security Administration Act 1992</b>
14	<b>Civil Partnership Act 2004</b>
15	<b>Civil Jurisdiction and Judgments Act 1982</b>

# Evidence Base (for summary sheets)

## 1. Background

### Introduction

1. 1 The 2007 Hague Convention aims to provide a quick and simple process for the establishment and enforcement of family maintenance orders between the UK and non EU Contracting States. It allows for maintenance orders made in other jurisdictions to be enforceable in UK courts and vice versa. Enforcement will be available using the same methods as for domestic cases, provided the incoming maintenance order is registered as required by the Convention.
1. 2 As the system currently stands, there is no uniform mechanism for the resolution of maintenance obligations between parties when one party resides outside of the EU. Whilst there are international maintenance instruments in place between some countries, in other cases the process is dealt with on a more ad-hoc basis. This lack of uniformity can generate unnecessary costs as well as delaying resolution for the parents involved.
1. 3 For countries within the EU the situation differs as from 18 June 2011 the EU Maintenance Regulation came into force. As described in the Policy Proposals section, many of the provisions of the 2007 Hague Convention are similar to the EU Maintenance Regulation. The 2007 Hague Maintenance Convention will apply to cases between Contracting States (ratified) outside the EU and between the UK and those non-EU states.
1. 4 The Convention has a strong strategic fit with domestic policy (owned by the Department of Work and Pensions) in terms of ensuring that both parents support their children following divorce or separation.

### Policy Objectives

1. 5 The policy objective is to implement the 2007 Hague Maintenance Convention which aims to ensure the effective international recovery of child support and other forms of family maintenance, in line with EU policy. EU policy means that the UK will operate the convention for child and spousal maintenance only under the Hague 2007 Convention.
1. 6 This will ensure that the UK meets our legal and international obligations as well as directly supporting the Government's own Green Paper proposals to reform the domestic maintenance services in England and Wales. This proposes that government should use mechanisms to encourage and support parents to fulfil their responsibilities by the payment of child maintenance.
1. 7 The tables below highlight the volumes of cases in 2010<sup>1</sup> under different conventions used by countries that have already signed or ratified the Convention (outside of Europe). It shows that if volumes remained constant, around 180 cases might be impacted, although this would increase if additional countries ratify the treaty in future, or if the new process means that additional cases are brought.
1. 8 Information on case volumes between the UK and other countries demonstrates that if this were the case, it is likely that case volumes would remain low. For example, there are currently around 40 cases between Australia and the UK each year.

Table 1: Volumes of cases between the UK and countries who have signed or ratified the Convention (outside of Europe)

	Bosnia	Norway	Ukraine	USA
In (Received)	0	37	0	137
Out (Sent)	0	0	0	7

Table 2: Volumes of cases under existing arrangements between UK and countries who have signed or ratified the Convention (outside of Europe)

<sup>1</sup> Volume information was provided by the Reciprocal Enforcement and Maintenance Order (REMO) Unit for England & Wales.

	Bosnia	Norway	Ukraine	USA
HAGUE Maintenance Convention (1973)	0	35	0	0
UN Maintenance Convention (1956)	0	2	0	0
USA-UK 2007 bilateral agreement	0	0	0	144

## Economic Rationale

1. 9 The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributive reasons (e.g. to reallocate goods and services to the more needy groups in society).
1. 10 In this case, the intervention would be justified primarily on efficiency grounds.
1. 11 There would be gains in productive efficiency if fewer court system costs and other resources were used to achieve an equivalent outcome in terms of enforcing international child maintenance obligations. In addition, a reduction in the time and resources required to pursue enforcement action may at the margin lead to more cases being fully enforced, or being enforced more quickly, benefiting those parents involved.

