

# Questionnaire relating to the **Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (Evidence Convention)**

Responding State:

United Kingdom

## I. General Feedback

1. How does your State rate the general operation of the Evidence Convention?
  - (b) Good.  
*“Scotland and Northern Ireland rate the operation of the Convention as satisfactory”.*
2. How does your State rate the useability of the HCCH publications developed to assist users of the Evidence Convention (the Practical Handbook on the Operation of the Evidence Convention ([Evidence Handbook](#)) and [Guide to Good Practice](#) – The Use of Video-Link)?
  - (a) Excellent.  
*“No comments”.*  
*“Scotland rates the usability of publications as good, and Northern Ireland as satisfactory”.*
3. What work could be carried out by the PB to facilitate the acceptance of accessions to the Evidence Convention (e.g., providing additional information or facilitating direct communication between your Central Authority and new Contracting Parties)?  
  
*“England and Wales suggests facilitating direct communications between our Central Authority and the Central /Competent Authorities of other contracting states”.*
4. Does your State’s Central Authority have a manual or electronic case management register or system that is used to track incoming requests under the Evidence Convention?
  - (c) Yes – manual for incoming only.  
*“Scotland has a manual case management system for incoming requests only”.*
5. If your State’s Central Authority has oversight for outgoing requests, please indicate if there is a system used to track the progress of these.
  - (b) Yes – manual.

## II. Scope of the Convention

6. In the previous five years\*, has your State experienced any difficulties in interpreting the scope of the Evidence Convention?  
  

\*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

  - (d) No.

7. Does your State consider the Evidence Convention mandatory or non-mandatory?
  - (b) Non-mandatory.  
*"Scotland considers the Evidence Convention mandatory".*
8. Has your State adopted "blocking statutes" or laws which are known by any other description, which prevent evidence being taken in the territory of your State for use in foreign proceedings other than under the Evidence Convention (or other international instrument)?
  - (b) No.
9. Has your State received or submitted requests for the taking of evidence in connection with arbitration proceedings?
  - (b) No.
10. Have any decisions relating to the use of the Evidence Convention in arbitration proceedings been rendered by the judicial authorities of your State?
  - (b) No.

### III. Operation of the Convention

#### A. Chapter I – Preparing, transmitting and progressing Letters of Request

Requesting State refers to the State from which a Letter of Request is, or will be, issued.  
 Requested State refers to the State to which a Letter of Request is, or will be, addressed.

11. As the **requesting State**, how are Letters of Request transmitted?
  - (b) Via the Central Authority to the Central Authority of the requested State.
12. As the **requesting State**, do the authorities of your State use the recommended Model Form?
  - (a) Yes, always.  
*"It is unknown whether Scotland uses the recommended Model Form (although as stated in the online questionnaire, England and Wales and Northern Ireland do)".*
13. Does your State consider further work on the Model Form would be beneficial? For example, a review of the Model Form with a view to including video-link and the preparation of guidelines outlining how to complete the Model Form.
  - (a) Yes.  
*"No comments".*  
*"Northern Ireland considers that revision to the Model Form is not required".*
14. As the **requested State**, do the authorities of your State send an acknowledgement of receipt for a Letter of Request?
  - (a) Yes.

15. During the past five years\*, as the **requested State**, has your State received a Letter of Request that is non-compliant?

\*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(a) Yes.

- 15.1. If the answer to Q15 above is “yes”, why was the request non-compliant?

(f) The request did not comply with the content requirements under Article 3.

(g) The request did not comply with the translation requirements under Article 4.

(h) Other.

*“Common problems are: • Letter of Request completed incorrectly/ incomplete; • Poor Translations; • Incorrect/incomplete address so witness unable to be served with order for examination; • Questions not listed/insufficient information provided to enable examiner to ask questions; • Witness is a child and that is not identified; • Only one copy of documents provided (2 are required)”.*

16. As the **requested State**, does your State provide advance assistance to foreign judicial authorities to prepare a Letter of Request to be sent under the Evidence Convention?

(a) Yes.

