

Private International Law (Implementation of Agreements) Bill [HL]

[AS AMENDED ON REPORT]

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B I L L

[AS AMENDED ON REPORT]

TO

Implement the Hague Conventions of 1996, 2005 and 2007 and to provide for the implementation of other international agreements on private international law.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Implementation of international agreements***1 Implementation of the 1996, 2005 and 2007 Hague Conventions**

- (1) In the Civil Jurisdiction and Judgments Act 1982 (“the 1982 Act”), in subsection (1) of section 1 (interpretation of references to the Conventions etc) insert at the appropriate place— 5
- ““the 1996 Hague Convention” means the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children concluded on 19th October 1996 at The Hague;” 10
- (2) Before section 4 of the 1982 Act (and before the italic heading preceding that section) insert—
- “3C The 1996 Hague Convention to have the force of law**
- (1) The 1996 Hague Convention shall have the force of law in the United Kingdom. 15
- (2) For the purposes of this Act the 1996 Hague Convention is to be read together with the following declarations made by the United Kingdom on 27th July 2012—
- (a) the declaration under Article 29 of the Convention, concerning applicable territorial units; 20

- (b) the declaration under Article 34 of the Convention, concerning communication of requests under paragraph 1 of that Article;
 - (c) the declaration under Article 54 of the Convention, concerning the use of French.
- (3) For convenience of reference there are set out in Schedules 3D and 3E respectively –
- (a) the English text of the 1996 Hague Convention;
 - (b) the declarations referred to in subsection (2).
- 3D The 2005 Hague Convention to have the force of law**
- (1) The 2005 Hague Convention shall have the force of law in the United Kingdom. 10
- (2) For the purposes of this Act the 2005 Hague Convention is to be read together with any reservations or declarations made by the United Kingdom at the time of the approval of the Convention.
- (3) For convenience of reference the English text of the 2005 Hague Convention is set out in Schedule 3F. 15
- 3E The 2007 Hague Convention to have the force of law**
- (1) The 2007 Hague Convention shall have the force of law in the United Kingdom.
- (2) For the purposes of this Act the 2007 Hague Convention is to be read together with any reservations or declarations made by the United Kingdom at the time of the approval of the Convention. 20
- (3) For convenience of reference the English text of the 2007 Hague Convention is set out in Schedule 3G.”
- (3) Before Schedule 4 to the 1982 Act insert (as Schedules 3D to 3G) the Schedules set out in Schedules 1 to 4 to this Act. 25
- (4) Schedule 5 (consequential and transitional provision) has effect.

General

2 Crown application

- (1) The amendments of the Civil Jurisdiction and Judgments Act 1982 made by this Act bind the Crown in accordance with the provisions of section 51 of that Act. 30
- (2) Regulations under section [clause removed] may make provision binding the Crown.
- (3) The reference to the Crown in subsection (2) does not include – 35
- (a) Her Majesty in Her private capacity,
 - (b) Her Majesty in right of the Duchy of Lancaster, or
 - (c) the Duke of Cornwall.

3 Extent, commencement and short title

- (1) This Act extends to England and Wales, Scotland and Northern Ireland. 40

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- (2) Sections 1 and 2(1) and Schedules 1 to 5 come into force on IP completion day.
 - (3) The rest of this Act comes into force on the day on which it is passed.
 - (4) This Act may be cited as the Private International Law (Implementation of Agreements) Act 2020.

SCHEDULES

SCHEDULE 1

Section 1

SCHEDULE TO BE INSERTED AS SCHEDULE 3D TO THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982

“SCHEDULE 3D 5

TEXT OF THE 1996 HAGUE CONVENTION

CONVENTION ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN

(Concluded 19 October 1996) 10

The States signatory to the present Convention,
 Considering the need to improve the protection of children in
 international situations,
 Wishing to avoid conflicts between their legal systems in respect
 of jurisdiction, applicable law, recognition and enforcement of
 measures for the protection of children, 15
 Recalling the importance of international co-operation for the
 protection of children,
 Confirming that the best interests of the child are to be a primary
 consideration, 20
 Noting that the *Convention of 5 October 1961 concerning the powers of
 authorities and the law applicable in respect of the protection of minors* is
 in need of revision,
 Desiring to establish common provisions to this effect, taking into
 account the *United Nations Convention on the Rights of the Child* of 20
 November 1989, 25
 Have agreed on the following provisions –

CHAPTER I—SCOPE OF THE CONVENTION

Article 1

- (1) The objects of the present Convention are – 30
- (a) to determine the State whose authorities have jurisdiction
to take measures directed to the protection of the person or
property of the child;
 - (b) to determine which law is to be applied by such authorities
in exercising their jurisdiction; 35
 - (c) to determine the law applicable to parental responsibility;

- (d) to provide for the recognition and enforcement of such measures of protection in all Contracting States;
 - (e) to establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention. 5
- (2) For the purposes of this Convention, the term ‘parental responsibility’ includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child. 10

Article 2

The Convention applies to children from the moment of their birth until they reach the age of 18 years.

Article 3

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The measures referred to in Article 1 may deal in particular with—

- (a) the attribution, exercise, termination or restriction of parental responsibility, as well as its delegation;
- (b) rights of custody, including rights relating to the care of the person of the child and, in particular, the right to determine the child’s place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child’s habitual residence; 20
- (c) guardianship, curatorship and analogous institutions; 25
- (d) the designation and functions of any person or body having charge of the child’s person or property, representing or assisting the child;
- (e) the placement of the child in a foster family or in institutional care, or the provision of care by *kafala* or an analogous institution; 30
- (f) the supervision by a public authority of the care of a child by any person having charge of the child;
- (g) the administration, conservation or disposal of the child’s property. 35

Article 4

The Convention does not apply to—

- (a) the establishment or contesting of a parent-child relationship;
- (b) decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption; 40
- (c) the name and forenames of the child;
- (d) emancipation;
- (e) maintenance obligations;
- (f) trusts or succession; 45
- (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. 5

CHAPTER II – JURISDICTION

Article 5

- (1) The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property. 10
- (2) Subject to Article 7, in case of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.

Article 6 15

- (1) For refugee children and children who, due to disturbances occurring in their country, are internationally displaced, the authorities of the Contracting State on the territory of which these children are present as a result of their displacement have the jurisdiction provided for in paragraph 1 of Article 5. 20
- (2) The provisions of the preceding paragraph also apply to children whose habitual residence cannot be established.

Article 7

- (1) In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another State, and 25
 - (a) each person, institution or other body having rights of custody has acquiesced in the removal or retention; or 30
 - (b) the child has resided in that other State for a period of at least one year after the person, institution or other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment. 35
- (2) The removal or the retention of a child is to be considered wrongful where –
 - (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and 40
 - (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. 45

The rights of custody mentioned in sub-paragraph (a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

- (3) So long as the authorities first mentioned in paragraph 1 keep their jurisdiction, the authorities of the Contracting State to which the child has been removed or in which he or she has been retained can take only such urgent measures under Article 11 as are necessary for the protection of the person or property of the child. 5

Article 8 10

- (1) By way of exception, the authority of a Contracting State having jurisdiction under Article 5 or 6, if it considers that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, may either
- request that other authority, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or 15
 - suspend consideration of the case and invite the parties to introduce such a request before the authority of that other State. 20
- (2) The Contracting States whose authorities may be addressed as provided in the preceding paragraph are
- (a) a State of which the child is a national,
 - (b) a State in which property of the child is located, 25
 - (c) a State whose authorities are seised of an application for divorce or legal separation of the child’s parents, or for annulment of their marriage,
 - (d) a State with which the child has a substantial connection.
- (3) The authorities concerned may proceed to an exchange of views. 30
- (4) The authority addressed as provided in paragraph 1 may assume jurisdiction, in place of the authority having jurisdiction under Article 5 or 6, if it considers that this is in the child’s best interests.

Article 9

- (1) If the authorities of a Contracting State referred to in Article 8, paragraph 2, consider that they are better placed in the particular case to assess the child’s best interests, they may either
- request the competent authority of the Contracting State of the habitual residence of the child, directly or with the assistance of the Central Authority of that State, that they be authorised to exercise jurisdiction to take the measures of protection which they consider to be necessary, or 40
 - invite the parties to introduce such a request before the authority of the Contracting State of the habitual residence of the child. 45
- (2) The authorities concerned may proceed to an exchange of views.

- (3) The authority initiating the request may exercise jurisdiction in place of the authority of the Contracting State of the habitual residence of the child only if the latter authority has accepted the request.

Article 10 5

- (1) Without prejudice to Articles 5 to 9, the authorities of a Contracting State exercising jurisdiction to decide upon an application for divorce or legal separation of the parents of a child habitually resident in another Contracting State, or for annulment of their marriage, may, if the law of their State so provides, take measures directed to the protection of the person or property of such child if 10
- (a) at the time of commencement of the proceedings, one of his or her parents habitually resides in that State and one of them has parental responsibility in relation to the child, and 15
- (b) the jurisdiction of these authorities to take such measures has been accepted by the parents, as well as by any other person who has parental responsibility in relation to the child, and is in the best interests of the child. 20
- (2) The jurisdiction provided for by paragraph 1 to take measures for the protection of the child ceases as soon as the decision allowing or refusing the application for divorce, legal separation or annulment of the marriage has become final, or the proceedings have come to an end for another reason. 25

Article 11

- (1) In all cases of urgency, the authorities of any Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take any necessary measures of protection. 30
- (2) The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken the measures required by the situation.
- (3) The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in each Contracting State as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question. 35

Article 12 40

- (1) Subject to Article 7, the authorities of a Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take measures of a provisional character for the protection of the person or property of the child which have a territorial effect limited to the State in question, in so far as such measures are not incompatible with measures already taken by authorities which have jurisdiction under Article 5 to 10. 45

- (2) The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken a decision in respect of the measures of protection which may be required by the situation. 5
- (3) The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in the Contracting State where the measures were taken as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question. 10

Article 13

- (1) The authorities of a Contracting State which have jurisdiction under Articles 5 to 10 to take measures for the protection of the person or property of the child must abstain from exercising this jurisdiction if, at the time of the commencement of the proceedings, corresponding measures have been requested from the authorities of another Contracting State having jurisdiction under Articles 5 to 10 at the time of the request and are still under consideration. 15
- (2) The provisions of the preceding paragraph shall not apply if the authorities before whom the request for measures was initially introduced have declined jurisdiction. 20

Article 14

The measures taken in application of Articles 5 to 10 remain in force according to their terms, even if a change of circumstances has eliminated the basis upon which jurisdiction was founded, so long as the authorities which have jurisdiction under the Convention have not modified, replaced or terminated such measures. 25

CHAPTER III – APPLICABLE LAW 30

Article 15

- (1) In exercising their jurisdiction under the provisions of Chapter II, the authorities of the Contracting States shall apply their own law.
- (2) However, in so far as the protection of the person or the property of the child requires, they may exceptionally apply or take into consideration the law of another State with which the situation has a substantial connection. 35
- (3) If the child's habitual residence changes to another Contracting State, the law of that other State governs, from the time of the change, the conditions of application of the measures taken in the State of the former habitual residence. 40

Article 16

- (1) The attribution or extinction of parental responsibility by operation of law, without the intervention of a judicial or

administrative authority, is governed by the law of the State of the habitual residence of the child.

- (2) The attribution or extinction of parental responsibility by an agreement or a unilateral act, without intervention of a judicial or administrative authority, is governed by the law of the State of the child’s habitual residence at the time when the agreement or unilateral act takes effect. 5
- (3) Parental responsibility which exists under the law of the State of the child’s habitual residence subsists after a change of that habitual residence to another State. 10
- (4) If the child’s habitual residence changes, the attribution of parental responsibility by operation of law to a person who does not already have such responsibility is governed by the law of the State of the new habitual residence.

Article 17 15

The exercise of parental responsibility is governed by the law of the State of the child’s habitual residence. If the child’s habitual residence changes, it is governed by the law of the State of the new habitual residence.

Article 18 20

The parental responsibility referred to in Article 16 may be terminated, or the conditions of its exercise modified, by measures taken under this Convention.

Article 19

- (1) The validity of a transaction entered into between a third party and another person who would be entitled to act as the child’s legal representative under the law of the State where the transaction was concluded cannot be contested, and the third party cannot be held liable, on the sole ground that the other person was not entitled to act as the child’s legal representative under the law designated by the provisions of this Chapter, unless the third party knew or should have known that the parental responsibility was governed by the latter law. 25 30
- (2) The preceding paragraph applies only if the transaction was entered into between persons present on the territory of the same State. 35

Article 20

The provisions of this Chapter apply even if the law designated by them is the law of a non-Contracting State.

Article 21 40

- (1) In this Chapter the term “law” means the law in force in a State other than its choice of law rules.