## Policy Proposals

1. 12 The proposal is to implement the 2007 Hague Convention by way of domestic secondary legislation.<sup>2</sup>
1. 13 Implementation of the 2007 Hague Convention would supersede existing maintenance instruments between the UK and other states, assuming that Contracting States to those other instruments would prefer to operate the 2007 Hague Convention. This is expected, as the international recovery of maintenance should be quicker, cheaper and generally far more effective within the Convention.
1. 14 The proposals contained within the provisions are:
- i. The Convention shall apply to maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years.
  - ii. The Convention also addresses issues of recognition and enforcement, or enforcement of a decision for spousal support.
  - iii. The Convention provides specific rules about legal aid so that in almost all child maintenance cases, legal assistance is free of charge. There are rules on legal aid for non-child cases which means that in some circumstances Legal Aid will be available here and in other contracting States.
  - iv. The Convention provides a system of "Central Authorities" ("CAs") in each Contracting State i.e. those countries who are party to the Convention (which includes all EU Member States which are bound by it by virtue of conclusion (ratification) by the EU) to facilitate the establishment and enforcement of maintenance. A CA for a country is responsible for carrying out and facilitating many of the operational procedures in helping to recognise and enforce a maintenance order in another Contracting State. It is where a parent/party would generally need to go to in order to make a maintenance application under the 2007 Hague Convention. Their application would be sent to the equivalent CA in the other State.

<sup>2</sup> s2(2) European Community Act 1972 Regulations



- v. The Lord Chancellor's CA for England and Wales is the Reciprocal Enforcement and Maintenance Order (REMO) Unit which is located in the Office of the Official Solicitor and Public Trustee. Scotland and Northern Ireland will have their own CAs. An outline of the functions REMO will carry out under this Convention are explained in the next sub-section, 'central authorities/Ministry of Justice'.
  - vi. The Convention allows for maintenance orders made in other jurisdictions to be enforceable in UK courts and vice versa. Enforcement will be available using the same methods as for domestic cases, provided the incoming maintenance order is registered as required by the Convention.
1. 15 The proposals mean that for a British parent/party trying to recognise and enforce a maintenance order for a person under 21 years of age or for spousal support if one party is residing in a country outside the EU which has ratified the 2007 Hague Convention, then an application can be made to the CA to recognise and enforce a maintenance order against that party. This should simplify the process for British parents in the situation where one party lives outside of the EU.
  1. 16 An application can also be made from a party living in a Contracting State outside the EU for a maintenance order to be recognised and enforced against a party residing in the UK. An application can only be made when one party is living in another Contracting State to the 2007 Hague Convention.
  1. 17 Where both parties are living in the same country any claim for the recognition and enforcement of a maintenance order will be dealt with by the law of that country and not by any of the provisions contained in the 2007 Hague Convention.
  1. 18 The 2007 Hague Convention would establish a simpler procedure for the recognition and enforcement of foreign maintenance orders. It also contains a rule to protect maintenance creditors (those who are owed maintenance) by preventing debtors (those who owe maintenance) from bringing proceedings to modify the order, or obtain a new order, in a country other than the habitual residence of the creditor.
  1. 19 This Convention is going to be concluded by the EU on behalf of all EU Member States. The date of conclusion has yet to be confirmed but by virtue of a Council Decision of the 9th June 2011 (2011/432/EU) the UK is required by the EU (along with all EU Member States) to provide the EU Commission with the relevant information on national procedures by 10 December 2012. The UK should have in place all necessary legislative and operational arrangements to implement the Convention by that date. Failure to do so could result in infraction proceedings.
  1. 20 To date only Norway has ratified the 2007 Hague Convention and the USA, Albania, Bosnia and Herzegovina and Ukraine have signed the Convention. The success of the 2007 Hague Convention globally will depend on the number of states that become party to it. Conclusion by the EU commits EU Member States to the 2007 Hague Convention and will provide a powerful incentive for significant third states such as the USA and Australia to become party to this Convention as well<sup>3</sup>.

