

Enforcement of Judgments in the UK after Brexit

ANGHARAD M PARRY

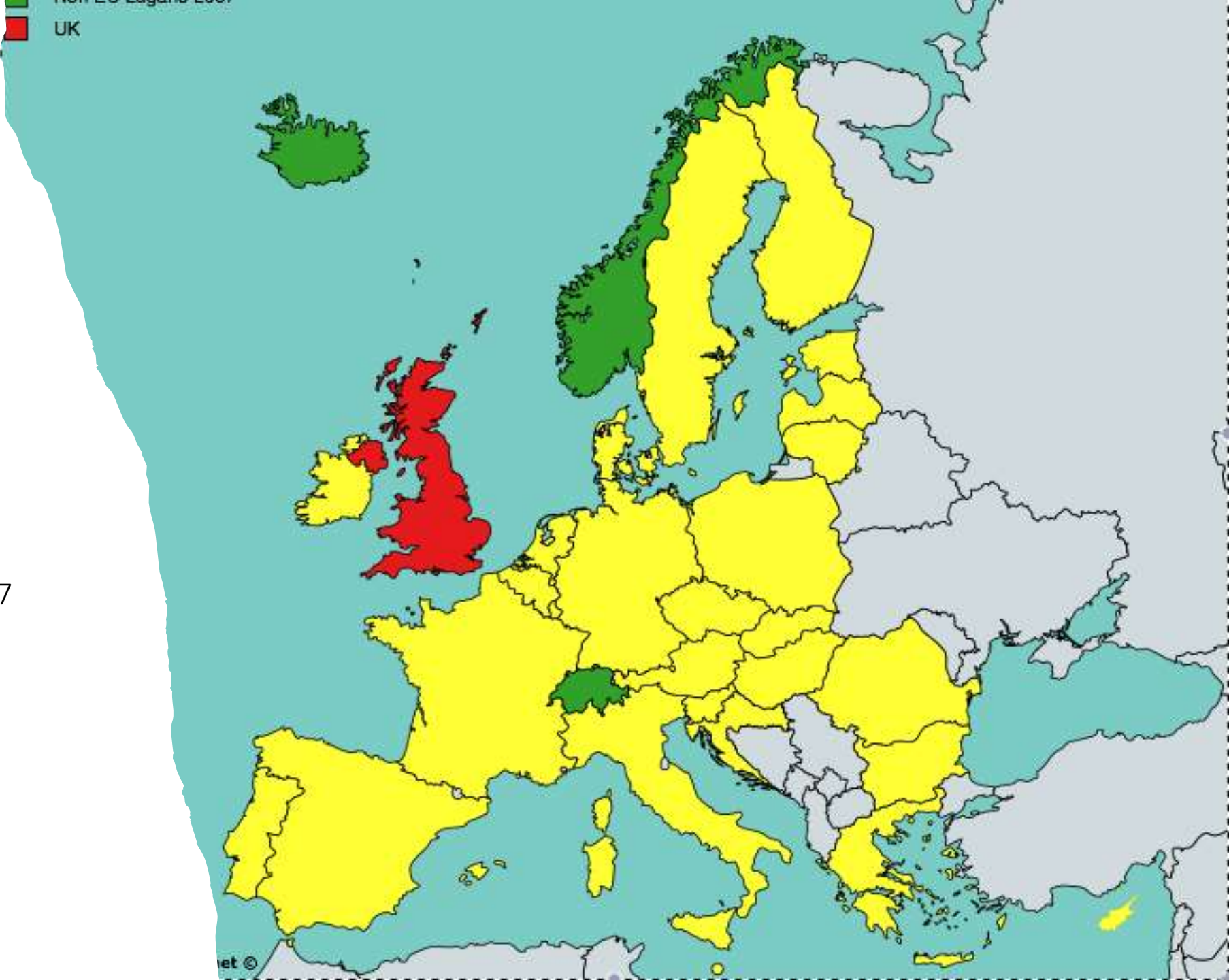
BARRISTER, TWENTY ESSEX



UK

EU

NON EU LUGANO 2007



The Former System: Cases commenced before end of transition

- I. ***BRUSSELS RECAST REGIME.***



11pm on 31 December 2020: UK left Brussels Recast Regime

Cases commenced before end transition (31 Dec 2020)