- (2) However, if the law applicable according to Article 16 is that of a non-Contracting State and if the choice of law rules of that State designate the law of another non-Contracting State which would apply its own law, the law of the latter State applies. If that other non-Contracting State would not apply its own law, the applicable law is that designated by Article 16. 5

Article 22

The application of the law designated by the provisions of this Chapter can be refused only if this application would be manifestly contrary to public policy, taking into account the best interests of the child. 10

CHAPTER IV – RECOGNITION AND ENFORCEMENT

Article 23

- (1) The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States. 15
- (2) Recognition may however be refused –
- (a) if the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II;
 - (b) if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State; 20
 - (c) on the request of any person claiming that the measure infringes his or her parental responsibility, if such measure was taken, except in a case of urgency, without such person having been given an opportunity to be heard; 25
 - (d) if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child; 30
 - (e) if the measure is incompatible with a later measure taken in the non-Contracting State of the habitual residence of the child, where this later measure fulfils the requirements for recognition in the requested State; 35
 - (f) if the procedure provided in Article 33 has not been complied with.

Article 24

- (1) Without prejudice to Article 23, paragraph 1, any interested person may request from the competent authorities of a Contracting State that they decide on the recognition or non-recognition of a measure taken in another Contracting State. The procedure is governed by the law of the requested State. 40

Article 25

The authority of the requested State is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction.

Article 26 5

- (1) If measures taken in one Contracting State and enforceable there require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in the law of the latter State. 10
- (2) Each Contracting State shall apply to the declaration of enforceability or registration a simple and rapid procedure.
- (3) The declaration of enforceability or registration may be refused only for one of the reasons set out in Article 23, paragraph 2.

Article 27 15

Without prejudice to such review as is necessary in the application of the preceding Articles, there shall be no review of the merits of the measure taken.

Article 28

Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law, taking into consideration the best interests of the child. 20
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CHAPTER V – CO-OPERATION

Article 29

- (1) A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention on such authorities. 30
- (2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State. 35

Article 30 40

- (1) Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention.

- (2) They shall, in connection with the application of the Convention, take appropriate steps to provide information as to the laws of, and services available in, their States relating to the protection of children.

Article 31

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- (1) The Central Authority of a Contracting State, either directly or through public authorities or other bodies, shall take all appropriate steps to –
- (a) facilitate the communications and offer the assistance provided for in Articles 8 and 9 and in this Chapter; 10
 - (b) facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the Convention applies;
 - (c) provide, on the request of a competent authority of another Contracting State, assistance in discovering the whereabouts of a child where it appears that the child may be present and in need of protection within the territory of the requested State. 15

Article 32

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On a request made with supporting reasons by the Central Authority or other competent authority of any Contracting State with which the child has a substantial connection, the Central Authority of the Contracting State in which the child is habitually resident and present may, directly or through public authorities or other bodies,

- (a) provide a report on the situation of the child;
- (b) request the competent authority of its State to consider the need to take measures for the protection of the person or property of the child. 30

Article 33

- (1) If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of the child in a foster family or institutional care, or the provision of care by *kafala* or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State, it shall first consult with the Central Authority or other competent authority of the latter State. To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care. 35
- (2) The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child's best interests. 40

Article 34

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- (1) Where a measure of protection is contemplated, the competent authorities under the Convention, if the situation of the child so

requires, may request any authority of another Contracting State which has information relevant to the protection of the child to communicate such information.

- (2) A Contracting State may declare that requests under paragraph 1 shall be communicated to its authorities only through its Central Authority. 5

Article 35

- (1) The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under this Convention, especially in securing the effective exercise of rights of access as well as of the right to maintain direct contacts on a regular basis. 10

- (2) The authorities of a Contracting State in which the child does not habitually reside may, on the request of a parent residing in that State who is seeking to obtain or to maintain access to the child, gather information or evidence and may make a finding on the suitability of that parent to exercise access and on the conditions under which access is to be exercised. An authority exercising jurisdiction under Articles 5 to 10 to determine an application concerning access to the child, shall admit and consider such information, evidence and finding before reaching its decision. 15
20

- (3) An authority having jurisdiction under Articles 5 to 10 to decide on access may adjourn a proceeding pending the outcome of a request made under paragraph 2, in particular, when it is considering an application to restrict or terminate access rights granted in the State of the child's former habitual residence. 25

- (4) Nothing in this Article shall prevent an authority having jurisdiction under Articles 5 to 10 from taking provisional measures pending the outcome of the request made under paragraph 2. 30

Article 36

In any case where the child is exposed to a serious danger, the competent authorities of the Contracting State where measures for the protection of the child have been taken or are under consideration, if they are informed that the child's residence has changed to, or that the child is present in another State, shall inform the authorities of that other State about the danger involved and the measures taken or under consideration. 35

Article 37 40

An authority shall not request or transmit any information under this Chapter if to do so would, in its opinion, be likely to place the child's person or property in danger, or constitute a serious threat to the liberty or life of a member of the child's family.

Article 38

- (1) Without prejudice to the possibility of imposing reasonable charges for the provision of services, Central Authorities and other public authorities of Contracting States shall bear their own costs in applying the provisions of this Chapter. 5
- (2) Any Contracting State may enter into agreements with one or more other Contracting States concerning the allocation of charges.

Article 39

Any Contracting State may enter into agreements with one or more other Contracting States with a view to improving the application of this Chapter in their mutual relations. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention. 10

CHAPTER VI – GENERAL PROVISIONS 15

Article 40

- (1) The authorities of the Contracting State of the child’s habitual residence, or of the Contracting State where a measure of protection has been taken, may deliver to the person having parental responsibility or to the person entrusted with protection of the child’s person or property, at his or her request, a certificate indicating the capacity in which that person is entitled to act and the powers conferred upon him or her. 20
- (2) The capacity and powers indicated in the certificate are presumed to be vested in that person, in the absence of proof to the contrary. 25
- (3) Each Contracting State shall designate the authorities competent to draw up the certificate.

Article 41

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which they were gathered or transmitted. 30

Article 42

The authorities to whom information is transmitted shall ensure its confidentiality, in accordance with the law of their State.

Article 43 35

All documents forwarded or delivered under this Convention shall be exempt from legalisation or any analogous formality.

Article 44

Each Contracting State may designate the authorities to which requests under Articles 8, 9 and 33 are to be addressed. 40

Article 45

- (1) The designations referred to in Articles 29 and 44 shall be communicated to the Permanent Bureau of the Hague Conference on Private International Law.
- (2) The declaration referred to in Article 34, paragraph 2, shall be made to the depositary of the Convention. 5

Article 46

A Contracting State in which different systems of law or sets of rules of law apply to the protection of the child and his or her property shall not be bound to apply the rules of the Convention to conflicts solely between such different systems or sets of rules of law. 10

Article 47

In relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Convention apply in different territorial units – 15

- (1) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit;
- (2) any reference to the presence of the child in that State shall be construed as referring to presence in a territorial unit; 20
- (3) any reference to the location of property of the child in that State shall be construed as referring to location of property of the child in a territorial unit;
- (4) any reference to the State of which the child is a national shall be construed as referring to the territorial unit designated by the law of that State or, in the absence of relevant rules, to the territorial unit with which the child has the closest connection; 25
- (5) any reference to the State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage, shall be construed as referring to the territorial unit whose authorities are seised of such application; 30
- (6) any reference to the State with which the child has a substantial connection shall be construed as referring to the territorial unit with which the child has such connection; 35
- (7) any reference to the State to which the child has been removed or in which he or she has been retained shall be construed as referring to the relevant territorial unit to which the child has been removed or in which he or she has been retained; 40
- (8) any reference to bodies or authorities of that State, other than Central Authorities, shall be construed as referring to those authorised to act in the relevant territorial unit; 45
- (9) any reference to the law or procedure or authority of the State in which a measure has been taken shall be construed

- as referring to the law or procedure or authority of the territorial unit in which such measure was taken;
- (10) any reference to the law or procedure or authority of the requested State shall be construed as referring to the law or procedure or authority of the territorial unit in which recognition or enforcement is sought. 5

Article 48

For the purpose of identifying the applicable law under Chapter III, in relation to a State which comprises two or more territorial units each of which has its own system of law or set of rules of law in respect of matters covered by this Convention, the following rules apply – 10

- (a) if there are rules in force in such a State identifying which territorial unit's law is applicable, the law of that unit applies; 15
- (b) in the absence of such rules, the law of the relevant territorial unit as defined in Article 47 applies.

Article 49

For the purpose of identifying the applicable law under Chapter III, in relation to a State which has two or more systems of law or sets of rules of law applicable to different categories of persons in respect of matters covered by this Convention, the following rules apply – 20

- (a) if there are rules in force in such a State identifying which among such laws applies, that law applies; 25
- (b) in the absence of such rules, the law of the system or the set of rules of law with which the child has the closest connection applies.

Article 50

This Convention shall not affect the application of the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, as between Parties to both Conventions. Nothing, however, precludes provisions of this Convention from being invoked for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights. 30 35

Article 51

In relations between the Contracting States this Convention replaces the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, and the Convention governing the guardianship of minors, signed at The Hague 12 June 1902, without prejudice to the recognition of measures taken under the Convention of 5 October 1961 mentioned above. 40

Article 52

- (1) This Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument. 5
- (2) This Convention does not affect the possibility for one or more Contracting States to conclude agreements which contain, in respect of children habitually resident in any of the States Parties to such agreements, provisions on matters governed by this Convention. 10
- (3) Agreements to be concluded by one or more Contracting States on matters within the scope of this Convention do not affect, in the relationship of such States with other Contracting States, the application of the provisions of this Convention. 15
- (4) The preceding paragraphs also apply to uniform laws based on special ties of a regional or other nature between the States concerned.

Article 53

- (1) The Convention shall apply to measures only if they are taken in a State after the Convention has entered into force for that State. 20
- (2) The Convention shall apply to the recognition and enforcement of measures taken after its entry into force as between the State where the measures have been taken and the requested State.

Article 54

- (1) Any communication sent to the Central Authority or to another authority of a Contracting State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the other State or, where that is not feasible, a translation into French or English. 30
- (2) However, a Contracting State may, by making a reservation in accordance with Article 60, object to the use of either French or English, but not both.

Article 55

- (1) A Contracting State may, in accordance with Article 60, 35
- (a) reserve the jurisdiction of its authorities to take measures directed to the protection of property of a child situated on its territory;
 - (b) reserve the right not to recognise any parental responsibility or measure in so far as it is incompatible with any measure taken by its authorities in relation to that property. 40
- (2) The reservation may be restricted to certain categories of property.

Article 56

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convoke a Special Commission in order to review the practical operation of the Convention.

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CHAPTER VII—FINAL CLAUSES

Article 57

(1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Eighteenth Session.

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(2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 58

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(1) Any other State may accede to the Convention after it has entered into force in accordance with Article 61, paragraph 1.

(2) The instrument of accession shall be deposited with the depositary.

(3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph b of Article 63. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

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Article 59

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

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(2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

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(3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 60

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(1) Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 59, make one or both of the reservations provided

for in Articles 54, paragraph 2, and 55. No other reservation shall be permitted.

- (2) Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the depositary.
- (3) The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph. 5

Article 61

- (1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 57. 10
- (2) Thereafter the Convention shall enter into force –
 - (a) for each State ratifying, accepting or approving it subsequently, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession; 15
 - (b) for each State acceding, on the first day of the month following the expiration of three months after the expiration of the period of six months provided in Article 58, paragraph 3; 20
 - (c) for a territorial unit to which the Convention has been extended in conformity with Article 59, on the first day of the month following the expiration of three months after the notification referred to in that Article. 25

Article 62

- (1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units to which the Convention applies. 30
- (2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period. 35

Article 63

The depositary shall notify the States Members of the Hague Conference on Private International Law and the States which have acceded in accordance with Article 58 of the following – 40

- (a) the signatures, ratifications, acceptances and approvals referred to in Article 57;
- (b) the accessions and objections raised to accessions referred to in Article 58;
- (c) the date on which the Convention enters into force in accordance with Article 61; 45

- (d) the declarations referred to in Articles 34, paragraph 2, and 59;
- (e) the agreements referred to in Article 39;
- (f) the reservations referred to in Article 54, paragraph 2, and 55 and the withdrawals referred to in Article 60, paragraph 2; 5
- (g) the denunciations referred to in Article 62.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 19th day of October 1996, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Eighteenth Session.” 10 15

SCHEDULE 2

Section 1

SCHEDULE TO BE INSERTED AS SCHEDULE 3E TO THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982

“SCHEDULE 3E 20

DECLARATIONS MADE BY THE UNITED KINGDOM IN RELATION TO THE 1996 HAGUE CONVENTION

PART 1

DECLARATION CONCERNING APPLICABLE TERRITORIAL UNITS

In accordance with Article 29, paragraph 2, of the Convention, the Government of the United Kingdom declares that it will interpret this paragraph as referring only to cases where the requesting Central Authority does not know to which applicable territorial unit their application should be addressed. In such cases the United Kingdom designates the Central Authority for England to transmit to the relevant Central Authority. 25 30

PART 2

DECLARATION CONCERNING COMMUNICATION OF REQUESTS UNDER PARAGRAPH 1 OF ARTICLE 34

In accordance with Article 34, paragraph 2, of the Convention, the Government of the United Kingdom declares that requests made under paragraph 1 of Article 34 shall be communicated to its authorities only through the relevant Central Authority. 35

PART 3

DECLARATION CONCERNING THE USE OF FRENCH

In accordance with Article 54, paragraph 2, of the Convention, the Government of the United Kingdom of Great Britain and Northern Ireland declares that it objects to the use of French.” 5

SCHEDULE 3

Section 1

SCHEDULE TO BE INSERTED AS SCHEDULE 3F TO THE CIVIL JURISDICTION AND JUDGMENTS
ACT 1982

“SCHEDULE 3F

TEXT OF THE 2005 HAGUE CONVENTION 10

CONVENTION ON CHOICE OF COURT AGREEMENTS

(Concluded 30 June 2005)

The States Parties to the present Convention,
 Desiring to promote international trade and investment through enhanced judicial co-operation, 15
 Believing that such co-operation can be enhanced by uniform rules on jurisdiction and on recognition and enforcement of foreign judgments in civil or commercial matters,
 Believing that such enhanced co-operation requires in particular an international legal regime that provides certainty and ensures the effectiveness of exclusive choice of court agreements between parties to commercial transactions and that governs the recognition and enforcement of judgments resulting from proceedings based on such agreements, 20
 Have resolved to conclude this Convention and have agreed upon the following provisions – 25

CHAPTER I – SCOPE AND DEFINITIONS

ARTICLE 1

Scope

- (1) This Convention shall apply in international cases to exclusive choice of court agreements concluded in civil or commercial matters. 30
- (2) For the purposes of Chapter II, a case is international unless the parties are resident in the same Contracting State and the relationship of the parties and all other elements relevant to the dispute, regardless of the location of the chosen court, are connected only with that State. 35
- (3) For the purposes of Chapter III, a case is international where recognition or enforcement of a foreign judgment is sought.

