

UNITED KINGDOM

LEGAL BASIS

1. Has your State signed and/or ratified the *European Convention on State Immunity (1972)* and/or the *United Nations Convention on Jurisdictional Immunities of States and Their Property (2004)*? Do the authorities of your State consider the provisions on these treaties on service of process as a codification of customary international law? Does your State apply any other international legal instrument (apart from bilateral agreements)?

The UK has ratified the European Convention on State Immunity (1978). The UK has signed but not ratified the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004). The UK does not believe that all provisions in these treaties represent a codification of customary international law, although it is certainly the case that some of the provisions do.

2. Please provide information on:

a. National legislation (in particular its title, source and content; if available, please provide official translations and/or references to Internet sources).

The UK has codified its law and practice on state immunity in the State Immunity Act 1978, which was passed when the UK ratified the European Convention on State Immunity. That legislation can be found here: <http://www.legislation.gov.uk/ukpga/1978/33>.

The Civil Procedure Rules (CPR) set out the more detailed rules of court as applicable in England and Wales. CPR 6.44 and 6.45, together with the Practice Direction 6B (Service out of the jurisdiction), are key. The Rules and Practice Directions can be found here: <http://www.justice.gov.uk/courts/procedure-rules/civil/rules>.

Similar provision about service is made for courts in Scotland (see in particular Chapter 16 of the Court of Session Rules <https://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules>) and Northern Ireland (see in particular Order 11 of the Rules of the Court of Judicature (Northern Ireland) <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/the-rules-of-the-court-of-judicature-northern-ireland-1980-february-2021.pdf>).

b. Case-law and practice, specifying whether your national courts and tribunals review the lawfulness of the service of process by operation of law.

If a question of ineffective service is raised, it is likely that the court or tribunal would review legality of service. For example, service was considered in the case of *Kuwait Airways Corporation v Iraqi Airlines* [2002] UKHL 2002. That case provides authority, from what was then the UK’s highest court (the House of Lords), that service cannot be effected by serving the diplomatic mission of the respondent State in the UK.

Further, the CPR require that permission of the court is needed to serve proceedings outside the jurisdiction. Accordingly, there is a degree of judicial supervision at an early stage.

PROCEDURE

3. Please describe the procedure(s) applicable to service of process on a foreign State, specifying the hierarchy between the different methods for serving process. In particular, please provide information on when the service is deemed to be effected,

time-limits, the grounds to refuse service of process and the consequences of the unlawfulness of the service.

Section 12 of the State Immunity Act 1978 governs service of proceedings against a foreign State. The general rule is that any writ or other document required to be served for instituting proceedings against a foreign State shall be served by being transmitted through the UK's Foreign, Commonwealth and Development Office to the Ministry of Foreign Affairs of that State. Service shall be deemed to be effected when the writ or document is received at that Ministry (section 12(1)).

Section 12 further specifies that where a State is served, the period for entering an appearance does not begin to run until 2 months after the date on which the State is served (section 12(2)).

Judgment in default of appearance shall not be given against a foreign State except on proof that service has been properly effected and that the time for entering an appearance has expired (section 12(4)).

However, the general rules described above do not prevent service of a writ or other document instituting proceedings in any manner to which the foreign State has agreed. The UK has entered into a number of agreements with other states which means that other rules are in place (for example the Hague Convention on the Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters).

The CPR require that permission of the court is needed to serve proceedings outside the jurisdiction. If proceedings are not properly served, there is no requirement on the State to enter an appearance and there is no basis on which the claimant can apply for default judgment.

a. How are the terms “diplomatic channels” (Article 16 § 2 of the European Convention and Article 22 § 1 c) i) of the United Nations Convention) interpreted by your national authorities? Please indicate whether these terms include a notification to the embassy of the State concerned in the State of forum.

The proceedings are sent from the court to the Foreign, Commonwealth and Development Office. The UK serves on “diplomatic channels” by sending the proceedings to its diplomatic mission in the foreign State which then serves them on the relevant Ministry of Foreign Affairs.

UK practice is not to notify the embassy of the State concerned in the UK.

b. How are the terms “if necessary” (Article 16 § 2 of the European Convention and Article 22 § 3 of the United Nations Convention) interpreted by your national authorities?

The Civil Procedure Rules require that where documents are being served on a foreign State, a translation must also be provided unless English is the official language of the State concerned (Rule 6.45).

4. Where your State is the defendant in the proceedings, what is accepted as an adequate service of process? Please specify whether your State accepts the service to its embassy in the State of forum.

The UK expects that proceedings are served as set out above i.e. they are served on the Foreign, Commonwealth and Development Office of the UK via diplomatic channels. The UK does not believe that there can be proper service of proceedings on a diplomatic mission as this represents an infringement of the inviolability of the premises of a diplomatic mission contrary to Article 22 of the Vienna Convention on Diplomatic Relations.