

Legalisation of Public Documents within the EU Member States

UNITED KINGDOM

National Rapporteur:
Nigel Ready

PART I – Documents operating cross-border: Current legal practice as regards legalisation or other similar or equivalent requirements

OVERVIEW OF PART I Error! Reference source not found.

PART I.A. General

I.A.1. European Community Law

I.A.1.1. Introduction Error! Reference source not found.

I.A.1.2. Implementation of specific measures Error! Reference source not found.

Area of Justice - judicial cooperation in civil matters (Article 61(c) EC)

Article 19 of Regulation (EC) No 1346/2000

Amendments to give effect to the provisions of the Regulation (in particular by amending or introducing prescribed forms) have been made by the Insolvency Act 1986 (Amendment) Regulations 2002 (S.I. 2002 No.1037), the Insolvency (Amendment) Rules 2002 (S.I. 2002 No.1307), the Insolvent Partnerships (Amendment) Order 2002 (S.I. 2002 No. 1308) and the Administration of Insolvent Estates of Deceased Persons Order 2002 (S.I. 2002 No. 1309). There is no requirement for legalisation of the liquidator's appointment – see e. g. form 7.20 scheduled to the Insolvency (Amendment) Rules 2002 (application for confirmation by court of creditors' voluntary winding up) which simply requires “ evidence of [the applicant's] appointment as liquidator “ to be attached.

Article 4(4) of Regulation (EC) No 1348/2000

Regulation implemented by Civil Procedure Rules 1998 (S.I. 1998 No. 3132 L.17), Part 6, Section III (as inserted by Civil Procedure (Amendment) Rules 2000) as supplemented by PRACTICE DIRECTION – SERVICE OUT OF THE JURISDICTION to which the Regulation is annexed. The Regulation is fully implemented and no legalisation requirements apply.

Article 56 of Regulation (EC) No 44/2001

Regulation implemented by Part 74, section 1 of the Civil Procedure Rules 1998 as inserted by Civil Procedure (Amendment) Rules 2002 (S.I. 2002 No. 2058). See in particular r. 74.4(6). There is no requirement for legalisation. Note that representatives *ad litem* are not required to be appointed by written instrument in order to appear in the courts of England and Wales.

Article 57 of Regulation (EC) No 44/2001

The Civil Procedure Rules 1998, (r.74.11) apply the rules governing the registration of judgments under the Regulation to the enforcement of authentic instruments under article 57.

Article 58 of Regulation (EC) No 44/2001

The Civil Procedure Rules 1998, (r.74.11) likewise apply the rules governing the registration of judgments under the Regulation to the enforcement of court settlements under article 58.

Article 46 Regulation (EC) No 2201/2003

The European Communities (Jurisdiction and Judgments in Matrimonial and Parental Responsibility Matters) Regulations 2005 update domestic legislation to take account of the EC Regulation by assigning proceedings under the Regulation to the Family Division of the High Court. It may be assumed that no legalisation requirements apply.

Article 52 of Regulation (EC) No 2201/2003

See response in relation to article 46.

Article 52 Regulation (EC) No 2201/2003, certificates drawn up in the standard forms of ANNEX I (Article 39), II (Article 39), III (Article 41) or IV (Article 42)

See response in relation to article 46.

Article 27 of Regulation (EC) No 805/2004

The Regulation is implemented by Part 74, Section V of the Civil Procedure Rules 1998 as inserted by Civil Procedure (Amendment) Rules 2002 (S.I. 2002 No. 2058) as supplemented by PRACTICE DIRECTION 74 –EUROPEAN ENFORCEMENT ORDERS . Para. 5.2 of the Practice Direction states that a copy of a document will satisfy the conditions necessary to establish its authenticity “if it is an official copy of the courts of the member state of origin”(sic).

ANNEXES I (Article 9 - judgments), II (Article 24 – court settlements) and III (Article 25 – authentic instruments) of Regulation (EC) No 805/2004

It may be assumed that no legalisation requirements apply.

Article 13(5) of Directive 2002/8/EC

The limited changes to UK law necessary to implement the Directive were made by the Community Legal Service (Financial) (Amendment) Regulation 2004 (S.I. No. 2899). In the view of the Community Legal Service the provision of legal aid in England and Wales generally satisfies or exceeds the minimum requirements of the Directive. It may safely be assumed that no legalisation requirements apply.

Free movement of goods (Article 23 EC)

Article 250 of Regulation (EEC) No 2913/92

The Regulation is implemented by s14 (1) Finance Act 1994 and the Customs Reviews and Appeals (Tariff and Origin) Regulations 1997 (SI 1997/534). Such legislation empowers the Commissioner of Customs and Excise to make decisions relating to the tariff classification and determination of the origin of goods.

The officially designated authorities for the issue of EC “Certificates of Origin” in

England and Wales are local Chambers of Commerce. Certificates of origin are obtained upon completion of a "Formal Undertaking" and payment of a fee. Since 2003 certificates of origin can also be obtained electronically and are known as "e-Certs". E-Certs are also obtained from the local Chamber of Commerce. The application is electronically stamped by a member of the export documentation team and returned to the applicant to print. A database of all e-Certs is kept and the authenticity of an e-cert can be checked by typing in the certificate of origin number.

The certificate of origin must be accompanied by the export invoice.

There are no requirements for legalisation of certificates of origin within the Member States; however, legalisation may be required if the goods are being exported to countries who are not members of the EEA. In such case the Chamber of Commerce will handle the legalisation process on the exporter's behalf.

Free movement of workers - social security (Article 42 EC)

Article 85 Regulation (EEC) No 1408/71 read in conjunction with Regulation (EEC) No 574/72

The time allowed for completion of this questionnaire has not permitted a review of the entire *corpus* of UK law relating to the implementation of the Regulations mentioned. However, it may be stated categorically that there is no requirement imposed by the UK administrative authorities for legalisation of the statements, documents, etc referred to by the Regulations.

The following information may be of use:

UK administrative authorities responsible for the UK social security scheme are the Department for Work and Pensions (DWP) and the Pension Service. There are special coordinating rules between the UK and EEA countries and Switzerland: for example, if an EEA national has been paying the equivalent of National Insurance contributions in the home country this will help them with a claim for benefits in the UK.

There is a special system in the case of Eastern European countries which have recently acceded to the EU known as the Worker Registration Scheme. Individuals from Eastern European countries (including, the Baltic States, Poland, Slovakia, Slovenia, Hungary and the Czech Republic) do not have an automatic right to work in the UK in the same way as individuals from other EEA countries. Individuals must apply to the Home Office for a WRS registration card and certificate before they may seek work in the UK or claim UK benefits. They are required to submit in support of such application their original passport or national identity card and a copy of a letter from the UK employer confirming the employment start date.

When an EEA national claims benefits in the UK certain documents must be produced to establish the identity of the applicant. These documents must be originals. Photocopies will not be accepted. The documents that the DWP will accept are:

- a. Valid passport
- b. Identification card
- c. Birth certificate or deed poll

d. Home Office document.

In relation to point d. above, upon entering the UK an individual may have been issued with immigration documents by the Home Office. These documents will be accepted by the DWP as proof of identity.

If none of the above documentation is available the DWP will accept any two of the following:

- a. Letter from employer
- b. Contract of employment
- c. Work permit
- d. Payslips
- e. Invoices
- f. Student identification card
- g. Letter from college
- h. Student loan documents
- i. Mortgage or rental agreement
- j. Full driving licence
- k. Utility bills
- l. Letter from accountant
- m. Services contract

The DWP and Pensions Service is trying to reduce its reliance on documentation to be produced by the individual and therefore details will be stored in the DWP's database after an initial claim is made. On making subsequent claims an individual can be identified over the telephone and eventually over the internet by answering three security questions (such as date of birth, current address etc.).

If an EEA national is to apply for benefits in the UK they will also have to apply for a National Insurance number either before or at the same time as applying for benefits. National Insurance numbers are obtained from the local Jobcentre office (part of the DWP). The checks carried out upon application for a National Insurance are stricter than those carried out for applications for benefits. Applicants are required to attend an interview in which their documentation is examined. Checks on passports and visas are carried out using ultra-violet light to check that they are genuine.

In some cases claims are transferred to the DWP from foreign administrative authorities. In such cases liaison forms are used to verify life events and the facts given in these forms are accepted by the DWP. However, in the event of conflict of information between the authorities the UK authorities reserve the right to request to see original documentation.

Acceptance of original documents depends, in all cases, on the officer to whom the claim is presented. Translations of the documents are not normally required since evidence of identity is largely dependent on the photograph on the identity document and the name, which are both easily identifiable. If a translation is required the individual will never be asked to obtain a translation of the document: authorities have their own network of translators and therefore no certification or legalisation of translations is required.

I.A.1.3. Judicial control Error! Reference source not found.

The rapporteur is unaware of any relevant case-law.

I.A.2. Hague Convention of 5 October 1961 (the ‘Apostille’ Convention)

I.A.2.1. Status Error! Reference source not found.

The information recorded is correct.

I.A.2.2. Scope Error! Reference source not found.

The Convention has been extended by Her Majesty’s Government to the following territories:

Territorial units	Extension	EIF	Auth	Res/D/N
Anguilla (UK)	24-II-1965	25-IV-1965		
Bermuda (UK)	24-II-1965	25-IV-1965		
British Antarctic Territory (UK)	24-II-1965	25-IV-1965		
Cayman Islands (UK)	24-II-1965	25-IV-1965		
Falkland Islands (UK)	24-II-1965	25-IV-1965		
Gibraltar (UK)	24-II-1965	25-IV-1965		<u>Res</u>
Guernsey, Bailiwick of (UK)	21-VIII-1964	24-I-1965		
Isle of Man (UK)	21-VIII-1964	24-I-1965		
Jersey (UK)	21-VIII-1964	24-I-1965		
Montserrat (UK)	24-II-1965	25-IV-1965		
Saint Helena (UK)	24-II-1965	25-IV-1965		
Turks and Caicos Islands (UK)	24-II-1965	25-IV-1965		
Virgin Islands (UK)	24-II-1965	25-IV-1965		

I.A.2.3. Legislative implementation Error! Reference source not found.

It should be noted that in the United Kingdom the power to make treaties is a Crown prerogative – i.e. the power vests in the executive rather than the legislature. Accordingly, legislation is generally not required for a treaty ratified by the Government to enter into force although all treaties are now laid before parliament in accordance with the Ponsonby rule as explained in the following memorandum:

THE PONSONBY RULE

Introduction

The power to make treaties is a Prerogative power vested in the Crown. It is exercised on the advice of the Secretary of State for Foreign and Commonwealth Affairs, who, in turn, consults with other Departments of Government whose responsibilities would be engaged in executing the provisions of particular treaties. There is no constitutional requirement for Parliament to approve a treaty, although sometimes legislation is needed before the Government can ratify a treaty.

Since 1924 all treaties subject to ratification (with limited exceptions) have been laid before Parliament for 21 sitting days in accordance with the Ponsonby Rule before ratification (or its equivalent) is effected. The laying is done by means of a Command Paper published in one of the following FCO series: Country, Miscellaneous or European Communities. Since 1997 treaties laid before Parliament in accordance with the Ponsonby Rule have been laid together with an Explanatory Memorandum (EM). When

a treaty has entered into force for the United Kingdom (whether on signature or following ratification etc.), it is published in the Treaty Series of Command Papers.

