



UK Government Signals Intention to Sign the Hague Convention 2019

Introduction

On 23 November 2023, the UK Government signalled its intention, “as soon as practicable” to sign the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters¹. While it is true to say that the Hague Convention 2019 is “not yet” very important², it is equally true to say that it might well become very important in the future, such that it is worth considering the consequences of the UK Government’s decision in some detail.

The Hague Convention 2019: background

Just for context, it is necessary, briefly, to consider the aims and structure of the Hague Convention 2019. As Professors Garcimartin and Saumier make clear in their explanatory report³, the Hague Convention 2019’s objective is “to promote access to justice globally through enhanced judicial cooperation, which will reduce the risks and costs associated with cross-border legal relations and dispute resolution”.

It seeks to achieve this objective by providing a framework of rules which allow for the recognition and enforcement of judgments in civil or commercial matters in all contracting states⁴. That said, the Hague Convention 2019 does not, in fact, apply to all such judgments⁵, given that, by Article 2, judgments concerning, *inter alia*, insolvency, defamation and arbitration are excluded from its scope. Whilst, on the face of the text, the inclusions and exclusions are apparently clear, it is a fairly safe bet that, in the coming years, there will be extensive litigation to determine the precise limits of each.

Leaving any such litigation to the side, where a judgment given in one contracting state falls within the scope of the Hague Convention 2019, it “shall be recognised and enforced in another contracting state in accordance with” the provisions which the Hague Convention 2019 contains⁶. There are, it must be said, limited grounds on which recognition or enforcement of eligible judgments may be refused. In order to be eligible, a judgment must meet one of the requirements set out in Article 5(1). Recognition or enforcement may then be refused⁷ only on one of the bases set out in Article 7.

Why has the UK Government taken the decision to sign up?

The UK Government has offered a number of reasons to support its decision to sign up to the Hague Convention 2019, chief amongst them “the benefit to both businesses and consumers operating and living across borders, by providing greater legal certainty about the mutual

recognition and enforcement of judgments given in the UK and in another contracting state⁸.”

There is, of course, great potential for the Hague Convention 2019 to provide such benefit but, while countries like the United States, Russia and Israel have signed up, presently only Ukraine and the EU have completed ratification. The reach of the Hague Convention 2019 is, therefore, currently quite limited.

That said, the UK Government’s quick ratification of the Hague Convention 2019 ought, at least, to provide a clear and coherent basis for the recognition and enforcement of judgments which fall within its scope as between EU Member States courts and the courts of England and Wales. Such clarity will indeed be welcome. Further, as the UK Government points out⁹, signing up to the Hague Convention 2019 does not “prohibit the UK from joining [the] Lugano [Convention] in the future”. There is, indeed, a material advantage to doing things in this order, viz that where Lugano was in operation first temporally, judgments required to be recognised under it could not be refused recognition under the Hague Convention 2019¹⁰.

How will implementation of the Hague Convention 2019 likely look?

It would appear that the UK Government strongly favours a registration model to implement the Hague Convention 2019¹¹, choosing this over and above a “model that would allow judgment creditors to proceed directly to the enforcement

1 See the UK Government’s “Response to Consultation” Report, dated 23 November 2023.

2 A Briggs, “Private International Law in English Courts” (2nd edition, 2023 OUP), 394.

3 Explanatory Report on the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, 2020, paragraph 12.

4 *Ibid*, paragraph 14.

5 Defined by Article 3(1)(b) in such a fashion as to include non-money judgments.

6 Hague Convention 2019, Article 4(1).

7 *Ibid*, Article 4(4).

8 Fn. 1, paragraph 17.

9 *Ibid*, paragraph 19.

10 See Article 23(2) of the Hague Convention 2019 and the example given by Professor Briggs, fn. 2, at 396.



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stage as if the foreign judgment would allow judgment creditors to proceed directly to the enforcement stage as if the foreign judgment were a domestic one". This must make sense, given the potential width of the membership of the Hague Convention 2019.

It is likely that the UK Government will employ a registration model which is similar to that currently used when dealing with judgments that fall within the Hague Convention of 30 June 2005 on Choice of Court Agreements. In practice then "this could mean that parties seeking to have a foreign judgment recognised and enforced in the UK under Hague 2019 would be required to submit an application to the court, setting out the

applicable indirect jurisdiction ground, amongst other things and provide the necessary evidence. Parties objecting to the recognition and enforcement of the foreign judgment would then have an opportunity to challenge the registration before enforcement takes place, by way of appeal against or setting aside of the registration¹²".

Final thoughts

It is certainly true that the Hague Convention 2019 is not a panacea. It is also true that it does not prevent the recognition or enforcement of foreign judgments under national law¹³. As such, litigants will still need advice on the various other mechanisms, both statutory and

at common law, governing the recognition and enforcement of foreign judgments, though they may not need as much such advice. That said, English judges will, perhaps soon, have the opportunity to shape the interpretation of the Hague Convention 2019's terms, an exciting prospect, given the fact that the global reach of those provisions is set to expand in the coming years. All in all, it is no great surprise that the UK Government has signalled its intention to sign up to the Hague Convention 2019 and to do so as soon as practicable.



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11. Fn. 1, paragraph 64.

12. *Ibid*, paragraph 65.

13. Article 15 of the Hague Convention 2019, subject to Article 6.