*“When contacted by email or telephone we provide as much information as we can, including a template letter of request and draft order”.*

*“In England & Wales, when contacted by email or telephone we provide as much information as we can, including a template letter of request and draft order. In Northern Ireland, assistance is not provided to foreign judicial authorities, and in Scotland it is unknown”.*

17. As the **requested State**, does your State provide advance assistance to legal representatives to prepare a Letter of Request to be sent under the Evidence Convention?

(a) Yes.

*“We frequently receive requests for assistance from solicitors or local authorities who are unfamiliar with the process and provide assistance and templates”.*

*“In England & Wales, as stated in the online questionnaire advance assistance is provided. We frequently receive requests for assistance from solicitors or local authorities who are unfamiliar with the process and provide assistance and templates. In Northern Ireland assistance is not provided, and in Scotland this is unknown”.*

18. Once your State has received a Letter of Request, do your State’s judicial authorities rephrase, restructure, and / or strike out objectionable questions or offensive wording in order to execute a Letter of Request (also known as “blue-pencilling”)?

(a) Yes.

*“Only on rare occasions where there is a contested hearing between the applicant and the witness(es), and the court considers that it could give effect to the letter of request if some “blue pencilling” were carried out. But re-drafting is not permitted”.*

*“In England and Wales, this is only done on rare occasions where there is a contested hearing between the applicant and the witness(es), and the court considers that it could give effect to the letter of request if some “blue pencilling” were carried out. But re-drafting is not permitted. In Northern Ireland and Scotland, this is not done”.*

19. As the **requested State**, can the execution of a Letter of Request that has been received be challenged?

(a) Yes.

*"A witness can make an application to set aside or vary an order for examination, and the court will have a hearing to determine such application".*

*"In England & Wales a witness can make an application to set aside or vary an order for examination, and the court will have a hearing to determine such an application. In Scotland the execution of a letter of request cannot be challenged, and in Northern Ireland this is unknown".*

19.1. If the answer to Q19 above is "yes", is the requesting authority or the interested party permitted to respond to the challenge?

(a) Yes.

*"The witness is entitled to apply to set aside, vary or stay the order for the witness to provide evidence".*

20. As the **requesting State**, can the sending of a Letter of Request abroad be challenged?

(b) No.

*"In England & Wales, the requesting party must seek the permission of the judge dealing with the case to send a letter of request, and the opposing party may oppose that application if, for example, they do not wish the evidence to be adduced as a deposition, or by video link and consider that the witness should be able to attend the hearing. But once the judge has given permission for a letter of request to be issued (subject to any appeal, which would be rare), the sending of the letter of request cannot be opposed".*

21. As the **requested State**, which authority is generally responsible for informing the requesting authority of the time and place of the execution of a Letter of Request (Art. 7)?

(a) Central Authority.

22. During the past five years\*, as the **requested State**, has your State received a request specifying a particular method or procedure for taking of evidence (e.g., how witnesses are to be examined)? (Art. 9(2))

\*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(a) Yes.

*"In England and Wales, requesting parties often ask for the procedure of the law of the requesting state to be applied to the examination".*

*"In Northern Ireland the response is no".*

23. As the **requested State**, does your State require the requesting State to reimburse costs?

(c) No.

*"In England & Wales, unless a special procedure is requested which incurs exceptional costs. England & Wales acts in accordance with Art 14 of the Convention".*

23.1. If the answer to Q23 above is "yes", please indicate circumstances where reimbursement is sought.

N/A

24. As the **requested State**, who may make a request for a Letter of Request to be withdrawn?
- (a) Requesting authority.
  - (b) Representative of the parties.
  - (c) Parties.
25. As the requested State, does your State reject a Letter of Request seeking discovery if it is too broad?
- (c) Not applicable, Article 23 declaration.  
*"In Northern Ireland, the response is no".*

## **B. Chapter I – Execution of a Letter or Request – Witness Examination**

All questions directed towards the Contracting Party operating as the requested State.