The Ponsonby Rule of 1924

Since March 1892, it had been the practice to present to Parliament the texts of treaties binding the United Kingdom. This was done in a numbered series of Command Papers known as the Treaty Series. But treaties were published in that series only after they had entered into force for the United Kingdom, so that at that stage no Parliamentary approval, tacit or express, could be sought or given.

On 1 April 1924, during the Second Reading Debate on the Treaty of Peace (Turkey) Bill, Mr Arthur Ponsonby (Under-Secretary of State for Foreign Affairs in Ramsay MacDonald's first Labour Government) made the following statement: "It is the intention of His Majesty's Government to lay on the table of both Houses of Parliament every treaty, when signed, for a period of 21 days, after which the treaty will be ratified and published and circulated in the Treaty Series. In the case of important treaties, the Government will, of course, take an opportunity of submitting them to the House for discussion within this period. But, as the Government cannot take upon itself to decide what may be considered important or unimportant, if there is a formal demand for discussion forwarded through the usual channels from the Opposition or any other party, time will be found for the discussion of the Treaty in question." He warned that:

"Resolutions expressing Parliamentary approval of every Treaty before ratification would be a very cumbersome form of procedure and would burden the House with a lot of unnecessary business. The absence of disapproval may be accepted as sanction, and publicity and opportunity for discussion and criticism are the really material and valuable elements which henceforth will be introduced" [H.C. Deb. (1924) 171, c. 1999-2005]. The statement responded to the demands of some of the Government's supporters for a Parliamentary practice that would render impossible the 'secret Treaties and secret clauses of Treaties' of the kind which were then generally supposed to have helped bring about the First World War. Since then, the practice of secret treaties has been largely abolished by changes in diplomatic practice, reinforced in turn by specific obligations in the Covenant of the League of Nations and then in the United Nations Charter requiring all treaties to be deposited with the United Nations once they have entered into force, which then publishes them in the United Nations Treaty Series (UNTS) published periodically by the UN Secretariat. Moreover, many States, including the United Kingdom, have published Treaty Series of their own. The Ponsonby Rule was withdrawn during the subsequent Baldwin Government, but was reinstated in 1929 and gradually hardened into a practice observed by all successive Governments.

Application of the Ponsonby Rule

The Ponsonby Rule requires that every treaty signed by the United Kingdom subject to ratification should be laid before Parliament for 21 sitting days (although they need not be continuous). The FCO interprets the Ponsonby Rule as applying to acceptance, approval and accession as well as to ratification. "Acceptance" and "approval" have the same legal effect as ratification, and "accession" arises when the United Kingdom Government consents to be bound by a treaty of which it was not an original signatory. The Ponsonby Rule does not apply to treaties that enter into force on signature. In its Response of July 1982 to the 6th Report of the Joint Committee on Statutory Instruments (Session 1981-82), the Government confirmed that "International agreements [i.e. treaties] (including agreements amending international agreements) that are subject to ratification are, under the Ponsonby Rule, laid before Parliament

before they are ratified." However, "Sometimes an international agreement is amended, and the amendment, which may or may not be in the form of an international agreement, though it is not subject to ratification, does require the making of a statutory instrument for its implementation. In such a case, the Government accepts that the text of the agreement or amendment should be made available to Parliament, preferably when the statutory instrument is laid but in any case before it enters into force unless urgent or other important considerations make this impracticable" [Cmnd. 8600]. Therefore, in practice the Ponsonby Rule has also been applied to (a) amendments to multilateral treaties which are themselves subject to ratification and (b) amendments which, although subject to the silent procedure, require legislation.

Moreover, since January 1998 it has been the FCO's consistent practice to apply the Ponsonby Rule to treaties which are not subject to formal ratification (or acceptance or approval) but simply to the mutual notification of the completion of constitutional and other procedures by each Party. (However, the Ponsonby Rule does not apply to treaties subject to unilateral notification of completion of procedures, where there are no procedures or legislation required on the UK side and notification is only by the other side.)

Exceptions to the Ponsonby Rule

On 6 May 1981 the Lord Privy Seal announced in a written answer to a parliamentary question that: "In order to effect economies in the publication of Command Papers, it has been decided that the texts of bilateral double taxation agreements should no longer be tabled in Parliament as White papers in the Country Series of Command Papers. They will however continue to be published in the Treaty Series of Command Papers after entry into force. These new arrangements will necessitate a limited departure from the strict terms of what has become known as the Ponsonby Rule - namely, the practice whereby the texts of all international agreements concluded subject to ratification are laid before Parliament for a period of 21 sitting days after signature and before ratification. The purpose of the Ponsonby Rule is to afford Parliament the opportunity of considering commitments which the Government of the day are proposing to enter into. In the case of bilateral double taxation agreements, that purpose is already served by the statutory requirement that the draft of any Order in Council providing for double taxation relief shall be laid before the House of Commons for approval by affirmative resolution, it being the invariable practice that the text of any bilateral double taxation agreement falling within the scope of the Ponsonby Rule should be scheduled to the draft Order designed to implement the agreement. It will accordingly be seen that the new arrangements are wholly consistent with the spirit of the Ponsonby Rule." [H.C. Deb. (1981) 4, WA 82].

With the growth of practice over the years, the Ponsonby Rule has been understood to allow for exceptions from its operation in special cases, when other means of consulting or informing Parliament can be used instead. Alternative procedures are:

- adopting a Motion;
- passing a Bill;
- making an announcement in a debate;
- adopting a resolution or a Motion as part of the Affirmative Resolution procedure for making an Order in Council;
- answering a Parliamentary Question;
- consulting leaders of the Opposition and other parliamentary parties.

However, in practice departures from the Ponsonby Rule are rare.

Explanatory Memoranda

Following an undertaking by Ministers on 16 December 1996 [H.C. Deb. (1996) 287, WA 94302; H.L. Deb. (1996) 576, WA 101], all treaties signed after 1 January 1997 and laid before Parliament under the Ponsonby Rule are now accompanied by an Explanatory Memorandum (EM). It contains a description of the subject matter of the treaty and an account of the reasons why it is proposed that the United Kingdom should become a party to the treaty. It further highlights the benefits for the United Kingdom from participation in the treaty as well as any burdens which would result. Guidelines on Explanatory Memoranda for Treaties are published on the Treaties page of the FCO web site at <http://www.fco.gov.uk/directory/treaty.asp>.

The FCO sends two copies of a Command Paper with its accompanying EM to the Clerk in Charge, Votes and Proceedings Office at the House of Commons for laying. A further copy of the Command Paper and 25 copies of its accompanying EM are sent to the Vote Office at the House of Commons for distribution to Members. Arrangements for the House of Lords are as follows: Two copies of a Command Paper and its accompanying EM are sent to the Clerk of the Parliaments at the House of Lords. One set is stamped for the attention of the 'Printed Paper Office', which also receives 2 copies of the EM direct for distribution to Members. In addition, EMs are published on the Treaties page of the FCO web site.

In its Response of 31 October 2000 to the House of Commons Procedure Committee's Second Report of Session 1999-2000, Parliamentary Scrutiny of Treaties (HC 210), the Government stated that: "The FCO will ensure that a copy of each Command Paper and accompanying Explanatory Memorandum (EM) for treaties laid before Parliament under the Ponsonby Rule is sent to what the FCO judges to be the relevant departmental select committee. It would then be for the lead committee to decide whether the Command Paper and EM might be more relevant to another committee or relevant to more than one committee and to pass it on accordingly." This practice was implemented at the start of November 2000.

Extension of the Ponsonby Period

The Government Response to the Procedure Committee further stated that: "In accordance with the Ponsonby Rule time for consideration of a treaty by a select committee should normally be within 21 sitting days, but in cases where a committee wished to conduct an inquiry that was likely to take more than 21 days, it is open to a committee to ask for an extension. The Government would aim to respond positively to such requests provided circumstances permit and cases are justified."

*Foreign and Commonwealth Office
January 2001*

I.A.2.4. Practical implementation Error! Reference source not found.

1. In person, by mail (ordinary or registered), courier or DX (Document Exchange)
2. The Legalisation Office checks signatures and seals against samples held on its electronic database. Samples are entered only after checks and enquiries have been made as to their authenticity and the capacity of the signatory. Sample signatures and seals are added and deleted from the database in this way on a continuing basis so that the list is kept up to date.
- 3.



Apostille.pdf

4. The apostille is in the form of an allonge securely glued to the document. The embossed seal of the Secretary of State is affixed in such away that its impression is apparent both on the apostille and the document itself.
5. The apostille is affixed on (or on the reverse of) the page bearing the signature, seal or stamp which is being authenticated.
6. English and French
7. The information on the apostille is completed electronically; the apostille itself is affixed manually.
8. The seal of the Secretary of State is embossed and the impression thereof is apparent on the document itself as well as the apostille which is printed on watermarked paper. Each apostille has a unique number which can be checked against the computerised database. The database itself is securely protected. If there is doubt as to the authenticity of a signature or seal submitted for legalisation proper enquiries are made and the police alerted if there is evidence of fraud.
9. The existing hardware and software is updated and replaced as necessary. The Legalisation Office is aware of the growing use of electronic signatures and of the E-apostille project. Although it is not directly involved with the project, it follows developments and, if the E-apostille system were to be implemented internationally, it would review its systems at the appropriate time.
10. The Legalisation Office offers a same day service to applicants for apostilles attending in person at its public counter. It aims to deal with postal applications within ten working days. Applications for apostilles made by DX (Documentary Exchange) are generally dealt with by the close of business on the working day following their receipt by the Legalisation Office.
11. The current fee is £19.00. The fee is fixed by Order-in-Council which is then laid before Parliament. The Order-in-Council currently in force is the Consular Fees Order 2005 (S.I.2005/1965). Any proposal to increase apostilles is initiated by the Consular Directorate of the Foreign & Commonwealth Office of which the Legalisation Office forms part. The fee for apostilles is determined in the light of overall costs for the provision by the Foreign & Commonwealth Office of Consular services generally and is intended to contribute to the recovery of those costs. It is not intended to raise revenue.

N.B. The form of apostille issued by the Legalisation Office is the same for all countries and the same procedure applies to the apostilling of documents for all Member States.

Registration/Card Index Requirement

1. The Card Index is maintained in electronic form.
2. There are no current plans to modernise the existing systems although the data is constantly updated. The system uses a dedicated software programme produced by the Foreign & Commonwealth Office.
3. The index can be consulted by direct application (in person, by post, e-mail) etc.) to the Legalisation Office.

Competent Authorities

1. The sole competent authority is the Foreign & Commonwealth Office acting through the Legalisation Office in London.
2. See below for identity and contact details.
3. The contact person is the Head of Legalisation (currently Mr. Lawrence Weldon) at the address given below.

I.A.2.5. Judicial control Error! Reference source not found.

There is an issue currently before the courts as to the whether there is any civil liability arising from the operation of the Convention. An interlocutory judgment is reported at *Weston v. Gribben* [2005] EWHC 2953

I.A.2.6. Empirical analysis Error! Reference source not found.

The Legalisation Office has made available the following statistics for the 5 day period from 12 to 16 June 2006:

Total no. of apostilles issued (all countries) 6651

of which :

Judicial documents	232
Administrative documents	1907
Notarial documents ¹	2422
Official certificates	2090

There are no statistics indicating how many of the above apostilles were issued in respect of documents intended for use in EU countries.

