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Kaukab Stewart MSP
Convener of the Equalities, Human Rights and Civil
Justice Committee
The Scottish Parliament
Edinburgh
EH99 1SP

By email: ehrcj.committee@parliament.scot

9 November 2023

Dear Convener

**RETAINED EU LAW (REVOCATION AND REFORM) (SCOTLAND) ACT 2023
THE CIVIL JURISDICTION AND JUDGMENTS (SAVING PROVISION) REGULATIONS
2023**

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 asked the UK Government to make the SI on or after 11 December so the Committee will have the full 28 days provided for in the protocol to consider the notification. I look forward to hearing from you by 8 December.

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

SIOBHIAN BROWN

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot
Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot



NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI(s) (if known) or a title describing the policy area

The Civil Jurisdiction and Judgments (Saving Provision) Regulations 2023

Is the notification Type 1 or Type 2

Type 1

Details of the provisions that Scottish Ministers are being asked to consent to.

The proposed SI will continue savings made at EU Exit to ensure that the 2007 Lugano Convention on jurisdiction and enforcement of judgments in civil and commercial matters (“the 2007 Lugano Convention”), a private international law agreement, can continue to apply to certain legacy cases.

Summary of the proposals

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”) at the end of 2023 if further savings are not made through this SI.

The 2007 Lugano Convention is a Private International Law instrument containing rules governing jurisdiction in civil and commercial matters when a case has connections to more than one country, as well as rules providing for the recognition and enforcement of judgments in such matters. The Convention is a treaty amongst EU member states (EUMSs), Norway, Iceland, and Switzerland and was entered into by the EU on behalf of EUMSs while the UK was a Member State.

At EU Exit, the Convention was revoked for the UK because the UK’s membership was dependent on its status as an EUMS and because its operation relied on reciprocal application which would no longer occur. Given the need for reciprocity, alignment with EU provisions was not possible.

However, the Convention was saved for transitional cases i.e. to save the jurisdiction rules for cases commenced before the end of the transition period with the EU (subject to limited modifications), and to save the recognition and enforcement rules for judgments issued in cases commenced before that point. This decision was made in order to minimise potential disruption to litigants and to make outcomes as predictable as possible.

This savings provision for limited legacy cases relied in part on section 4 of the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”), as well as on the

Exit SI that was made (The Civil Jurisdiction and Judgments (EU Exit) (Amendment) Regulations 2019, regulations 92 and 93) ('the Exit Regulations').

Since the original savings for transitional cases extended UK-wide, the UK Government propose to extend this SI UK-wide.

Does the SI relate to a common framework or other scheme?

No.

Summary of stakeholder engagement/consultation

There has been no engagement or consultation on this SI, which is preserving the status quo.

A note of other impact assessments, (if available)

No impact assessments have been prepared by the UK Government for this SI as it continues legacy savings and does not change how they operate.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers' legislation

Scottish Ministers propose to consent to this legislation to:

- ensure continuity in respect of relevant judgements issued before the end of the transition period; and
- save the recognition and enforcement rules for judgments issued in cases commenced before the end of the transition period.

Intended laying date (if known) of instruments likely to arise

Making date of 11 December 2023. Under the powers being used by the UK Government, there is no Parliamentary procedure at Westminster. The Scottish Government has asked the UK Government to make the SI on or after 11 December, to give the Committee the full 28 days to respond.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Ministers' proposal to consent, why not?

N/A

Information about any time dependency associated with the proposal

Section 2 of the REUL Act will repeal section 4 of the Withdrawal Act at the end of the year. This repeal therefore creates a risk that the savings put in place for legacy 2007 Lugano Convention cases will fall away unless this SI is made.

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
November 2023**