

HOW TO ENFORCE A JUDGMENT IN ENGLAND

(A) What is the applicable law?

(a) Domestic judgments: Civil Procedure Rules 1998 as amended (CPR). Judgments to be enforced for money judgments in Scotland and Northern Ireland (and vice versa) require an application to be made for registration of a certificate for enforcement under the Civil Jurisdiction and Judgments Act 1982 (1982 Act).

(b) Foreign judgments: Brussels I Regulation 44/2001 (proceedings started in EU Member State before 10.01.15. Brussels I (Recast) Regulation 1215/2012 (10.01.15 to 31.12.20). Foreign Judgments (Reciprocal Enforcement) Act 1933 (FCA 1933) (also applies to some EU Member States where relevant bilateral treaty in place). Administration of Justice Act 1920 (AJA 1920) (Mainly applies to Commonwealth countries and British Overseas Territories) includes Cyprus & Malta. Common law rules apply where no applicable treaty in place with UK. A foreign judgment will need to be final and conclusive. The Judgment Creditor will need to bring an action in the English Courts based on a simple debt.

(B) What international conventions and agreements is your jurisdiction a party to?

- Brussels Convention 1968 applies to judgments in Gibraltar and some dependent territories of EU Member States.
- 2005 Hague Convention on Choice of Agreements (Dependent on when the choice of agreement was entered into).
- 2007 Lugano II Convention applies to UK proceedings prior to 01/01/21 and can be enforced in any EU Member State/Iceland/Norway/Switzerland

(C) What types of judgments in commercial matters are enforceable?

Domestic:

- Money Judgments
- Default Judgments (can be subject to an application to set aside)
- Judgments ordering or prohibiting the doing of acts or injunctions
- Declaratory Judgments
- Judgment awards made without notice (relate to provisional measures- enforceable, but can be subsequently set aside)

Foreign:

- Money Judgments
- Default Judgments (if there was no submission to the jurisdiction) and Judgments made without notice awards (if the judgment/order has been served), foreign decisions granting provisional measures
- Declaratory (recognised under common law regime) – enforceable under European regime but not under the statutory or common law regime.

Some other types of judgments – there are separate rules relating to insolvency (both under the European and common law regime). Arbitration awards and specific European regulations that apply to wills and succession and matrimonial matters.

General outlines:

(D) Are the lawyers and procurator needed?

A Party does not need legal representation and can act in person (Litigant in person) or can instruct a Solicitor or a barrister (direct access).

(E) Is a security for costs needed?

A challenge can be made under the provisions of Article 44 (1) of the Recast Brussels Regs.

An application can be made under S.3 in respect of persons applying for the registration of judgments.

There are also provisions under Part II of AJA 1920 and FCA 1933, regarding enforcement making it necessary for claimants residing in those countries to which those Acts apply to give security. CPR 74 concerning Security for costs was amended following exit day (31.12.20) and omitted reference to the Lugano Convention and Judgments Regulation, save for some transitional and saving provisions.

In respect of any appeal proceedings, it may be possible to obtain security against a judgment creditor who is resident overseas or if certain other provisions apply.

(F) Which court is the competent court?

Proceedings that require the recognition and enforcement of foreign judgments in England & Wales should be brought in the High Court.

(G) Can the debtor oppose to the enforcement?

Having obtained a registration order under the Brussels Regulation 2001, Brussels Convention 1968, Lugano Convention 2007, AJA 1920 and FCA 1933, there is a period of time to challenge or appeal and no steps can be taken to enforce until the application/appeal is finalised.

Under Article 44(1) of the Brussels Recast, it is possible to limit and challenge enforcement proceedings.

In respect of other enforcement proceedings not mentioned above, it may be possible to apply for injunctive relief.

Measures to secure the effectiveness of enforcement:

(H) Is it possible to obtain an automatic freezing order of bank accounts?

You must apply to the Court for a further Order following registration (called an Interim Third Party Debt Order and then apply for it to be made final).

(I) How do you secure the effectiveness of an immovable property?

You must apply to the Court for a further Order following registration (Called an Interim Charging Order – You must apply for it to be made final). It may be possible to further apply to the Court for an Order for Sale of the property, following the making and registration of the Final Charging Order.

(J) Is there a Bailiff in your jurisdiction?

Yes, called High Court Enforcement Officers (HCEO).

(K) Can one freely choose the person of the bailiff?

Yes, HCEO's are authorized by the Government. Can be instructed through the High Court Enforcement Officers Association or direct.

(L) How much does this cost?

HCEO fees are recovered in full from the judgment debtor if enforcement is successful. If unsuccessful, the judgment creditor would normally only have to pay a compliance fee.

(M) In which field with they work?

In terms of monies owed in respect of an individual - please see below. The HCEO also has greater powers in respect of entry to commercial premises to remove stock, vehicles, goods, machinery etc. for sale at auction.

The HCEO can also enter into a debt repayment plan with the Judgment Debtor.

(N) How do they work?

The HCEO may visit the judgment debtor to secure payment or agree a payment plan. Goods may be removed and sold at auction, which includes vehicles, jewellery, goods, stock, equipment, to the value of the judgment debt.

(O) Is the judgment creditor entitled to interest? If so, on what basis is it calculated?

Interest may be payable at the rate of 8% per annum, once registered in the High Court. (The amount stated in the foreign judgment will have to be converted to Pounds Sterling at the time for applying for enforcement) or at the interest rate provided for in the foreign judgment.

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