26. As the **requested State**, how is a hearing conducted for Chapter I requests?
- (a) Before a Judge, Magistrate, Special Master, or other court official.
  - (c) By a private examiner.
27. Does your State require the Letter of Request to include specific questions to be used during the taking of evidence?
- (b) No.  
*"In Scotland, the response is yes".*
28. In your State, are hearings public or private?
- (a) Public, unless otherwise ordered by a judge.  
*"In England & Wales, hearings are public, unless otherwise ordered by a judge. But in practice most examinations are conducted in private, and the examiner also has power to order that the examination be conducted in private. In Northern Ireland hearings are private".*
29. In your State, is a witness provided with a copy of questions / matters contained in the Letter of Request in advance of a hearing?
- (a) Yes, always.
30. In your State, what are the requirements for documents that are to be presented to a witness?
- (a) Any document presented to a witness must be attached to the Letter of Request.
  - (d) No requirements.
31. In your State, are documents produced by the witness during the taking of evidence authenticated by the court or authority?
- (b) No.
32. In your State, can representatives of the parties who attend the taking of evidence ask additional questions and / or cross examine the witness?
- (b) No.  
*"In Northern Ireland, representatives cannot attend".*

33. In your State, is an oath or affirmation administered to the witness before the taking of evidence?
- (a) Yes.  
*"In Northern Ireland, the response is no".*
34. In your State, can the witness be subject to further examination?
- (a) Yes.  
*"In Northern Ireland and Scotland, the response is no".*
- 34.1. If the answer to Q34 above is "yes", is a second Letter of Request required?
- (a) Yes.
35. Does your State have sanctions for the non-appearance of a witness?
- (a) Yes.  
*"In England and Wales, if the witness does not comply, they are given a further opportunity to do so on a later specified date. If they again fail to comply they are ordered to attend before a judge who may impose a sanction for failure to comply, such as a fine or ultimately imprisonment".*  
*"In Northern Ireland, the response is no".*
36. During the past five years\*, as the **requested State**, is your State aware of a person requested to give evidence invoking privilege?
- \*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.
- (b) Yes, under the law of the State of origin (Art. 11(b)).  
*"In a case in England and Wales, a witness has relied on privilege under US law. There may be other occasions where a witness has relied on privilege that this court has not been informed of".*  
*"In Northern Ireland and Scotland, this is unknown".*
37. Does your State require interpreters in the taking of evidence to be certified?
- (a) Yes.
38. In your State, how is witness testimony transcribed?
- (d) Written and signed testimony.  
*"In Northern Ireland and Scotland the answer is (b) Verbatim recording through written".*
- #### IV. Use of Information Technology
- In 2019, the PB circulated a questionnaire on the use of information technology in relation to the operation of the Evidence Convention. That survey was concluded prior to the start of the COVID-19 pandemic. The questions below seek information from Contracting Parties on the use of technology and in light of the pandemic.
39. Does your State's Central Authority accept Letters of Request to be transmitted electronically?
- (b) No.

40. Does your State allow the taking of evidence by video-link under Chapter I?
- (a) Yes.  
*"In Northern and Scotland, it is unknown whether the State allows the taking of evidence by video-link under Chapter I".*
41. Does your State allow the taking of evidence by video-link under Chapter II?
- (a) Yes.  
*"In Northern Ireland, this is unknown".*
42. Does your State use the Model Form for video-link evidence?
- (a) Yes.
43. What challenges has your State faced regarding the use of information technology under the Evidence Convention?
- (a) None.
44. Has your State adopted any new information technology measures to facilitate the operation of the Evidence Convention, particularly in response to the COVID-19 pandemic?
- (a) Yes.  
*"Evidence can be given by video link from the witness's own device, provided that the witness is giving evidence voluntarily".*  
*"In Northern Ireland and Scotland, the response is no".*
45. In your State's opinion, what topics could the PB explore further (e.g., for the purposes of training, seminars, or conferences) in relation to the use of information technology under the Evidence Convention?
- "England and Wales would like encouragement to contracting states to permit direct video link evidence given by witnesses voluntarily to be permitted without requiring a letter of request. This is because it often takes a long time for most contracting states to respond to a letter of request, so that it is often not possible to obtain agreement from a contracting state before trial".*
46. In your State's opinion, what further work could the PB do on the use of information technology under the Evidence Convention?
- (b) Other.  
*"See answer to Qu 46"*  
*"In Northern Ireland, the response is no further work".*
47. In addition to the Evidence Convention, is your State party to any bilateral, regional, or multilateral agreements that provide rules for the taking of evidence abroad?
- (a) Yes.