¹ This includes all notarial signatures/seals presented for legalisation. The Legalisation Office does not differentiate between notarial acts *stricto sensu* and notarial certificates placed on private documents.

I.A.3. Parallel international agreements

I.A.3.1. Status Error! Reference source not found.

1. 1968 Council of Europe Convention for the Abolition of Legalisation of Documents Executed by Diplomatic Agents or Consular officers – *in force since 14/8/1970*
2. 1987 Brussels Convention abolishing the Legalisation of Documents in the Member States of the European Communities – *the United Kingdom was a signatory, but the Convention has not been ratified and accordingly is not in force.*
3. The Hague Convention concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations Towards Children (1958) – *the United Kingdom is not a party.*
4. The Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965) – *in force since 10/11/1969*
5. The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (1970) – *in force since 14/9/1976*
6. The Hague Convention concerning the International Administration of the Estates of

Deceased Persons (1973) - *the United Kingdom was a signatory, but the Convention has not been ratified and accordingly is not in force for the UK.*

7. The Hague Convention on Civil Aspects of International Child Abduction (1980) – *in force since 1/8/1986*
8. The Hague Convention on International Access to Justice (1980) – *the United Kingdom is not a party*
9. The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996) - *the United Kingdom was a signatory, but the Convention has not been ratified and accordingly is not in force for the UK.*

I.A.3.2. Scope Error! Reference source not found.

1. 1968 Council of Europe Convention for the Abolition of Legalisation of Documents Executed by Diplomatic Agents or Consular officers – *extended to the Isle of Man, Guernsey and Jersey*
2. 1987 Brussels Convention abolishing the Legalisation of Documents in the Member States of the European Communities – *not in force for the United Kingdom*
3. The Hague Convention concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations Towards Children (1958) - *the United Kingdom is not a party*
4. The Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1969) – *extended to Anguilla, Bermuda, Cayman Islands, Falkland Islands, Gibraltar, Guernsey, Isle of Man, Jersey, Montserrat, Pitcairn, Saint Helena, Turks and Caicos Islands, Virgin Islands*
5. The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters – *extended to Akrotiri and Dhekelia Sovereign Base Areas (Cyprus), Anguilla, Cayman Islands, Falkland Islands, Gibraltar, Guernsey, Isle of Man, Jersey.*
6. The Hague Convention concerning the International Administration of the Estates of Deceased Persons (1973) – *not in force for the United Kingdom*
7. The Hague Convention on Civil Aspects of International Child Abduction (1980) - *extended to Bermuda, Cayman Islands, Falkland Islands, Isle of Man, Jersey, Montserrat.*
8. The Hague Convention on International Access to Justice (1988) - *the United Kingdom is not a party*
9. The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (2002) – *not in force for the United Kingdom.*

I.A.3.3. Legislative implementation Error! Reference source not found.

See response to 1.A.2.3

I.A.3.4. Practical implementation Error! Reference source not found.

1. 1968 Council of Europe Convention for the Abolition of Legalisation of Documents Executed by Diplomatic Agents or Consular officers – *no central authority designated.*
2. 1987 Brussels Convention abolishing the Legalisation of Documents in the Member States of the European Communities - *not in force for the United Kingdom*
3. The Hague Convention concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations Towards Children (1958) - *the United Kingdom is not a party*
4. The Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1969) – *Central Authority: Her Majesty's Principal Secretary of State for Foreign Affairs; other authorities(Art. 18);*

*For England and Wales:
The Senior Master of the Supreme Court
Royal Courts of Justice
Strand
LONDON WC2
England*

Tel:

*For Scotland:
The Scottish Executive Justice
Department
Civil Justice & International Division
Second Floor West
Saint Andrews House
Regent Road
EDINBURGH EH1 3DG
Scotland
tel.: +44 (131) 244 4826/9
fax: +44 (131) 244 4848*

*For Northern Ireland:
The Master (Queen's Bench and
Appeals)
Royal Courts of Justice
BELFAST 1
Northern Ireland*

5. The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters - *Central Authority: Her Majesty's Principal Secretary of State for Foreign Affairs; competent authority (Art. 18, 24)*

*For England and Wales:
The Senior Master of the Supreme Court (Queen's Bench Division)*

Tel;

*For Northern Ireland:
the Master (Queen's Bench and Appeals)
Royal Courts of Justice
Belfast 1*

*For Scotland:
The Scottish Executive Justice Department
Civil Justice & International Division
Second Floor West
Saint Andrews House
Regent Road
Edinburgh EH1 3DG
tel.: +44.131.244.4826/9
fax: +44.131.244.4848*

6. The Hague Convention concerning the International Administration of the Estates of Deceased Persons (1973) - *not in force for the United Kingdom*
7. The Hague Convention on Civil Aspects of International Child Abduction (1980)

CENTRAL AUTHORITY FOR ENGLAND AND WALES AND THE CENTRAL AUTHORITY TO WHICH APPLICATIONS MAY BE ADDRESSED FOR TRANSMISSION TO THE APPROPRIATE CENTRAL AUTHORITY WITHIN THE UNITED KINGDOM:

*The Child Abduction Unit
Official Solicitor and Public Trustee
4th Floor
81 Chancery Lane
LONDON WC2A 1DD
United Kingdom
numéro de téléphone/telephone number: +44 (207) 911 7047
(renseignements/enquiries)
numéro de télécopie/telefax number: +44 (207) 911 7248
adresse e-mail/e-mail address: -
persons to contact:*

- *Mr Matt WOOD
tel.: +44 (207) 911 7045
e-mail: matt.wood@offsol.gsi.gov.uk*
- *Ms Asma ALI
tel.: +44 (207) 911 7047*

e-mail: asma.ali@offsol.gsi.gov.uk

FOR NORTHERN IRELAND

Northern Ireland Court Service

Civil and Family Branch

21st Floor, Windsor House

9-15 Bedford Street

BELFAST BT2 7LT

Northern Ireland

United Kingdom

numéro de téléphone/telephone number: +44 (28) 90 328 594

numéro de télécopie/telex number: +44 (28) 90 314 854

adresse e-mail/e-mail address: -

person to contact:

- Ms Jane McCONNELL
(langue de communication/language of communication: anglais/English)
tel.: +44 (28) 90 328 594 ext. 2289
fax: +44 (28) 90 314 854
e-mail: janemcconnell@courtsni.co.uk

FOR SCOTLAND

Scottish Executive Justice Department

Private International Law Branch

St. Andrew's House

EDINBURGH EH1 3DG

Scotland, UK

numéro de téléphone/telephone number: +44 (131) 244 4827

numéro de télécopie/telex number: +44 (131) 244 4848

persons to contact:

- Mr Marcus HOUSTON
tel.: +44 (131) 244 4827
e-mail: marcus.houston@scotland.gsi.gov.uk

8. The Hague Convention on International Access to Justice (1988) - *the United Kingdom is not a party*
9. The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (2002) - *the United Kingdom was a signatory, but the Convention has not been ratified and accordingly is not in force*

I.A.3.5. Judicial control Error! Reference source not found.

I.A.4. National Law

I.A.4.1. Legislative framework Error! Reference source not found.

There is no requirement under English law for the legalisation of foreign documents by UK diplomatic or consular officers in order for them to be receivable before the judicial or administrative authorities in England and Wales (and, it may safely be asserted, before those authorities elsewhere in the United Kingdom). Outside the specialised and relatively small group of lawyers whose practices have an international dimension, legalisation is a largely unknown concept. Phipson on *Evidence*, the leading text-book and practitioners' manual in the evidentiary field, contains no mention of legalisation even though it deals in some detail with the admissibility of foreign public documents.

It is understood that, prior to the entry into force of the Apostille convention, legalisations could be obtained at certain British consulates. However, it seems unlikely that this would have been intended to facilitate the reception of a document in the UK, but rather as the first link in a chain of legalisations leading to the legalisation of a document for a third country – in this scenario, the second link in the chain would have been the verification of the British consular official's signature and seal by the Foreign and Commonwealth Office in London and the third and final link the legalisation of the seal of the Secretary of State by the consulate in London of the State of the document's ultimate destination. This process is still followed in the case of a large number of documents originating in British Dependent Territories (including the Crown Dependencies of Guernsey, Jersey and the Isle of Man) which have to be produced in a foreign country. In these cases, the FCO will verify the signature and seal of the Crown representative in the territory concerned (typically the Governor-General, Lieutenant Governor or a member of his staff) as a preliminary to legalisation by the Consulate of the receiving State.

Under the Commissioners for Oaths Act 1889, s.6, British diplomatic and consular officials exercising their functions in a foreign country or place :

"...may, in that country or place, administer any oath and take any affidavit, and also do any notarial act which any notary public can do within the United Kingdom; and every oath, affidavit, and notarial act administered, sworn, or done by or before any such person shall be as effectual as if duly administered, sworn, or done by or before any lawful authority in any part of the United Kingdom."

Furthermore:

(2) Any document purporting to have affixed, impressed, or subscribed thereon or thereto the seal and signature of any person authorised by this section to administer an oath in testimony of an oath, affidavit, or act being administered, taken, or done by or before him, shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person, or of the official character of that person. "

The provisions just mentioned are intended to facilitate the authentication of signatures on private documents, rather than legalisation *stricto sensu* which relates only to the verification of public documents.

Order 41, r.12 of the Rules of the Supreme Court 1965 (now repealed) had the consequence that affidavits sworn before non-Commonwealth notaries were admissible only if the signature *and authority* of the notary had been verified by a British consular official or under the seal of the local court – the verification had to state that the notary or other official was duly authorised to administer oaths in the country in which the affidavit was sworn; this requirement went beyond a mere legalisation and it is not certain that

an apostille would have satisfied it. The position has been somewhat simplified under the current rules regulating the practice of the Supreme Court which provide (Civil Procedure Rules 1998, r.32.17):

“A person may make an affidavit outside the jurisdiction in accordance with –
...
(b) the law of the place where he makes the affidavit.”

According to *Civil Procedure 2006* (the “White Book”), para. 32.17.1 :

“ In a given case, ascertaining the place where the affidavit was made should not prove too difficult; where it is necessary to do so, ascertaining whether an affidavit conforms with the law of the place where made may require proof of the relevant foreign law.”

It is therefore clear that a mere legalisation does not by itself render a document admissible before the courts of England and Wales. Moreover, in the case of documents verified by a notary, the recently introduced presumption of authenticity in relation to notarial acts (Civil Procedure Rules 1998, r.32.20) renders legalisation entirely otiose.

In the case of outgoing documents, it should be noted that the Legalisation Office of the Foreign and Commonwealth Office continues to provide a legalisation service in respect of documents for use in countries which are not parties to the Apostille convention.

I.A.4.2. Scope Error! Reference source not found.

See response to 1.A.4.1

I.A.4.3. Practical implementation Error! Reference source not found.

The legalisation procedure followed by the Legalisation Office of the FCO in respect of documents for non-Apostille convention countries is identical to that applied in the case of Convention countries.

I.A.4.4. Judicial control Error! Reference source not found.

See response to 1.A.4.1

PART I.B. Specific

I.B.1. Introduction Error! Reference source not found.

