



HOUSE OF LORDS

International Agreements Committee

11th Report of Session 2023–24

**Scrutiny of international
agreements: 2019 Hague
Convention on the Recognition
and Enforcement of Foreign
Judgments in Civil or
Commercial Matters**

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International Agreements Committee

The International Agreements Committee is appointed by the House of Lords in each session to consider, and where appropriate report on, 1) matters relating to the negotiation, conclusion and implementation of international agreements, and 2) treaties laid before Parliament in accordance with Part 2 of the Constitutional Reform and Governance Act 2010.

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Declaration of interests

See Appendix 1.

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SUMMARY

This report considers the following agreement, laid before Parliament in accordance with section 20 of the Constitutional Reform and Governance Act 2010:

- Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, CP 1037

The Convention, known as Hague 2019, provides a cross-border system for the recognition of court judgments in a broad range of civil and commercial matters, though with some excluded areas. Once the Convention is in force for the UK, judgments given by UK courts must be enforced by the courts of another state party unless one of the specific grounds of refusal in the Convention applies. It will, therefore, not only support international trade with the UK but will also reinforce the UK as one of the most successful and important international dispute resolution centres in the world.

Hague 2019 is a Private International Law agreement. Such agreements provide a legal framework for resolving cross-border disputes and support international trade by ensuring businesses have the confidence to enter into cross-border contracts knowing there are effective mechanisms to obtain redress.

Hague 2019 has been in force for the EU member states since September 2023 so UK ratification of Hague 2019 will to a large extent plug a gap left by EU exit when the UK was obliged to withdraw from Brussels Regulation (Recast) and the Lugano Convention. The Committee urges the Government to resume its efforts to rejoin the Lugano Convention in addition to ratifying Hague 2019.

Hague 2019 was signed by the UK on 12 January 2024 following an overwhelmingly positive response to a Government consultation. It will come into force in the UK 12 months after ratification.

Hague 2019 is reported to the House for information.

Scrutiny of international agreements: 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters

AGREEMENT REPORTED FOR INFORMATION

Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague 2019)¹

1. The Convention was laid before Parliament on 22 March 2024 and the period for scrutiny under s20 of the Constitutional Reform and Governance Act expires on 16 May 2024.

Private International Law

2. The 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague 2019) forms part of Private International Law (PIL). Hague 2019 was adopted within the Hague Conference on Private International Law which is the leading international forum for developing internationally agreed rules on PIL, with a membership of 90 states and the EU.² The UK currently participates in 13 Hague conventions.³
3. PIL agreements provide a legal framework for resolving cross-border disputes. As noted by the Government in its factsheet accompanying the 2020 Private International Law (Implementation of Agreements) Bill:

“Without [PIL] agreements, UK businesses, individuals and families engaged in cross-border disputes will struggle to resolve them. There may be parallel court cases in different countries which reach conflicting decisions, and the decisions made by UK courts may not be recognised abroad. ... [PIL] rules assist courts and disputing parties to deal with cases involving foreign elements. The rules typically cover matters such as which court should hear a case (jurisdiction), which country’s law should apply to resolve it (applicable law), and whether the decisions of a foreign court should be recognised and enforced (recognition and enforcement of judgments).”⁴

Hague 2019 is concerned with the last of these three categories.

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- 1 Foreign, Commonwealth & Development Office, *The Convention on the Recognition and Enforcement of Judgments in Civil and Commercial Matters adopted at the Hague*, CP 1037 (2 July 2019): https://assets.publishing.service.gov.uk/media/65fdc035f1d3a031c432ac5f/MS_7.2024_Convention_Recognition_Enforcement_Foreign_Judgments_Civil_Commercial_Matters.pdf [accessed 24 April 2024]
 - 2 HCCH, ‘HCCH Members’: <https://www.hcch.net/en/states/hcch-members> [accessed 24 April 2024]
 - 3 HCCH, ‘List of Hague Conference conventions in which UK participates as at April 2024’: <https://www.hcch.net/en/states/hcch-members/details1/?sid=75> [accessed 24 April 2024]
 - 4 Ministry of Justice, *The Private International Law (Implementation of Agreements) Bill Fact Sheet*: <https://assets.publishing.service.gov.uk/media/5efa04e5d3bf7f769c84e004/pil-factsheet.pdf> [accessed 24 April 2024]

4. PIL agreements also support international trade by ensuring that UK businesses can have the confidence to enter into cross-border contracts, investment relationships and to operate across borders in the knowledge that there are effective mechanisms in place to obtain redress in other jurisdictions if a dispute arises.⁵

