



ABOUT THE FLBA

The FLBA is the Specialist Bar Association for the family bar. The Association has approximately 2,200 members, who together comprise a substantial proportion of the practising family bar (2,900 barristers listed family as their main area of practice, according to the Bar Council statistics for February 2025). The FLBA National Committee comprises approximately 60 of those practising family barristers, drawn from all levels of call, areas of practice and geographical regions, and is broadly representative of the membership at large. As such, the Association has a wealth of experience in dealing with cases across the spectrum of family work, both in our members' practice at the bar and for many in their role as members of the fee paid judiciary.

This response has been prepared by our International Sub Committee and has been approved by the Officers of the Association.

DRAFT HAGUE CONVENTION ON CONCURRENT CIVIL PROCEEDINGS

The draft Hague Convention aims to cover jurisdiction issues and to develop binding rules for a future instrument **on concurrent proceedings including parallel proceedings and related actions or claims while acknowledging the primary role of both jurisdictional rules and the doctrine of forum non conveniens.**

The aim of the instrument is to enhance legal certainty, predictability, and access to justice by reducing litigation costs, and to mitigate inconsistent judgments in transnational litigation in civil or commercial matters.

Overview of the draft Convention

Scope

Article 1 states that the Convention will apply to parallel proceedings (and related actions¹) in civil and commercial matters.

Article 2 excludes the following, relevant to the family sphere, from scope:

- (a) The status and legal capacity of natural persons;
- (b) Maintenance obligations;
- (c) Other family law matters, including matrimonial property regimes and other rights or obligations arising out of marriage or similar relationships;
- (d) Wills and succession;
- (e) Arbitration and related proceedings.

The Draft Convention has 23 Articles and it sets out the following framework to address:

- parallel proceedings – Chapter II. In brief, a court seised with parallel proceedings that satisfy the requisite jurisdiction/connection criterion under Arts 6-8 should proceed with adjudicating the dispute and other courts must suspend or dismiss the proceedings;
- related actions – Chapter III. Courts seised with related actions may, by taking into account the factors listed in Art 11(2) consider whether a single court should adjudicate all or part of the related actions and, if so, which court is the more appropriate court.

The above frameworks are supported by a cooperation provision and a communication mechanism under Chapter IV.

Chapter V contains safeguards and two general provisions in relation to specific subject matter declarations and uniform interpretation.

The existing international instruments governing jurisdiction

¹ Whether it does not or is still under discussion.

The UK is a signatory to the following Hague Conventions that govern matters of jurisdiction:

1. The **Hague Convention** on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children **1996** ('The 1996 Hague Protection Convention'). Its object is to determine the state whose authorities have jurisdiction to take measures of protection for the child concerned and his/her property. Among others, the following matters fall within the scope of the 1996 Convention:

- (a) Issues related to parental responsibility;
- (b) Rights of custody;
- (c) Guardianship, curatorship and analogous institutions.

2. The following matters are not within the scope of the Convention:

- a. Establishment or contesting of a parent-child relationship;
- b. Adoption;
- c. Names and forenames of the child;
- d. Emancipation;
- e. Maintenance obligations;
- f. Trusts or succession;
- g. Social security;
- h. Public measures of a general nature in matters of education or health;
- i. Measures taken as a result of penal offences committed by children;
- j. Decisions on the right of asylum and on immigration.

3. Chapter 4 deals with recognition, non-recognition, registration and enforcement of measures taken across all Contracting States through Articles 23 to 28. Together these Articles set out the principle that measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other

Contracting States without the need to take proceedings for registration. Where there is non-compliance or opposition, recognition may only be refused on the specified grounds. There is a mechanism for enforcement of orders and it is stipulated that there shall be no review of the merits without prejudice to such review as is necessary to apply the preceding provisions.

4. The **Hague Convention 2005 on Choice of Court Agreements** which aims to ensure the effectiveness of exclusive choice of court agreements between parties to international **commercial** transactions. The Convention is of no application in matters concerning family law. It is of the same scope as the proposed Draft Convention.