I.B.2. Specific documents

1. Documents proving involuntary unemployment Error! Reference source not found.

The Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003) (hereafter referred to as the 2006 Regulations) transpose the UK’s obligations under Directive 2004/38 EC (free movement) into domestic legislation. Applications for registration certificates and documents certifying permanent residence are made to the Immigration & Nationality Directorate of the Home Office on forms EEA1 and EEA3 respectively. “Qualified persons” for the purposes of the 2006 Regulations include workers and jobseekers, and “workers” may include persons in involuntary unemployment.

The precise documents to be submitted in support of an application will depend on the applicant's individual circumstances. However, in relation to supporting documents, forms EEA1 and EEA3 specify as follows:

“All documents should be originals. If you can't provide an original document when applying, please explain why and say when you will be able to provide it. If you provide a certified copy, it should be a copy certified by the body or authority which issued the original document, or by a notary. To resolve your application, we need to see the originals of passport(s) or ID card(s) as appropriate, and if needed to prove a family member relationship, marriage and birth certificates.”

Forms EEA2 (application for residence card by family member of non EEA national) and EEA4 (application for permanent residence by family member of non EEA national) are in identical terms.

Accordingly, it is apparent that no legalisation is required in respect of any document submitted in support of an application for proof of the entitlement of an EU citizen to reside in the UK in the exercise of Treaty rights of free movement and this would evidently extend to a document proving involuntary unemployment.

2. Documents proving a family relationship or other durable relationship Error!
Reference source not found.

The registration of births, marriages and deaths in England and Wales dates back to 1837. Since then, there have been some changes in legislation which affect day-to-day practices, but the original approach to registration and the methodologies employed remain relatively unchanged.

The General Register Office (GRO) forms part of the Office for National Statistics - an independent government agency which produces regular analysis of social, economic and business information.

Working in partnership with local authorities in England and Wales, the GRO oversees a local registration service to members of the general public. The remit of the GRO extends over a range of aspects relating to civil marriage preparation, celebration and registration and the registration of births, deaths, stillbirths and adoptions.

As well as being a legal requirement, the registration of these events enables individuals to obtain certified copies of entries in support of applications for official documentation such as passports and driving licences, and for claiming benefits and pensions. All certificates issued by the GRO can be authenticated by the UK Foreign and Commonwealth Office by way of apostille to facilitate their production overseas if required. No legalisation is required for certificates issued by the GRO for use within the UK as these certificates are held to “prove themselves” since they fall within the category

of “public documents” as that term is understood in English law (see II.A.1.1. below) which differs from the definition used for the purposes of the Apostille Convention.

In a White Paper titled “Civil Registration: Vital Change – Birth, Marriage and Death Registration in the 21st Century” presented to Parliament by the Economic Secretary to the Treasury at the beginning of 2002 the United Kingdom Government proposed wide-ranging changes to the system of civil registration in England and Wales. One of the proposed changes was to “move away from holding the traditional ‘snapshot’ of life events towards the concept of a ‘living record’”. At the present time there is no way of proving (i.e. procuring the issuance of a certificate or other documentary record confirming) an ongoing family or other durable relationship. In the United Kingdom a person’s marital status is not recorded in his or her passport or any other identity document. The same applies to civil partnerships.

In practice, where marital status is relevant the person concerned would in all probability simply be asked to state whether he or she is single, married, divorced or in a civil partnership. If evidence were to be required, the document creating the claimed status, i.e. a marriage certificate, decree absolute or civil partnership certificate would be requested. There is no way of proving or evidencing single status. If the document evidencing marital status was issued overseas, then with the exception of civil partnerships, a marriage certificate or document showing the dissolution of a marriage will be accepted at face value in the absence of obvious forgery and a translation certified by a person claiming knowledge of the relevant languages will suffice if the document is not in English. The decision as to whether documents presented in a given situation appears in general to rest with the individual reviewing the application. The absence of regulations regarding proof of the authenticity and translation of official documents places significant responsibility on that person.

3. Documents proving or contesting a parent-child relationship Error! Reference source not found.

Birth certificates

Where the parents of a new-born child are married, both parents’ names will be entered in the birth register and either parent may register the birth. If the father’s particulars are to be entered in the register when the parents are not married to each other, his particulars may only be entered if the person acknowledging himself to be the father attends and signs the register along with the mother, or, if either parent so desires, he or she may attend alone to give information for the registration and produce a statutory declaration made by the other parent acknowledging parentage, or, if the mother or father attends alone and produces a relevant court Order naming a person as putative father.

Births may be registered without any father’s particulars being shown in the register. If this is the case, then under the laws of England and Wales a birth may be re-registered to show the father’s particulars in the circumstances set out above.

Paternity

For the purposes of obtaining statutory paternity leave and paternity pay, according to the form prescribed by HM Revenue and Customs:

"You must be able to declare that

- you are*
- the baby's biological father, or*
- married to or in a civil partnership with the mother, or*
- living with the mother in an enduring family relationship, but are not an immediate relative, [...]"*

No documentary evidence is required (and thus the question of apostilles or legalization does not arise) to support this declaration but the form does point out that:

"Penalties may be charged where a person, either fraudulently or negligently, gives incorrect information or makes a false statement or declaration for the purpose of claiming entitlement to Statutory Adoption, Paternity, Maternity or Sick Pay."

The following appears on the web site of the Department for Constitutional Affairs www.dca.gov.uk:

"Paternity

Someone who wants to establish that he is the child of a particular person may apply for a declaration of parentage under section 56 of the Family Law Act 1986. This declaration is valid for all purposes, e.g. to amend a birth certificate, to establish a right to inherit property, or to acquire nationality or citizenship.

There are special arrangements for obtaining a declaration of paternity when the Child Support Agency is considering a maintenance assessment for an alleged parent who denies parentage. The Child Support Act 1991 introduced a simplified procedure for the person with care of a child (usually the mother), or the Secretary of State, to obtain a declaration of paternity which is valid for child support purposes only.

- Section 56 of the Family Law Act 1986 enables any person to seek a court declaration either:
 - o that a named person is or was his parent, or*
 - o that he is legitimate, or*
 - o that he has or has not become a legitimated person.**
- Only the 'child' in question (who may in fact be an adult) is entitled to apply for a declaration under section 56. (In practice, when the child is a minor, it is most often the mother who initiates the proceedings.) Both of the child's parents, if they are still alive, must be joined as respondents to the proceedings.*
- A declaration under section 56 is binding on the Crown and on all other persons; in other words it is binding for any purpose. The declaration is binding in time; i.e. without limit of time in the UK whether for the purpose of legal proceedings or for any other purpose. Section 56 makes no provision for a declaration from the court that a named person is not the child's parent.*
- On an application for a declaration under section 56, the court has to make the declaration where the truth of the proposition is proved to its satisfaction, unless*

to do so would be contrary to public policy. This embodies previous case law to the effect that the court would not make a bare declaration unless the evidence in support of it could be properly investigated and verified.

- *The court has jurisdiction to deal with an application under section 56 only if the applicant is domiciled in England & Wales on the date of the application or has been habitually resident in England & Wales throughout the period of one year ending with that date.*
- *When a declaration of paternity is made under the Family Law Act 1986, the court notifies the Registrar General of the declaration. Under section 14A of the Births and Deaths Registration Act 1953 the Registrar General has discretion to authorise the re-registration of the birth on the basis of the declaration; neither parent signs the new registration. The original birth registration is annotated to show that the birth has been re-registered.*
- *It is important, in these circumstances, that there are no disputes as to the court's findings under the 1986 Act. In practice, the Registrar General writes to the person named in the application for the declaration giving the details to be entered in the new birth registration, and allowing 28 days for a response before authorising the re-registration. This enables any queries about information contained in the declaration to be raised with the court before a new birth registration takes place."*

The outcome of this procedure is that paternity will be recorded at the General Register Office and thereafter be evidenced by a birth certificate. Any document issued by the court as part of the proceedings may be apostilled provided that it is an office or sealed copy, as may a birth certificate if this is required to facilitate the production of such documents overseas. It seems that the GRO will only accept a paternity declaration from a UK court and thus the production (and possible legalisation) of an overseas order need not be considered.

Adoption

An adoption order gives parental responsibility for a child to the adopters and extinguishes the parental responsibility which any other person, including the birth mother and father, has for the child immediately before making the order. The legal effect is absolute and irrevocable.

An alternative to adoption is a residence order. This results from an application for an order that a particular child should live with the applicant and his or her partner, if any. If a residence order is granted, the applicant would normally be granted parental responsibility in respect of the child, but parental responsibility would not necessarily be taken away from another person. The child would not inherit on the applicant's death unless provision is made for him or her in a will. Also the order would not give the applicant's surname to the child; the order lasts until the child's sixteenth birthday or in exceptional circumstances, his eighteenth birthday.

Both adoption and residence orders are issued by the UK courts and thus may be apostilled and/or legalised if required to facilitate their production overseas. However, in practice it is more likely that a certificate would be issued by the General Register Office with reference to the Adopted Children Register.

The Adopted Children Register is a record of all adoptions granted by courts in

England and Wales since 1927.

When a court issues an adoption order a new birth entry is made in the Adopted Children Register. This replaces the original birth entry. The order also instructs the General Register Office to ensure the original birth entry is marked "adopted".

The Adopted Children Register is not open to public inspection or search.

Overseas adoptions are generally known as Registrable Foreign Adoptions. These can be registered in the Adopted Children Register providing the adoptive parent(s) were habitually resident in England or Wales at the time of the adoption. If not, you will need to seek legal advice as to the recognition of the adoption in this country.

The following appears on the website of the General Register Office www.gro.gov.uk:

"Will I need to provide supporting documentation?

Yes, please provide the original evidence of the adoption. This could be:

- *a certified copy of an adoption entry*
- *a certificate that the adoption has been granted*

We cannot accept certified or notarized copies from solicitors (sic).

Any supporting documentation supplied should be from the organisation granting the adoption and signed by a person authorised to do so.

If the documentation is not in English a translation will be required. This must be signed and endorsed by the translator with their:

- *name*
- *address*
- *occupation*
- *and a statement that the translation is true and accurate*

If we have any queries with the application, we will contact you either by letter, email or telephone. If there are no problems your supporting documentation will be returned."

An adoption certificate is a replacement birth certificate but in an adopted person's new name. It is expected to be used by an adopted person for all legal and administrative purposes in place of the original birth certificate. The main difference between the two documents is the addition of court particulars on an adoption certificate.

All certificates issued by the General Register Office may be apostilled and/or legalised to facilitate their acceptance overseas, but as regards incoming documents the GRO does not require (or recognise) legalisation or the apostille procedure.

4. Documents proving the name and forenames of a child or adult Error!

Reference source not found.

In England and Wales an individual's name is a matter of fact. A person's name is acquired by use and reputation and may be different to the name stated on his or name birth certificate, passport or any other document.

In court and for the purposes of affidavits and statutory declarations, persons are asked to state their name under oath and no documentary evidence would normally be asked for. For affidavits the spoken oath commences "I swear by Almighty God that this is my name and handwriting ..."

It is quite common (in the case of given names) - and perfectly acceptable - for a person to be known by a name which is a middle name on official records (e.g. John Smith's passport shows his name to be "Michael John Smith") or does not appear on official records at all (e.g. John Smith's passport shows his name to be "Michael Peter Smith"). John Smith is in both cases still John Smith regardless of the name on his birth certificate or passport. This situation often causes difficulties for British citizens dealing with documentary formalities in countries where the law on names relates a person's name strictly to the name on that person's identity card.

