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Convener of the Equalities, Human Rights and Civil
Justice Committee
The Scottish Parliament
Edinburgh
EH99 1SP

19 March 2024

Dear Convener

The Recognition and Enforcement of Judgments (2019 Hague Convention etc.) Regulations 2024

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under a UK Act of Parliament for proposals relating to EU exit which are within the legislative competence of the Scottish Parliament

I attach a Type 1 notification which sets out the details of an SI which the UK Government proposes to make and the reasons why I am content that Scottish devolved matters are to be included in this SI.

We will, in accordance with the protocol, advise you when the final SI is made and advise you as to whether the final SI is in keeping with the terms of this notification.

We have been advised that the UK Government to lay the SI on 6th May 2024 so the Committee will have the full 28 days provided for in the protocol to consider the notification.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

SIOBHIAN BROWN

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot
Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

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NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI(s) (if known) or a title describing the policy area

The Recognition and Enforcement of Judgments (2019 Hague Convention etc.) Regulations 2024

Is the notification Type 1 or Type 2

Type 1

Details of the provisions that Scottish Ministers are being asked to consent to.

The UK Government have advised that they intend to ratify and implement the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters ('Hague 2019'). Scottish Ministers intend to consent to a UK wide SI being made to implement the Convention into domestic law. The UK SI is called The Recognition and Enforcement of Judgments (2019 Hague Convention etc.) Regulations 2024.

Summary of the proposals

Hague 2019 is a multilateral Private International Law Convention which establishes common rules to facilitate the recognition and enforcement of foreign judgments in civil and commercial cases between Contracting States to the Convention¹. By facilitating cross-border recognition and enforcement, the Convention is designed to enhance access to justice and favour multilateral trade, investment, and cross-border mobility.

Hague 2019 aims to reduce transactional and litigation costs in cross-border matters and to promote international access to justice. Once the UK has ratified, the Convention will provide greater certainty and predictability for those involved in cross-border civil and commercial disputes.

Ratification of the Convention will take place once the necessary implementing framework is in place for the Convention to operate in the UK. This will involve the laying of a Statutory Instrument in the UK Parliament, under powers available in the Private International Law (Implementation of International Agreements) Act 2020, to amend the Civil Jurisdiction and Judgments Act 1982 (the 1982 Act). This will incorporate Hague 2019 into domestic law and set out key implementing measures.

This SI will also change some of the implementing provisions of the Convention of 30 June 2005 on Choice of Court Agreements as currently set out in the Civil

¹ <https://www.hcch.net/en/instruments/conventions/full-text/?cid=137>

Jurisdiction and Judgments Act 1982, for consistency with the approach being taken to Hague 2019.

Under the 2020 Act, the Secretary of State may make regulations extending to Scotland and Northern Ireland with the consent, respectively, of the Scottish Ministers and a Northern Ireland Department. The intention is the SI will extend UK-wide and will mostly contain uniform implementing provisions, with some specific provisions for each jurisdiction.

As part of the implementation process, the Scottish Government, working with the UK Government, has prepared a policy paper to go to the Scottish Civil Justice Council, proposing court rules be made in relation to the Convention. In line with usual practice, any court rules would be made separately for Scotland and not on a UK basis.

Does the SI relate to a common framework or other scheme?

No.

Summary of stakeholder engagement/consultation

Two formal consultations have been carried out. The first concluded in February 2023, and all Scottish and UK stakeholders were in favour of Hague 19 being ratified and implemented into domestic law. In January 2024 there was a targeted consultation by the UK Government which has focussed on technical aspects of the operation of the Convention. Scottish stakeholders including the Law Society of Scotland, the Faculty of Advocates and SCTS have engaged with this consultation and were broadly in agreement with the proposals put forward by the UK Government.

The Scottish Government has also engaged directly with Scottish stakeholders to advise them of progress and to seek their insight and advice regarding the operation of the Convention in the Scottish legal system. Scottish stakeholders remain in favour of the Convention being implemented into Scots law.

A note of other impact assessments, (if available)

As no significant regulatory impact on businesses is expected, UKG have not carried out an impact assessment.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

Hague 2019 provides uniform rules for the recognition and enforcement of judgments between the UK and other Contracting Parties, including the EU Member States. Hague 2019 will provide greater legal certainty, and will allow businesses to have greater confidence when operating across borders in the

knowledge that there would be effective mechanisms in place to enforce Scottish judgments in other jurisdictions and vice versa.

As the policy intention in relation to Hague 19 is the same across the UK, it seems appropriate and a practical use of resources for the SI made by the Secretary of State to cover Scotland as well.

EU Alignment

Prior to Brexit the recognition and enforcement of judgments from other EU Member States was regulated by a series of EU instruments and treaties collectively known as ‘the Brussels Regime’, which operated in a reciprocal manner between EU Member States. Implementation of the Hague 19 Convention will ensure recognition and enforcement of foreign judgments in civil and commercial cases between signatory states of the Convention. That will include the EU Member States as the EU is a signatory to the Convention.

Intended laying date (if known) of instruments likely to arise

Week of 6th May 2024

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister’s proposal to consent, why not?

N/A

Information about any time dependency associated with the proposal

No time dependency associated with the proposal.

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

There are no broader governance issues in relation to this proposal.

Any significant financial implications?

There are no significant financial implications.

**Justice Directorate
Scottish Government
March 2024**