Article 2
Exclusions from scope

- (1) This Convention shall not apply to exclusive choice of court agreements –
- (a) to which a natural person acting primarily for personal, family or household purposes (a consumer) is a party; 5
 - (b) relating to contracts of employment, including collective agreements.
- (2) This Convention shall not apply to the following matters –
- (a) the status and legal capacity of natural persons; 10
 - (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; 15
 - (e) insolvency, composition and analogous matters;
 - (f) the carriage of passengers and goods;
 - (g) marine pollution, limitation of liability for maritime claims, general average, and emergency towage and salvage; 20
 - (h) anti-trust (competition) matters;
 - (i) liability for nuclear damage;
 - (j) claims for personal injury brought by or on behalf of natural persons;
 - (k) tort or delict claims for damage to tangible property that do not arise from a contractual relationship; 25
 - (l) rights *in rem* in immovable property, and tenancies of immovable property;
 - (m) the validity, nullity, or dissolution of legal persons, and the validity of decisions of their organs; 30
 - (n) the validity of intellectual property rights other than copyright and related rights;
 - (o) infringement of intellectual property rights other than copyright and related rights, except where infringement proceedings are brought for breach of a contract between the parties relating to such rights, or could have been brought for breach of that contract; 35
 - (p) the validity of entries in public registers.
- (3) Notwithstanding paragraph 2, proceedings are not excluded from the scope of this Convention where a matter excluded under that paragraph arises merely as a preliminary question and not as an object of the proceedings. In particular, the mere fact that a matter excluded under paragraph 2 arises by way of defence does not exclude proceedings from the Convention, if that matter is not an object of the proceedings. 40
- (4) This Convention shall not apply to arbitration and related proceedings. 45
- (5) Proceedings are not excluded from the scope of this Convention by the mere fact that a State, including a government, a

governmental agency or any person acting for a State, is a party thereto.

- (6) Nothing in this Convention shall affect privileges and immunities of States or of international organisations, in respect of themselves and of their property. 5

Article 3

Exclusive choice of court agreements

For the purposes of this Convention –

- (a) “exclusive choice of court agreement” means an agreement concluded by two or more parties that meets the requirements of paragraph c) and designates, for the purpose of deciding disputes which have arisen or may arise in connection with a particular legal relationship, the courts of one Contracting State or one or more specific courts of one Contracting State to the exclusion of the jurisdiction of any other courts; 10
- (b) a choice of court agreement which designates the courts of one Contracting State or one or more specific courts of one Contracting State shall be deemed to be exclusive unless the parties have expressly provided otherwise; 15
- (c) an exclusive choice of court agreement must be concluded or documented – 20
- (i) in writing; or
- (ii) by any other means of communication which renders information accessible so as to be usable for subsequent reference; 25
- (d) an exclusive choice of court agreement that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. The validity of the exclusive choice of court agreement cannot be contested solely on the ground that the contract is not valid. 30

Article 4

Other definitions

- (1) In this Convention, “judgment” means any decision on the merits given by a court, whatever it may be called, including a decree or order, and a determination of costs or expenses by the court (including an officer of the court), provided that the determination relates to a decision on the merits which may be recognised or enforced under this Convention. An interim measure of protection is not a judgment. 35
- (2) For the purposes of this Convention, an entity or person other than a natural person shall be considered to be resident in the State – 40
- (a) where it has its statutory seat;
- (b) under whose law it was incorporated or formed;
- (c) where it has its central administration; or 45
- (d) where it has its principal place of business.

CHAPTER II – JURISDICTION

Article 5

Jurisdiction of the chosen court

- (1) The court or courts of a Contracting State designated in an exclusive choice of court agreement shall have jurisdiction to decide a dispute to which the agreement applies, unless the agreement is null and void under the law of that State. 5
- (2) A court that has jurisdiction under paragraph 1 shall not decline to exercise jurisdiction on the ground that the dispute should be decided in a court of another State. 10
- (3) The preceding paragraphs shall not affect rules –
- (a) on jurisdiction related to subject matter or to the value of the claim;
 - (b) on the internal allocation of jurisdiction among the courts of a Contracting State. 15

However, where the chosen court has discretion as to whether to transfer a case, due consideration should be given to the choice of the parties.

Article 6

Obligations of a court not chosen 20

A court of a Contracting State other than that of the chosen court shall suspend or dismiss proceedings to which an exclusive choice of court agreement applies unless –

- (a) the agreement is null and void under the law of the State of the chosen court; 25
- (b) a party lacked the capacity to conclude the agreement under the law of the State of the court seised;
- (c) giving effect to the agreement would lead to a manifest injustice or would be manifestly contrary to the public policy of the State of the court seised; 30
- (d) for exceptional reasons beyond the control of the parties, the agreement cannot reasonably be performed; or
- (e) the chosen court has decided not to hear the case.

Article 7

Interim measures of protection 35

Interim measures of protection are not governed by this Convention. This Convention neither requires nor precludes the grant, refusal or termination of interim measures of protection by a court of a Contracting State and does not affect whether or not a party may request or a court should grant, refuse or terminate such measures. 40

CHAPTER III – RECOGNITION AND ENFORCEMENT

Article 8

Registration and enforcement

- (1) A judgment given by a court of a Contracting State designated in an exclusive choice of court agreement shall be recognised and enforced in other Contracting States in accordance with this Chapter. Recognition or enforcement may be refused only on the grounds specified in this Convention. 5
- (2) Without prejudice to such review as is necessary for the application of the provisions of this Chapter, there shall be no review of the merits of the judgment given by the court of origin. The court addressed shall be bound by the findings of fact on which the court of origin based its jurisdiction, unless the judgment was given by default. 10
- (3) A judgment shall be recognised only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of origin. 15
- (4) Recognition or enforcement may be postponed or refused if the judgment is the subject of review in the State of origin or if the time limit for seeking ordinary review has not expired. A refusal does not prevent a subsequent application for recognition or enforcement of the judgment. 20
- (5) This Article shall also apply to a judgment given by a court of a Contracting State pursuant to a transfer of the case from the chosen court in that Contracting State as permitted by Article 5, paragraph 3. However, where the chosen court had discretion as to whether to transfer the case to another court, recognition or enforcement of the judgment may be refused against a party who objected to the transfer in a timely manner in the State of origin. 25

Article 9

Refusal of recognition or enforcement

Recognition or enforcement may be refused if –

- (a) the agreement was null and void under the law of the State of the chosen court, unless the chosen court has determined that the agreement is valid; 35
- (b) a party lacked the capacity to conclude the agreement under the law of the requested State;
- (c) the document which instituted the proceedings or an equivalent document, including the essential elements of the claim, 40
- (i) was not notified to the defendant in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant entered an appearance and presented his case without contesting notification in the court of origin, provided that the law of the State of origin permitted notification to be contested; or 45

- (ii) was notified to the defendant in the requested State in a manner that is incompatible with fundamental principles of the requested State concerning service of documents;
- (d) the judgment was obtained by fraud in connection with a matter of procedure; 5
- (e) recognition or enforcement would be manifestly incompatible with the public policy of the requested State, including situations where the specific proceedings leading to the judgment were incompatible with fundamental principles of procedural fairness of that State; 10
- (f) the judgment is inconsistent with a judgment given in the requested State in a dispute between the same parties; or
- (g) the judgment is inconsistent with an earlier judgment given in another State between the same parties on the same cause of action, provided that the earlier judgment fulfils the conditions necessary for its recognition in the requested State. 15

Article 10

Preliminary questions 20

- (1) Where a matter excluded under Article 2, paragraph 2, or under Article 21, arose as a preliminary question, the ruling on that question shall not be recognised or enforced under this Convention.
- (2) Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment was based on a ruling on a matter excluded under Article 2, paragraph 2. 25
- (3) However, in the case of a ruling on the validity of an intellectual property right other than copyright or a related right, recognition or enforcement of a judgment may be refused or postponed under the preceding paragraph only where – 30
 - (a) that ruling is inconsistent with a judgment or a decision of a competent authority on that matter given in the State under the law of which the intellectual property right arose; or 35
 - (b) proceedings concerning the validity of the intellectual property right are pending in that State.
- (4) Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment was based on a ruling on a matter excluded pursuant to a declaration made by the requested State under Article 21. 40

Article 11

Damages

- (1) Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment awards damages, including exemplary or punitive damages, that do not compensate a party for actual loss or harm suffered. 45

- (2) The court addressed shall take into account whether and to what extent the damages awarded by the court of origin serve to cover costs and expenses relating to the proceedings.

Article 12

Judicial settlements (*transactions judiciaires*) 5

Judicial settlements (*transactions judiciaires*) which a court of a Contracting State designated in an exclusive choice of court agreement has approved, or which have been concluded before that court in the course of proceedings, and which are enforceable in the same manner as a judgment in the State of origin, shall be enforced under this Convention in the same manner as a judgment. 10

Article 13

Documents to be produced

- (1) The party seeking recognition or applying for enforcement shall produce – 15
- (a) a complete and certified copy of the judgment;
 - (b) the exclusive choice of court agreement, a certified copy thereof, or other evidence of its existence;
 - (c) if the judgment was given by default, the original or a certified copy of a document establishing that the document which instituted the proceedings or an equivalent document was notified to the defaulting party; 20
 - (d) any documents necessary to establish that the judgment has effect or, where applicable, is enforceable in the State of origin; 25
 - (e) in the case referred to in Article 12, a certificate of a court of the State of origin that the judicial settlement or a part of it is enforceable in the same manner as a judgment in the State of origin. 30
- (2) If the terms of the judgment do not permit the court addressed to verify whether the conditions of this Chapter have been complied with, that court may require any necessary documents.
- (3) An application for recognition or enforcement may be accompanied by a document, issued by a court (including an officer of the court) of the State of origin, in the form recommended and published by the Hague Conference on Private International Law. 35
- (4) If the documents referred to in this Article are not in an official language of the requested State, they shall be accompanied by a certified translation into an official language, unless the law of the requested State provides otherwise. 40

Article 14

Procedure

The procedure for recognition, declaration of enforceability or registration for enforcement, and the enforcement of the judgment, are governed by the law of the requested State unless 45

this Convention provides otherwise. The court addressed shall act expeditiously.

Article 15 Severability

Recognition or enforcement of a severable part of a judgment shall be granted where recognition or enforcement of that part is applied for, or only part of the judgment is capable of being recognised or enforced under this Convention. 5

CHAPTER IV – GENERAL CLAUSES

Article 16 Transitional provisions 10

- (1) This Convention shall apply to exclusive choice of court agreements concluded after its entry into force for the State of the chosen court.
- (2) This Convention shall not apply to proceedings instituted before its entry into force for the State of the court seised. 15

Article 17 Contracts of insurance and reinsurance

- (1) Proceedings under a contract of insurance or reinsurance are not excluded from the scope of this Convention on the ground that the contract of insurance or reinsurance relates to a matter to which this Convention does not apply. 20
- (2) Recognition and enforcement of a judgment in respect of liability under the terms of a contract of insurance or reinsurance may not be limited or refused on the ground that the liability under that contract includes liability to indemnify the insured or reinsured in respect of – 25
 - (a) a matter to which this Convention does not apply; or
 - (b) an award of damages to which Article 11 might apply.