#### Central Authorities / Ministry of Justice

1. 21 The function of the CAs<sup>4</sup> will be to transmit and receive applications that seek to recover maintenance, and "facilitate" (rather than actually provide) some of the services to maintenance creditors and debtors.
1. 22 Additionally, they have obligations to help to obtain information relevant to the case, including location of the debtor or creditor, and helping to obtain relevant financial information on the debtor. The information will be used by competent courts and authorities making decisions about establishing or enforcing maintenance in cross border cases under the Convention.
1. 23 In order to enable the England and Wales CA to fulfil these obligations, the implementing legislation will enable it to request specific relevant information from HMRC and DWP. Criminal

<sup>3</sup> Once other countries ratify this Convention it will be updated on the Hague website at the following link, [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=131](http://www.hcch.net/index_en.php?act=conventions.status&cid=131)

<sup>4</sup> As described primarily in Chapters II and III of the Convention

1. 24 The proposed sanction for unauthorised disclosure of shared data is a prison sentence of 3 months for summary conviction, and/ or a fine; or up to 2 years imprisonment (and/or a fine) for conviction on indictment. When operating the equivalent sanctions in relation to this information for their own staff, DWP and HMRC tend to use existing disciplinary sanctions for minor breaches or prosecute for theft or fraud if a more serious breach is involved and financial gain is the motive. The extension of the data sharing offences is intended to act more as a deterrent and is likely to result in few prosecutions. HMRC and DWP have agreed to share data on the basis that equivalent criminal offences on safeguarding sensitive personal data will apply.
1. 25 The criminal sanctions are similar to the offences already in place for the EU Maintenance Regulation, which are: i) a disclosure offence which relates to the protection of financial information and ii) failure of the maintenance debtor to notify the court of a change of address. The criminal sanction proposed (mirroring the existing sanctions) where the debtor fails without reasonable excuse to provide notice of change of address to the designated officer of the court is that debtor may be liable on summary conviction to a fine not exceeding level 2 on the standard scale which is around £500.
1. 26 According to *Article 12* of the Convention there is a time limit of handling requests within three months after confirming acceptance of an application for the enforcement of a maintenance order. This is designed to ensure minimum standards and will apply to REMO. The detailed operational approach to these requirements for REMO is currently being assessed and will be subject to the development of service level agreements between, for example, the REMO team and HMRC / DWP.
1. 27 Overall the role for staff at REMO is expected to be similar to that required under the current EU Maintenance Regulation. The 2007 Hague Convention requires extra, but similar duties from members of staff at REMO. REMO will see an increase in the number of cases they receive as a result of the 2007 Hague Convention coming into force, although potentially they could see a reduction in the number of cases they receive under existing international maintenance instruments. This is because those countries that will ratify the 2007 Hague Convention are expected to prefer to operate the 2007 Hague Convention rather than existing international arrangements.

### **Affected key stakeholder groups**

The Convention will apply to the three UK jurisdictions: England and Wales, Scotland, Northern Ireland and Gibraltar. This Impact Assessment relates to England and Wales only.

The following groups and sectors are likely to be affected by the Convention:

- *HMCTS*: Guidance will be provided to court staff and the Judiciary on the HMCTS Intranet. This guidance will reflect the differences between the 2007 Hague Convention and existing international maintenance agreements and the required duties court staff would need to fulfil. Where required, new forms for court staff will be created, along with amendments to existing forms. IT changes will also need to be made.
- *Criminal Justice System*: Potential additional costs from any additional cases that arise and enter the Criminal Justice System based on the sanctions outlined above.
- *Public Authorities*: HM Revenue and Customs (HMRC) and the Department for Work and Pensions (DWP) will be required to share data with the Central Authorities under the 2007 Hague Convention to facilitate the making of maintenance decisions and their enforcement. These public bodies are expected to provide good and proportionate coverage in terms of the information required under the 2007 Hague Convention.
- *Central Authority*: The England and Wales central authority, REMO will be required to carry out more extensive duties than under the current non EU international maintenance treaties. However, these duties are comparable to those operational duties required of Central



- *Legal profession:* Specialist lawyers or law firms working on issues related to maintenance obligations. There will be changes to procedure and lawyers will need to be familiar with these in the small number of cases lawyers get involved in e.g. the entitlement to legal aid for applicants pursuing maintenance. Lawyers will need to know when to apply the 2007 Convention or other arrangements instead. Over time this should become easier as more countries decide to ratify the 2007 Hague Convention and effectively supersede many existing arrangements relating to them.
- *Legal aid fund:* There may be additional costs to the legal aid fund as the provisions in the Convention allow for non-means tested legal aid when the child is under 21. Volumes of cases are expected to be low based on the low overall case volumes expected, coupled with the fact that only a subset of these would potentially require additional legal aid compared to currently.
- *Individuals:* These are the parties to these cases:
 

Creditors: an individual to whom maintenance is owed or is alleged to be owed. Creditors are expected to benefit as it could improve the speed with which maintenance payments are enforced and the ease of doing so.

