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The UK courts can order the Disclosure of documents located outside the jurisdiction under a manner of available mechanisms and legal principles, including letters of request, powers under the Civil Jurisdiction and Judgments Act 1982, Norwich Pharma Orders or International Treaties. These procedures are addressed in further detail below.

Letters of Request (Letters Rogatory)

A letter of request, or letter rogatory, is a request from a court in one country to the judicial authority in another country to perform a specified act that would violate the requested country's sovereignty if done without its approval. The UK is a signatory to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 1970, which provides a framework for judicial cooperation in the collection of evidence across borders. The Convention outlines procedures for the issuance and execution of Letters of Request between member countries. In the UK, the use of Letters of Request is can be found in Civil Procedure Rules (CPR), Part 34.13-34.17.

This relief is commonly used for the taking of evidence, serving a summons, subpoena or other legal notice, and the execution of a civil judgement. In the context of the disclosure of documents, a letter of request can be used for obtaining documents or evidence needed in the requesting country's case. The process can be time-consuming and expensive, as it involves navigating international legal and diplomatic channels.

Procedurally, the requesting party applies to the UK court, which then issues the letter of request. The receiving foreign court (subject to its own laws and procedures) may then compel the production of the requested documents subject to disclosure. Once the evidence is collected and the documents obtained, the foreign court then provides it to the requesting UK court, which in turn integrates the evidence into the proceedings at play. It is important to note that the

principle of comity requires respect for the legal systems and sovereignty of foreign jurisdictions. As a result, the execution of a Letter of Request is subject to the discretion of the foreign court.

Letters of request may be used irrespective of whether multi-lateral or bilateral treaties on judicial assistance are in force. The letter of request process is governed by international treaties, such as the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 1970 (to which many countries are signatories). Variations in legal procedures and evidentiary rules between countries can affect how requests are processed and the type of evidence that can be obtained.

Section 25, Civil Jurisdiction and Judgments Act, 1982

Section 25 of the Civil Jurisdiction and Judgments Act, 1982 provides the UK High Court with the power to grant interim relief (such as disclosure orders, injunctions, freezing orders, or other measures to preserve assets or evidence) in support of foreign proceedings, even if the substantive proceedings are being conducted in a foreign court or tribunal. The court considers whether the order can be practically enforced, particularly when documents or parties are located abroad. In the context of disclosure, this remedy can be used to preserve evidence that may be critical to the foreign proceedings.

Norwich Pharmacal Orders

A Norwich Pharmacal Order (NPO) can be used to compel a third party who is inadvertently embroiled in wrongdoing to disclose certain documents or information – this applies even when third parties are outside of the UK. The enforcement of ex-jurisdictional NPOs can be challenging and may require cooperation with foreign courts. This order is named after the case *Norwich Pharmacal Co. v Customs and Excise Commissioners* [1974] AC 133, which established the precedent.

The main purpose of an NPO is to assist a party (usually the claimant) in identifying wrongdoers, obtaining evidence needed to bring a claim, or tracing the proceeds of wrongdoing. It is often used in cases where the identity of the wrongdoer is unknown or where crucial information is held by a third party.

Parties seeking an NPO must demonstrate to the court that the third party is involved in the wrongdoing, that that order is necessary, and that there is no other practical way to obtain the information. The effectiveness of an NPO against a foreign entity depends on whether the foreign jurisdiction recognises and enforces NPOs.

Procedurally, the applicant must file an application to the High Court, usually supported by witness statements and evidence demonstrating the need for the order. The application is then made on notice to the respondent, allowing them to attend the hearing and make representations. The judge then determines whether the order should be granted, based on the evidence and arguments presented. If an NPO is granted, the order will specify what information or documents the respondent must disclose and the timeframe for compliance.

International Treaties

International treaties or bilateral agreements provide mechanisms for cross-border evidence gathering. These frameworks allowed for streamlined processes in areas such as cross-border litigation, evidence gathering, and enforcement of judgments.

As a side-note, prior to Brexit, the UK was part of several EU regulations and international treaties that facilitated judicial cooperation across borders within the EU, i.e., Brussels I Regulation (Recast) (EU) No. 1215/2012 (which governed jurisdiction and the recognition and enforcement of judgments in civil and commercial matters among EU member states), Regulation (EC) No 1206/2001 (which facilitated cooperation between EU member states regarding the taking of evidence in civil or commercial matters), European Investigation Order (EIO) Directive 2014/41/EU (which streamlined the process of obtaining evidence in criminal matters across EU borders).

Following Brexit, the UK and the EU reached the Trade and Cooperation Agreement (TCA), which includes provisions for judicial cooperation in civil and commercial matters, though it is less comprehensive than the EU regulations. The Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019 amended domestic law to handle jurisdiction and enforcement issues post-Brexit. Ensuring foreign judgments are recognised and enforced in the UK (and vice versa) can be more challenging, relying on conventions or new agreements.

The UK is a continued Participant in Hague Conventions, including those on evidence and service of documents, ensuring continued cooperation with many countries worldwide, which rely on the use of Letters of Request. Additionally, the UK has pursued bilateral agreements with individual countries to ensure continued judicial cooperation. These agreements often mirror the provisions of the previous EU regulations but are tailored to the specific bilateral relationship.



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