

Equalities, Human Rights and Civil Justice Committee  
Tuesday 30 April 2024  
11th Meeting, 2024 (Session 6)

## UK subordinate legislation: consideration of consent notification

### Introduction

1. This paper supports the Committee’s consideration of a ‘type 1’ consent notification sent by the Scottish Government relating to the following proposed UK statutory instrument (SI)—[The Recognition and Enforcement of Judgments \(2019 Hague Convention etc.\) Regulations 2024](#).
2. The process for the Scottish Parliament’s consideration of consent notifications is set out in a Protocol on scrutiny by the Scottish Parliament of consent by Scottish Ministers to UK secondary legislation in devolved areas arising from EU Exit. Further details of this process are set out in **Annexe A**.

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

3. On 19 March 2024, the Minister for Victims and Community Safety wrote to the Committee to notify the Scottish Government’s proposal to consent to the UK SI. This correspondence is in **Annexe B**. The SI notification is available in **Annexe C**.
4. The UK Government had initially intended to lay the statutory instrument on 6 May 2024, which would have allowed the Committee the full 28 days provided in the protocol to consider the notification. On 25 April 2024, however, the Minister wrote to the Committee to advise that the UK Government now intends to lay the statutory instrument between 29 April and 2 May 2024. The Minister notes that this “does not affect the process for the UK Government obtaining the consent of the Scottish Ministers as the statutory instrument is affirmative and so will only be made by UK Ministers once the Westminster Parliament has approved it”. This correspondence is in **Annexe D**.
5. The proposed SI will continue savings which the UK Government, Scottish Government, and Northern Ireland Administration decided at EU Exit should be made for transitional cases, but which are at risk of repeal by the Retained EU Law (Revocation and Reform) Act 2023 Act (“the REUL Act”) if further savings are not made through this SI.
6. 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.

7. 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 Convention. 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.
8. 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.
9. The proposed SI will be made under section 2 of the Private International Law (Implementation of International Agreements) Act. This contains a statutory requirement that UK Ministers must obtain the consent of Scottish Ministers before making this instrument. Accordingly, it cannot be made as proposed unless the Scottish Ministers consent.
10. Most of the responses to the UK Government's consultation were in favour of joining even though there are some limitations in the scope of the Hague Convention, see:

[https://assets.publishing.service.gov.uk/media/6554c926046ed400148b992a/The\\_Hague\\_Convention\\_Response\\_to\\_Consultation\\_web.pdf](https://assets.publishing.service.gov.uk/media/6554c926046ed400148b992a/The_Hague_Convention_Response_to_Consultation_web.pdf)

and

<https://committees.parliament.uk/publications/42351/documents/210488/default/>

11. The Faculty of Advocates response to the consultation can be found at:

<https://www.advocates.org.uk/media/4290/faculty-response-hague-convention.pdf>

## Next steps

12. If the Committee wishes to approve the proposal to consent to the SI, it may, in doing so, set out any observations or concerns in its letter to the Scottish Government that it thinks are relevant.
13. If the Committee is not content with the proposal, however, it may make one of the following recommendations—
  - I. That the Scottish Government should not give its consent to the provision being made in a UK SI and that the Scottish Government should instead produce an alternative Scottish legislative solution, or;
  - II. That the provision should not be made at all (that is, that the Scottish Government should not consent to the provision being included in a UK SI, nor should the Scottish Government take forward an alternative Scottish legislative solution). However, in relation to this option the Committee should be aware (as noted above) that it is a legal requirement that the Convention is implemented, and accordingly it is

necessary that provision to achieve that purpose is made whether at UK or Scottish level

14. If the Committee recommends that the Scottish Government should not consent, it should write to the Scottish Government, setting out which of the options for non-consent (see above), reflects its view.

**Clerks to the Committee**  
**April 2024**

## **Annexe A: Process for parliamentary scrutiny of consent notifications in relation to UK statutory instruments**

1. The Protocol provides for the Scottish Parliament to scrutinise the Scottish Government's decisions to consent to certain subordinate legislation made by the UK Government: specifically, UK Government subordinate legislation on matters within devolved competence in areas formerly governed by EU law. It sets out a proportionate scrutiny approach and categorises SI notifications as 'type 1' or 'type 2'.
2. Type 2 applies where all aspects of the proposed instrument are clearly technical (e.g., they merely update references in legislation that are no longer appropriate following EU exit) or do not involve a policy decision. These are notified retrospectively, after the Scottish Government has given its consent.
3. All other proposals are type 1. In this case, the Scottish Parliament's agreement is sought *before* the Scottish Government gives consent to the UK Government making subordinate legislation in this way. Each type 1 notification must be considered by the relevant Committee.
4. **The Committee's role in relation to type 1 notifications is to decide whether it agrees with the Scottish Government's proposal to consent to the UK Government making Regulations within devolved competence, in the manner that the UK Government has indicated to the Scottish Government.**
5. If Members are content for consent to be given, the Committee will write to the Scottish Government accordingly. The Committee may also wish to note any issues in its response or request that it be kept up to date on any relevant developments.
6. If the Committee is not content with the proposal, however, it may recommend that the Scottish Government should not give its consent (more detail on the options available to the Committee in relation to this particular notification is given below). In that event, the Scottish Ministers have 14 days under the Protocol to respond to the Committee's recommendation. They could—
  - Agree. If so, the Scottish Ministers would then withhold their consent.
  - Not agree. If so, the Parliament will debate the issue.
7. If the Parliament agrees to the Committee's recommendation that the Scottish Ministers should not consent, the Protocol provides that the Scottish Ministers should "normally not consent" to the UKSI. However, the Protocol also provides that if the Scottish Ministers consider that the Committee's proposed alternative cannot be achieved, they may consent to the UK SI. If so, they must explain why they are doing so to the Scottish Parliament.

## **Annexe B: Letter from the Minister for Victims and Community Safety**

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**

## Annexe C: SI Notification

### **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 Convention<sup>1</sup>. 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 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

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

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 6<sup>th</sup> 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**



## **Annexe D: Letter from the Minister for Victims and Community Safety**

25 April 2024

Dear Convener

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

Further to my letter of 19 March 2024 notifying this UK SI, I write to advise that the UK Government intend to bring forward their laying date in order to give further time for scrutiny at Westminster. They now intend to lay between 29<sup>th</sup> April and 2<sup>nd</sup> May.

This does not affect the process for the UK Government obtaining the consent of the Scottish Ministers as the SI is affirmative and so will only be made by UK Ministers once the Westminster Parliament has approved it.

As before, 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 the notification.

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

**SIOBHIAN BROWN**