*For Parties that answered yes to Q47 above:*

- 47.1. Do any of these agreements provide for the use of electronic means to assist in the taking of evidence (e.g., video-link)?

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For Parties that answered yes to Q47 above:

47.2. If yes, what electronic means or information technology does your State use in the taking of evidence?

N/A

## V. 2023 Meeting of the Special Commission & Monitoring

48. Does your State have any suggestions that could assist in the promotion, implementation or operation of the Evidence Convention?

(a) Yes.

*"See answer to Q46 . In addition, imposing time limits or suggested time limits for acknowledging and responding to letters of request and encouraging full and correct completion of the Model Form".*

*"England & Wales suggests that the PB could further explore the idea of imposing time limits or suggested time limits for acknowledging and responding to letters of request and encouraging full and correct completion of the Model Form".*

48.1. If the answer to Q48 above is "yes", please indicate whether the information provided may be published.

(a) Yes.

49. What are the three key topics or practical issues related to the Evidence Convention that your State would like discussed at the 2023 meeting of the Special Commission?

1. *"Direct evidence by video link"*

2. *"Long delays in responding/no response by many contracting states, and how timely responses could be encouraged"*

3. *"Encouraging direct communication between Central Authorities so that a more informal method of communication could be achieved to promote efficiency."*

49.1. Please indicate whether the information provided in Q49 above may be published.

(a) Yes.

50. The PB is in the process of revising the Evidence Handbook and the Guide to Good Practice – The Use of Video Link, with a view to consolidating these publications. Are there any specific topics, suggestions for presentation or formatting, or any other proposals you recommend for inclusion?

(b) No.

*"In Scotland, the response is no".*

50.1. If the answer to Q50 above is "yes", please indicate whether the information provided may be published.

N/A

## DATA & STATISTICS FOR CONTRACTING PARTIES

### I. Statistics under Chapter I

#### A. Incoming Requests

- How many incoming Letters of Request for the taking of evidence did your State receive under Chapter I in each of the following years?

|                                  |   |
|----------------------------------|---|
| 2017                             | <i>"England &amp; Wales - We do not have exact records for 2017 and 2018 but the approximate average per annum was 540 Northern Ireland - 3 Scotland - Unknown"</i> |
| 2018                             | <i>"England &amp; Wales - We do not have exact records for 2017 and 2018 but the approximate average per annum was 540 Northern Ireland - 2 Scotland - 1"</i>       |
| 2019                             | England & Wales - 428 Northern Ireland - 3 Scotland - 1   |
| 2020                             | England & Wales - 587 Northern Ireland - 2 Scotland - 2   |
| 2021                             | England & Wales - 753 Northern Ireland - 2 Scotland - 20  |
| 2022                             | England & Wales - 666 Northern Ireland - 1 Scotland - 26  |
| Unknown - <i>please explain.</i> |   |
| -                                |   |

- Which three States made the most requests?

| Requesting State  | Number  |
|---|---------|
| England & Wales - Romania,<br>Northern Ireland - Turkey   | Unknown |
| England & Wales - Turkey,<br>Northern Ireland - Australia | Unknown |
| England & Wales - Poland,<br>Northern Ireland - Norway    | Unknown |

- What is the average time taken (in months) to execute a Letter of Request in your State?