Debtors: an individual who owes or who is alleged to owe maintenance. By virtue of the above there may be costs to debtors although only in line with payments that they should be making. A debtor who unreasonably resists enforcement will greatly increase the financial burden upon him or herself. This is the case for domestic cases too and is effectively self imposed.

This Convention will only apply when there is a cross border element in a maintenance case involving the UK and a country which has ratified the 2007 Hague Convention. The 2007 Hague Convention should simplify the process for these individuals.
- *Banks:* There may be additional costs to banks from placing charges on debtors' bank accounts if additional cases are enforced in future, although volumes are expected to be low. Banks can place an administrative charge for this so the net impact is expected to be minimal.
- *Employers* – There may be additional costs to employers from levying additional attachment of earnings orders in future if additional cases are enforced, although volumes are expected to be low. Employers are unable to recoup an administrative charge.

## 2. Cost Benefit Analysis

2. 1 This Impact Assessment identifies impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing the 2007 Hague Convention. The costs and benefits are compared to the do nothing option.
2. 2 Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised which might include how the proposals impact differently on particular groups of society or changes in equity and fairness.
2. 3 In this case, the costs and benefits identified are not quantifiable based on a lack of data about the volume of cases that will be affected as well as information on the operation of the system currently, in terms of the costs of operating it as well as other dimensions such as the speed of service. This is explained in more detail in the cost benefit analysis throughout.
2. 4 As part of implementation it is proposed to put in place mechanisms to establish with more certainty volumes of cases under the Convention and these will be important to the Post Implementation Review as described on page 16.

### Option 0 - Base Case (do nothing)

2. 5 The IA process requires that all options are assessed relative to a common baseline. The baseline for this IA is to “do nothing”. This would mean that the UK would maintain existing provisions under the existing international maintenance agreements which extend beyond the EU. The main

2. 6 In practice this is not a feasible or realistic base case because the 2007 Hague Convention is binding on the UK and therefore must be implemented. Doing nothing (non implementation) could lead to significant infraction costs and reputational damage for the UK with implications for other areas of EU law where the UK may wish to exert its influence. These infraction costs or the potential for reputational analysis do not form part of the cost benefit analysis, which considers only the expected policy impacts.
2. 7 The existing international maintenance agreements which operate between the UK and Contracting States outside the EU will still be in place after the 2007 Hague Convention comes into force. However it is expected that the advantages contained in the 2007 Hague Convention will mean that the UK and Contracting States outside the EU will prefer to use the 2007 Hague Convention when dealing with maintenance cases and so there should be a gradual migration of cases away from the existing instruments.

### **Option 1 – Fully implement the 2007 Hague Convention**

2. 8 The proposal under this option is be prepared to fully implement the 2007 Hague Convention from December 2012.
2. 9 This means that for child or spousal maintenance proceedings where one party lives outside of the EU, the process is likely to be carried out according to the provisions within the 2007 Hague Convention rather than existing arrangements, where these exist. This is the assumption made throughout the analysis which follows.
2. 10 As described in the Policy Proposals section, the Regulations for the 2007 Hague Convention will include:
  - i. The provision for a uniform approach to the recognition and enforcement of the maintenance decisions of other Contracting States in the courts of England and Wales.
  - ii. Establish the Central Authority (CA) for England and Wales to take on the functions identified in the 2007 Hague Convention.
  - iii. Make provisions for data sharing from specified public bodies to the CAs to facilitate the operation of CA obligations under the Convention.
  - iv. Make provisions for non-means, non-merits tested legal aid to be provided for child applicants under this Convention.
  - v. Make provisions for the recognition and enforcement of maintenance applications in the magistrate's court to mirror those in domestic and EU cases so there is a consistent procedure in dealing with maintenance cases regardless of whether they are purely domestic or have an international element.