Article 18 No legalisation 30

All documents forwarded or delivered under this Convention shall be exempt from legalisation or any analogous formality, including an Apostille.

Article 19 Declarations limiting jurisdiction 35

A State may declare that its courts may refuse to determine disputes to which an exclusive choice of court agreement applies if, except for the location of the chosen court, there is no connection between that State and the parties or the dispute. 40

Article 20

Declarations limiting recognition and enforcement

A State may declare that its courts may refuse to recognise or enforce a judgment given by a court of another Contracting State if the parties were resident in the requested State, and the relationship of the parties and all other elements relevant to the dispute, other than the location of the chosen court, were connected only with the requested State. 5

Article 21

Declarations with respect to specific matters 10

- (1) Where a State has a strong interest in not applying this Convention to a specific matter, that State may declare that it will not apply the Convention to that matter. The State making such a declaration shall ensure that the declaration is no broader than necessary and that the specific matter excluded is clearly and precisely defined. 15
- (2) With regard to that matter, the Convention shall not apply –
- (a) in the Contracting State that made the declaration;
 - (b) in other Contracting States, where an exclusive choice of court agreement designates the courts, or one or more specific courts, of the State that made the declaration. 20

Article 22

Reciprocal declarations on non-exclusive choice of court agreements

- (1) A Contracting State may declare that its courts will recognise and enforce judgments given by courts of other Contracting States designated in a choice of court agreement concluded by two or more parties that meets the requirements of Article 3, paragraph c), and designates, for the purpose of deciding disputes which have arisen or may arise in connection with a particular legal relationship, a court or courts of one or more Contracting States (a non-exclusive choice of court agreement). 25
- (2) Where recognition or enforcement of a judgment given in a Contracting State that has made such a declaration is sought in another Contracting State that has made such a declaration, the judgment shall be recognised and enforced under this Convention, if – 30
- (a) the court of origin was designated in a non-exclusive choice of court agreement;
 - (b) there exists neither a judgment given by any other court before which proceedings could be brought in accordance with the non-exclusive choice of court agreement, nor a proceeding pending between the same parties in any other such court on the same cause of action; and 40
 - (c) the court of origin was the court first seised.

Article 23
Uniform interpretation

In the interpretation of this Convention, regard shall be had to its international character and to the need to promote uniformity in its application.

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Article 24
Review of operation of the Convention

The Secretary General of the Hague Conference on Private International Law shall at regular intervals make arrangements for –

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- (a) review of the operation of this Convention, including any declarations; and
- (b) consideration of whether any amendments to this Convention are desirable.

Article 25
Non-unified legal systems

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(1) In relation to a Contracting State in which two or more systems of law apply in different territorial units with regard to any matter dealt with in this Convention –

- (a) any reference to the law or procedure of a State shall be construed as referring, where appropriate, to the law or procedure in force in the relevant territorial unit; 20
- (b) any reference to residence in a State shall be construed as referring, where appropriate, to residence in the relevant territorial unit; 25
- (c) any reference to the court or courts of a State shall be construed as referring, where appropriate, to the court or courts in the relevant territorial unit;
- (d) any reference to a connection with a State shall be construed as referring, where appropriate, to a connection with the relevant territorial unit. 30

(2) Notwithstanding the preceding paragraph, a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to apply this Convention to situations which involve solely such different territorial units. 35

(3) A court in a territorial unit of a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to recognise or enforce a judgment from another Contracting State solely because the judgment has been recognised or enforced in another territorial unit of the same Contracting State under this Convention. 40

(4) This Article shall not apply to a Regional Economic Integration Organisation.

Article 26

Relationship with other international instruments

- (1) This Convention shall be interpreted so far as possible to be compatible with other treaties in force for Contracting States, whether concluded before or after this Convention. 5
- (2) This Convention shall not affect the application by a Contracting State of a treaty, whether concluded before or after this Convention, in cases where none of the parties is resident in a Contracting State that is not a Party to the treaty.
- (3) This Convention shall not affect the application by a Contracting State of a treaty that was concluded before this Convention entered into force for that Contracting State, if applying this Convention would be inconsistent with the obligations of that Contracting State to any non-Contracting State. This paragraph shall also apply to treaties that revise or replace a treaty concluded before this Convention entered into force for that Contracting State, except to the extent that the revision or replacement creates new inconsistencies with this Convention. 10
15
- (4) This Convention shall not affect the application by a Contracting State of a treaty, whether concluded before or after this Convention, for the purposes of obtaining recognition or enforcement of a judgment given by a court of a Contracting State that is also a Party to that treaty. However, the judgment shall not be recognised or enforced to a lesser extent than under this Convention. 20
25
- (5) This Convention shall not affect the application by a Contracting State of a treaty which, in relation to a specific matter, governs jurisdiction or the recognition or enforcement of judgments, even if concluded after this Convention and even if all States concerned are Parties to this Convention. This paragraph shall apply only if the Contracting State has made a declaration in respect of the treaty under this paragraph. In the case of such a declaration, other Contracting States shall not be obliged to apply this Convention to that specific matter to the extent of any inconsistency, where an exclusive choice of court agreement designates the courts, or one or more specific courts, of the Contracting State that made the declaration. 30
35
- (6) This Convention shall not affect the application of the rules of a Regional Economic Integration Organisation that is a Party to this Convention, whether adopted before or after this Convention – 40
- (a) where none of the parties is resident in a Contracting State that is not a Member State of the Regional Economic Integration Organisation;
 - (b) as concerns the recognition or enforcement of judgments as between Member States of the Regional Economic Integration Organisation. 45

CHAPTER V – FINAL CLAUSES

Article 27

Signature, ratification, acceptance, approval or accession

- (1) This Convention is open for signature by all States.
- (2) This Convention is subject to ratification, acceptance or approval by the signatory States. 5
- (3) This Convention is open for accession by all States.
- (4) Instruments of ratification, acceptance, approval or accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention. 10

Article 28

Declarations with respect to non-unified legal systems

- (1) If a State has two or more territorial units in which different systems of law apply in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time. 15
- (2) A declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies. 20
- (3) If a State makes no declaration under this Article, the Convention shall extend to all territorial units of that State.
- (4) This Article shall not apply to a Regional Economic Integration Organisation. 25

Article 29

Regional Economic Integration Organisations

- (1) A Regional Economic Integration Organisation which is constituted solely by sovereign States and has competence over some or all of the matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that the Organisation has competence over matters governed by this Convention. 30
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- (2) The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, notify the depositary in writing of the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Organisation shall promptly notify the depositary in writing of any changes to its competence as specified in the most recent notice given under this paragraph. 40
- (3) For the purposes of the entry into force of this Convention, any instrument deposited by a Regional Economic Integration 45

Organisation shall not be counted unless the Regional Economic Integration Organisation declares in accordance with Article 30 that its Member States will not be Parties to this Convention.

- (4) Any reference to a “Contracting State” or “State” in this Convention shall apply equally, where appropriate, to a Regional Economic Integration Organisation that is a Party to it. 5

Article 30

Accession by a Regional Economic Integration Organisation without its Member States

- (1) At the time of signature, acceptance, approval or accession, a Regional Economic Integration Organisation may declare that it exercises competence over all the matters governed by this Convention and that its Member States will not be Parties to this Convention but shall be bound by virtue of the signature, acceptance, approval or accession of the Organisation. 10
15
- (2) In the event that a declaration is made by a Regional Economic Integration Organisation in accordance with paragraph 1, any reference to a “Contracting State” or “State” in this Convention shall apply equally, where appropriate, to the Member States of the Organisation. 20

Article 31

Entry into force

- (1) This Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the second instrument of ratification, acceptance, approval or accession referred to in Article 27. 25
- (2) Thereafter this Convention shall enter into force—
- (a) for each State or Regional Economic Integration Organisation subsequently ratifying, accepting, approving or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession; 30
- (b) for a territorial unit to which this Convention has been extended in accordance with Article 28, paragraph 1, on the first day of the month following the expiration of three months after the notification of the declaration referred to in that Article. 35

Article 32

Declarations 40

- (1) Declarations referred to in Articles 19, 20, 21, 22 and 26 may be made upon signature, ratification, acceptance, approval or accession or at any time thereafter, and may be modified or withdrawn at any time.
- (2) Declarations, modifications and withdrawals shall be notified to the depositary. 45

- (3) A declaration made at the time of signature, ratification, acceptance, approval or accession shall take effect simultaneously with the entry into force of this Convention for the State concerned.
- (4) A declaration made at a subsequent time, and any modification or withdrawal of a declaration, shall take effect on the first day of the month following the expiration of three months after the date on which the notification is received by the depositary. 5
- (5) A declaration under Articles 19, 20, 21 and 26 shall not apply to exclusive choice of court agreements concluded before it takes effect. 10

Article 33 Denunciation

- (1) This Convention may be denounced by notification in writing to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies. 15
- (2) The denunciation shall take effect on the first day of the month following the expiration of twelve months after the date on which the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the date on which the notification is received by the depositary. 20

Article 34 Notifications by the depositary

The depositary shall notify the Members of the Hague Conference on Private International Law, and other States and Regional Economic Integration Organisations which have signed, ratified, accepted, approved or acceded in accordance with Articles 27, 29 and 30 of the following – 30

- (a) the signatures, ratifications, acceptances, approvals and accessions referred to in Articles 27, 29 and 30;
- (b) the date on which this Convention enters into force in accordance with Article 31; 35
- (c) the notifications, declarations, modifications and withdrawals of declarations referred to in Articles 19, 20, 21, 22, 26, 28, 29 and 30;
- (d) the denunciations referred to in Article 33.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention. 40

Done at The Hague, on 30 June 2005, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the Member States 45

of the Hague Conference on Private International Law as of the date of its Twentieth Session and to each State which participated in that Session.”

SCHEDULE 4

Section 1

SCHEDULE TO BE INSERTED AS SCHEDULE 3G TO THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982 5

“SCHEDULE 3G

TEXT OF THE 2007 HAGUE CONVENTION

CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE 10

(Concluded 23 November 2007)

The States signatory to the present Convention,
 Desiring to improve co-operation among States for the international recovery of child support and other forms of family maintenance, 15

Aware of the need for procedures which produce results and are accessible, prompt, efficient, cost-effective, responsive and fair,
 Wishing to build upon the best features of existing Hague Conventions and other international instruments, in particular the United Nations *Convention on the Recovery Abroad of Maintenance* of 20 June 1956, 20

Seeking to take advantage of advances in technologies and to create a flexible system which can continue to evolve as needs change and further advances in technology create new opportunities, 25

Recalling that, in accordance with Articles 3 and 27 of the United Nations *Convention on the Rights of the Child* of 20 November 1989,
 – in all actions concerning children the best interests of the child shall be a primary consideration, 30

– every child has a right to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development, 30

– the parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development, and 35

– States Parties should take all appropriate measures, including the conclusion of international agreements, to secure the recovery of maintenance for the child from the parent(s) or other responsible persons, in particular where such persons live in a State different from that of the child, 40

Have resolved to conclude this Convention and have agreed upon the following provisions –

CHAPTER I—OBJECT, SCOPE AND DEFINITIONS

Article 1

Object

The object of the present Convention is to ensure the effective international recovery of child support and other forms of family maintenance, in particular by— 5

- (a) establishing a comprehensive system of co-operation between the authorities of the Contracting States;
- (b) making available applications for the establishment of maintenance decisions; 10
- (c) providing for the recognition and enforcement of maintenance decisions; and
- (d) requiring effective measures for the prompt enforcement of maintenance decisions.

