Survey response	
Please indicate: [State:]	United Kingdom
Please indicate: [Region:]	Scotland
Please indicate your profession:	Academia
Do you have practical expertise in cross-border civil or commercial litigation:	No
Press "Next" to continue	
1.1 What are your views on the scope of the Draft Text?	Art 1.1 seems entirely reasonable, but art 1.2 introduces an unnecessary and unwelcome complicating effect, not least given the ambiguity surrounding the connecting factor of habitual residence (noting also that the definition in art 3(2) is partial). I would favour excising art 1.2 in order to simplify the operation of a future instrument.
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?	Yes, though arguably rules should also be developed to accommodate situations where there are parallel proceedings or related actions in (a) the courts of a Contracting State; and (b) the courts of a Third State.
1.3 What are your views on the subject matter exclusions in particular, and how they would work in practice? For example, what are your views on the formulation of the arbitration exclusion in Article 2(3)?	There is a very broad list of exclusions - which one comes to expect in international conventions/regulations - which inevitably would undermine the usefulness and effectiveness of a future instrument.Overall, however, it makes sense for the exclusions from scope to mirror those set out in the 2019 Judgments Convention. With regard to the art 2(1) exclusions, I would excise the wording in parenthesis in para (e), which introduces unhelpful ambiguity. I support the principle of the arbitration exclusion in art 2(3) so as to minimise, insofar as is possible, any actual or perceived detriment to, or conflict with, arbitration practice. The operation of the 1958 New York Convention should not be prejudiced and explicit wording to this effect should be included. The exclusion of consumer and employment contracts is appropriate, but significantly curtails the subject matter scope of the instrument.
1.4 What are your views on the geographical scope of the Draft Text and how it would work in practice? (See paragraph 16 for further information).	Art 1.2 is unclear and unhelpful and I would favour excising it in order to simplify the operation of a future instrument.
2. What are your views on the definitions of parallel proceedings and related actions? In particular, please share your views on how these definitions might operate, and be applied by parties and courts, in practice.	The definition of “parallel proceedings” is clear and workable. The definition of “related actions” is opaque and so ambiguous as to be unhelpful. Interpretation of art 3(1)(b) ('substantially the same', 'connected to each other', 'in material part',

	'material fact') potentially would generate more litigation than it would help to solve.
3. What are your views on Article 4?	The wording of art 4 seems broadly consistent with art 32 of Regulation (EU) No 1215/2012 (Brussels I Regulation Recast) and workable.
4. What are your views on Article 5?	While the broad import of the rules on suspension, dismissal, and resumption of parallel proceedings itself is sensible, as is the approach of establishing international obligations of the court seised, the wording is awkward and unclear (especially art 5(3)). Moreover the relationship between art 5 and the recognition and enforcement of foreign judgments is potentially complex and would need to be addressed and set out clearly.
5. What are your views on Articles 6 – 8 including how they will work in practice?	I agree with the principle that the court of a Contracting State in which immovable property is situated should have exclusive jurisdiction in parallel proceedings which have, as their main object, rights in rem in immovable property. In the party autonomy provision, there must be absolute coherence between the Draft Text and the 2005 Choice of Court Convention. The wording of art 7 is convoluted, but the essence of the hierarchical rules is reasonable.
6.1 What are your views on the 'jurisdiction / connection' list in Article 8(2)?	Art 8 is elaborate, indeed too elaborate. Using art 5(1) of the 2019 Judgments Convention as a basis for these provisions is sensible, but it is not clear why the draft text should depart from these bases; the rationale for the departure has not been clearly articulated. I would not support adoption of this provision without greater clarity and commentary being provided as to its intended purpose, scope and operation. On the whole, I would favour reducing the number of acceptable 'connections' to align with the 2019 Judgments Convention.
6.2 Based on your experience, do you consider these factors appropriate for parallel proceedings i.e. for obliging courts to suspend or dismiss proceedings if they are not seised on the basis of one of these? Why or why not?	-
6.3 Are there any additional factors that you believe should be included?	-
7.1 What are your views on the approaches proposed in Article 9 for determining which court should adjudicate the dispute in cases of parallel proceedings which Articles 6 – 8 have not resolved?	I appreciate that, if more than one court satisfies the jurisdiction / connection requirements set out in art 8(2), a determination must be made as to which court is the more appropriate, using the approach laid down in art 9 and taking into account the factors listed in art 10. Art 9 will establish the

