Private international Law (Implementation of Agreements) Bill

New Clause to be moved in Committee

NC 1

After Clause 1 insert—

“(1 ) The Secretary of State may make regulations for the purpose of, or in connection with, implementing the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters signed at Lugano on 30th October 2007 (the “2007 Lugano Convention”), in the event that the United Kingdom becomes a party to the Convention in its own right.

(2) The Secretary of State must consult the Scottish Ministers, the Welsh Ministers and a Northern Ireland Department before making regulations under subsection (1).

(3) Regulations under subsection (1) are subject to super-affirmative resolution procedure'.

Effect

This amendment enables the Secretary of State to make regulations implementing the Lugano Convention into law in the UK.

Reason

We agree with the Government’s policy to re-join the Lugano Convention (see the background note below) in its own right. If the UK manages to accede to the Convention by 31 December 2020 a relatively simple and quick mechanism will be essential for the implementation of the Convention.

We therefore agreed with the approach of HL Bill 101 (before it was amended) subject to, where possible, consultation on any draft regulation (pending further reform of the Parliamentary process for scrutiny of treaties).

However, as reform of the treaty process is not imminent we consider the Government should amend the bill to provide for a regulation making power focussed specifically on the implementation of the Lugano Convention. Such a provision is needed for the purposes of implementing the Lugano Convention as quickly as possible in the event of the UK acceding to the Convention. This would not preclude the Government reinstating the pervious regulation making powers which were removed from the bill during its passage in the House of Lords.

The Scottish Parliament agreed a legislative consent motion for the Bill on 17 June 2020 <https://www.parliament.scot/parliamentarybusiness/Bills/114912.aspx> whilst it was being considered by the House of Lords.

Background Note

Introduction

Recognition and enforcement of judgments in civil and commercial matters between the UK and the EU27 is currently (in the transition period) provided for in Regulation 1215/ 2012 (“Brussels I Recast”) which has direct effect.

Recognition and enforcement of judgments in matrimonial matters is provided for in Regulation 2201/2003, which itself is the subject of a proposal for amendment by the European Parliament (“Brussels II Recast”).

The Lugano Convention

Similar provision for recognition and enforcement of judgments in civil and commercial matters between the UK, EU 27 and EFTA countries is in the Lugano Convention (“Lugano”) <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:22007A1221(03)> They are effectively an earlier version of Brussels I Recast (Regulation 44/2001, the Brussels Regulation).

Brussels I Recast and Lugano Convention are dual instruments. They make provision for the allocation of jurisdiction and the enforcement of judgments. They make the enforcement of rights simpler, more efficient and less costly for citizens, consumers, workers and businesses. Being dual instruments, they also avoid parallel litigation (i.e. legal claims in relation to the same dispute brought in more than one jurisdiction).

Accession to the Lugano Convention is of considerable importance to the protection of rights for individuals, consumers, workers, and businesses in both the UK and the EU27. A similar arrangement in relation to children and matrimonial matters is also crucial.

Brussels I Recast and Lugano are very important for litigants who obtain judgments and orders in UK and EU courts. Citizens and businesses in the UK and the EU are concerned to ensure that judgments obtained anywhere in Europe will remain readily enforceable in the UK and the EU. Brussels I Recast and Lugano facilitate trade and enforce a level playing field. They avoid competition between jurisdictions, which makes litigation simpler and more cost effective. Brussels I Recast and Lugano protect workers’ rights, and consumers. Both provisions make special provision reinforcing the rights of consumers, workers and insurance policy holders.

The UK applied to become a contracting state to Lugano on 8 April 2020. This application was invited by the EFTA states. The EU has not started its process to respond. The Commission has only indicated that it is possibly not going to recommend – but it has not made up its mind yet. Many member states are expecting Lugano to be agreed. There is a risk that EU agreement to the UK’s accession to the Lugano Convention is seen by the EU as dependent on the completion of the UK/EU FTA. We consider that such a linkage is unjustified because the Convention is separate from the EU legal order.

It would be useful for citizens in both the UK and the EU if there could be an Agreement on provisions similar to Brussels II Recast with the EU in relation to matrimonial matters.

The agreement of the EU Member States would be required for both of these agreements.

The Political Declaration supports this conclusion (paragraphs 2, 3, 5, 6, 19 and 21). The high level of integration between the economies of the UK and the European Union, the very close links between its peoples and the need to safeguard the rule of law across the region provide both a unique context and a strong rationale for both sides.