Article 2

Scope

15

- (1) This Convention shall apply—
 - (a) to maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years;
 - (b) to recognition and enforcement or enforcement of a decision for spousal support when the application is made with a claim within the scope of sub-paragraph a); and 20
 - (c) with the exception of Chapters II and III, to spousal support.
- (2) Any Contracting State may reserve, in accordance with Article 62, the right to limit the application of the Convention under sub-paragraph 1 a), to persons who have not attained the age of 18 years. A Contracting State which makes this reservation shall not be entitled to claim the application of the Convention to persons of the age excluded by its reservation. 25 30
- (3) Any Contracting State may declare in accordance with Article 63 that it will extend the application of the whole or any part of the Convention to any maintenance obligation arising from a family relationship, parentage, marriage or affinity, including in particular obligations in respect of vulnerable persons. Any such declaration shall give rise to obligations between two Contracting States only in so far as their declarations cover the same maintenance obligations and parts of the Convention. 35
- (4) The provisions of this Convention shall apply to children regardless of the marital status of the parents. 40

Article 3

Definitions

For the purposes of this Convention—

- (a) “creditor” means an individual to whom maintenance is owed or is alleged to be owed; 45
- (b) “debtor” means an individual who owes or who is alleged to owe maintenance;

- (c) “legal assistance” means the assistance necessary to enable applicants to know and assert their rights and to ensure that applications are fully and effectively dealt with in the requested State. The means of providing such assistance may include as necessary legal advice, assistance in bringing a case before an authority, legal representation and exemption from costs of proceedings; 5
- (d) “agreement in writing” means an agreement recorded in any medium, the information contained in which is accessible so as to be usable for subsequent reference; 10
- (e) “maintenance arrangement” means an agreement in writing relating to the payment of maintenance which—
 - (i) has been formally drawn up or registered as an authentic instrument by a competent authority; or
 - (ii) has been authenticated by, or concluded, registered or filed with a competent authority, and may be the subject of review and modification by a competent authority; 15
- (f) “vulnerable person” means a person who, by reason of an impairment or insufficiency of his or her personal faculties, is not able to support him or herself. 20

CHAPTER II— ADMINISTRATIVE CO-OPERATION

Article 4

Designation of Central Authorities

- (1) A Contracting State shall designate a Central Authority to discharge the duties that are imposed by the Convention on such an authority. 25
- (2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and shall specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State. 30
35
- (3) The designation of the Central Authority or Central Authorities, their contact details, and where appropriate the extent of their functions as specified in paragraph 2, shall be communicated by a Contracting State to the Permanent Bureau of the Hague Conference on Private International Law at the time when the instrument of ratification or accession is deposited or when a declaration is submitted in accordance with Article 61. Contracting States shall promptly inform the Permanent Bureau of any changes. 40

Article 5

General functions of Central Authorities

Central Authorities shall—

45

- (a) co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention;
- (b) seek as far as possible solutions to difficulties which arise in the application of the Convention.

5

Article 6

Specific functions of Central Authorities

- (1) Central Authorities shall provide assistance in relation to applications under Chapter III. In particular they shall –
 - (a) transmit and receive such applications; 10
 - (b) initiate or facilitate the institution of proceedings in respect of such applications.
- (2) In relation to such applications they shall take all appropriate measures –
 - (a) where the circumstances require, to provide or facilitate the provision of legal assistance; 15
 - (b) to help locate the debtor or the creditor;
 - (c) to help obtain relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor, including the location of assets; 20
 - (d) to encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes;
 - (e) to facilitate the ongoing enforcement of maintenance decisions, including any arrears; 25
 - (f) to facilitate the collection and expeditious transfer of maintenance payments;
 - (g) to facilitate the obtaining of documentary or other evidence;
 - (h) to provide assistance in establishing parentage where necessary for the recovery of maintenance; 30
 - (i) to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures that are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application; 35
 - (j) to facilitate service of documents.
- (3) The functions of the Central Authority under this Article may, to the extent permitted under the law of its State, be performed by public bodies, or other bodies subject to the supervision of the competent authorities of that State. The designation of any such public bodies or other bodies, as well as their contact details and the extent of their functions, shall be communicated by a Contracting State to the Permanent Bureau of the Hague Conference on Private International Law. Contracting States shall promptly inform the Permanent Bureau of any changes. 40 45
- (4) Nothing in this Article or Article 7 shall be interpreted as imposing an obligation on a Central Authority to exercise powers that can be exercised only by judicial authorities under the law of the requested State.

Article 7

Requests for specific measures

- (1) A Central Authority may make a request, supported by reasons, to another Central Authority to take appropriate specific measures under Article 6(2) b), c), g), h), i) and j) when no application under Article 10 is pending. The requested Central Authority shall take such measures as are appropriate if satisfied that they are necessary to assist a potential applicant in making an application under Article 10 or in determining whether such an application should be initiated. 5
10
- (2) A Central Authority may also take specific measures on the request of another Central Authority in relation to a case having an international element concerning the recovery of maintenance pending in the requesting State. 10

Article 8

Central Authority costs

- (1) Each Central Authority shall bear its own costs in applying this Convention. 15
- (2) Central Authorities may not impose any charge on an applicant for the provision of their services under the Convention save for exceptional costs arising from a request for a specific measure under Article 7. 20
- (3) The requested Central Authority may not recover the costs of the services referred to in paragraph 2 without the prior consent of the applicant to the provision of those services at such cost. 25

CHAPTER III – APPLICATIONS THROUGH CENTRAL AUTHORITIES

Article 9

Application through Central Authorities

An application under this Chapter shall be made through the Central Authority of the Contracting State in which the applicant resides to the Central Authority of the requested State. For the purpose of this provision, residence excludes mere presence. 30

Article 10

Available applications

- (1) The following categories of application shall be available to a creditor in a requesting State seeking to recover maintenance under this Convention – 35
- (a) recognition or recognition and enforcement of a decision;
 - (b) enforcement of a decision made or recognised in the requested State; 40
 - (c) establishment of a decision in the requested State where there is no existing decision, including where necessary the establishment of parentage;
 - (d) establishment of a decision in the requested State where recognition and enforcement of a decision is not possible, or is refused, because of the lack of a basis for recognition 45

- and enforcement under Article 20, or on the grounds specified in Article 22 b) or e);
- (e) modification of a decision made in the requested State;
- (f) modification of a decision made in a State other than the requested State. 5
- (2) The following categories of application shall be available to a debtor in a requesting State against whom there is an existing maintenance decision –
- (a) recognition of a decision, or an equivalent procedure leading to the suspension, or limiting the enforcement, of a previous decision in the requested State; 10
- (b) modification of a decision made in the requested State;
- (c) modification of a decision made in a State other than the requested State.
- (3) Save as otherwise provided in this Convention, the applications in paragraphs 1 and 2 shall be determined under the law of the requested State, and applications in paragraphs 1 c) to f) and 2 b) and c) shall be subject to the jurisdictional rules applicable in the requested State. 15
- Article 11 20
- Application contents
- (1) All applications under Article 10 shall as a minimum include –
- (a) a statement of the nature of the application or applications;
- (b) the name and contact details, including the address and date of birth of the applicant; 25
- (c) the name and, if known, address and date of birth of the respondent;
- (d) the name and date of birth of any person for whom maintenance is sought;
- (e) the grounds upon which the application is based; 30
- (f) in an application by a creditor, information concerning where the maintenance payment should be sent or electronically transmitted;
- (g) save in an application under Article 10(1) a) and (2) a), any information or document specified by declaration in accordance with Article 63 by the requested State; 35
- (h) the name and contact details of the person or unit from the Central Authority of the requesting State responsible for processing the application.
- (2) As appropriate, and to the extent known, the application shall in addition in particular include – 40
- (a) the financial circumstances of the creditor;
- (b) the financial circumstances of the debtor, including the name and address of the employer of the debtor and the nature and location of the assets of the debtor; 45
- (c) any other information that may assist with the location of the respondent.

(3) The application shall be accompanied by any necessary supporting information or documentation including documentation concerning the entitlement of the applicant to free legal assistance. In the case of applications under Article 10(1) a) and (2) a), the application shall be accompanied only by the documents listed in Article 25. 5

(4) An application under Article 10 may be made in the form recommended and published by the Hague Conference on Private International Law.

Article 12 10

Transmission, receipt and processing of applications and cases through Central Authorities

(1) The Central Authority of the requesting State shall assist the applicant in ensuring that the application is accompanied by all the information and documents known by it to be necessary for consideration of the application. 15

(2) The Central Authority of the requesting State shall, when satisfied that the application complies with the requirements of the Convention, transmit the application on behalf of and with the consent of the applicant to the Central Authority of the requested State. The application shall be accompanied by the transmittal form set out in Annex 1. The Central Authority of the requesting State shall, when requested by the Central Authority of the requested State, provide a complete copy certified by the competent authority in the State of origin of any document specified under Articles 16(3), 25(1) a), b) and d) and (3) b) and 30(3). 20 25

(3) The requested Central Authority shall, within six weeks from the date of receipt of the application, acknowledge receipt in the form set out in Annex 2, and inform the Central Authority of the requesting State what initial steps have been or will be taken to deal with the application, and may request any further necessary documents and information. Within the same six-week period, the requested Central Authority shall provide to the requesting Central Authority the name and contact details of the person or unit responsible for responding to inquiries regarding the progress of the application. 30 35

(4) Within three months after the acknowledgement, the requested Central Authority shall inform the requesting Central Authority of the status of the application. 40

(5) Requesting and requested Central Authorities shall keep each other informed of—
 (a) the person or unit responsible for a particular case;
 (b) the progress of the case,
 and shall provide timely responses to enquiries. 45

(6) Central Authorities shall process a case as quickly as a proper consideration of the issues will allow.

- (7) Central Authorities shall employ the most rapid and efficient means of communication at their disposal.
- (8) A requested Central Authority may refuse to process an application only if it is manifest that the requirements of the Convention are not fulfilled. In such case, that Central Authority shall promptly inform the requesting Central Authority of its reasons for refusal. 5
- (9) The requested Central Authority may not reject an application solely on the basis that additional documents or information are needed. However, the requested Central Authority may ask the requesting Central Authority to provide these additional documents or information. If the requesting Central Authority does not do so within three months or a longer period specified by the requested Central Authority, the requested Central Authority may decide that it will no longer process the application. In this case, it shall inform the requesting Central Authority of this decision. 10
15

Article 13
Means of communication

Any application made through Central Authorities of the Contracting States in accordance with this Chapter, and any document or information appended thereto or provided by a Central Authority, may not be challenged by the respondent by reason only of the medium or means of communication employed between the Central Authorities concerned. 20
25

Article 14
Effective access to procedures

- (1) The requested State shall provide applicants with effective access to procedures, including enforcement and appeal procedures, arising from applications under this Chapter. 30
- (2) To provide such effective access, the requested State shall provide free legal assistance in accordance with Articles 14 to 17 unless paragraph 3 applies.
- (3) The requested State shall not be obliged to provide such free legal assistance if and to the extent that the procedures of that State enable the applicant to make the case without the need for such assistance, and the Central Authority provides such services as are necessary free of charge. 35
- (4) Entitlements to free legal assistance shall not be less than those available in equivalent domestic cases. 40
- (5) No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in proceedings under the Convention.

Article 15

Free legal assistance for child support applications

- (1) The requested State shall provide free legal assistance in respect of all applications by a creditor under this Chapter concerning maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years. 5
- (2) Notwithstanding paragraph 1, the requested State may, in relation to applications other than those under Article 10(1) a) and b) and the cases covered by Article 20(4), refuse free legal assistance if it considers that, on the merits, the application or any appeal is manifestly unfounded. 10

Article 16

Declaration to permit use of child-centred means test

- (1) Notwithstanding Article 15(1), a State may declare, in accordance with Article 63, that it will provide free legal assistance in respect of applications other than under Article 10(1) a) and b) and the cases covered by Article 20(4), subject to a test based on an assessment of the means of the child. 15
- (2) A State shall, at the time of making such a declaration, provide information to the Permanent Bureau of the Hague Conference on Private International Law concerning the manner in which the assessment of the child's means will be carried out, including the financial criteria which would need to be met to satisfy the test. 20
- (3) An application referred to in paragraph 1, addressed to a State which has made the declaration referred to in that paragraph, shall include a formal attestation by the applicant stating that the child's means meet the criteria referred to in paragraph 2. The requested State may only request further evidence of the child's means if it has reasonable grounds to believe that the information provided by the applicant is inaccurate. 25
30
- (4) If the most favourable legal assistance provided for by the law of the requested State in respect of applications under this Chapter concerning maintenance obligations arising from a parent-child relationship towards a child is more favourable than that provided for under paragraphs 1 to 3, the most favourable legal assistance shall be provided. 35

Article 17

Applications not qualifying under Article 15 or Article 16

- In the case of all applications under this Convention other than those under Article 15 or Article 16 – 40
- (a) the provision of free legal assistance may be made subject to a means or a merits test;
- (b) an applicant, who in the State of origin has benefited from free legal assistance, shall be entitled, in any proceedings for recognition or enforcement, to benefit, at least to the same extent, from free legal assistance as provided for by the law of the State addressed under the same circumstances. 45

CHAPTER IV – RESTRICTIONS ON BRINGING PROCEEDINGS

Article 18

Limit on proceedings

- (1) Where a decision is made in a Contracting State where the creditor is habitually resident, proceedings to modify the decision or to make a new decision cannot be brought by the debtor in any other Contracting State as long as the creditor remains habitually resident in the State where the decision was made. 5
- (2) Paragraph 1 shall not apply –
- (a) where, except in disputes relating to maintenance obligations in respect of children, there is agreement in writing between the parties to the jurisdiction of that other Contracting State; 10
 - (b) where the creditor submits to the jurisdiction of that other Contracting State either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; 15
 - (c) where the competent authority in the State of origin cannot, or refuses to, exercise jurisdiction to modify the decision or make a new decision; or 20
 - (d) where the decision made in the State of origin cannot be recognised or declared enforceable in the Contracting State where proceedings to modify the decision or make a new decision are contemplated. 25

CHAPTER V – RECOGNITION AND ENFORCEMENT

25

Article 19

Scope of the Chapter

- (1) This Chapter shall apply to a decision rendered by a judicial or administrative authority in respect of a maintenance obligation. The term “decision” also includes a settlement or agreement concluded before or approved by such an authority. A decision may include automatic adjustment by indexation and a requirement to pay arrears, retroactive maintenance or interest and a determination of costs or expenses. 30
- (2) If a decision does not relate solely to a maintenance obligation, the effect of this Chapter is limited to the parts of the decision which concern maintenance obligations. 35
- (3) For the purpose of paragraph 1, “administrative authority” means a public body whose decisions, under the law of the State where it is established – 40
- (a) may be made the subject of an appeal to or review by a judicial authority; and
 - (b) have a similar force and effect to a decision of a judicial authority on the same matter.
- (4) This Chapter also applies to maintenance arrangements in accordance with Article 30. 45

- (5) The provisions of this Chapter shall apply to a request for recognition and enforcement made directly to a competent authority of the State addressed in accordance with Article 37.

