

EXPLANATORY MEMORANDUM TO
THE CIVIL JURISDICTION AND JUDGMENTS (HAGUE
CONVENTION ON CHOICE OF COURT AGREEMENTS 2005)
REGULATIONS 2015

2015 No. 1644

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations make provision to facilitate the application of the Hague Convention on Choice of Court Agreements 2005 (the “Convention”) in the United Kingdom. The Convention, which has been signed and ratified by the European Union and comes into force on 1 October 2015, aims to ensure the effectiveness of choice of court agreements made between parties to international commercial contracts.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 There are no matters of special interest to the Committee.

4. Legislative Context

4.1 The Convention was signed on behalf of the European Union on 1 April 2009 (see Council Decision 2009/397/EC of 26 February 2009 OJ No L 133, 29.2.2009, p1) and ratified on behalf of the European Union on 11 June 2015 (see Council Decision 2014/887/EU of 4 December 2014 OJ No L 353, 10.12.2014 p5). The UK opted in to both the proposed Council Decision on signature and the Council Decision on approval of the Convention. The Convention is binding on EU Member States in accordance with Article 216 of the Treaty on the Functioning of the European Union. It will enter into force on 1 October 2015, in accordance with Article 31 of the Convention. The Draft Council Decision was considered by the European Scrutiny Committee in its 44th Report of the 2013/2014 session; and its 1st and 13th Reports of the 2014/2015 session. The House of Lords European Union Committee considered the draft Council Decision at its meetings on 5 March and 15 October 2014. The draft Council Decision was released from scrutiny in both Houses in October 2014.

4.2 At the time of ratifying the Convention, the EU made a declaration in relation to its application to insurance contracts in accordance with Article 21 of the Convention, and a unilateral declaration in relation to the future review of its position in relation to such contracts. The texts of these declarations are annexed to Council Decision 2014/887/EU. The Convention provides for the rules on choice of court agreements in Regulation (EU) No 1215/2012 (the Brussels 1 (recast) Regulation) and the Lugano Convention 2007 to continue to apply to the extent specified by Article 26 of the Convention.

The text of the Convention can be seen here:

<http://www.hcch.net/upload/conventions/txt37en.pdf>

4.3 The Convention requires a court of a Contracting State, which has been designated by an agreement to deal with disputes arising under it, to hear a case (and other courts to decline to do so) and that any judgment rendered by a chosen court must be recognised and enforced in other Contracting States. The Convention is directly applicable in the United Kingdom and its provisions do not themselves require implementation. Rather, these Regulations make only the necessary consequential amendments to enable application of the Convention in the UK. In particular, they make amendments to the Civil Jurisdiction and Judgments Act 1982 which contains provisions on jurisdiction, recognition and enforcement of foreign judgments. The amendments provide, among other things, for foreign judgments, which are required to be recognised and enforced by the Convention, to be registered prior to enforcement in the UK, subject to an appeals process. The procedure is similar to that which applies in relation to the recognition and enforcement of other foreign judgments, for example those given under the Lugano Convention 2007.

4.4 The Regulations also make consequential amendments to the Civil Procedure Rules 1998. The amendments to the Civil Procedure Rules are being made in these Regulations rather than by separate instrument, because of their minor and consequential nature. The Civil Procedure Rule Committee are content with this approach. Amendments to the court rules in Scotland will be made separately. Northern Ireland is considering to what extent amendments to court rules are necessary.

5. Territorial Extent and Application

5.1 These Regulations extend to England and Wales, Scotland and Northern Ireland.

6. European Convention on Human Rights

6.1 The Lord Chancellor and Secretary of State for Justice has made the following statement regarding Human Rights:

In my view the provisions of the Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) Regulations 2015 are compatible with Convention rights.

7. Policy background

7.1 Choice of court agreements (or “jurisdiction clauses”) are common in commercial contracts and enable the parties to decide in advance which courts will settle disputes under the agreement, but they have not always been respected under divergent national rules. Delays and legal uncertainty arise, particularly where a party brings a case before a court other than the one designated under the agreement.

7.2 The final text of the Convention was adopted by the Hague Conference on Private International Law in 2005 and the European Community, its Member States (including

the UK) and other major countries participated in those negotiations. The aim of the Convention is to ensure the effectiveness of choice of court agreements by requiring chosen courts to hear cases (and non-chosen courts to decline to hear cases) and for their judgments to be recognised and enforced. This will promote greater legal certainty for businesses involved in cross-border transactions, leading to a more favourable climate for international trade and investment. The UK is the pre-eminent centre for the settlement of international contract disputes, so the application of the Convention to the UK will serve to bolster the UK's international reputation, to the benefit of the legal economy, as well as benefitting the general interests of UK businesses which enter into international commercial transactions.

7.3 The immediate impact of the coming into force of the Convention is likely to be minimal since Mexico is the only other Contract State apart from the EU. However, it is hoped that more countries will be persuaded to join the Convention now that it has come into force. The United States and Singapore are signatories and other countries are considering acceding to it.

Consolidation

7.4 No further consolidation of the various enactments amended is planned at present.

8. Consultation

8.1 The Advisory Committee on Private International Law, whose members consist of senior judiciary, academics and practitioners who are experts in this field, have been consulted on a draft of these Regulations. The Advisory Committee and other interested persons have previously been consulted on the UK's decision to support EU signature and ratification of the Convention and have supported EU accession to the Convention.

9. Guidance

9.1 The Ministry of Justice is not planning to issue any separate guidance in relation to these Regulations.

10. Impact

10.1 A full impact assessment on the effect of EU ratification of the Convention on the UK has not been produced for this instrument. This is due to no significant impact on the private, voluntary or public sectors being foreseen.

10.2 Analysis of the instrument was conducted by the Ministry of Justice at the point of the UK's decision to opt-in. The assessment concluded that implementation of the Convention in UK law could have a net positive impact. This was based on the expectation that the benefits (an increase in business activity, fee revenue and greater legal certainty for business) outweigh the costs (an increase in court costs because of the increased case volume). Current Ministry of Justice initiatives moving courts to a cost recovery state would mitigate the costs to government of any associated increase in case volume, but may also taper the benefits of the Convention.

11. Regulating small business

11.1 The legislation applies in relation to choice of court agreements entered into by small businesses, but its impact on this sector is not likely to be significant.

12. Monitoring and review

12.1 The application of the Convention in EU Member States, and the terms upon which the EU has ratified it (including the declaration in relation to insurance contracts), will be kept under review at EU level. The operation of these Regulations will also be kept under review by the Ministry of Justice. The Civil Procedure Rules 1998 are kept under review by the Civil Procedure Rule Committee.

13. Contact

Nic Turner at the Ministry of Justice - tel: 020 3334 4286 or email:
Nic.Turner@justice.gsi.gov.uk can answer any queries regarding this instrument..