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STATUTORY INSTRUMENTS

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**2018 No. 1124**

**EXITING THE EUROPEAN UNION  
PRIVATE INTERNATIONAL LAW**

**The Civil Jurisdiction and Judgments (Hague Convention on  
Choice of Court Agreements 2005) (EU Exit) Regulations 2018**

*Made - - - - 30th October 2018*

*Laid before Parliament 1st November 2018*

*Coming into force in accordance with regulation 1*

The requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018<sup>(1)</sup> (relating to the appropriate Parliamentary procedure for these Regulations) have been satisfied.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of and paragraph 21(b) of Schedule 7 to that Act.

**PART 1**

**Introduction**

**Citation and commencement**

1. These Regulations may be cited as the Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) (EU Exit) Regulations 2018 and come into force on exit day.

**Interpretation**

2. In these Regulations—

“the 2005 Hague Convention” means the Convention on Choice of Court Agreements concluded on 30 June 2005 at The Hague<sup>(2)</sup>;

“exclusive choice of court agreement” has the meaning given by Article 3;

“the section 4 rights” has the meaning given by regulation 3;

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(1) [2018 c. 16](#)

(2) <https://assets.hcch.net/docs/510bc238-7318-47ed-9ed5-e0972510d98b.pdf>

and a reference to an Article is a reference to an Article of the 2005 Hague Convention.

## PART 2

### The rights etc deriving from the 2005 Hague Convention

#### **Rights etc deriving from the 2005 Hague Convention**

3.—(1) The section 4 rights have effect in the United Kingdom on and after exit day—

- (a) subject to and in accordance with regulations 4 to 6, and
- (b) subject to paragraph (2).

(2) If a declaration made by the EU under Article 21 has effect immediately before exit day, the section 4 rights are to continue not to apply on and after exit day with regard to a matter specified in the declaration.

(3) In these Regulations, the section 4 rights are the rights, powers, liabilities, obligations, restrictions, remedies and procedures which—

- (a) are derived from the 2005 Hague Convention, and
- (b) continue to be recognised in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 (saving for rights etc. under s2(1) of the ECA).

(4) The Articles of, and the declarations under, the 2005 Hague Convention from which the section 4 rights are derived are—

- (a) Articles 1 to 18, 23, 25(1) and (3) and 26;
- (b) any declaration made by the EU under Article 21 which has effect immediately before exit day.

#### **Choice of court agreements concluded before exit day**

4.—(1) This regulation applies in the case of an exclusive choice of court agreement which is concluded—

- (a) after the 2005 Hague Convention entered into force for the United Kingdom by virtue of being a member State, but
- (b) before exit day.

(2) The section 4 rights have effect as regards the agreement as if—

- (a) the United Kingdom remained without interruption a State bound by the 2005 Hague Convention on and after exit day, and
- (b) Article 26(6) operated as it would have operated if the United Kingdom had also continued to be a member State on and after exit day.

(3) Notwithstanding the effect that Article 26(2) to (5) would produce if the United Kingdom were a State bound by the 2005 Hague Convention, the section 4 rights do not have effect as regards the agreement if and to the extent that their having effect would conflict with an obligation of the United Kingdom under another treaty.

#### **Choice of court agreements concluded before the 2005 Hague Convention again enters into force for the United Kingdom**

5.—(1) This regulation applies in the case of an exclusive choice of court agreement which is concluded—

- (a) on or after exit day, but
  - (b) before the 2005 Hague Convention again enters into force for the United Kingdom.
- (2) The section 4 rights have effect as regards the agreement as if—
- (a) the United Kingdom were a State bound by the 2005 Hague Convention on and after exit day, and
  - (b) Article 26(6) operated accordingly (and not as if the United Kingdom were also a member State).

(3) Notwithstanding the effect that Article 26(2) to (5) would produce if the United Kingdom were a State bound by the 2005 Hague Convention, the section 4 rights do not have effect as regards the agreement if and to the extent that their having effect would conflict with an obligation of the United Kingdom under another treaty.

### **Choice of court agreements concluded after the 2005 Hague Convention again enters into force for the United Kingdom**

6.—(1) This regulation applies if the 2005 Hague Convention again enters into force for the United Kingdom on or after exit day.

(2) The section 4 rights are to have effect as regards the exclusive choice of court agreements indicated by Article 16, as it applies to the United Kingdom on that new entry into force.

(3) Paragraph (2) is not to be read as requiring Article 26(6) to operate as if the United Kingdom were a member State after that entry into force.

## **PART 3**

### **Modification and amendment of primary and secondary legislation**

#### **Primary and subordinate legislation referring to the 2005 Hague Convention**

- 7.—(1) Provision made in relation to the 2005 Hague Convention by—
- (a) the Civil Jurisdiction and Judgments Act 1982(3),
  - (b) the Civil Procedure Rules 1998(4), and
  - (c) the Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) Regulations 2015(5),

also applies in the case of an exclusive choice of court agreement to which regulation 4 or 5 applies.

(2) Where the provision so applies in a particular case, it has effect as if the provision were made in relation to the section 4 rights, as the section 4 rights have effect in that case (see regulation 3(2) and regulation 4(2) and (3) or 5(2) and (3)).