Article 20

Bases for recognition and enforcement

5

- (1) A decision made in one Contracting State (“the State of origin”) shall be recognised and enforced in other Contracting States if –
- (a) the respondent was habitually resident in the State of origin at the time proceedings were instituted;
 - (b) the respondent has submitted to the jurisdiction either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; 10
 - (c) the creditor was habitually resident in the State of origin at the time proceedings were instituted; 15
 - (d) the child for whom maintenance was ordered was habitually resident in the State of origin at the time proceedings were instituted, provided that the respondent has lived with the child in that State or has resided in that State and provided support for the child there; 20
 - (e) except in disputes relating to maintenance obligations in respect of children, there has been agreement to the jurisdiction in writing by the parties; or
 - (f) the decision was made by an authority exercising jurisdiction on a matter of personal status or parental responsibility, unless that jurisdiction was based solely on the nationality of one of the parties. 25
- (2) A Contracting State may make a reservation, in accordance with Article 62, in respect of paragraph 1 c), e) or f).
- (3) A Contracting State making a reservation under paragraph 2 shall recognise and enforce a decision if its law would in similar factual circumstances confer or would have conferred jurisdiction on its authorities to make such a decision. 30
- (4) A Contracting State shall, if recognition of a decision is not possible as a result of a reservation under paragraph 2, and if the debtor is habitually resident in that State, take all appropriate measures to establish a decision for the benefit of the creditor. The preceding sentence shall not apply to direct requests for recognition and enforcement under Article 19(5) or to claims for support referred to in Article 2(1) b). 35
40
- (5) A decision in favour of a child under the age of 18 years which cannot be recognised by virtue only of a reservation in respect of paragraph 1 c), e) or f) shall be accepted as establishing the eligibility of that child for maintenance in the State addressed.
- (6) A decision shall be recognised only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of origin. 45

Article 21

Severability and partial recognition and enforcement

- (1) If the State addressed is unable to recognise or enforce the whole of the decision, it shall recognise or enforce any severable part of the decision which can be so recognised or enforced. 5
- (2) Partial recognition or enforcement of a decision can always be applied for.

Article 22

Grounds for refusing recognition and enforcement

- Recognition and enforcement of a decision may be refused if— 10
- (a) recognition and enforcement of the decision is manifestly incompatible with the public policy (“*ordre public*”) of the State addressed;
- (b) the decision was obtained by fraud in connection with a matter of procedure; 15
- (c) proceedings between the same parties and having the same purpose are pending before an authority of the State addressed and those proceedings were the first to be instituted;
- (d) the decision is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed; 20
- (e) in a case where the respondent has neither appeared nor was represented in proceedings in the State of origin— 25
- (i) when the law of the State of origin provides for notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or 30
- (ii) when the law of the State of origin does not provide for notice of the proceedings, the respondent did not have proper notice of the decision and an opportunity to challenge or appeal it on fact and law; or 35
- (f) the decision was made in violation of Article 18.

Article 23

Procedure on an application for recognition and enforcement

- (1) Subject to the provisions of the Convention, the procedures for recognition and enforcement shall be governed by the law of the State addressed. 40
- (2) Where an application for recognition and enforcement of a decision has been made through Central Authorities in accordance with Chapter III, the requested Central Authority shall promptly either— 45
- (a) refer the application to the competent authority which shall without delay declare the decision enforceable or register the decision for enforcement; or

- (b) if it is the competent authority take such steps itself.
- (3) Where the request is made directly to a competent authority in the State addressed in accordance with Article 19(5), that authority shall without delay declare the decision enforceable or register the decision for enforcement. 5
- (4) A declaration or registration may be refused only on the ground set out in Article 22 a). At this stage neither the applicant nor the respondent is entitled to make any submissions.
- (5) The applicant and the respondent shall be promptly notified of the declaration or registration, made under paragraphs 2 and 3, or the refusal thereof in accordance with paragraph 4, and may bring a challenge or appeal on fact and on a point of law. 10
- (6) A challenge or an appeal is to be lodged within 30 days of notification under paragraph 5. If the contesting party is not resident in the Contracting State in which the declaration or registration was made or refused, the challenge or appeal shall be lodged within 60 days of notification. 15
- (7) A challenge or appeal may be founded only on the following –
- (a) the grounds for refusing recognition and enforcement set out in Article 22; 20
 - (b) the bases for recognition and enforcement under Article 20;
 - (c) the authenticity or integrity of any document transmitted in accordance with Article 25(1) a), b) or d) or (3) b).
- (8) A challenge or an appeal by a respondent may also be founded on the fulfilment of the debt to the extent that the recognition and enforcement relates to payments that fell due in the past. 25
- (9) The applicant and the respondent shall be promptly notified of the decision following the challenge or the appeal.
- (10) A further appeal, if permitted by the law of the State addressed, shall not have the effect of staying the enforcement of the decision unless there are exceptional circumstances. 30
- (11) In taking any decision on recognition and enforcement, including any appeal, the competent authority shall act expeditiously.
- Article 24 35
- Alternative procedure on an application for recognition and enforcement
- (1) Notwithstanding Article 23(2) to (11), a State may declare, in accordance with Article 63, that it will apply the procedure for recognition and enforcement set out in this Article. 40
- (2) Where an application for recognition and enforcement of a decision has been made through Central Authorities in accordance with Chapter III, the requested Central Authority shall promptly either –

- (a) refer the application to the competent authority which shall decide on the application for recognition and enforcement; or
- (b) if it is the competent authority, take such a decision itself.
- (3) A decision on recognition and enforcement shall be given by the competent authority after the respondent has been duly and promptly notified of the proceedings and both parties have been given an adequate opportunity to be heard. 5
- (4) The competent authority may review the grounds for refusing recognition and enforcement set out in Article 22 a), c) and d) of its own motion. It may review any grounds listed in Articles 20, 22 and 23(7) c) if raised by the respondent or if concerns relating to those grounds arise from the face of the documents submitted in accordance with Article 25. 10
- (5) A refusal of recognition and enforcement may also be founded on the fulfilment of the debt to the extent that the recognition and enforcement relates to payments that fell due in the past. 15
- (6) Any appeal, if permitted by the law of the State addressed, shall not have the effect of staying the enforcement of the decision unless there are exceptional circumstances. 20
- (7) In taking any decision on recognition and enforcement, including any appeal, the competent authority shall act expeditiously.

Article 25 Documents

- (1) An application for recognition and enforcement under Article 23 or Article 24 shall be accompanied by the following – 25
- (a) a complete text of the decision;
- (b) a document stating that the decision is enforceable in the State of origin and, in the case of a decision by an administrative authority, a document stating that the requirements of Article 19(3) are met unless that State has specified in accordance with Article 57 that decisions of its administrative authorities always meet those requirements; 30
- (c) if the respondent did not appear and was not represented in the proceedings in the State of origin, a document or documents attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard, or that the respondent had proper notice of the decision and the opportunity to challenge or appeal it on fact and law; 35 40
- (d) where necessary, a document showing the amount of any arrears and the date such amount was calculated;
- (e) where necessary, in the case of a decision providing for automatic adjustment by indexation, a document providing the information necessary to make the appropriate calculations; 45

- (f) where necessary, documentation showing the extent to which the applicant received free legal assistance in the State of origin.
- (2) Upon a challenge or appeal under Article 23(7) c) or upon request by the competent authority in the State addressed, a complete copy of the document concerned, certified by the competent authority in the State of origin, shall be provided promptly –
- (a) by the Central Authority of the requesting State, where the application has been made in accordance with Chapter III;
- (b) by the applicant, where the request has been made directly to a competent authority of the State addressed.
- (3) A Contracting State may specify in accordance with Article 57 –
- (a) that a complete copy of the decision certified by the competent authority in the State of origin must accompany the application;
- (b) circumstances in which it will accept, in lieu of a complete text of the decision, an abstract or extract of the decision drawn up by the competent authority of the State of origin, which may be made in the form recommended and published by the Hague Conference on Private International Law; or
- (c) that it does not require a document stating that the requirements of Article 19(3) are met.

Article 26
 Procedure on an application for recognition

This Chapter shall apply *mutatis mutandis* to an application for recognition of a decision, save that the requirement of enforceability is replaced by the requirement that the decision has effect in the State of origin.

Article 27
 Findings of fact

Any competent authority of the State addressed shall be bound by the findings of fact on which the authority of the State of origin based its jurisdiction.

Article 28
 No review of the merits

There shall be no review by any competent authority of the State addressed of the merits of a decision.

Article 29
 Physical presence of the child or the applicant not required

The physical presence of the child or the applicant shall not be required in any proceedings in the State addressed under this Chapter.

Article 30
Maintenance arrangements

- (1) A maintenance arrangement made in a Contracting State shall be entitled to recognition and enforcement as a decision under this Chapter provided that it is enforceable as a decision in the State of origin. 5
- (2) For the purpose of Article 10(1) a) and b) and (2) a), the term “decision” includes a maintenance arrangement.
- (3) An application for recognition and enforcement of a maintenance arrangement shall be accompanied by the following – 10
- (a) a complete text of the maintenance arrangement; and
 - (b) a document stating that the particular maintenance arrangement is enforceable as a decision in the State of origin.
- (4) Recognition and enforcement of a maintenance arrangement may be refused if – 15
- (a) the recognition and enforcement is manifestly incompatible with the public policy of the State addressed;
 - (b) the maintenance arrangement was obtained by fraud or falsification; 20
 - (c) the maintenance arrangement is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed. 25
- (5) The provisions of this Chapter, with the exception of Articles 20, 22, 23(7) and 25(1) and (3), shall apply *mutatis mutandis* to the recognition and enforcement of a maintenance arrangement save that – 30
- (a) a declaration or registration in accordance with Article 23(2) and (3) may be refused only on the ground set out in paragraph 4 a);
 - (b) a challenge or appeal as referred to in Article 23(6) may be founded only on the following – 35
 - (i) the grounds for refusing recognition and enforcement set out in paragraph 4;
 - (ii) the authenticity or integrity of any document transmitted in accordance with paragraph 3;
 - (c) as regards the procedure under Article 24(4), the competent authority may review of its own motion the ground for refusing recognition and enforcement set out in paragraph 4 a) of this Article. It may review all grounds listed in paragraph 4 of this Article and the authenticity or integrity of any document transmitted in accordance with paragraph 3 if raised by the respondent or if concerns relating to those grounds arise from the face of those documents. 40 45

- (6) Proceedings for recognition and enforcement of a maintenance arrangement shall be suspended if a challenge concerning the arrangement is pending before a competent authority of a Contracting State.
- (7) A State may declare, in accordance with Article 63, that applications for recognition and enforcement of a maintenance arrangement shall only be made through Central Authorities. 5
- (8) A Contracting State may, in accordance with Article 62, reserve the right not to recognise and enforce a maintenance arrangement.

Article 31 10

Decisions produced by the combined effect of provisional and confirmation orders

Where a decision is produced by the combined effect of a provisional order made in one State and an order by an authority in another State (“the confirming State”) confirming the provisional order – 15

- (a) each of those States shall be deemed for the purposes of this Chapter to be a State of origin;
- (b) the requirements of Article 22 e) shall be met if the respondent had proper notice of the proceedings in the confirming State and an opportunity to oppose the confirmation of the provisional order; 20
- (c) the requirement of Article 20(6) that a decision be enforceable in the State of origin shall be met if the decision is enforceable in the confirming State; and 25
- (d) Article 18 shall not prevent proceedings for the modification of the decision being commenced in either State.

CHAPTER VI – ENFORCEMENT BY THE STATE ADDRESSED

Article 32 30

Enforcement under internal law

- (1) Subject to the provisions of this Chapter, enforcement shall take place in accordance with the law of the State addressed.
- (2) Enforcement shall be prompt.
- (3) In the case of applications through Central Authorities, where a decision has been declared enforceable or registered for enforcement under Chapter V, enforcement shall proceed without the need for further action by the applicant. 35
- (4) Effect shall be given to any rules applicable in the State of origin of the decision relating to the duration of the maintenance obligation. 40
- (5) Any limitation on the period for which arrears may be enforced shall be determined either by the law of the State of origin of the decision or by the law of the State addressed, whichever provides for the longer limitation period.

