

---

## ACCESSION TO THE EVIDENCE CONVENTION

---

### Accession procedure

The Convention is open for accession by States which are not Members of The Hague Conference. The instrument of accession must be deposited with the Ministry of Foreign Affairs of the Netherlands. Under article 39, the accession will have effect only as regards the relations between the acceding State and such Contracting States as declare their acceptance of the accession.

Various decisions fall to be taken before accession can be effected, and information on most of these matters must be communicated to the Netherlands Ministry of Foreign Affairs - see articles 33 and 35:

- (1) A decision must be made whether or not to enter a reservation excluding Chapter Two (article 33).
- (2) A Central Authority must be designated (article 2) and additional authorities may be designated in certain circumstances (articles 24 and 25).
- (3) A declaration may be made insisting on the use of a language other than English or French, and related declarations on language matters may also be made (articles 4 and 33); for anglophonic countries these matters do not arise.
- (4) An acceding State may decide to declare that it will not accept Letters of Request seeking pre-trial discovery of documents (article 23) (see above).
- (5) Declarations may be made under article 8, permitting members of the judicial personnel of the requesting State to be present at the execution of a Letter of Request, and, if so required, prescribing the authority which must give permission in each case.
- (6) A declaration may be made under article 11 recognising the privileges and duties of witnesses under the law of third States.
- (7) Under article 15, a declaration may be made requiring consuls to seek the permission of a designated authority before taking the evidence of their own nationals.
- (8) Under article 16, a declaration may be made either designating an authority with power to give permission for the taking of evidence by consuls from persons not their nationals or dispensing with the need for prior permission.

- (9) Under article 17, a declaration may be made either designating an authority with power to give permission for the taking of evidence by commissioners or dispensing with the need for prior permission.
- (10) A declaration may be made under article 18 enabling consuls or commissioners to seek assistance to obtain evidence by compulsion, and designating the authority to whom such application should be made.
- (11) Under article 27, a State may declare that Letters of Request may be transmitted by channels other than the one principally prescribed in the Convention.

By way of illustration, the text of the U.K. declarations is as follows:

"1. In accordance with Article 8 Her Majesty's Government declare that members of the judicial personnel of the requesting authority may be present at the execution of a Letter of Request.

2. In accordance with Article 18 Her Majesty's Government declare that a diplomatic officer, consular agent or commissioner authorised to take evidence under Articles 15, 16 and 17 may apply to the competent authority designated hereinbefore for appropriate assistance to obtain such evidence by compulsion provided that the Contracting State whose diplomatic officer, consular agent or commissioner makes the application has made a declaration affording reciprocal facilities under Article 18.

3. In accordance with Article 23 Her Majesty's Government declare that the United Kingdom will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents. Her Majesty's Government further declare that Her Majesty's Government understand "Letters of Request issued for the purpose of obtaining pre-trial discovery of documents" for the purposes of the foregoing Declaration as including any Letter of Request which requires a person:

- a. to state what documents relevant to the proceedings to which the Letter of Request relates are, or have been, in his possession, custody or power; or
- b. to produce any documents other than particular documents specified in the Letter of Request as being documents appearing to the requested court to be, or to be likely to be, in his possession, custody or power.

4. In accordance with Article 27 Her Majesty's Government declare that by the law and practice of the United Kingdom the prior permission referred to in Articles 16 and 17 is not required in respect of diplomatic officers, consular agents or commissioners of a Contracting State which does not require permission to be obtained for the purposes of taking evidence under Articles 16 and 17."

Legislative  
provisions

Legislation is necessary to give effect to the Convention. In the United Kingdom, there was passed the Evidence (Proceedings in Other Jurisdictions) Act 1975. A number of features of that Act are noteworthy.

- (i) It provides a set of rules applicable to requests originating from foreign countries generally, and is not limited expressly to contracting States to The Hague Convention. In view of the traditional approach to common law countries, this would seem likely to be generally acceptable in the Commonwealth.
- (ii) It went further than the Convention requires in a number of respects, making provision for the supply of evidence in criminal proceedings (s.5) and certain international proceedings (s.6).
- (iii) It replaces the Foreign Tribunals Evidence Act 1856, the Evidence by Commission Act 1859 and the Evidence by Commission Act 1885; these Acts or their counter-jurisdictions.

A draft Bill, based closely upon the U.K. provisions follows, and it is followed in turn by some explanatory notes.