A person may change his or her name either by adopting a new name or by reverting to a previous name without any documentary formalities. It is usual, however, if the name change is not related to a person's marriage, to execute a deed poll, which provides formal evidence (but not proof) of a change of name. A deed poll may be enrolled under the Enrolment of Deeds (Change of Name) Regulations 1994 but the applicant must be a Commonwealth citizen as defined in s. 37(1) of the British Nationality Act 1981. The deed poll is exhibited to a statutory declaration by a Commonwealth citizen who is a householder resident in the United Kingdom. The declaration states the period (not less than 10 years) during which the householder has known the applicant and identifies the applicant with the person referred to in the documents exhibited to the declaration.

The documents most commonly produced as evidence of a person's name in England and Wales are a birth certificate, a passport, a driving licence and – for the purposes of proving a change of name on marriage or divorce – a marriage certificate or decree absolute respectively. For adopted persons an adoption certificate is evidence of a change of name (see above).

Birth certificate:

Birth certificates are frequently requested as evidence of a person's name (despite the above-described situation which means that a person's name is not necessarily that set out on his or her birth certificate) partly because it is presumed that everyone has a birth certificate, whilst no such presumption exists in the case of a passport or driving licence. As noted above, certificates issued by the GRO may be apostilled for recognition overseas if necessary. The procedure for acceptance of a foreign birth certificate will be at the discretion of the authority or institution requiring its production. In general terms such documents are accepted on a "face-value" basis with documents in foreign languages requiring a translation into English (possibly "certified"²).

² TRANSLATIONS – it should be noted that there is no provision in the UK for the official recognition of translators or the official certification of translations. No academic qualifications or training is required of a person wishing to translate professionally,

Passport:

Applications for a first 10-year adult passport have to be countersigned by a person who holds a title listed below (or "someone of similar standing"):

- accountant;
- articulated clerk of a limited company
- assurance agent of recognised company
- bank/building society official
- barrister
- broker
- chairman/director of limited company
- chemist
- chiropodist
- Christian Science practitioner
- Commissioner of Oaths
- Councillor: local or county
- civil servant (permanent)
- dentist
- engineer (with professional qualifications)
- fire service official
- funeral director
- insurance agent (full time) of a recognised company
- journalist
- Justice of the Peace
- legal secretary (members and fellows of the Institute of legal secretaries)
- local government

and so on... the list is lengthy and in practice it would seem to be more difficult to find a person who is not included than to find someone who is. The original principle was clearly that the need for a trustworthy person to guarantee the credentials of the person applying for a passport was met by stipulating categories of professionals whose judgment and statements could be relied upon. The person countersigning the application form is not required to provide any evidence of his or her standing.

Passports are not a category of document which may be legalised or apostilled, but in many cases – in particular in meeting requirements imposed by money-laundering legislation – copies of passports are submitted as evidence of identity (which includes, amongst other matters, a person's name). It is the experience of the rapporteur's notarial office that notarised copies of passports requested for the purposes of production overseas (including within the European Union) are routinely apostilled (a frequent example is the client wishing to obtain an NIE number in Spain) or legalised, whereas notarised copies (or copies certified by other officials) of passports being produced within the UK are accepted at face value. The Home Office requires that certified copies of passports being submitted for the purposes of the issuance of work and residence permits be certified on every page or bound under ribbon and seal under a notarial certificate, but there appears to be no procedure for verifying the authenticity

although in some circumstances such requirements may exist, for example for membership of the Institute of Linguists or to work for particular translation agencies. Where a translation is to be produced as evidence in a UK court it is generally exhibited to a translator's affidavit and the translator may then be summonsed to the court to be cross-examined.

of the signature and/or seal and the status of the certifying officer.

In the guidance and information for caseworkers dealing with applications under the Highly Skilled Migrant Programme from applicants under 28 years of age (for whom there is special provision) there are two exceptions from the general rule that original documents must be provided in support of such an application – one relates to copies of academic articles and the second is that notarized copies of passport ID pages are acceptable. There is no reference to the location of the notary issuing the copy and no stated requirement for the notary's status to be verified by legalisation, apostille or otherwise.

Driving licence:

GB driving licences are issued by the Driver and Vehicle Licensing Authority (commonly known as the DVLA) in Swansea.

It is possible to apply for a first provisional GB driving licence online. Applicants must be resident in Great Britain and otherwise meet all relevant criteria. The DVLA generally requires original identity documents to be sent with applications. If an applicant holds a digital passport, the DVLA can capture his or her photograph and signature from the Identity and Passport Service (an executive agency of the Home Office responsible for the issuance of passports and, in the future, of ID cards as part of the National Identity Scheme).

If the applicant does not have a digital passport, then the following means of identification are specified by the DVLA to be acceptable:

full current valid passport (no reference is made to any requirement for the passport to be issued in any particular country, but if the passport is not issued within the EC or EEA then the photograph accompanying the application has to be certified by a person resident in the UK who has known the applicant for two years and who is:

*“a local business person or shopkeeper;
a librarian;
a professionally qualified person, for example a lawyers, teacher or engineer;
a police officer;
a bank or building society officer;
a civil servant;
a minister of religion;
a magistrate; or
a local councillor, a Member of Parliament, AM, MEP or MSP.”*

UK birth/adoption certificate (with photograph certified as above)

UK certificate of registry of birth (with photograph certified as above)

identity card issued by a member state of the European Community/European Economic Area (with photograph certified as above)

travel documents issued by the Home Office (with uncertified photograph)

UK certificate of naturalisation (with photograph certified as above).

If your name has changed from that shown on the document you provide, you will also need to give DVLA proof of your name change, e.g. an original marriage certificate, decree nisi or absolute, or deed-poll declaration.”

5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship Error! Reference source not found.

Marriage certificates:

Rather like names, marriages are a question of fact not a question of registration. The fact that a person in the UK holds a marriage certificate does not mean that that person is currently married. All that may be deduced from such a certificate is that the persons named therein underwent a ceremony of marriage in the manner and at the time stated: it does not mean that they are still married. Indeed either party may have since died or the parties may have been divorced and may have re-married. A person may be married under the laws of England and Wales regardless of where the marriage ceremony took place. Foreign marriages are recognised by the laws of England and Wales as described in the following passage from Dicey & Morris:

“A marriage is formally valid when (and only when) any one of the following conditions as to the form of celebration is complied with (that is to say):

- (1) if the marriage is celebrated in accordance with the form required or (semble) recognised as sufficient by the law of the country where the marriage was celebrated;
- (2) if the marriage is celebrated in accordance with the requirements of the English common law in a country where the use of the local form is impossible; or
- (3) if the marriage is celebrated in accordance with the requirements of the English common law in a country in the belligerent occupation of military forces and one of the parties is a member of those forces or of other military forces associated with them; or
- (4) if the marriage is celebrated in accordance with the provisions of the Foreign Marriage Act 1892, s.22 (as amended by the Marriage (Scotland) Act 1977, Sched. 2; and by the Foreign Marriage (Amendment) Act 1988, s.6), between parties of whom at least one is a member of Her Majesty’s Forces serving in any foreign territory (defined for these purposes so as to exclude any part of the Commonwealth³) or employed in such territory in such other capacity as may be prescribed by Order in Council; or
- (5) if the marriage, being between parties of whom at least one is a United Kingdom national, is celebrated outside the Commonwealth in accordance with the provisions of, and the form required by, the Foreign Marriage Acts 1892 to 1948, as amended by the Foreign Marriage (Amendment) Act 1988.”

³ At the present time the following countries are within the Commonwealth: Antigua and Barbuda, Australia, The Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei Darussalam, Cameroon, Canada, Cyprus, Dominica, Fiji Islands, The Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Mozambique, Namibia, Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Swaziland, Tonga, Trinidad and Tobago, Tuvalu, Uganda, United Kingdom, United Republic of Tanzania, Vanuatu and Zambia. It is worth noting that both Cyprus and Malta are now EU Member States and members of the Commonwealth.

Marriages contracted in England and Wales must be registered. It is not, however, necessary to register a marriage contracted overseas, although it may be advantageous to do so.

The central registration authority is the General Register Office and all certificates issued by this authority may be apostilled or legalized if required for production overseas.

Foreign marriage certificates, if produced in this country, will fall under the general rules for production of public documents in court (see II.A.4. below) or the internal rules of the institution or authority requiring their production. For example, the Passport Office may require sight of a marriage certificate in order to issue a passport with a person's new married name.

Civil Partnership Certificates;

The Civil Partnership Act 2004 came into operation on 5 December 2005 and enables a same-sex couple to register as civil partners of each other.

A civil partnership can be registered in England and Wales in a register office or in approved premises.

There are two types of certificate:

one which shows all the details of the civil partnership including the addresses of the partners at the time the partnership was registered

one which shows all the details of the civil partnership excluding the addresses of the partners at the time the partnership was registered

Overseas civil partnerships may not be recorded at a register office. However, an application may be made to have overseas civil partnership documents – with translations if necessary – sent from the country where it took place and deposited with the General Register Office at Southport.

Two conditions apply:

(a) the civil partnership has to have taken place in one of the countries from which the General Register Office can accept formal notifications (see below)

(b) one of the partners must be a British citizen – and only that person can apply to deposit the details.

Applicants can opt to arrange to create a record of an overseas civil partnership at any time after it has taken place – there is no time limit. The General Register Office only accepts original documents, or certified copies issued by the foreign authority, and only the consul for the district where the civil partnership took place can send the documentation

Overseas civil partnership documents which have been deposited with the General Register Office are recorded in the public indexes for research and certificate application purposes. From this point on, the General Register Office can issue certified copies of the documents – which may be apostilled or legalised if required to facilitate their production overseas.

Countries from which the General Register Office can accept formal notifications:

Belgium	France	Norway
Canada	Germany	Spain
Denmark	Iceland	Sweden
Finland	Netherlands	United States of America

Decrees Absolute:

In England and Wales the only documentary proof of divorce is a court order known as a decree absolute. Office or sealed copies of decrees absolute may be apostilled or legalized to facilitate their acceptance overseas. Documents proving a divorce which took place overseas being produced in this country would fall under the general rules for production of public documents in court (see II.A.4. below) or the internal rules of the authority requiring production of such document.

The equivalent for a civil partnership is a final order dissolving the civil partnership and this is also issued by a court.

6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities Error! Reference source not found.

The rapporteur is not aware of any requirement by any authority or professional body in the United Kingdom for the legalisation of documents of this nature.

7. Documents proving a person's professional qualifications (diplomas) Error! Reference source not found.

The rapporteur is not aware of the existence of any requirement by any United Kingdom professional body for the legalisation of diplomas, certificates and other evidence of formal qualifications issued in Member States outside the UK submitted in support of an application for recognition of those qualifications in the UK. The following examples in relation to specific professions are illustrative of the approach taken by professional bodies in the UK:

(i) Law Society

When a qualified European lawyer wishes to practise as a solicitor in England and Wales he/she must take the Qualified Lawyers Transfer Test. In order to be eligible to take this test, that lawyer must provide the Law Society with the following documentation:

- "a) A certified copy of your original certificate(s) showing the higher education academic qualifications that you have been awarded (e.g. degree certificate/post graduate diplomas/legal education certificates).
- b) A certified copy of your original certificate evidencing your professional qualification(s)(e.g. Bar exams etc.).
- c) A certified copy of your original certificate of admission/call.

d) An original certificate or certificates from your professional body or home court confirming:

Your date of admission to the professional body and/or home court.