Article 33
Non-discrimination

The State addressed shall provide at least the same range of enforcement methods for cases under the Convention as are available in domestic cases.

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Article 34
Enforcement measures

(1) Contracting States shall make available in internal law effective measures to enforce decisions under this Convention.

(2) Such measures may include—

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- (a) wage withholding;
- (b) garnishment from bank accounts and other sources;
- (c) deductions from social security payments;
- (d) lien on or forced sale of property;
- (e) tax refund withholding;
- (f) withholding or attachment of pension benefits;
- (g) credit bureau reporting;
- (h) denial, suspension or revocation of various licenses (for example, driving licenses);
- (i) the use of mediation, conciliation or similar processes to bring about voluntary compliance.

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Article 35
Transfer of funds

(1) Contracting States are encouraged to promote, including by means of international agreements, the use of the most cost-effective and efficient methods available to transfer funds payable as maintenance.

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(2) A Contracting State, under whose law the transfer of funds is restricted, shall accord the highest priority to the transfer of funds payable under this Convention.

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CHAPTER VII – PUBLIC BODIES

Article 36
Public bodies as applicants

(1) For the purposes of applications for recognition and enforcement under Article 10(1) a) and b) and cases covered by Article 20(4), “creditor” includes a public body acting in place of an individual to whom maintenance is owed or one to which reimbursement is owed for benefits provided in place of maintenance.

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(2) The right of a public body to act in place of an individual to whom maintenance is owed or to seek reimbursement of benefits provided to the creditor in place of maintenance shall be governed by the law to which the body is subject.

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(3) A public body may seek recognition or claim enforcement of—

- (a) a decision rendered against a debtor on the application of a public body which claims payment of benefits provided in place of maintenance;
 - (b) a decision rendered between a creditor and debtor to the extent of the benefits provided to the creditor in place of maintenance. 5
- (4) The public body seeking recognition or claiming enforcement of a decision shall upon request furnish any document necessary to establish its right under paragraph 2 and that benefits have been provided to the creditor. 10

CHAPTER VIII – GENERAL PROVISIONS

Article 37

Direct requests to competent authorities

- (1) The Convention shall not exclude the possibility of recourse to such procedures as may be available under the internal law of a Contracting State allowing a person (an applicant) to seize directly a competent authority of that State in a matter governed by the Convention including, subject to Article 18, for the purpose of having a maintenance decision established or modified. 15
- (2) Articles 14(5) and 17 b) and the provisions of Chapters V, VI, VII and this Chapter, with the exception of Articles 40(2), 42, 43(3), 44(3), 45 and 55, shall apply in relation to a request for recognition and enforcement made directly to a competent authority in a Contracting State. 20
- (3) For the purpose of paragraph 2, Article 2(1) a) shall apply to a decision granting maintenance to a vulnerable person over the age specified in that sub-paragraph where such decision was rendered before the person reached that age and provided for maintenance beyond that age by reason of the impairment. 25

Article 38

Protection of personal data

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which they were gathered or transmitted.

Article 39

Confidentiality

Any authority processing information shall ensure its confidentiality in accordance with the law of its State.

Article 40

Non-disclosure of information

- (1) An authority shall not disclose or confirm information gathered or transmitted in application of this Convention if it determines that to do so could jeopardise the health, safety or liberty of a person. 40

- (2) A determination to this effect made by one Central Authority shall be taken into account by another Central Authority, in particular in cases of family violence.
- (3) Nothing in this Article shall impede the gathering and transmitting of information by and between authorities in so far as necessary to carry out the obligations under the Convention. 5

Article 41
No legalisation

No legalisation or similar formality may be required in the context of this Convention. 10

Article 42
Power of attorney

The Central Authority of the requested State may require a power of attorney from the applicant only if it acts on his or her behalf in judicial proceedings or before other authorities, or in order to designate a representative so to act. 15

Article 43
Recovery of costs

- (1) Recovery of any costs incurred in the application of this Convention shall not take precedence over the recovery of maintenance. 20
- (2) A State may recover costs from an unsuccessful party.
- (3) For the purposes of an application under Article 10(1) b) to recover costs from an unsuccessful party in accordance with paragraph 2, the term “creditor” in Article 10(1) shall include a State. 25
- (4) This Article shall be without prejudice to Article 8.

Article 44
Language requirements

- (1) Any application and related documents shall be in the original language, and shall be accompanied by a translation into an official language of the requested State or another language which the requested State has indicated, by way of declaration in accordance with Article 63, it will accept, unless the competent authority of that State dispenses with translation. 30
- (2) A Contracting State which has more than one official language and cannot, for reasons of internal law, accept for the whole of its territory documents in one of those languages shall, by declaration in accordance with Article 63, specify the language in which such documents or translations thereof shall be drawn up for submission in the specified parts of its territory. 35 40
- (3) Unless otherwise agreed by the Central Authorities, any other communications between such Authorities shall be in an official language of the requested State or in either English or French. However, a Contracting State may, by making a reservation in

- (f) any reference to location of assets in that State shall be construed as referring, where appropriate, to the location of assets in the relevant territorial unit;
- (g) any reference to a reciprocity arrangement in force in a State shall be construed as referring, where appropriate, to a reciprocity arrangement in force in the relevant territorial unit; 5
- (h) any reference to free legal assistance in that State shall be construed as referring, where appropriate, to free legal assistance in the relevant territorial unit; 10
- (i) any reference to a maintenance arrangement made in a State shall be construed as referring, where appropriate, to a maintenance arrangement made in the relevant territorial unit;
- (j) any reference to recovery of costs by a State shall be construed as referring, where appropriate, to the recovery of costs by the relevant territorial unit. 15
- (2) This Article shall not apply to a Regional Economic Integration Organisation.

Article 47

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Non-unified legal systems – substantive rules

- (1) A Contracting State with two or more territorial units in which different systems of law apply shall not be bound to apply this Convention to situations which involve solely such different territorial units. 25
- (2) A competent authority in a territorial unit of a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to recognise or enforce a decision from another Contracting State solely because the decision has been recognised or enforced in another territorial unit of the same Contracting State under this Convention. 30
- (3) This Article shall not apply to a Regional Economic Integration Organisation.

Article 48

Co-ordination with prior Hague Maintenance Conventions 35

In relations between the Contracting States, this Convention replaces, subject to Article 56(2), the Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations and the Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children in so far as their scope of application as between such States coincides with the scope of application of this Convention. 40

Article 49

Co-ordination with the 1956 New York Convention 45

In relations between the Contracting States, this Convention replaces the United Nations Convention on the Recovery Abroad

of Maintenance of 20 June 1956, in so far as its scope of application as between such States coincides with the scope of application of this Convention.

Article 50

Relationship with prior Hague Conventions on service of documents and taking of evidence 5

This Convention does not affect the Hague Convention of 1 March 1954 on civil procedure, the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. 10

Article 51

Co-ordination of instruments and supplementary agreements

(1) This Convention does not affect any international instrument concluded before this Convention to which Contracting States are Parties and which contains provisions on matters governed by this Convention. 15

(2) Any Contracting State may conclude with one or more Contracting States agreements, which contain provisions on matters governed by the Convention, with a view to improving the application of the Convention between or among themselves, provided that such agreements are consistent with the objects and purpose of the Convention and do not affect, in the relationship of such States with other Contracting States, the application of the provisions of the Convention. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention. 20
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(3) Paragraphs 1 and 2 shall also apply to reciprocity arrangements and to uniform laws based on special ties between the States concerned. 30

(4) This Convention shall not affect the application of instruments of a Regional Economic Integration Organisation that is a Party to this Convention, adopted after the conclusion of the Convention, on matters governed by the Convention provided that such instruments do not affect, in the relationship of Member States of the Regional Economic Integration Organisation with other Contracting States, the application of the provisions of the Convention. As concerns the recognition or enforcement of decisions as between Member States of the Regional Economic Integration Organisation, the Convention shall not affect the rules of the Regional Economic Integration Organisation, whether adopted before or after the conclusion of the Convention. 35
40

Article 52

Most effective rule 45

(1) This Convention shall not prevent the application of an agreement, arrangement or international instrument in force between the requesting State and the requested State, or a

reciprocity arrangement in force in the requested State that provides for –

- (a) broader bases for recognition of maintenance decisions, without prejudice to Article 22 f) of the Convention;
 - (b) simplified, more expeditious procedures on an application for recognition or recognition and enforcement of maintenance decisions; 5
 - (c) more beneficial legal assistance than that provided for under Articles 14 to 17; or
 - (d) procedures permitting an applicant from a requesting State to make a request directly to the Central Authority of the requested State. 10
- (2) This Convention shall not prevent the application of a law in force in the requested State that provides for more effective rules as referred to in paragraph 1 a) to c). However, as regards simplified, more expeditious procedures referred to in paragraph 1 b), they must be compatible with the protection offered to the parties under Articles 23 and 24, in particular as regards the rights of the parties to be duly notified of the proceedings and be given adequate opportunity to be heard and as regards the effects of any challenge or appeal. 15 20

Article 53

Uniform interpretation

In the interpretation of this Convention, regard shall be had to its international character and to the need to promote uniformity in its application. 25

Article 54

Review of practical operation of the Convention

- (1) The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention and to encourage the development of good practices under the Convention. 30
- (2) For the purpose of such review, Contracting States shall cooperate with the Permanent Bureau of the Hague Conference on Private International Law in the gathering of information, including statistics and case law, concerning the practical operation of the Convention. 35

Article 55

Amendment of forms

- (1) The forms annexed to this Convention may be amended by a decision of a Special Commission convened by the Secretary General of the Hague Conference on Private International Law to which all Contracting States and all Members shall be invited. Notice of the proposal to amend the forms shall be included in the agenda for the meeting. 40 45

- (2) Amendments adopted by the Contracting States present at the Special Commission shall come into force for all Contracting States on the first day of the seventh calendar month after the date of their communication by the depositary to all Contracting States.
- (3) During the period provided for in paragraph 2 any Contracting State may by notification in writing to the depositary make a reservation, in accordance with Article 62, with respect to the amendment. The State making such reservation shall, until the reservation is withdrawn, be treated as a State not Party to the present Convention with respect to that amendment.

Article 56
 Transitional provisions

- (1) The Convention shall apply in every case where –
- (a) a request pursuant to Article 7 or an application pursuant to Chapter III has been received by the Central Authority of the requested State after the Convention has entered into force between the requesting State and the requested State;
- (b) a direct request for recognition and enforcement has been received by the competent authority of the State addressed after the Convention has entered into force between the State of origin and the State addressed.
- (2) With regard to the recognition and enforcement of decisions between Contracting States to this Convention that are also Parties to either of the Hague Maintenance Conventions mentioned in Article 48, if the conditions for the recognition and enforcement under this Convention prevent the recognition and enforcement of a decision given in the State of origin before the entry into force of this Convention for that State, that would otherwise have been recognised and enforced under the terms of the Convention that was in effect at the time the decision was rendered, the conditions of that Convention shall apply.
- (3) The State addressed shall not be bound under this Convention to enforce a decision or a maintenance arrangement, in respect of payments falling due prior to the entry into force of the Convention between the State of origin and the State addressed, except for maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years.

Article 57
 Provision of information concerning laws, procedures and services

- (1) A Contracting State, by the time its instrument of ratification or accession is deposited or a declaration is submitted in accordance with Article 61 of the Convention, shall provide the Permanent Bureau of the Hague Conference on Private International Law with –
- (a) a description of its laws and procedures concerning maintenance obligations;
- (b) a description of the measures it will take to meet the obligations under Article 6;

- (c) a description of how it will provide applicants with effective access to procedures, as required under Article 14;
 - (d) a description of its enforcement rules and procedures, including any limitations on enforcement, in particular debtor protection rules and limitation periods; 5
 - (e) any specification referred to in Article 25(1) b) and (3).
- (2) Contracting States may, in fulfilling their obligations under paragraph 1, utilise a country profile form recommended and published by the Hague Conference on Private International Law. 10
- (3) Information shall be kept up to date by the Contracting States.