Effect of EU Exit

5. The UK's membership of the EU automatically imported participation in EU PIL measures, in particular the Brussels Regulation (Recast)⁶ and the Lugano Convention⁷ on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The Brussels Regulation and Lugano Convention provided a highly streamlined system under which civil court judgments delivered by the UK courts were recognised and enforced in other Member States and the EFTA countries⁸, and vice versa, without additional procedures and with very limited grounds for refusal.
6. The Trade and Cooperation Agreement which now governs the UK-EU relationship does not deal with civil judicial cooperation and, although the Lugano Convention is open to accession by non-EU and non-EFTA states with the consent of existing parties, the EU blocked UK accession to Lugano in 2021⁹. As a result, from January 2021 the enforcement of UK court judgments in EU and EFTA countries, and vice versa, became a matter for the local law in the enforcing state. While most countries have domestic rules which allow judgments from other countries to be recognised and enforced in certain circumstances, these rules differ and can often involve relitigating certain aspects of a case causing delay and increasing expense for litigants.
7. The impact of the UK's withdrawal from the Brussels and Lugano systems was mitigated to a limited extent by the UK's participation after December 2020 in the 2005 Hague Convention on Choice of Court Agreements. This provides a system for the recognition and enforcement of judgments but only in cases arising out of contractual arrangements where the parties have chosen to confer exclusive jurisdiction on the courts of one country. UK participation in Hague 2019 is intended to provide enhanced recognition and enforcement arrangements in a wider range of cases with the aim of increasing legal certainty.

The Convention

8. Hague 2019 provides a system for the recognition and enforcement of court judgments in a broad range of civil and commercial matters, subject to

5 Ministry of Justice 'Consultation on the Hague Convention of 2 July 2019 on the recognition and enforcement of foreign judgments in civil or commercial matters', (Updated 23 November 2023): <https://www.gov.uk/government/consultations/hague-convention-of-2-july-2019-on-the-recognition-and-enforcement-of-foreign-judgments-in-civil-or-commercial-matters-hague-2019/consultation-on-the-hague-convention-of-2-july-2019-on-the-recognition-and-enforcement-of-foreign-judgments-in-civil-or-commercial-matters-hague-2019#the-consultation-1> [accessed 25 April 2024]

6 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (OJL 351/1, 20 December 2012)

7 Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, done at Lugano on 30 October 2007 (OJL 339/3, 21 December 2007)

8 Norway, Iceland and Switzerland are the member states of the European Free Trade Association which are parties to the Lugano Convention.

9 Assessment on the application of the United Kingdom of Great Britain and Northern Ireland to accede to the 2007 Lugano Convention, European Commission 4 May 2021, COM(2021) 222 final

certain excluded areas.¹⁰ Judgments given by courts in a contracting state must be recognised and enforced by the courts of another party unless one of the grounds for refusal in the Convention applies. There are additional requirements for a jurisdictional link between the subject matter of the claim and the state of judgment. Hague 2019 also applies to the enforcement of judicial settlements and orders for the recovery of costs. It provides a uniform process for claimants to follow when seeking enforcement of a judgment in another contracting state.

Declarations

9. Hague 2019 entitles contracting parties to declare when they ratify the Convention that they wish to limit recognition in certain circumstances.¹¹ Recognition and enforcement may be refused by a contracting party where it has declared that:
 - (a) it will not apply the Convention to cases involving parties with close connections to the requested state;
 - (b) it has a strong interest in not applying the Convention to a specific matter, which must be clearly and precisely defined in the declaration;
 - (c) it will not apply the Convention to cases involving the requested state or its agencies.

Respondents to a public consultation on Hague 2019 noted that such declarations would restrict application of the Convention and could invite reciprocal actions from other contracting states which would further limit its scope. Respondents were therefore largely of the view that the UK should not make any declarations under these provisions and the Government has decided to follow that approach.¹²

10. Additionally, under Article 29 of the Convention contracting parties may declare, upon ratification in relation to existing parties and subsequently when other countries seek to join, that they do not accept the application of the Convention in relation to a particular state. Russia has signed Hague 2019 and the Government has highlighted that while it does not intend to make any Article 29 declarations upon ratification, it proposes to keep this under review with respect to states joining the Convention in future.¹³ Given the global scope of the Hague Conference, it is possible that ratifications may be made in future giving rise to significant fair trial concerns. **While it would undermine the benefits of UK participation to unduly limit the application of the Convention to other countries, we agree that it is important for the Government to consider carefully in relation to each future ratification, including Russia, whether it is appropriate in each case to accept a recognition regime.**

10 Excluded areas include family law, wills and succession, transboundary marine pollution, insolvency, carriage of passengers and goods, intellectual property and defamation.