### **Costs of Option 1**

#### ***Costs to HM Courts & Tribunals Service (HMCTS)***

2. 11 Potential one-off adjustment costs so court staff have access to the relevant guidance on the 2007 Hague Convention, along with access to the relevant court forms.
2. 12 One-off costs to produce new guidance to staff and for staff to familiarise themselves with the relevant provisions within the Convention. This guidance will be provided on the HMCTS Intranet and will reflect the differences between the 2007 Hague Convention and existing international maintenance agreements as well as any difference in required duties court staff would need to fulfil. It may be that new forms need to be created.
2. 13 Overall, these adjustment costs are expected to be small as the provisions in the 2007 Hague convention are similar to the existing EU Maintenance Regulations.

2. 14 For court staff it is envisaged that they will not be faced initially with a large influx of cases when the 2007 Hague Convention comes into force due to the low number of existing cases with those countries who have already signed or ratified the 2007 Hague Convention. Potential case volumes are provided in the “Costs to CA” section.

### **Costs to Criminal Justice System (CJS)**

2. 15 There may be additional costs on the criminal justice system. Based on the low volume of additional cases falling within the Convention these are also expected to be low, especially because the majority of cases will not require any criminal sanctions to be levied.

### **Costs to Public Authorities – HMRC, DWP**

2. 16 One-off transition costs to familiarise staff with new arrangements. As for HMCTS staff, the parallels between the 2007 Hague convention and the existing EU Maintenance Regulations mean that these are expected to be small.
2. 17 Ongoing costs to share data. The burden of this cost will be limited to HMRC staff time who will have to reply to the data access requests, although volumes are expected to be low. It is assumed that such data requests will not require any additional HMRC resource to address them although they could be carried out at the expense of other work.

### **Costs to Central Authority in England & Wales/Ministry of Justice (REMO)**

2. 18 Adjustment costs for REMO are expected to be small as the provisions in 2007 Hague Convention are similar to existing provisions contained in the EU Maintenance Regulation, for which REMO has had operational responsibility since 11 June 2011.
2. 19 There could be ongoing costs for REMO associated with a larger remit including processing and sharing wider data and processing greater volumes of cases over time. These costs are likely to be offset by other benefits including savings on translations and savings on cases that originate from outside of the 2007 Hague Convention. These are described in the benefits section below.
2. 20 The volume of cases REMO will have to deal with under The Hague 2007 convention is uncertain, but will only relate to cases where one party with the maintenance claim is in a non EU Country. The tables below summarise the cases received in 2010<sup>5</sup> from the countries that have already ratified or signed the 2007 Hague Convention under existing international maintenance agreements. These are the 1956 United Nations Convention on the Recovery Abroad of Maintenance, the 1973 Hague Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations and the 2007 bilateral agreement between the UK and USA on the enforcement of maintenance. It shows that around 180 cases per annum might initially fall within the remit of REMO. As mentioned in policy description EU cases are assumed to be dealt with in the same way as currently. There are currently no existing international maintenance agreements with Albania who have signed the 2007 Hague Convention so this information could not be recorded. However, we have no evidence to suggest that additional volumes would be significant.

Table 1: Volumes of cases between the UK and countries who have signed or ratified the Convention (outside of Europe)

	Bosnia	Norway	Ukraine	USA
In (Received)	0	37	0	137
Out (Sent)	0	0	0	7

Table 2: Volumes of cases under existing arrangements between UK and countries who have signed or ratified the Convention (outside of Europe)

	Bosnia	Norway	Ukraine	USA
HAGUE Maintenance Convention (1973)	0	35	0	0
UN Maintenance Convention (1956)	0	2	0	0
USA-UK 2007 bilateral agreement	0	0	0	144

<sup>5</sup> Volume information was provided by the Reciprocal Enforcement and Maintenance Order (REMO) Unit for England & Wales

2. 21 Once the EU has ratified the 2007 Hague Convention on behalf of all EU Member States it is expected that this will encourage other countries outside the EU to ratify this Convention. We would expect cases under the 2007 Hague Convention to rise over time if a Commonwealth country such as Australia became party to the 2007 Hague Convention. In 2010 the number of Australian cases REMO has dealt with under existing international maintenance treaties is as follows. On this basis approximately another 40 cases might fall to REMO within the Convention.