That you are of good character and repute.

That neither has there been nor are there any proceedings pending against you for professional or other misconduct.

Whether or not you are currently entitled to practise in your home jurisdiction, and if not, the reason for this.

Please note that the above document must be an original, to be received by the Society within three months of the date of issue.

e) Official translations to be attached to ALL documents submitted which are not in English. [these must be certified by a lawyer or notary or a reputable translator]...”

SOURCE:

<http://www.lawsociety.org.uk/documents/downloads/becomingqlltapplicgreen.pdf>

The Law Society does not require any of this evidentiary documentation to be legalised.

(ii) Bar Council

Similarly, a qualified European lawyer wishing to practise as a barrister in England and Wales must provide the Bar Council with the following documentation:

- i) Original or certified copy of the diploma/certificate entitling you to practise in your home jurisdiction
- ii) Original or certified copy of any other certificates on which you wish to rely
- iii) English translations of any documents in i) or ii) that are in a language other than English
- iv) Any evidence on which you rely to demonstrate that you are of good character and repute
- v) Particulars of any previous application which you may have made under CR30”

Source:

http://www.legaleducation.org.uk/downloads/european_lawyers_notes_for_guidance.doc

The Bar Council does not require any of this evidentiary documentation to be legalised.

(iii) General Medical Council

All doctors who wish to practise medicine in the UK must be registered with the General Medical Council (GMC).

Amongst other things, a foreign EU national who wishes to register with the GMC must submit the following:

- a. evidence of good standing

- b. proof of identity
- c. evidence of qualifications
- d. official and original translations of any documents not in English

Depending on the European country where the individual qualified, the GMC require specific evidentiary documents such as diplomas and other certificates. In all cases, however, the GMC require sight of original documents. They do not accept photocopies or notarised copies of documents.

Any documents not issued in English must be accompanied by an English translation. The translation must be made directly from the original document and not from a certified copy and must bear a seal or stamp, showing that the translation has been prepared by an official translator of a translation service or a Consulate/Embassy office.

Source: http://www.gmc-uk.org/doctors/join_the_register/eea_nationals_in.asp

However, in no situation does the GMC require documentary evidence to be legalized.

In relation to academic institutions, It is the experience of the notarial office in which the rapporteur practises that UK Universities accept foreign academic certificates at face value. Given that students will frequently apply to more than one university at a time, universities generally have to accept certified copies of academic certificates within the application process. Notarised copies are certainly acceptable, as in all probability would be copies certified by a solicitor or the issuing academic institution. To the knowledge of the rapporteur no UK university imposes any form of requirement relating to legalisation or apostilles under the Hague Convention.

8. Documents proving a person's death Error! Reference source not found.

The rapporteur is not aware of any requirements of the Department for Work and Pensions (DWP) for legalisation of documents that prove a person's death. Documentation that proves a person's death is by way of a death certificate. In the context of social security, certain benefits, such as bereavement benefit, may be claimed as a result of a relative's death and therefore require the production of an original death certificate. Photocopies are not accepted. Only in cases where it is difficult to prove a person's death (for example, natural disaster) would the DWP accept secondary evidence. The evidence required depends on the individual circumstances of the applicant.

Translations of death certificates are not normally required, as long as the individual is easily identifiable and the decision making officer is satisfied with the content of the certificate. If a translation is required the applicant is not responsible for obtaining a translation of the certificate. The DWP use its own source of translators and therefore there is no requirement for certification or legalisation of the translation.

The following may be found on the website of the Department of Work and Pensions www.dwp.gov.uk:

"If the death occurred abroad, or on a foreign ship or aircraft, you should register the

death according to the local regulations of that country and get a Death Certificate. Also register the death with the British Consul so that a record of the death will be kept in England. You will be able to get a copy of the Death Certificate from the consulate later or from the:

*Overseas Registration Section
Smedley Hydro
Trafalgar Road
Birkdale
Southport
PR8 2HH*

You can arrange a local burial or cremation. The British Consul in that country can register the death and a record will be kept at the Overseas Registration Section..

You may be able to bring the body back to England or Wales.

You will need the Death Certificate from the place the person died, or an authorisation for the removal of the body from the country of death from the coroner or relevant authority.

To arrange a funeral in England or Wales you will need:

- an authenticated translation of a foreign Death Certificate, or*
- a Death Certificate issued in Scotland or Northern Ireland.*

(these must show the cause of death)

and a Certificate of No Liability to Register from the registrar in England and Wales, in whose sub-district it is intended to bury or cremate the body.

To arrange a cremation in England or Wales, where the death occurred abroad, you will need a cremation order from the Home Office or a form E from the coroner.

If the death was from natural causes, the Home Office will issue an order on production of the application for cremation (form A) and original documents (which must clearly state the cause of death) from the country where death occurred.

The Home Office may require authorised translations of documents in some foreign languages.”

9. Documents proving a person’s date of birth Error! Reference source not found.

In the context of social security, the Department of Work and Pensions (DWP) requests a birth certificate to prove a person’s date of birth. EEA nationals applying for State pension or bereavement benefits must produce an original certificate of birth to the DWP: however, if multiple benefits are claimed, an original certificate will only have to be produced when making the first claim. Thereafter the information is held in the DWP’s database. Photocopies are not accepted.

An increasing number of applicants for social security are EEA nationals born outside the UK. In the event that the country in which they were born does not have a formal registration system a certificate of birth will not be available. In such cases the DWP will require secondary evidence depending on the individual’s circumstances. Such secondary evidence includes passports, identity cards, baptism certificates or marriage certificates. In the event that a certificate of birth has been lost, but the event was registered, the DWP does not ask individuals to obtain a certified copy from the relevant registry. The DWP has explained that this is because the applicant usually has limited

resources: accordingly, the DWP will accept secondary evidence as listed above.

Translations of the above mentioned documents are not normally required by the DWP, and, as in the case of death certificates, it is the responsibility of the officer assessing the claim to satisfy himself of the contents of the information given. If translations are required the DWP will use its own network of translators: accordingly, there is no requirement for the certification or legalisation of the translations. Similarly, the original documents themselves do not require to be legalised or apostilled in order to be accepted by the DWP.

Note also that the guidance and information for Home Office caseworkers dealing with applications under the Highly Skilled Migrant Programme states that all documents submitted as evidence in support of an application must be originals with two exceptions – one of these being that notarised copies of the person details of an applicant's passport are accepted as evidence of age (for applicants who are under 28 years old). The guidance contains no reference to apostilles or legalisation in relation to this requirement, although there is a note stating that where a document is not in English the original must be accompanied by a "fully certified" translation by a "recognised translator" (without any definition of the two terms in quotation marks).

In day-to-day life, the documents an individual commonly produces in order to prove his date of birth are a birth certificate, passport or driving licence. There are also various schemes intended for young adults which provide proof-of-age cards. Generally these simply avoid the inconvenience of carrying a passport or birth certificate when proof of age is needed, usually for the purchase of tobacco, alcohol or other age-restricted merchandise. There is an organisation called PASS which approves the various local and national schemes and provides for some uniformity of procedure and appearance of the cards. They are not intended for use overseas

**10. Documents proving the establishment by incorporation of a company Error!
Reference source not found.**

Registration of a branch of an overseas company at Companies House

Schedule 21A, paragraph 1 of the Companies Act 1985 requires that an overseas company opening a branch in Great Britain must file a return containing particulars of the company and of the branch with the Registrar of Companies accompanied by certain documentation, including a certified copy of the instrument constituting or defining the constitution of the foreign company and the latest accounts . The return is made on Form BR1 as prescribed by The Companies (Forms) (Amendment) Regulations 2002 which specifies that copies of the constitutional documents and the latest accounts must be certified in the place of incorporation to be a true copy by:

- (a) an official of the Government in whose custody the original is committed; or
- (b) a notary public; or
- (c) an officer of the company on oath taken before

- (i) a person having authority in that place to administer an oath; or
- (ii) any of the British officials mentioned in section 6 of the Commissioners for Oaths Act 1889 (these include British consular officials in the exercise of the notarial functions conferred by this section).

If the constitutional documents of the company or the latest accounts and reports are not written in the English language, they must be accompanied by a certified translation. This must be done in the following manner:

(a) if the translation is made in the United Kingdom, by:

- (i) a notary public in any part of the United Kingdom;
- (ii) a solicitor (if the translation was made in Scotland, a solicitor of the Supreme Court of Judicature of England and Wales (if it was made in England or Wales), or a solicitor of the Supreme Court of Judicature of Northern Ireland (if it was made in Northern Ireland); or
- (iii) a person certified by a person mentioned above to be known to him to be competent to translate the document into English; or

(b) if the translation was made outside the United Kingdom, by:

- (i) a notary public;
- (ii) a person authorised in the place where the translation was made to administer an oath;
- (iii) any of the British officials mentioned in section 6 of the Commissioners for Oaths Act 1889;
- (iv) a person certified by a person mentioned above known to him to be competent to translate the document into English.

See: <http://www.companieshouse.gov.uk/forms/foreignForms/br1.pdf>

However, the Registrar does not require either the copies of the constitutional documents or their translation to be legalized.

11. Documents proving the constitution of a company, including any official translation thereof Error! Reference source not found.

See 10.

12. Documents proving the latest banking accounts of a company Error! Reference source not found.

See 10.

13. Documents proving the deposit of cash or certificates of deposit Error! Reference source not found.

Implementation of EC Directive 88/361/EEC is by way of The Movements of Capital (Required Information) Regulations 1990 (SI 1990/1671). This regulation specifies the information that must be given to the Commissioners of the Inland Revenue by the non-resident body corporate. Such information includes, *inter alia*, the territory from the laws of which the body corporate derives its status as a body corporate and the nature of its trade or business. No legalisation requirements are specified.

Deposits of cash are generally made electronically. The rapporteur is not aware of any documents that are issued as a result of depositing cash electronically and which might legalisation.

PART II – Incoming documents: Effects in the Member State’s legal order

OVERVIEW OF PART II [Error! Reference source not found.](#)

II.A.1. European Community Law

II.A.1.1. The effect of the implementation of Community law [Error! Reference source not found.](#)

The term “public document” has a narrower meaning in the English law of evidence than that in which it is understood in civil law jurisdictions and is accorded to it by the Apostille convention. In England and Wales, the categorisation and admissibility of public documents is now largely governed by statute, but the basic rule is that :

“A public document coming from the proper place or a certified copy of it is sufficient proof of every particular stated in it.” (*Wilton & Company v. Phillips* (1903)19 T.L.R. 390).

Under English law the category of public documents is chiefly limited to public registers, reports and acts made under public authority and in relation to matters of public interest and concern. Thus, under English law, a certified copy of an entry of birth issued by the General Register Office is a public document, but a notarial instrument is not.

Accordingly, it is impossible to compare the status of a public document in the English domestic sense with the documents described in the Community instruments in question, in particular to the extent that in some cases (e.g. authentic instruments) the latter may have no English equivalent.