*"England & Wales - 3-5 months Scotland - 6-12 months"*

4. If possible, please provide a breakdown of how long (in months) it took to execute incoming requests.

|  | < 1 | 1-3 | 3-6 | 6-12 | > 12 |
|--|-----|-----|-----|------|------|
| 2017   |     |     | x   |      |      |
| 2018   |     |     | x   |      |      |
| 2019   |     |     | x   |      |      |
| 2020   |     |     | x   |      |      |
| 2021   |     |     | x   |      |      |
| 2022<br>(if data available)  |     |     | x   |      |      |
| Unknown – please explain.<br>“This is the same for Northern Ireland (3-6 months on average) apart from the year 2020 where the average was 6-12 months”. |     |     |     |      |      |

\*\*\* In Northern Ireland, the figures are as follows - 3-6 months for the years 2017, 2018, 2019, 2021, 2022 / 6-12 months for the year 2020”.

5. How many incoming Letters of Request for the taking of evidence did your State receive via **electronic transmission** under Chapter I in each of the following years?

|   |   |
|---|---|
| 2017  | 0 |
| 2018  | 0 |
| 2019  | 0 |
| 2020  | 0 |
| 2021  | 0 |
| 2022  | 0 |
| Unknown – please explain.<br>“Hard Copies are requested”. |   |

## B. Outgoing Requests

6. How many outgoing Letters of Request for the taking of evidence did your State make under Chapter I in each of the following years?

|   |  |
|---|--|
| 2017  | <i>"England &amp; Wales - We do not have exact records for 2017 and 2018 but the approximate average per annum was 13"</i> |
| 2018  | <i>"England &amp; Wales - as above"</i>  |
| 2019  | England & Wales – 17   |
| 2020  | England & Wales – 22   |
| 2021  | England & Wales – 53   |
| 2022  | England & Wales – 46   |
| Unknown – <i>please explain.</i><br><i>"The numbers for Northern Ireland are 0. For Scotland the numbers are 0 because the Central Authority do not deal with outgoing requests".</i> |  |

7. Which States were the subject of the most requests?

| Requesting State         | Number  |
|--------------------------|---------|
| England & Wales - France | Unknown |
| -                        | -       |
| -                        | -       |

8. How many outgoing requests for the taking of evidence did your State make via electronic transmission under Chapter I in each of the following years?

|  |   |
|--|---|
| 2017   | 0 |
| 2018   | 0 |
| 2019   | 0 |
| 2020   | 0 |
| 2021   | 0 |
| 2022   | 0 |
| Unknown – <i>please explain.</i><br><i>"All done via post or diplomatic channels".</i> |   |

**C. Video-Link**

9. How many incoming Letters of Request for the taking of evidence did your State execute under Chapter I in each of the following years?

|                                  |   |
|----------------------------------|---|
| 2017                             | -   |
| 2018                             | -   |
| 2019                             | <i>"7 (plus 7 telephone conferences)"</i>   |
| 2020                             | <i>"23 (plus 11 telephone conferences)"</i> |
| 2021                             | 2   |
| 2022                             | <i>"8 (plus 2 telephone conferences)"</i>   |
| Unknown – <i>please explain.</i> |   |

10. How many incoming requests for the taking of evidence did your State execute under Chapter II in each of the following years?

|  |   |
|--|---|
| 2017   | - |
| 2018   | - |
| 2019   | - |
| 2020   | - |
| 2021   | - |
| 2022   | - |
| Unknown – <i>please explain.</i><br><i>"Separate records are not kept for Chapter II requests, but it would have been very few".</i> |   |

## CASE LAW, ADDITIONAL INFORMATION & SUPPORTING DOCUMENTS

### I. Case Law

Please list all your State's judicial decisions that have considered the Evidence Convention since 2014, and provide a link to, or upload, the decision (in PDF format only).

*"Please see uploaded document"*

*1 file uploaded.*

### II. Additional Documents

Please provide links to and / or any additional information or documentation to support your response (in PDF format only). This may include:

- ⇒ resources for the general public or guidelines for Central or other Authorities' staff;
- ⇒ implementation legislations, recent legislative developments; or
- ⇒ books, articles, or other published work.

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*2 files uploaded.*

## PUBLICATION OF RESPONSES

Please confirm whether your responses to this questionnaire can be published on the HCCH website.

(a) Yes.