Country	In	Out	HAGUE (1973)	UN(1956)	COMMONWEALTH
<b>Australia</b>	35	2	26	2	9

2. 22 REMO might also see additional cases in future if there is a change in claimant behaviour following the introduction of the Convention, such as if the lack of funds to pursue a case or the practical difficulty of doing so was previously a deterrent. Based on the initial volumes identified above, it is expected that if this was the case, volumes would still remain low.

### ***Costs to Legal Professionals***

2. 23 There may be one-off transition costs (expected to be small) for legal professionals to familiarise themselves to new arrangements and identify when to operate within the 2007 Hague Convention as opposed to other existing arrangements.

### ***Costs to Legal Aid Fund***

2. 24 The Convention may raise additional costs to the legal aid fund as it provides for free legal aid (i.e. legal aid provided on a non means tested basis) for child support applications where the maintenance is for a child under 21. For other applications (e.g. spousal maintenance) free legal aid is to be provided unless the procedures of the State concerned enable the applicant to make the case without the need for such assistance. Applications are to be made through Central Authorities.
2. 25 For debtors in the UK, in practice the recognition and enforcement of maintenance orders in the magistrates' courts does not usually need any legal assistance. If legal assistance is required, England and Wales has provided for the entitlements under the Convention to be the same as those under the EU Maintenance Regulation – Legal Help in the first instance and it would then be for the solicitor providing Legal Help to justify if the issues in the case were sufficiently complex and difficult to justify an application for full Legal Representation.
2. 26 In other countries where the Convention has been ratified, legal aid has to be provided to the extent provided in the home country and/or on a means and merits tested basis, and this broadly matches current arrangements.
2. 27 It is not been possible to estimate the government burden from legal aid for these cross-border maintenance cases because the Legal Services Commission does not separately record either (a) the costs of maintenance enforcement proceedings or (b) the numbers of cross border proceedings funded by legal aid under current arrangements. It is therefore not possible to ascertain those cases which receive legal aid at the moment.
2. 28 Based on the low case volumes outlined above, coupled with the possibility for legal aid under existing arrangements it is assumed that any additional burden on government is likely to be small. Further, not all applicants may need Legal Representation - in most cases it is expected that assistance under Legal Help would be sufficient given the nature of the proceedings. This would fulfil the legal aid obligations of the 2007 Hague Convention under this article.

### ***Costs to Individuals (Creditors)***

2. 29 There are no expected costs to claimants from the proposals.

### ***Costs to Individuals (Debtors)***

2. 30 The proposals within the Convention may bring forward costs to debtors if it increases the speed of maintenance payment.

2. 31 Debtors may also be subject to additional costs if they wish to vary a maintenance order. This is because in order for the defendant to proceed with this, they would need to challenge the maintenance order in the country where the maintenance order was made, meaning that they may have to incur travel costs and potential legal fees.
2. 32 For those debtors who do not comply with the maintenance payments and are subject to enforcement mechanisms there could be additional costs. These could relate to bank administrative charges or the possibility of criminal sanctions if the defendant fails to provide notice of a change of address.

#### ***Costs to Banks***

2. 33 There may be minimal costs to banks.
2. 34 If the volume of cases enforced through bank charges remains the same as currently, then there would be no costs to banks.
2. 35 If additional enforcements take place in future then there could be a cost to banks from levying charges on bank accounts. If this is the case, volumes would be expected to be low - enforcement for a maintenance order is usually settled through other means before the need to go down this route. Further, banks will be able to make an administrative charge if such action takes place and on this basis, it is assumed that potential costs to banks will be minimal.