11 Articles 17–19 of the Convention.

12 Ministry of Justice. *The Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague 2019): Response to Consultation*, (23 November 2023): https://assets.publishing.service.gov.uk/media/6554c926046ed400148b992a/The_Hague_Convention_Response_to_Consultation_web.pdf [accessed 25 April 2024]

13 Foreign, Commonwealth and Development Office, ‘Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters [MS No.7/2024]: Explanatory Memorandum’, at paragraphs 4.29–4.32: <https://www.gov.uk/government/publications/convention-on-the-recognition-and-enforcement-of-foreign-judgments-in-civil-or-commercial-matters-ms-no72024> [accessed 29 April]. Contracting parties have 12 months after a new ratification to decide whether they will apply Hague 2019 to the joining state.

Implementation

11. Hague 2019 will enter into force for the UK 12 months after the date of deposit of the instrument of ratification.¹⁴ The Government intends that Hague 2019 should apply to the whole United Kingdom but some implementing legislation will need to be adopted separately by Scotland and Northern Ireland since those nations have separate legal systems. The Government have already laid draft affirmative regulations under the Private International Law (Implementation of Agreements) Act 2020¹⁵ before Parliament. Scottish Ministers and the Scottish Parliament and the NI Department of Justice have consented to the application of these regulations across the whole United Kingdom.¹⁶
12. Amendments will also be required to rules of court in all three jurisdictions which, outside England and Wales, will need to be done by the relevant devolved authorities. In order to accommodate different implementation processes across the United Kingdom, the Explanatory Memorandum indicates that the Government anticipates that when the Convention is ratified it will apply to England and Wales only.¹⁷ This is an unusual process but is permissible because Article 25 of the Convention allows parties with non-unified legal systems to declare that they will only apply it to some of its territorial units. The Government's intention is to extend Hague 2019 to Scotland and Northern Ireland by subsequent Article 25 declarations during the 12-month period after ratification so that it will enter into force UK-wide simultaneously.¹⁸
13. **We understand that the Government is keen to move ahead with the ratification process for Hague 2019 so that it can enter into force for the UK at the earliest opportunity, but we call on it to work with the Devolved Administrations to ensure that Scotland and Northern Ireland are not left behind.**

Assessment

14. In late 2022 the Government launched a public consultation on whether UK should join Hague 2019 and the outcome was published in November 2023¹⁹. Respondents to the consultation²⁰ were unequivocally in favour of UK participation in the Hague 2019, while a number of downsides were noted, including:

14 Article 28 of the Convention

15 [The Recognition of Judgments \(2019 Hague Convention etc\) Regulations 2024](#)

16 Explanatory Memorandum, paragraph 5.1

17 Foreign, Commonwealth and Development Office, 'Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters [MS No.7/2024]: Explanatory Memorandum', at para 9.2: <https://www.gov.uk/government/publications/convention-on-the-recognition-and-enforcement-of-foreign-judgments-in-civil-or-commercial-matters-ms-no72024> [accessed 30 April] [accessed 30 April]

18 Under Article 30(4) of the Convention a declaration extending the territorial scope to Scotland and Northern Ireland would take effect three months after the date of the declaration.

19 Ministry of Justice 'Consultation on the Hague Convention of 2 July 2019 on the recognition and enforcement of foreign judgments in civil or commercial matters', (Updated 23 November 2023): <https://www.gov.uk/government/consultations/hague-convention-of-2-july-2019-on-the-recognition-and-enforcement-of-foreign-judgments-in-civil-or-commercial-matters-hague-2019/consultation-on-the-hague-convention-of-2-july-2019-on-the-recognition-and-enforcement-of-foreign-judgments-in-civil-or-commercial-matters-hague-201#the-consultation-1> [accessed 30 April]

20 There were 39 responses to the consultation from across the UK legal sector including professional associations, law firms, individual practitioners and academics.

- (a) that, given its potentially global reach, the Convention could give rise to an obligation to recognise and enforce judgments from jurisdictions where there are concerns about the reliability or fairness of the judicial system, and
- (b) that the Convention may not benefit seriously injured victims bringing cross-border personal injury claims due to the exclusion of certain categories of proceedings and the possibility for judgments arising from conditional fee arrangements not to be recognised on public policy grounds.