EU MS courts; Art 67 Withdrawal Agreement: courts should apply Brussels Recast principles for case commenced before end transition

English courts: courts should apply Brussels Recast principles for cases commenced before end transition and judgments resulting from them

The Former System

- ***II. LUGANO REGIME***

- EFTA States (Iceland, Norway, Switzerland – note the unique position of Denmark)
- UK applied to join in its own name in 2020, but has not yet succeeded in joining. Hopes are diminishing that it will do so. EU Commission has given preliminary indication that it is not in favour of UK joining – already reported, but 4 May 2021 official statement made.
- Await the decision of the European Council

Lugano – Reciprocity already breaking down?

- In theory, cases commenced before 31.12.20 should continue under the Lugano Rules.
- However, in practice, this may already be breaking down: see Zurich District Court decision of 22.02.21 that Lugano no longer applied (even to cases commenced pre-2021) cf. Swiss Federal Office of Justice statement.
- In UK, *Wright v Granath* [2021] EWCA Civ 28 : adopted an interpretation of Article 27 Lugano (*lis alibi pendens*) which arguably is pro-English jurisdiction

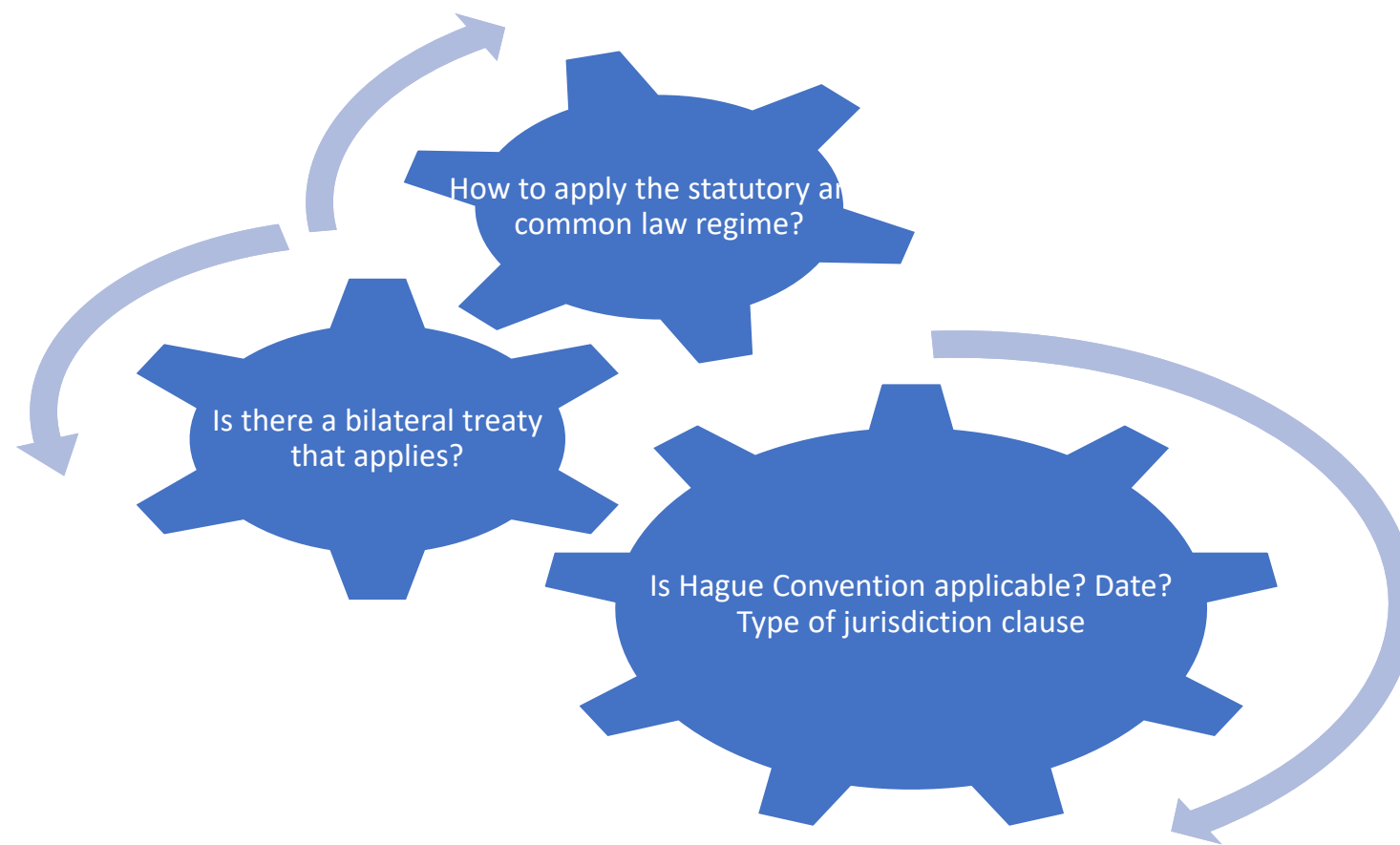
ALL CHANGE! ALL CHANGE!