#### ***Costs to employers***

2. 36 There may be costs to UK employers.
2. 37 If the volume of cases enforced through attachment of earnings orders remains the same as currently, then there would be no cost to UK employers.
2. 38 If additional enforcements take place in future then there could be a cost to employers from levying attachment of earnings orders, although volumes would be expected be low. Employers are not able to make an administrative charge for this.

#### **Benefits of Option 1**

##### ***Benefits to HM Courts & Tribunals Service (HMCTS)***

2. 39 HMCTS may see efficiency benefits associated with a more uniform approach to dealing with child and spousal maintenance applications from outside the EU, which may make cases quicker to process. If further countries ratify the Convention in due course, such as Australia, this benefit will be greater.

##### ***Benefits to Criminal Justice System***

2. 40 There are no expected benefits to the criminal justice system.

##### ***Benefits to Public Authorities***

2. 41 There are no expected benefits to Public Authorities.

##### ***Benefits to Central Authority in England & Wales/Ministry of Justice***

2. 42 The REMO unit have acquired expertise in dealing with maintenance applications under the EU Maintenance Regulation since this instrument came into force on 18 June 2011. The 2007 Hague Convention contains many similar provisions to those which also exist in the EU Maintenance Regulation. The consistency between both these instruments and therefore efficiency gains will enable REMO to further enhance the service they provide to members of the public especially when processing maintenance applications to countries outside the EU.
2. 43 Under article 44(1) of the Convention the UK made a declaration that it will only accept documents in English. (Documents not in English should be accompanied by translations into English if necessary). The UK also under article 44(3) of the Convention made the reservation that it would



2. 44 Overall therefore there may be efficiency benefits to REMO although in some cases there will be extra requirements of them.

#### ***Benefits to Legal Professionals***

2. 45 There are few expected benefits to legal professionals however there could be some additional work.

#### ***Benefits to Legal Aid Fund***

2.19 There are no expected benefits to the legal aid fund.

#### ***Benefits to Individuals (Creditors)***

2. 46 Claimants may benefit from child maintenance issues being resolved more quickly / effectively in cases where one party is residing in a Contracting State outside the EU. This will also benefit a UK citizen who lives in a Contracting State outside the EU e.g. Norway, but who is pursuing a maintenance payment from a debtor living in the UK.

2. 47 The rule within the Convention to prevent debtors from bringing proceedings to modify the order or obtain a new order in a country other than the habitual residence of the creditor might also benefit creditors if previously they had to face travel costs or alternatively were prohibited from getting involved in the case due to the costs involved.

2. 48 Claimants may benefit if they are now entitled to legal aid when they may not have been previously. This may particularly be the case if it now allows them to successfully pursue a maintenance claim where lack of funds deterred them before.

#### ***Benefits to Individuals (Debtors)***

2. 49 There are no benefits to debtors identified.

#### ***Benefits to Banks***

2. 50 There are no expected benefits to UK banks.

#### ***Benefits to employers***

2. 51 There are no expected benefits to UK employers.

#### **Option 1: Summary of key assumptions**

2. 52 The following key assumptions apply to Option 1:

- For child maintenance proceedings where one party lives outside of the EU, the process is likely to be carried out according to the provisions within the 2007 Hague Convention rather than existing arrangements on the basis the new process will be more efficient and more effective, once the country in question has ratified the Convention.
- It is assumed that volumes of cases in future will be approximately equal to those currently seen between countries that have signed or ratified the Convention. It could be that claimants bring additional cases in future if the lack of funds to pursue a case or the practical difficulty of doing so was previously a deterrent.
- The changes are assumed to lead to quicker and potentially more effective recovery for claimants.
- It is assumed that legal aid will be available for applicants pursuing to make an application for the registration and enforcement of a maintenance order.

- The extension of criminal sanctions to ensure sensitive financial and personal data is not mishandled and to make enforcement of a maintenance order more likely. It is not anticipated that these will be widely used.
- It is assumed that the administrative charge banks are able to charge is broadly equal to the administrative cost of levying the bank charge.

### **Summary of One In One Out position**

2. 53 This option is out of scope of the One In One Out rule as it relates to the implementation of an EU policy.