	central mechanism within the proposed instrument. It appears, however, that the views of the Working Group as to the underlying policy are split to such an extent that further discussion and compromise as to an agreed approach (if not form of wording) is required before external input can add genuine value.
7.2 What are your views on how the two approaches may work in practice?	-
7.3 Do you have a preference for either approach? If so, please explain why.	Of the options under consideration, my preference would be for a rule whereby, on application by a party, the court first seised determines the more appropriate court. However, I would have serious concerns about the apparent scope for duplication of litigation; both approaches seem to indulge, and possibly compound, the very problem that lies at the heart of the Parallel Proceedings project, namely, permitting the question of which court is the more appropriate, in effect, to be re-visited.
8.1 What are your views on the factors listed in Article 10 for determining the more appropriate court in cases of parallel proceedings subject to Article 9 (i.e. that are not resolved by Articles 6 – 8)?	Some of the factors listed (notably in non-exhaustive fashion) are very general ('the burdens of litigation on the parties', 'the convenience of the parties') or opaque (a 'significantly more complete resolution of the dispute as a whole'). These would have to be fleshed out to be of practical utility.
8.2 Do you have any views on how Article 10 might work in practice?	-
8.3 Are there additional considerations that, in your view, should be taken into account?	-
9. Do you have an overall view on the effectiveness of the framework developed in the Draft Text for dealing with parallel proceedings in an international context? Please explain any advantages and / or disadvantages of the framework, and how you think it will work in practice.	In a sense the public consultation seems premature because of the polarisation that apparently exists among the members of the Working Group in respect of a sizeable number of drafting points and policy questions (such as the fundamental approach to be taken in art 9).
10. Do you have a view on the effectiveness of the framework developed in the Draft Text for dealing with related actions in an international context? Please explain any advantages or disadvantages of the framework, and how you think it will work in practice.	As mentioned above, the definition of “related actions” is opaque and so ambiguous as to be unhelpful. Interpretation of art 3(1)(b) ('substantially the same', 'connected to each other', 'in material part', 'material fact') potentially would generate more litigation than it would help to solve. In principle, however, I support the development of an international scheme whereby courts seised with related actions may consider whether or not a single court should adjudicate all or part of the related actions and, if so, determine which court is

	the more appropriate court. As in my response to Q7.3 above, however, on the basis of what is proposed in the draft text concerning related actions, I would have serious concerns about the possible (indeed likely) duplication/multiplication of litigation (including tactical and satellite litigation), and think that another solution is needed in order to reduce, rather than potentially exacerbate, the bringing or continuing of related actions. I do not think that the related actions provision would be a clear and significant improvement on the status quo.
11.1 What are your views on the practical operation (or the effectiveness) of the communication methods set out in Chapter IV of the draft text for use between courts seised, in cases involving parallel proceedings and related actions?	While judicial cooperation is important, the communication provision must not be allowed to jeopardise full transparency in judicial proceedings. I would have some concerns that art 16 as drafted would jeopardise transparency vis-à-vis the parties.
11.2 Are there particular advantages and challenges you foresee in applying these methods?	-
12. What are your views on the three safeguards provided in the Draft Text (Articles 19-21), particularly as to how they will operate in practice?	One would hope that courts would perceive these safeguards in the same way as typically they view the standard 'ordre public'/'public policy' clause (i.e. to be only rarely invoked) though there is always potential for such provisions to be exploited. Appropriate wording (e.g. insertion of 'manifest' in art 19; and a definition of 'abuse of process' in order to distinguish from legitimate strategic or tactical litigation) should help to ensure this.
13.1 Would the rules set out in the Draft Text achieve the objectives of a future instrument? The objective of a future 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.	Regrettably, and for the reasons outlined in my answers, above, I do not consider that the objectives of certainty, predictablility and reduction in litigation costs would be met by the text as currently drafted.
13.2 Do you have any views on whether the proposed rules set out in the Draft Text would improve the status quo?	Again, with regret, I am not of the view that the rules as currently drafted would improve the status quo.
13.3 Do you consider there are any risks of tactical or satellite litigation arising from any of the provisions, or the overall approach of the Draft Text? Are these risks greater or fewer than those that currently exist? Are there any ways that	On the basis of the text as drafted, there would be a notable, probably increased risk of tactical/satellite litigation.

such risks could be addressed in the Draft Text?	
14. What other comments, if any, do you have?	-