

Brexit and the UK joining two HCCH Conventions - A convoluted and unorthodox process that has finally come to an end

As announced in a previous post, the UK has (again) joined the 2005 Choice of Court Convention and the 2007 Child Support Convention. On 2 October 2020, the Depositary has officially notified of the **new** UK instrument of accession to the Choice of Court Convention and of the **new** UK instrument of ratification of the Child Support Convention, including the new UK declarations and reservations. And yes both Conventions have been extended to Gibraltar from the outset.

As you may remember, the previous UK instruments of accession to and ratification of the above-mentioned Conventions were withdrawn because the United Kingdom and the European Union signed, ratified and approved a Withdrawal Agreement. Such an agreement entered into force on **1 February 2020**, and included a transition period that started on the date the Withdrawal Agreement entered into force and which will end on **31 December 2020**. In accordance with the Withdrawal Agreement, during the transition period, European Union law, including the HCCH Conventions, will continue to be applicable to and in the United Kingdom.

While from a public international law standpoint the UK has joined the HCCH Conventions above-mentioned **three times** (by EU approval, by accession/ratification - instruments that were later withdrawn, and by accession/ratification in September 2020), the view of the UK is that the HCCH Conventions have applied seamlessly since October 2015 regarding the HCCH Choice of Court Convention and since August 2014 regarding the HCCH Child Support Convention. In this regard, the UK declares:

With respect to the Choice of Court Convention: “Whilst acknowledging that the Instrument of Accession takes effect at 00:00 CET on **1 January 2021**, the United Kingdom considers that the 2005 Hague Convention entered into force for the United Kingdom on **1 October 2015** and that the United Kingdom is a

Contracting State without interruption from that date.”

With regard to the Child Support Convention: “Whilst acknowledging that the Instrument of Ratification takes effect at 00:00 CET on **1 January 2021**, the United Kingdom considers that the 2007 Hague Convention entered into force for the United Kingdom on **1 August 2014** and that the United Kingdom is a Contracting State without interruption from that date.”

Before referring to the UK declarations and reservations, perhaps our readers may find it interesting to get a recap of the unorthodox process by which the UK joined the two HCCH Conventions.

- On 1 October 2015, the UK was bound by the Choice of Court Convention by virtue of its membership of the European Union which approved the Convention on behalf of its Member States;
- On 1 August 2014, the UK was bound by the Child Support Convention by virtue of its membership of the European Union which approved the Convention on behalf of its Member States;
- On 28 December 2018, the UK deposited an instrument of accession to the Choice of Court Convention and an instrument of ratification of the Child Support Convention in the event the Withdrawal Agreement would not be ratified and approved by the UK and the European Union
- On several occasions, the UK suspended the legal effect of the accession/ratification, stating that as the European Council agreed a further extension of the period for withdrawal of the United Kingdom from the European Union under Article 50(3) of the Treaty on European Union. During the Extension Period, the United Kingdom remains a Member State of the European Union. As a Member State, European Union law, including the Agreement, will remain applicable to and in the United Kingdom. See our previous posts part I, part III;
- The UK extended its accession/ratification to Gibraltar in the event the Withdrawal Agreement would not be ratified and approved by the UK and the European Union. See our previous post here;
- The Withdrawal Agreement between the UK and the European Union was signed and approved and entered into force on 1 February 2020:
- On 31 January 2020, the UK withdrew its instrument of accession to the Choice of Court Convention and its instrument of ratification of the Child Support Convention (incl. declarations and reservations and extension to

Gibraltar). See our previous post here;

- On **28 September 2020**, the UK deposited a ***new*** instrument of accession to the Choice of Court Convention and a ***new*** instrument of ratification of the Child Support Convention, incl. declarations and reservations

While this process may seem to be undesirable from a legal standpoint (or just a legal nightmare!), the UK has acted in this way out of an abundance of caution and because of the lack of legal certainty surrounding Brexit.

With regard to the UK declarations, and in addition to the extension to Gibraltar, they seem to be exactly the same as those submitted previously, perhaps with some minor improvements.

The Depositary's notifications are available here for the Child Support Convention and here for the Choice of Court Convention.

Fortunately, the process of joining the above-mentioned Conventions by the UK has finally come to an end.