5. The **Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance 2007** on the recovery of child support and related family payments ('The 2007 Maintenance Convention'). The Convention applies to maintenance obligations arising from parent-child relationship where the child is under 21; recognition and enforcement of maintenance obligations (including spousal maintenance where ordered together with child maintenance) arising from parent-child relationship; spousal maintenance (as long as the application is not made through central authorities)².

Article 18 of the Convention contains jurisdictional restrictions including limiting any proceedings to vary or amend an order made to the court of the Contracting State where the decision was originally made where the judgment creditor remains habitually resident there.

6. **Hague Convention 2019 on the recognition and enforcement of foreign judgments in civil and commercial matters** which facilitates the international

² Contracting States may declare that they will extend the scope of the Convention. The UK and EU have extended the scope of the Convention by applying the provisions on administrative cooperation to all cases of spousal maintenance irrespective of an application for child maintenance.

circulation of judgments in civil and commercial matters. Similarly to the Hague Convention 2005, it is of no application to personal and family matters.

The UK and EU are parties to the above Conventions. However, the Maintenance Convention does not apply in the EU as the Maintenance Regulations takes precedence (except in Denmark).

The Private International Law (Implementation of Agreements) Act 2020 gives domestic effect to the Hague Conventions 1996, 2005 and 2007 by implementing them directly in domestic law by amendments to the Civil Jurisdiction and Judgments ('CJJ') Act 1982.

In addition to the above, the international instrument in operation in the field of divorce is the **Hague Convention of 1970 on the Recognition of Divorces and Legal Separations**. Its aim is clear from the title: to facilitate reciprocal *recognition* of divorces and legal separations between signatory states. However, the Convention does not cover civil partnerships or nullity proceedings.

There are domestic UK legislation governing jurisdiction in matrimonial matters which applies the Forum Conveniens doctrine.

The questions raised in the consultation are not addressed in full as the primary issue with the Draft Text is the exclusion of family related decisions from its scope.

Question 1

1.1 What are your views on the scope of the Draft Text?

Resp: As currently set out, the scope of the Draft Text does not include disputes relating to personal status or arising out of the breakdown of relationships. It therefore does not provide a jurisdictional framework for the recognition and enforcement of

decisions concerning personal status and financial obligations following the breakdown of relationships.

The issue of parallel and concurrent proceedings in family law are issues which require urgent attention. It is obviously important to internationally mobile families that there is a predictably clear framework of jurisdiction that they can rely in circumstances where financial obligations arise out relationships or its breakdown. As the Explanatory Report to the 1970 Divorce Convention states: “*Respect for rights acquired in foreign countries is the very foundation of international law, and the requirements of security and stability in family matters demand the greatest degree of cooperation between States...*”. Conversely, the lack of a framework and cooperation can lead to decisions being made that have long lasting adverse impact on families which is felt through generations through their children.

There is an existing framework for EU countries to address parallel and concurrent proceedings through various Council Regulations. The United Kingdom is no longer able to rely on those instruments. Consequently, the existing scheme is made up of a collage of different instruments. It is complicated for lawyers to navigate and necessarily even more so for families. The lack of *lis pendens* and a recognition and enforcement regime especially in the context of financial obligations and remedies affects cross border families.

The current framework available for jurisdiction, recognition and enforcement of maintenance obligations pursuant to the 2007 Maintenance Convention appears on its face to offer a similar level of inter-state recognition and enforcement of a “*maintenance decision*”. The Convention, however, does not define a maintenance decision and the Explanatory report references an ECJ case (Van den Boogard v Laumen C220/95) and the intention not to include orders making capital awards within its scope.

In summary, cross border families face uncertainty in circumstances of parallel and concurrent proceedings in relationship breakdown between sex same couples,

financial obligations upon divorce and certain financial obligations depending on whether an order can be characterised as payment of maintenance. It is therefore necessary that there is an instrument that addresses the current lacuna.

1.2 Does the subject matter scope of the Draft Text cover those matters for which rules on parallel proceedings and related actions would be beneficial?

Resp: It would be beneficial to extend the scope of the Draft Text to include decisions concerning the breakdown of relationships and the financial obligations that the breakdown creates and therefore to widen the scope of the enforcement and recognition of maintenance obligations regardless of the nature of the decision and the means of giving effect to the decision.

26 January 2026

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On behalf of the FLBA