However, the Community instruments are fully implemented into English law and the documents described therein are admitted and acted upon by the English courts without distinction between Member States. The English courts have never required any category of foreign public document to be legalised and, to that extent, the existence of the Community instruments has not altered English practice. By way of illustration, for the purposes of the enforcement in the United Kingdom of judgments in accordance with Council Regulation (EC) No. 44/2001, the Civil Jurisdiction and Judgments Order 2001, SI 2001/3929, Sch.1, para. 8(1) provides:

8. - (1) For the purposes of the Regulation –

(a) a document, *duly authenticated*, which purports to be a copy of a judgment given by

Legalisation Study Project Questionnaire: Page 34 18/07/2007 Confidential

a court of a Regulation State other than the United Kingdom shall without further proof be deemed to be a true copy, unless the contrary is shown; and

(b) a certificate obtained in accordance with Article 54 and Annex V shall be evidence, and in Scotland sufficient evidence, that the judgment is enforceable in the Regulation State of origin.

(2) A document purporting to be a copy of a judgment given by any such court as is mentioned in sub-paragraph (1)(a) *is duly authenticated* for the purposes of this paragraph if it purports –

(a) *to bear the seal of that court; or*

(b) *to be certified by any person in his capacity as a judge or officer of that court to be a true copy of a judgment given by that court.*

II.A.1.2. Admissibility and evidentiary weight in judicial proceedings Error! Reference source not found.

See II.A.1.1.

II.A.1.3. Admissibility and evidentiary weight in administrative matters Error! Reference source not found.

English public authorities have never required legalisation of foreign public documents; accordingly, the existence of the Community instruments does not affect administrative practice in that respect.

II.A.2. Hague Convention of 5 October 1961 (the ‘Apostille’ Convention)

II.A.2.1. The effect of completion of the requirements of the Hague Convention Error! Reference source not found.

Again, the lack of congruence between the term “public document” as understood in English law and as employed in the Apostille convention (see II.A.1 above) creates an element of confusion. Since legalisation has never been a precondition for the admissibility of foreign documents before the English courts, the mere addition of an apostille does not operate to render a document admissible which would not otherwise be so in accordance with the rules of evidence as applied by those courts. The approach of English courts to foreign public documents generally will be discussed at II.A.4. below.

II.A.2.2. Admissibility and evidentiary weight in judicial proceedings Error! Reference source not found.

See II.A.2.

II.A.2.3. Admissibility and evidentiary weight in administrative matters Error! Reference source not found.

English public authorities have never required legalisation of foreign public documents; accordingly, the existence of the Apostille convention has had no effect on administrative practice in that respect.

II.A.3. Parallel international agreements

II.A.3.1. The effect of completion of the requirements of parallel agreements Error! Reference source not found.

The fact that the parallel international agreements may remove the requirement for legalisation has no effect on English judicial or administrative practice for the reasons indicated in II.A.1 and II.A.2 above.

II.A.3.2. Admissibility and evidentiary weight in judicial proceedings Error! Reference source not found.

See II.A.3.1

II.A.3.3. Admissibility and evidentiary weight in administrative matters Error!
Reference source not found.

See II.A.3.1

II.A.4. National Law

II.A.4.1. The effect of the completion of the requirements of national law Error!
Reference source not found.

The confusion over the meaning of “public document” has already been mentioned. The position is further complicated by the fact that English law contains no body of rules dealing with the admissibility of foreign public documents generally. Accordingly, in this section, the question of the admissibility of foreign public documents (in the English sense of that term) will be illustrated by reference to registers of births, deaths and marriages and judicial documents. It has already been explained that an apostille or legalisation is not required to secure admissibility of a document before the judicial or administrative authorities in England and Wales – nor does the addition of an apostille or legalisation assist in securing admissibility.

Registers

The general rule at common law is that registers or certified extracts kept outside England and Wales are admissible “as to those matters which are properly and regularly recorded on them” when it *sufficiently appears* that they have been kept under the sanction of a public authority and are recognised by the tribunals of their own country as authentic records. (see Phipson on *Evidence*, 16th edition, para 32-67 and the cases therein referred to). The common law rule is preserved by the Civil Evidence Act 1995, s. 7(2). The effect of this rule is that expert evidence may be required to determine whether certificates etc emanating from a particular register meet the criteria for admissibility. The effect of this rule has been mitigated in respect of the registers of a number of overseas jurisdictions by the Evidence (Foreign, Dominion and Colonial Documents) Act 1933 and the Oaths and Evidence (Overseas Authorities and Countries) Act 1963. Under these statutes, orders have been made enabling matters entered in those registers to be accepted in evidence as proof of the facts recorded. The scope of the orders varies according to the jurisdiction concerned, (See generally Phipson *op. cit.* para 32-74). In respect of the United Kingdom’s EU partners it appears that orders have been made in relation to the following Member States:

(under the 1933 Act)

Belgium (S.R. & O. 1933 no. 838)

France (S.R. & O. 1937 no. 515)

(under the 1963 Act)

Denmark (S.I. 1969/144)

Germany (S.I. 1970/819)

Ireland (S.I. 1969/1059)

Italy (S.I. 1969/145)

Luxembourg (S.I. 1972/11116)

The Netherlands (S.I. 1970284)

Judicial documents

By the Evidence Act 1851, s. 7, all judgments, decrees, orders and other judicial proceedings of any court of justice in *any foreign state* may be proved either by examined copies, or copies purporting to be sealed with the seal of the court to which the originals belong, or where there is no seal signed by the judge with a statement in

writing that the court has no seal. See generally Phipson *op. cit.* para. 41-42 and Part 74 of the Civil Procedure Rules 1998.

Documents for production to administrative authorities

In the case of incoming documents administrative authorities generally adopt one or more of the following approaches:

1. The person making an application or otherwise wishing to rely on a document is asked to swear an affidavit or make a statutory or other declaration which imposes harsh penalties for giving false information;
2. A person of standing in the community is asked to “guarantee” the information provided by the applicant;
3. Original documents are accepted at their face-value unless manifestly forgeries. If the information in a document were to raise any questions, rather than ask for authentication of the document in question a UK authority would be much more likely to ask for further corroborating documents.

II.A.4.2. Admissibility and evidentiary weight in judicial proceedings Error! Reference source not found.

See II.A.4.1. Full faith and credit are given to the categories of public documents embraced by the statutes and statutory instruments mentioned in II.A.4.1

II.A.4.3. Admissibility and evidentiary weight in administrative matters Error! Reference source not found.

See II.A.4.2

See III.A.1.1

PART III – Incoming documents: Difficulties

OVERVIEW OF PART III Error! Reference source not found.

PART III.A. General

III.1. Hague Convention of 5 October 1961 (the ‘Apostille’ Convention)

III.A.1.1. Legal Error! Reference source not found.

As already explained, legalisation (whether by way of apostille or otherwise) is not required by the laws of England and Wales in order that a document may be admissible in judicial proceedings or submitted to an administrative authority. Accordingly, the question of difficulties (whether of a legal or practical nature) in relation to the legalisation of incoming documents does not arise.

III.A.1.2. Practical Error! Reference source not found.

See III.A.1.1

III.2. Parallel international agreements See III.A.1.1

III.A.2.1. Legal Error! Reference source not found.

See III.A.1.1

III.A.2.2. Practical Error! Reference source not found.

See III.A.1.1

III.3. National law

III.A.3.2. Legal Error! Reference source not found.

See III.A.1.1

III.A.3.3. Practical Error! Reference source not found.

See III.A.1.1

PART III.B. Specific

Since questions of apostilling and legalisation do not arise in the UK in the context of incoming documents it is not proposed to answer 1 to 13 of this Part. Any difficulties and confusion in relation to incoming documents are dealt with elsewhere in this questionnaire.

1. Documents proving involuntary unemployment

See note above.

2. Documents proving a family relationship or other durable relationship

See note above.

3. Documents proving or contesting a parent-child relationship

See note above.

4. Documents proving the name and forenames of a child or adult

See note above.

5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship

See note above.

6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities

See note above.

7. Documents proving a person's professional qualifications (diplomas)

See note above.

8. Documents proving a person's death

See note above.

9. Documents proving a person's date of birth

See note above.

10. Documents proving the establishment by incorporation of a company

See note above.

11. Documents proving the constitution of a company, including any official translation thereof

See note above.

12. Documents proving the latest banking accounts of a company

See note above.

13. Documents proving the deposit of cash or certificates of deposit

See note above.

PART IV – Outgoing documents: Difficulties

OVERVIEW OF PART IV Error! Reference source not found.

PART IV.A. General

IV.A.1. Hague Convention of 5 October 1961 (the 'Apostille' Convention) Error! Reference source not found.

IV.A.1.1. Legal Error! Reference source not found.

There is no difficulty of a legal nature to report in relation to the procedures carried out by the Legalisation Office, save perhaps to state that the interpretation by the Legalisation Office of what constitutes a "public document" for the purposes of the Apostille convention is perhaps more liberal than in certain other States parties. For example, it is the practice of the Legalisation Office to affix apostilles to certificates signed by solicitors appearing on private documents in verification of signatures etc. The justification for legalisation of these quasi-notarial acts is that solicitors are "officials connected with the courts" for the purposes of article 1 of the Convention. This interpretation may be strictly correct, but may lead to uncertainty in a receiving jurisdiction as to whether or not, in the absence of a notarial certificate, the document is

properly authenticated. In the rapporteur's view, the addition of an apostille to a document verified by a solicitor incorrectly attributes to the solicitor the role of independent certifying officer which properly belongs to the notary. It is also understood that apostilles are placed on certificates signed by medical practitioners registered in the United Kingdom.

IV.A.1.2. Practical Error! Reference source not found.

The procedures operated by the Legalisation Office are generally efficient although arguments could be made for boosting staff levels and extending opening hours. Contrary to the position in many other States parties to the Apostille Convention there is only one apostilling authority for the whole of the United Kingdom – the effect of this is that applicants for apostilles requiring a same-day service may have to travel long-distances and incur the concomitant expense. However, there is little evidence (anecdotal or otherwise) that this represents a problem so major as to require the substantial disbursement of public funds which would be involved if legalisation counters were to be opened in ,say, Edinburgh, Cardiff and Belfast.

The rapporteur has on occasion recommended to the Legalisation Office the introduction of a two-tier tariff – one for a “while you wait service “ which might chiefly appeal to corporate customers and a 24 hour service at a considerably lower tariff which might be more appropriate for individuals.

IV.A.2. Parallel international agreements Error! Reference source not found.

IV.A.2.1. Legal Error! Reference source not found.

There are no difficulties to report.

IV.A.2.2. Practical Error! Reference source not found.

There are no difficulties to report.

IV.A.3. National law Error! Reference source not found.

IV.A.3.1. Legal Error! Reference source not found.

For reasons already explained, questions of legalisation do not arise in England and Wales under “national” law.

IV.A.3.2. Practical Error! Reference source not found.

See IV.A.3.1

PART IV.B. Specific

1. Documents proving involuntary unemployment

Save as may be mentioned elsewhere in this questionnaire, the rapporteur is not aware of any difficulties.

2. Documents proving a family relationship or other durable relationship

Save as may be mentioned elsewhere in this questionnaire, the rapporteur is not aware of any difficulties.

3. Documents proving or contesting a parent-child relationship

Save as may be mentioned elsewhere in this questionnaire, the rapporteur is not aware

of any difficulties.

4. Documents proving the name and forenames of a child or adult

Save as may be mentioned elsewhere in this questionnaire, the rapporteur is not aware of any difficulties.

5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship

Save as may be mentioned elsewhere in this questionnaire, the rapporteur is not aware of any difficulties.

