

EXPLANATORY MEMORANDUM TO

THE CIVIL JURISDICTION AND JUDGMENTS (2005 HAGUE CONVENTION AND 2007 HAGUE CONVENTION) (AMENDMENT) REGULATIONS 2022

2022 No. 77

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument brings into domestic legislation the text of the UK's reservations and declarations to the Hague Convention on Choice of Court Agreements 2005 (2005 Hague Convention) and the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance 2007 (2007 Hague Convention) (together "the Conventions"). The Conventions are implemented under the Private International Law (Implementation of Agreements) Act (PIL Act) 2020, which ensures the reservations and declarations made at the time of approval of the Conventions are to be read alongside the Conventions. For ease of reference the Government wishes to bring the full text of these reservations and declarations into new schedules to the Civil Jurisdiction and Judgments Act 1982.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 It should be brought to the attention of the JCSI that this will be the first time the delegated powers under section 2 of the PIL Act 2020 have been used to make secondary legislation.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland, and Northern Ireland.
- 4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

- 5.1 Lord Wolfson QC, Parliamentary Under Secretary of State at the Ministry of Justice has made the following statement regarding Human Rights:

"In my view the provisions of the Civil Jurisdiction and Judgments (2005 Hague Convention and 2007 Hague Convention) (Amendment) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

- 6.1 On 28 September 2020, the United Kingdom deposited the instrument of accession to the 2005 Hague Convention and its instrument of ratification to the 2007 Hague Convention. The UK was previously bound by the Conventions by virtue of its EU membership from 2015 and 2014 respectively. This status continued to apply during the transition period, in accordance with the Withdrawal Agreement. The Conventions then entered into force for the United Kingdom (as an independent party) on 1 January 2021.

The PIL Act 2020 amended the Civil Jurisdiction and Judgments Act 1982 to implement the Conventions, and ensures they are read alongside the declarations and reservations which the UK deposited with the instruments of accession/ratification. For convenience of reference and to ensure the relevant texts are easily accessible in our domestic legislation, the Government now propose using the section 2 power in the PIL Act to make an SI to set out the UK's reservations and declarations alongside the texts of the Conventions. This instrument would bring the full text of those reservations and declarations into new schedules to the Civil Jurisdiction and Judgments Act 1982.

This instrument is the first use of the delegated powers under section 2 of the PIL Act 2020. The Government's intention to use these powers to insert the text of the reservations and declarations to the Conventions into a new schedule to the 1982 Act was made clear during debates on the PIL Act 2020¹.

7. Policy background

What is being done and why?

- 7.1 This instrument will not alter how the Conventions are enacted within the UK, as the reservations and declarations are already implemented via the PIL Act 2020. Putting the full text of these reservations and declarations into domestic legislation so that they can easily be read alongside the text of the Conventions, which is already presented in schedules to the Civil Jurisdiction and Judgments Act 1982, is intended to provide clarity on the UK's implementation of both Conventions.

The reservations and declarations for the Conventions remain the same as those made by the UK as an EU member state. No amendments were made when the UK rejoined as an independent party. Whilst no changes to the reservations and declarations to the UK's Conventions have been made in this instrument, it does not prevent amendments being made in the future if required and to the extent permitted under the Conventions.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the United Kingdom from the European Union because this withdrawal resulted in the decision for the UK to rejoin the Conventions as an independent party.

¹ HL Deb 13 May 2020, vol 803, col 721

9. Consolidation

- 9.1 These Regulations amend the Civil Jurisdiction and Judgments Act 1982 and introduce new schedules to that Act. They do not amend any other legislation.

10. Consultation outcome

- 10.1 Schedule 6 of the PIL Act 2020 states, “before the Secretary of State makes regulations under Section 2, the Secretary of State must consult such persons as the Secretary of State thinks appropriate.” In order to meet this requirement and given the purely technical nature of this SI and its limited effect, consultation was carried out with key stakeholders in England and Wales and Northern Ireland prior to the drafting of this instrument.

The following professional bodies for the legal profession were consulted - the Law Societies of England and Wales, Scotland and Northern Ireland; the Bar Councils of England and Wales and Northern Ireland and the Faculty of Advocates. In addition, legal practitioners, academics and judges who are members of groups and committees which specialise in Private International Law with whom the Ministry of Justice regularly works were also consulted. Furthermore, given the insurance specific declaration under the Hague 2005 Convention, the Association of British Insurers was also invited to provide comments.

All those contacted were provided with a summary of the purpose of the proposed instrument. Parties were invited to provide comments or ask questions on the proposals within four weeks, either in writing or orally at relevant meetings of expert groups or committees. Given that many of the organisations contacted are professional bodies, we invited them to share the summary of our proposals with their members as they considered appropriate. Two stakeholder meetings were attended at which a number of people referred to the proposals. At neither of these meetings nor in any formal response was any objection received.

11. Guidance

- 11.1 As this instrument does not alter the application of the Conventions, nor the related reservations and declarations, further guidance is not considered to be required.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because it does not change how the Conventions are implemented.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses because while small businesses are affected by this legislation, the legislation does not create any regulatory burdens on them.

14. Monitoring & review

14.1 Monitoring is not proposed because this instrument does not change how the Conventions are implemented. It will be reviewed if changes to the declarations and reservations are to be made.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Lord Wolfson, QC, Parliamentary Under Secretary of State at the Ministry of Justice has made the following statement:

“In my view the Civil Jurisdiction and Judgments (2005 Hague Convention and 2007 Hague Convention) (Amendment) Regulations 2022 does not require a review provision. Given this instrument will not create regulatory burdens such a provision would not be appropriate.”

15. Contact

15.1 Máillie McQuaid at the International Justice Policy Division at the Ministry of Justice (Telephone: 07812 460788 or email: PIL@justice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Kristen Tiley, Deputy Director for International Justice Policy Division at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Wolfson QC, Parliamentary Under Secretary of State at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.