Despite these and other concerns, the overall assessment of stakeholders was that the potential benefits of joining Hague 2019 outweighed any downsides.²¹

15. The Government's view was summarised in its response to the consultation exercise:

“The UK joining Hague 2019 would provide a set of common rules for the recognition and enforcement of civil and commercial judgments between the UK and the other Contracting Parties, including the EU. The Government believes that the Convention would therefore benefit both businesses and consumers operating and living across borders, between the UK and other countries. It would provide assurance that UK judgments in scope will be recognised and enforced in current and future Contracting Parties to the Convention, and vice versa, which will in turn encourage trade and investment.”
16. We also note the comments of stakeholders in the legal sector that Hague 2019 should help to promote the UK as a forum for dispute resolution by providing greater legal certainty that judgments from UK courts will be recognised and enforced in other states.
17. Hague 2019 is already in force for the EU member states and Ukraine. Uruguay has also ratified²². Ratification by the UK will therefore to a large extent plug the gap caused by the UK's withdrawal from the Brussels Regulation system when it left the EU. Hague 2019 does not, however, provide such a streamlined system for the recognition and enforcement of judgments with the EU as that which existed under the Brussels system and in particular more areas are excluded from its scope. **Many stakeholders have called for the Government to continue its efforts to join the Lugano Convention in addition to ratifying Hague 2019. We agree that the Government should do so.**²³

21 Ministry of Justice. *The Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague 2019): Response to Consultation*, (23 November 2023): https://assets.publishing.service.gov.uk/media/6554c926046ed400148b992a/The_Hague_Convention_Response_to_Consultation_web.pdf [accessed 15 April 2024]

22 HCCH, 'Status table': <https://www.hcch.net/en/instruments/conventions/status-table/?cid=137> [accessed 1 May 2024]

23 Ministry of Justice. *The Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague 2019): Response to Consultation*, (23 November 2023): https://assets.publishing.service.gov.uk/media/6554c926046ed400148b992a/The_Hague_Convention_Response_to_Consultation_web.pdf [accessed 15 April 2024]; The Law Society, 'UK signs up to Hague 2019 Convention', (15 January 2024): <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/uk-signs-up-to-hague-19-convention> [accessed 1 May 2024] and Bar Council *Response to the Ministry of Justice's consultation on possible UK accession to the Hague Convention 2019 on The Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters*, (February 2023): <https://www.barcouncil.org.uk/static/4dd9ddef-c5e4-437f-a5981757e7408c2d/Bar-Council-response-UK-accession-Hague-2019-Convention-8-Feb-2023.pdf> [accessed 1 May 2024]

18. Beyond the EU, Hague 2019 has a small number of parties at present but potentially many more states could join the Convention. Seven other states have so far signed Hague 2019, including the US, and its reach may grow. The Convention therefore has the potential to bring global benefits for individuals, businesses, and international trade and investment.
19. **We agree with the Government's assessment that ratification of Hague 2019 will be of benefit to the UK. In addition we regret the EU's decision to block the UK's accession to the Lugano Convention and urge the Government to resume its efforts to join Lugano, as well as Hague 2019, which would bring wider benefits. We report the Convention to the House for information together with our comments in paragraphs 10, 13 and 17.**

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Anderson of Swansea
 Lord Boateng
 Lord Etherton
 Lord Fox
 Lord German
 Lord Goldsmith KC (Chair)
 Lord Grimstone of Boscobel
 Lord Hannay of Chiswick
 Lord Howell of Guildford
 Baroness Kingsmill
 Lord Marland
 Lord Udney-Lister

Declarations of Interest

Lord Anderson of Swansea
No relevant interests

Lord Boateng
Independent non-executive director, at the Ghana International Bank
Board member, Syngenta Foundation
Advisory work, Ghana International Bank plc London
Advisory work, Water and Sanitation for the Urban Poor
Director, Akyem Law and Advisory Services Limited

Lord Etherton
No relevant interests

Lord Fox
No relevant interests

Lord German
No relevant interests

Lord Goldsmith KC
Partner, Debevoise & Plimpton LLP (International law firm)

Lord Grimstone of Boscobel
No relevant interests

Lord Hannay of Chiswick
Member, advisory board of the Centre for European Reform,
Member, European Leadership Network
Chair, European & International Analysts Group

Lord Howell of Guildford
No relevant interests

Baroness Kingsmill
No relevant interests

Lord Marland
Director, Janspeed Technologies Ltd (manufacturer of motor parts)

Lord Udney-Lister
Advisor to the Group Chairman of HSBC