### **Summary of overall impact on UK business**

2. 54 It is assumed the volumes of child maintenance proceedings where one party lives outside of the EU will remain similar to currently. In this case, there would be no impact on UK business from the proposals.
2. 55 It could be that claimants bring additional cases, and in this case a proportion of those may require enforcement through charges on bank accounts or attachment of earnings orders. Such volumes are expected to be low.
2. 56 Any additional enforcements could create costs to UK banks or UK employers, although based on the low volumes these are expected to be low, especially because UK banks are able to place an administrative charge if they are required to place additional charges on bank accounts.
2. 57 There may be similar effects on employers and banks in other Contracting States. The exact nature of these will depend on the national law in those countries as well as the volumes of cases enforced in those countries.

## **Specific Impact Tests**

### **Statutory equality duties**

A separate Equalities Impact Assessment has been completed for these proposals.

### **Competition Assessment**

There is no competition issue regarding implementation of the Convention.

### **Small Firms Impact Test**

There should be no adverse impacts on small businesses from the proposals. There will be a very small burden on firms of lawyers to familiarise themselves with these new rules – however, that burden falls on lawyers whenever there are changes to legislation, practice or procedure and therefore this is part of the unavoidable cost of being a practising lawyer.

### **Carbon Assessment**

These proposals may lead to a minor reduction in carbon emissions. If fewer hearings take place in public law cases there are likely to be fewer journeys to court made by parties to the case and their legal representatives. This may lead to a minor fall in emissions.

### **Other Environment**

None

### **Health Impact Assessment**

These proposals are unlikely to have a significant impact on health as they are unlikely to affect significant numbers of people. There may be a positive impact in individual cases as this legislation should make it easier to enforce maintenance arrangements.

### **Human Rights**

These proposals are compliant with the Human Rights Act.

### **Justice Impact Test**

The impact on the justice system is explained in the main evidence base section.

### **Rural proofing**

This regulation may affect people living in rural areas as well as those living in urban areas. We have not identified any specific impacts on people living in rural communities.

### **Sustainable Development**

The Government has committed to five principles of sustainable development:

- Living within environmental limits;
- Ensuring a strong, healthy and just society;
- Achieving a sustainable economy;
- Promoting good governance;
- Using sound science responsibly.

This proposal may contribute the second principle as it should help ensure that parents are able to enforce maintenance agreements more easily.

# Annex 1: Post Implementation Review (PIR) Plan

<p><b>Basis of the review:</b> [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review , or there could be a political commitment to review (PIR)];</p> <p>The 2007 Hague Convention will be reviewed by the EU after seven years. Before this review period the UK will monitor how the supporting domestic legislation is being operated and identify any impacts, trends and areas of concern. Furthermore there will be opportunities to discuss the operation of this Convention at meetings organised by the Hague Permanent Bureau and also by the EU in Brussels</p>
<p><b>Review objective:</b> [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>The Review is to evaluate the practical experiences relating to the cooperation between Central Authorities, in particular regarding those Authorities' access to the information held by public authorities and administrations, and an evaluation of the functioning of the procedure for recognition, declaration of enforceability and enforcement applicable to decisions given in a Contracting State. If it is necessary the review should also provide proposals for adaptation.</p>
<p><b>Review approach and rationale:</b> [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>This Convention will be reviewed internally. We will ensure that this is being continuously monitored by policy and operational staff and will address any issues and trends where required. Furthermore there will be a number of meetings both within England and Wales, in Brussels and also the Hague which will allow for stakeholders or EU Member States to voice any concerns they may have with the operation of this Convention when in force.</p>
<p><b>Baseline:</b> [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>The baseline will be the current procedure operated by the courts now.</p>
<p><b>Success criteria:</b> [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>The review of the Convention described above will provide the opportunity for the UK to monitor the effectiveness of its domestic legislation and feed in our observations on how the Convention itself could be adapted to improve its operation.</p>
<p><b>Monitoring information arrangements:</b> [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]</p> <p>Operational procedures are to be put in place that will require the collection of monitoring information for the policy review.</p>
<p><b>Reasons for not planning a review:</b> [If there is no plan to do a PIR please provide reasons here]</p>