Photo by Amin



The New System: Case commenced 01.01.21 on



The “New” System

HAGUE CHOICE OF COURT CONVENTION 2005

- Private International Law (Implementation of Agreements) Act 2020
- Exclusive choice of court agreements, and judgments resulting from them, must be respected
- Parties to the Hague Convention: EU states (including Denmark), UK in its own name, Mexico, Montenegro and Singapore
- Also signed but not yet in force: China, North Macedonia, Ukraine and USA
- Only to apply to **exclusive** choice of court clauses entered into after the relevant date. But what is the relevant date? UK says it is 1 October 2015; EU says it is 1 January 2021.
- Lengthy list of exceptions

Bilateral Treaties

- Old bilateral conventions “for the reciprocal [recognition and] enforcement of judgments in civil and commercial matters”: What will happen?
- France Paris, 18 January 1934
- Belgium Brussels, 2 May 1934
- Germany Bonn, 14 July 1960
- *Norway* *London, 12 June 1961*
- Austria Vienna, 14 July 1961
(amended, London, 6 March 1970)
- Italy Rome 7 February 1964,
- Netherlands The Hague, 17 November 1967

Bilateral treaties: Norway

- Unique position of Norway
- 1961 treaty revived/brought up to date by means of Reciprocal Enforcement of Foreign Judgments (Norway) (Amendment) (England and Wales and Northern Ireland) Order 2020/1338
- Much more limited in scope than Lugano, and deliberately tries not to “tread on toes” of the Lugano regime
- <https://www.lexisnexis.co.uk/legal/experts/3465>
- <https://twentyessex.com/wp-content/uploads/2021/01/Continued-recognition-of-civil-judgments-between-the-UK-and-Norway.pdf>

Recognition and Enforcement in English law

- Procedure governed by Part 74 CPR
- At common law, normally judgment must be for a definite sum, be final, not be in respect of taxes, penalties or multiple damages
- Generally English courts will not permit enforcement where the original court lacked jurisdiction according to the English conflict of laws rules OR judgment was obtained by fraud, is contrary to public policy, or violates the requirements of natural justice.
- Time limits apply (see s24(1) Limitation Act 1980 for common law rules)

Enforcement in English law

- Statutory regime:
- Excluding Hague Convention cases :
- Administration of Justice Act 1920 and Foreign Judgments (Reciprocal Enforcement) Act 1933 Acts (registration process) Vs. actions at common law.
- Statutory regimes proceed by registration and enforcement and are broadly cheaper and quicker than enforcement at common law.
- But how far will it be a matter of proceeding within the statutory regimes of the 1920 and 1933 Acts and how far will it be an enforcement action at common law?
- Countries with bilateral treaties may be under 1933 Act?
- Cyprus and Malta may be under 1920 Act?
- Note time limits (see section 2(1) FJA 1933)

ANGHARAD M PARRY
BARRISTER, TWENTY ESSEX

aparry@twentyessex.com