- (3) Provision made by reference to the 2005 Hague Convention by—

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- (3) [1982 c. 27](#)  
. Relevant amendments were made by  
[S.I. 2015/1644](#)
  - (4) [S.I. 1998/3132](#)  
. Relevant amendments were made by  
[S.I. 2015/1644](#)
  - (5) [S.I. 2015/1644](#)

- (a) section 25(3) of the Civil Jurisdiction and Judgments Act 1982 (interim relief in England and Wales and Northern Ireland in the absence of substantive proceedings)(6),
- (b) the Civil Jurisdiction and Judgments Act 1982 (Interim Relief) Order 1997(7), and
- (c) the Civil Jurisdiction and Judgments Act 1982 (Provisional and Protective Measures) (Scotland) Order 1997(8),

has effect while the United Kingdom is not a State bound by the 2005 Hague Convention as if it were such a State.

### **Civil Jurisdiction and Judgments Act 1982**

**8.** In section 24 of the Civil Jurisdiction and Judgments Act 1982(9) (interim relief and protective measures in cases of doubtful jurisdiction)—

- (a) in subsection (1)(c) (proceedings in England and Wales or Northern Ireland involving a reference to the European Court), omit “or the 2005 Hague Convention”;
- (b) in subsection (2)(c) (proceedings in Scotland involving a reference to the European Court), omit “or the 2005 Hague Convention”.

## PART 4

### Amendment of retained direct EU legislation

#### **Council Decision of 26 February 2009 (2009/397/EC)** )

**9.** Council Decision of 26 February 2009 on the signing on behalf of the European Community of the Convention on Choice of Court Agreements (

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- (6) Section 25(3) was amended by section 3 of, and paragraph 12 of Schedule 2 to, the Civil Jurisdiction and Judgments Act 1991 (c.12), section 107(2) of, and Schedule 4 to, the Arbitration Act 1996 (c.23)
    - › S.I.2001/3929
    - › S.I. 2009/3131
    - › S.I. 2011/1484
    - and
    - › S.I.2015/1644
  - (7) S.I. 1997/302
    - › Relevant amendments were made by
    - › S.I. 2015/1644
  - (8) S.I. 1997/2780 (S.174)
    - › Relevant amendments were made by
    - › S.I. 2015/1644
  - (9) Section 24(1)(c) and (2)(c) was amended by
    - › S.I. 2001/3929
    - › S.I. 2009/3131
    - › S.I. 2012/1809
    - and
    - › S.I. 2015/1644

[2009/397/EC](#)  
) is revoked.

**Council Decision of 4 December 2014 (2014/887/EU)**

**10.** Council Decision of 4 December 2014 on the approval, on behalf of the European Union, of the Convention on Choice of Court Agreements (2014/887/EU) is revoked.

Signed by authority of the Secretary of State for Justice

30th October 2018

*Lucy Frazer*  
Parliamentary Under-Secretary of State  
Ministry of Justice

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the power in section 8(1) of the European Union (Withdrawal) Act

2018 (c. 16)

in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(c) and (e)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments and modifications to legislation in the field of private international law, relating to the Hague Convention on Choice of Court Agreements, done at The Hague on 30th June 2005 (“the 2005 Hague Convention”). The United Kingdom has applied the 2005 Hague Convention since 1st October 2015 by virtue of the EU’s conclusion of that Convention and it will cease to apply to the United Kingdom upon exit day. These Regulations make provision in relation to the directly effective rights etc derived from the 2005 Hague Convention in domestic law, both in relation to choice of court agreements that will lose the benefit of the convention upon exit day and in relation to choice of court agreements to which the 2005 Hague Convention will once again apply when the United Kingdom accedes to that convention in its own right.

Part 2 of these Regulations identifies the rights etc which are derived from the 2005 Hague Convention and recognised in domestic law by virtue of section 4 of the European Union Withdrawal Act 2018 (“the section 4 rights”). That Part also makes provision regarding how the section 4 rights are to apply to exclusive choice of court agreements concluded before exit day, those concluded after exit day but before the 2005 Hague Convention again enters into force for the United Kingdom, and to those exclusive choice of court agreements to which the 2005 Hague Convention will apply in accordance with the provisions of Article 16 when that Convention again enters into force for the United Kingdom.

Part 3 of these Regulations modifies primary and secondary legislation relating to the 2005 Hague Convention, applying it to the section 4 rights as they apply to exclusive choice of court agreements concluded before exit day and those concluded after exit day but before the 2005 Hague Convention again enters into force for the United Kingdom. It also repeals section 24 of the Civil Jurisdiction and Judgments Act

1982 (c.27)

in so far as that provision relates to references to the Court of Justice of the European Union regarding interpretation of the 2005 Hague Convention.

Part 4 of these Regulations revokes retained EU legislation consisting of two Council Decisions relating to the signature and conclusion of the 2005 Hague Convention by the European Union.

An impact assessment on the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Ministry of Justice, 102 Petty France, London SW1H 9AJ and is published alongside this instrument at

[www.legislation.gov.uk](http://www.legislation.gov.uk)