CHAPTER IX – FINAL PROVISIONS

Article 58

Signature, ratification and accession

- (1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Twenty-First Session and by the other States which participated in that Session. 15
- (2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention. 20
- (3) Any other State or Regional Economic Integration Organisation may accede to the Convention after it has entered into force in accordance with Article 60(1). 25
- (4) The instrument of accession shall be deposited with the depositary.
- (5) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the 12 months after the date of the notification referred to in Article 65. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary. 30

Article 59

35

Regional Economic Integration Organisations

- (1) A Regional Economic Integration Organisation which is constituted solely by sovereign States and has competence over some or all of the matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that the Organisation has competence over matters governed by the Convention. 40
- (2) The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, notify the 45

- depository in writing of the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Organisation shall promptly notify the depository in writing of any changes to its competence as specified in the most recent notice given under this paragraph. 5
- (3) At the time of signature, acceptance, approval or accession, a Regional Economic Integration Organisation may declare in accordance with Article 63 that it exercises competence over all the matters governed by this Convention and that the Member States which have transferred competence to the Regional Economic Integration Organisation in respect of the matter in question shall be bound by this Convention by virtue of the signature, acceptance, approval or accession of the Organisation. 10
- (4) For the purposes of the entry into force of this Convention, any instrument deposited by a Regional Economic Integration Organisation shall not be counted unless the Regional Economic Integration Organisation makes a declaration in accordance with paragraph 3. 15
- (5) Any reference to a “Contracting State” or “State” in this Convention shall apply equally to a Regional Economic Integration Organisation that is a Party to it, where appropriate. In the event that a declaration is made by a Regional Economic Integration Organisation in accordance with paragraph 3, any reference to a “Contracting State” or “State” in this Convention shall apply equally to the relevant Member States of the Organisation, where appropriate. 20
25

Article 60
Entry into force

- (1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the second instrument of ratification, acceptance or approval referred to in Article 58. 30
- (2) Thereafter the Convention shall enter into force— 35
- (a) for each State or Regional Economic Integration Organisation referred to in Article 59(1) subsequently ratifying, accepting or approving it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance or approval; 40
- (b) for each State or Regional Economic Integration Organisation referred to in Article 58(3) on the day after the end of the period during which objections may be raised in accordance with Article 58(5);
- (c) for a territorial unit to which the Convention has been extended in accordance with Article 61, on the first day of the month following the expiration of three months after the notification referred to in that Article. 45

Article 61

Declarations with respect to non-unified legal systems

- (1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare in accordance with Article 63 that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time. 5
- (2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies. 10
- (3) If a State makes no declaration under this Article, the Convention shall extend to all territorial units of that State.
- (4) This Article shall not apply to a Regional Economic Integration Organisation. 15

Article 62

Reservations

- (1) Any Contracting State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 61, make one or more of the reservations provided for in Articles 2(2), 20(2), 30(8), 44(3) and 55(3). No other reservation shall be permitted. 20
- (2) Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the depositary. 25
- (3) The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in paragraph 2.
- (4) Reservations under this Article shall have no reciprocal effect with the exception of the reservation provided for in Article 2(2). 30

Article 63

Declarations

- (1) Declarations referred to in Articles 2(3), 11(1) g), 16(1), 24(1), 30(7), 44(1) and (2), 59(3) and 61(1), may be made upon signature, ratification, acceptance, approval or accession or at any time thereafter, and may be modified or withdrawn at any time. 35
- (2) Declarations, modifications and withdrawals shall be notified to the depositary.
- (3) A declaration made at the time of signature, ratification, acceptance, approval or accession shall take effect simultaneously with the entry into force of this Convention for the State concerned. 40
- (4) A declaration made at a subsequent time, and any modification or withdrawal of a declaration, shall take effect on the first day of the

month following the expiration of three months after the date on which the notification is received by the depositary.

Article 64
Denunciation

- | | |
|---|--------------|
| (1) A Contracting State to the Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a multi-unit State to which the Convention applies. | 5 |
| (2) The denunciation shall take effect on the first day of the month following the expiration of 12 months after the date on which the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the date on which the notification is received by the depositary. | 10

15 |

Article 65
Notification

The depositary shall notify the Members of the Hague Conference on Private International Law, and other States and Regional Economic Integration Organisations which have signed, ratified, accepted, approved or acceded in accordance with Articles 58 and 59 of the following –

- | | |
|---|----|
| (a) the signatures, ratifications, acceptances and approvals referred to in Articles 58 and 59; | |
| (b) the accessions and objections raised to accessions referred to in Articles 58(3) and (5) and 59; | 25 |
| (c) the date on which the Convention enters into force in accordance with Article 60; | |
| (d) the declarations referred to in Articles 2(3), 11(1) g), 16(1), 24(1), 30(7), 44(1) and (2), 59(3) and 61(1); | 30 |
| (e) the agreements referred to in Article 51(2); | |
| (f) the reservations referred to in Articles 2(2), 20(2), 30(8), 44(3) and 55(3), and the withdrawals referred to in Article 62(2); | |
| (g) the denunciations referred to in Article 64. | 35 |

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 23rd day of November 2007, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the Members of the Hague Conference on Private International Law at the date of its Twenty-First Session and to each of the other States which have participated in that Session.”

SCHEDULE 5

Section 1

CONSEQUENTIAL AND TRANSITIONAL PROVISION

PART 1

CONSEQUENTIAL PROVISION

<i>Civil Jurisdiction and Judgments Act 1982 (c. 27)</i>	5
1 In section 48 of the Civil Jurisdiction and Judgments Act 1982 (matters for which rules of court may provide), in subsection (1), before “the 2007 Hague Convention” insert “the 1996 Hague Convention,”.	
<i>European Union (Withdrawal) Act 2018 (c. 16)</i>	
2 Section 4 of the European Union (Withdrawal) Act 2018 (saving for rights etc under section 2(1) of the European Communities Act 1972) ceases to apply to rights, powers, liabilities, obligations, restrictions, remedies and procedures that are derived from—	10
(a) the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children concluded on 19th October 1996 at The Hague,	15
(b) the Convention on Choice of Court Agreements concluded on 30th June 2005 at The Hague, or	
(c) the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance done at The Hague on 23 November 2007.	20
<i>Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) (EU Exit) Regulations 2018 (S.I. 2018/1124)</i>	
3 (1) The Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) (EU Exit) Regulations 2018 are amended as follows.	25
(2) In Part 1 (introduction), omit regulation 2.	
(3) Omit Part 2 (the rights etc deriving from the 2005 Hague Convention).	
(4) In Part 3 (modification and amendment of primary and secondary legislation)—	30
(a) in the heading—	
(i) omit “Modification and”;	
(ii) omit “and Secondary”;	
(b) omit regulation 7.	
<i>International Recovery of Maintenance (Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance 2007) (EU Exit) Regulations 2018 (S.I. 2018/1125)</i>	35
4 (1) The International Recovery of Maintenance (Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance 2007) (EU Exit) Regulations 2018 are amended as follows.	40

(2)	In Part 1 (introduction), omit regulation 2.	
(3)	Omit Part 2 (the rights etc deriving from the 2007 Hague Convention).	
(4)	Omit Part 3 (modification and amendment of primary and secondary legislation).	
	<i>Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/479)</i>	5
5	In the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019 omit regulations 5 and 9.	
	<i>Council Decision 2008/431/EC</i>	
6	Council Decision of 5 June 2008 authorising certain Member States to ratify, or accede to, in the interest of the European Community, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children and authorising certain Member States to make a declaration on the application of the relevant internal rules of Community law (2008/431/EC) is revoked.	10 15
PART 2		
TRANSITIONAL PROVISION		
	<i>Interpretation of the 2005 Hague Convention as it has the force of law in the UK</i>	
7	For the purposes of Article 16 of the 2005 Hague Convention, as it has the force of law in the United Kingdom by virtue of section 3D(1) of the Civil Jurisdiction and Judgments Act 1982 (as inserted by section 1(2) of this Act), the date on which the 2005 Hague Convention entered into force for the United Kingdom is 1 October 2015, and accordingly references in the Convention to a Contracting State are to be read as including, without interruption from that date, the United Kingdom.	20 25
	<i>Interpretation of the 2007 Hague Convention as it has the force of law in the UK</i>	
8	For the purposes of Article 56 of the 2007 Hague Convention, as it has the force of law in the United Kingdom by virtue of section 3E(1) of the Civil Jurisdiction and Judgments Act 1982 (as inserted by section 1(2) of this Act), the date on which the 2007 Hague Convention entered into force for the United Kingdom is 1 August 2014, and accordingly references in the Convention to a Contracting State are to be read as including, without interruption from that date, the United Kingdom.	30
	<i>Interpretation of Part 2</i>	
9	In this Part of this Schedule—	35
	“the 2005 Hague Convention” means the Convention on Choice of Court Agreements concluded on 30 June 2005 at The Hague;	
	“the 2007 Hague Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague.	40

SCHEDULE 6

Section [clause removed]

REGULATIONS UNDER SECTION [CLAUSE REMOVED]

Restrictions on power to make regulations

- 1 (1) Regulations under section [clause removed] may not include—
 - (a) provision that confers power to legislate by means of regulations, orders, rules or other subordinate instrument (other than rules of procedure for courts or tribunals); 5
 - (b) provision that creates an offence for which an individual who has reached the age of 18 (or, in relation to Scotland or Northern Ireland, 21) is capable of being sentenced to imprisonment for a term of more than two years (ignoring any enactment prohibiting or restricting the imprisonment of individuals who have no previous convictions). 10
- (2) Sub-paragraph (1)(a) does not prevent the modification of a power to legislate conferred otherwise than under section [clause removed], or the extension of any such power to purposes of a similar kind to those for which it was conferred. 15
- (3) A power to give practice directions or other directions regarding matters of administration is not a power to legislate for the purposes of sub-paragraph (1)(a).

Regulations to be made by statutory instrument or statutory rule 20

- 2 The power to make regulations under section [clause removed]—
 - (a) is exercisable by statutory instrument, in the case of regulations made by the Secretary of State;
 - (b) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)), in the case of regulations made by a Northern Ireland department. 25

Parliamentary or assembly procedure

- 3 (1) This paragraph applies to a statutory instrument containing regulations made by the Secretary of State under section [clause removed].
- (2) If the instrument contains (whether alone or with other provision)—
 - (a) provision made for the purpose of implementing or applying, in relation to the United Kingdom or a particular part of the United Kingdom, any relevant international agreement that has not previously been the subject of any such provision (whether made by regulations under section [clause removed] or otherwise), 35
 - (b) provision made for the purpose of giving effect, in relation to the United Kingdom or a particular part of the United Kingdom, to any relevant arrangements that relate to a particular territory and have not previously been the subject of any such provision (whether made by regulations under that section or otherwise), 40
 - (c) provision that creates or extends, or increases the penalty for, a criminal offence, or
 - (d) provision that amends primary legislation,it may not be made unless a draft of the instrument has been laid before each House of Parliament and approved by a resolution of each House. 45

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- (3) In this Schedule “relevant arrangements” means arrangements of the kind mentioned in section [clause removed].
- (4) If sub-paragraph (2) does not apply to the instrument, it is subject to annulment in pursuance of a resolution of either House of Parliament.
- 4 (1) This paragraph applies to regulations made by the Scottish Ministers under section [clause removed]. 5
- (2) The regulations are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010) (asp 10)) if they contain (whether alone or with other provision) –
- (a) provision made for the purpose of implementing or applying, in relation to Scotland, any relevant international agreement that has not previously been the subject of any such provision (whether made by regulations under section [clause removed] or otherwise), 10
 - (b) provision made for the purpose of giving effect, in relation to Scotland, to any relevant arrangements that relate to a particular territory and have not previously been the subject of any such provision (whether made by regulations under that section or otherwise), 15
 - (c) provision that creates or extends, or increases the penalty for, a criminal offence, or 20
 - (d) provision that amends primary legislation.
- (3) If sub-paragraph (2) does not apply to the regulations, they are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).
- 5 (1) A Northern Ireland department may not make regulations under section [clause removed] that contain (whether alone or with other provision) – 25
- (a) provision made for the purpose of implementing or applying, in relation to Northern Ireland, any relevant international agreement that has not previously been the subject of any such provision (whether made by regulations under section [clause removed] or otherwise), 30
 - (b) provision made for the purpose of giving effect, in relation to Northern Ireland, to any relevant arrangements that relate to a particular territory and have not previously been the subject of any such provision (whether made by regulations under that section or otherwise), 35
 - (c) provision that creates or extends, or increases the penalty for, a criminal offence, or
 - (d) provision that amends primary legislation,
- unless a draft of the regulations has been laid before the Northern Ireland Assembly and approved by a resolution of the Assembly. 40
- (2) Regulations under section [clause removed] made by a Northern Ireland department are subject to negative resolution, within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954, if a draft of the regulations was not required to be laid before the Northern Ireland Assembly and approved by a resolution of the Assembly. 45
- (3) Section 41(3) of that Act applies for the purposes of sub-paragraph (1) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.

Interpretation

- 6 In this Schedule –
- “amend” includes repeal or revoke;
 - “primary legislation” means any provision of –
 - (a) an Act of Parliament, 5
 - (b) an Act of the Scottish Parliament,
 - (c) an Act or Measure of Senedd Cymru, or
 - (d) Northern Ireland legislation;
 - “relevant arrangements” has the meaning given in paragraph 3(3);
 - “relevant international agreement” has the same meaning as in section 10 [clause removed].

Private International Law (Implementation of Agreements) Bill [HL]

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B I L L

[AS AMENDED ON REPORT]

To implement the Hague Conventions of 1996, 2005 and 2007 and to provide for the implementation of other international agreements on private international law.

Lord Keen of Elie

Ordered to be Printed, 17th June 2020

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