6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities

Save as may be mentioned elsewhere in this questionnaire, the rapporteur is not aware of any difficulties.

7. Documents proving a person's professional qualifications (diplomas)

Save as may be mentioned elsewhere in this questionnaire, the rapporteur is not aware of any difficulties. However, it may be noted that, in response to concern over the recent appearance of "lifestyle" or "online" universities offering apparently genuine academic qualifications without any academic course, the UK Foreign and Commonwealth Office has adopted a policy of issuing apostilles to public documents relating to academic certificates only if such certificates were, on the face of it, issued by academic institutions accredited in the United Kingdom (regardless of the form of certification qualifying the document as "public" under the Hague Convention).

The following appears on the website of the UK Foreign and Commonwealth Office www.fco.gov.uk:

"We will only legalise academic certificates or documents, which refer to qualifications from an accredited UK institution. The legalisation office will check the qualifications/institutions against lists of accredited providers available from the Department of Education and Skills, the British Accreditation Council for independent Further and Higher Education and the Open and Distance Learning Quality Council.

Academic documents must also be signed by a practising UK solicitor or notary public. When signing the document the solicitor/notary can confirm that the document is genuine after performing their own checks or sign a photocopy of the document confirming it is a true copy of an original document."

8. Documents proving a person's death

Save as may be mentioned elsewhere in this questionnaire, the rapporteur is not aware of any difficulties.

9. Documents proving a person's date of birth

Save as may be mentioned elsewhere in this questionnaire, the rapporteur is not aware of any difficulties.

10. Documents proving the establishment by incorporation of a company

Save as may be mentioned elsewhere in this questionnaire, the rapporteur is not aware of any difficulties.

11. Documents proving the constitution of a company, including any official translation thereof

Save as may be mentioned elsewhere in this questionnaire, the rapporteur is not aware of any difficulties. However, the following may be noted:

When a company is first incorporated a "certificate of incorporation" is issued by the appropriate Registrar (for England and Wales, for Scotland or for Northern Ireland). If a company changes its name, a "certificate of incorporation on change of name" is issued. Companies House will also issue certified copies of these certificates and certificates confirming the incorporation details of a company.

Certificates issued by Companies House are stamped or electronically signed but they will not be accepted by the Foreign and Commonwealth Office for the purpose of issuing apostilles.

Companies House will issue "certified certificates" signed by an officer on behalf of the appropriate Registrar which are accepted for the purpose of issuing apostilles.

12. Documents proving the latest banking accounts of a company

Save as may be mentioned elsewhere in this questionnaire, the rapporteur is not aware of any difficulties.

13. Documents proving the deposit of cash or certificates of deposit

Save as may be mentioned elsewhere in this questionnaire, the rapporteur is not aware of any difficulties.

PART V – Justification of legalisation or other similar or equivalent requirements identified in Part I

PART V.A. General

V.A.1. Hague Convention of 5 October 1961 (the ‘Apostille’ Convention)

V.A.1.1 Requirements and procedures Error! Reference source not found.

As far as the United Kingdom is concerned, the need for legalisation only arises in the context of outgoing documents and then only in cases where that formality is a prerequisite to the acceptance of a document by the judicial or administrative authorities in the receiving State. From the English practitioner’s viewpoint, the legalisation process chiefly comes into play at the interface of the common and civil law systems. In civil law jurisdictions there is greater reliance on the written record and considerable formality attaches to the preparation and authentication of documents whether in the context of court proceedings or of transactions involving the acquisition, alienation or charging by way of security of immoveable property or registered moveables such as ships or aircraft. In the majority of the United Kingdom’s partners in the EU, the notarial system is entrenched. The notarial system is based on legal certainty and that certainty can only be assured within the context of a rigid system of rules, regulating, for example, how a person may be a party to a notarial act through an agent or attorney – this will often involve the execution of a notarial power of attorney which will only be acceptable to the notary in the receiving jurisdiction if it bears an apostille. In common law countries, there is a tradition of orality in the presentation of evidence to their courts, less reliance on formality and greater flexibility in the range of written evidence which is admissible, particularly since the entry into force of the Civil Evidence Act 1995 which abolished the hearsay rule in civil proceedings and introduced a wide category of self-proving documents. Numerous presumptions exist under the English evidentiary rules which mean that copies of documents (or even copies of copies) may be adduced in court proceedings (often in the form of “bundles” agreed by the parties) and are admitted in evidence unless and until they are challenged by the opposing party. Likewise, the execution of documents and deeds (for example relating to the sale of real property) is accompanied by relatively little formality.

Accordingly, from a UK perspective the requirement for legalisation of a document emanating in the UK for production in another Member State is inevitably discriminatory. However, this is only one facet of the asymmetry inherent in a European Union where two fundamentally different legal systems have to co-exist. In this light, the inconvenience and expense caused by the need for a document’s legalisation might seem an insignificant price to pay for the certainty which the legalisation provides to the judicial and administrative bodies in the receiving Member State. The fact that all Member States except Denmark (a country which in the rapporteur’s experience does not insist on legalisation of UK documents) are parties to the Apostille Convention has greatly simplified the legalisation process to the extent that it represents at most an irritation rather than a major bar to the exercise of Community rights. It must also be borne in mind that civil law countries place far greater importance on the integrity of their public records than is the case in the UK. The informality, for example, of the system for filing documents at the Companies Registration Office is promoted as “business-friendly”, but has resulted in corporate identity theft on a not insignificant scale; this situation contrasts markedly with that prevailing in Member States such as Germany and Spain where most documents submitted for filing at commercial registers are required to be in notarial form and, if executed before a UK notary, apostilled.

It is inevitable that, where documents circulate over large culturally diverse geographical

areas with divergent legal systems, procedures need to be put in place to enable recipients of those documents to be certain of their authenticity – hence, a notarial system came into being at an early stage in the development of the United States of America and (despite the many shortcomings of the system there) continues to thrive. It is therefore scarcely surprising that within the EU, where far less homogeneity exists between the legal systems of its constituent States and with 20 official languages, some form of instantly recognisable “passport” should be required in order to enable important legal documents to circulate within the Community – from this point of view, the Apostille system can be seen as a protection for the citizen against the risk of fraud. Also, in the context of anti-money laundering legislation, financial sector bodies are required to make ever more rigorous checks when dealing with new clients. In the rapporteur’s experience. It is increasingly the case that compliance departments may seek the assurance of an apostille where account opening documents are submitted by persons resident (or companies incorporated) in another country, whether or not within the EU.

V.A.1.2 Effects rules Error! Reference source not found.

Since apostilling or legalization is not a requirement for the production of documents in the United Kingdom it is not to proposed to answer the remainder of Part V.

V.A.2. Parallel international agreements

V.A.2.1 Requirements and procedures Error! Reference source not found.

See note above.

V.A.2.2 Effects rules Error! Reference source not found.

See note above.

V.A.3. National law

V.A.3.1 Requirements and procedures Error! Reference source not found.

See note above.

V.A.3.2 Effects rules Error! Reference source not found.

See note above.

PART V.B. Specific

1. Documents proving involuntary unemployment

See note above.

2. Documents proving a family relationship or other durable relationship

See note above.

3. Documents proving or contesting a parent-child relationship

See note above.

4. Documents proving the name and forenames of a child or adult

See note above.

5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship

See note above.

6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities

See note above.

7. Documents proving a person's professional qualifications (diplomas)

See note above.

8. Documents proving a person's death

See note above.

9. Documents proving a person's date of birth

See note above.

10. Documents proving the establishment by incorporation of a company

See note above.

11. Documents proving the constitution of a company, including any official translation thereof

See note above.

12. Documents proving the latest banking accounts of a company

See note above.

13. Documents proving the deposit of cash or certificates of deposit

See note above.

PART VI – Suggested action

OVERVIEW OF PART VI Error! Reference source not found.

VI.1. European Error! Reference source not found.

The rapporteur would commence by querying the extent to which the apostille system does in fact represent a major impediment in the context of intra-Community relations and a hindrance to the exercise of Community rights. One should not lose sight of the fact that the purpose of the Hague Convention of 5 October 1961 was to facilitate the circulation of documents internationally, not to hamper it. The rapporteur recalls, when he became a notary in 1980, the difficulties, delays and uncertainties caused by the legalisation process as administered by the consulates of number of countries which then or now are the United Kingdom's partners in the European Community and have since ratified the Apostille convention. The apostille system, at least as administered by the Legalisation Office in London, provides a reasonably efficient service which, certainly in the context of high value transactions, represents value for money.

It is necessary to bear in mind the fact that the European Community, particularly as recently expanded, embraces a huge variety of legal systems which, at the present stage of the Community's development, contain disparities in professional and ethical standards. Business procedures inevitably vary amongst the Member States and cultural and linguistic differences represent in themselves a *de facto* barrier to the free circulation of documents within the Community. If the eradication of the apostille system were considered more of a priority by Member State governments it is perhaps curious that the 1987 Brussels Convention, which calls for the abolition of the legalisation of documents within the European Community, has failed to achieve the necessary number of ratifications in order to come into force. It is apparent to the rapporteur that Member States regard the prevention of fraud and the integrity of their public records to be a greater priority than removing the minor irritation caused to citizens and enterprises within the Community on those relatively few occasions when apostilles may be required.

The free international circulation of documents depends on their being in a standard format and as easily recognisable as, say, a bank-note or an apostille. As an initial step, the standardisation of certain categories of documents, e.g., civil status certificates, might lead to the removal of the need for apostilles in some cases. The vast majority of legal documents circulating within the community are, however, of a heterogeneous nature and scarcely susceptible to standardisation. With a view to achieving standardisation of certain routine legal documents, the International Union of the Latin Notariat published some years ago uniform forms of power of attorney in a number of European languages; in the rapporteur's experience these are rarely used.

One possible approach would be to remove the requirement for the legalization of notarial acts circulating within the Community. However, the role of the notary is not uniform within the Community and notaries practising in common-law jurisdictions are still viewed with some wariness by their civil law counterparts. Within the United Kingdom, only the thirty or so scrivener notaries (who practise almost exclusively in

Central London) have been admitted to the International Union of the Latin Notariat and are thus considered to be “civil law” notaries in the Romano-gothic tradition.

Interestingly, the United Kingdom has taken unilateral steps under the Oaths and Evidence (Overseas & Countries) Act 1963 (see paragraph II.A. above) to admit in evidence the registers of a number of European countries. This might be a useful precedent for other Member States if action at a Community level is not taken.

The rapporteur has observed with interest the E-apostille Pilot Programme. Although he claims no expertise in the field of electronic certification, it is his personal belief that international legal documentation will continue to be paper-based for the foreseeable future; he also has doubts from a purely practical point of view as to the appropriateness of the use of proprietary Adobe software as currently envisaged. The rapporteur notes that many of the documents which he encounters in daily practice in the City of London are of a voluminous nature – they may extend to several hundreds of pages each and the fact that under the existing proposals these documents will need to be scanned into Adobe PDF format, transmitted by e-mail to the apostilling authority and thereafter to the interested parties in the receiving jurisdiction will invariably lead to expense (since scanning is a time consuming matter) and uncertainties since e-mail systems are not always capable of handling the size of files which in some cases will be involved.

VI.2. Intergovernmental Error! Reference source not found.

See VI.1

VI.3. National Error! Reference source not found.

See VI.1