Regimes of recognition and enforcement of judgments

A comparison of the similarities and differences of the respective regimes of recognition and enforcement of judgments under Council Regulation 44/2001 with those provided by the English Common Law.

As a Member State of the European Union, the United Kingdom is subject to two regimes of recognition and enforcement of judgments. One is the domestic system that has developed under the English common law, while the other has been imposed upon the English legal system by the European Council, through Regulation 44/2001. These two regimes are similar in many ways, although there also significant differences between them.

The Council Regulation acknowledges that in the pursuit of a community in which free movement of persons is ensured, there needs to be ' measures relating to judicial cooperation in civil matters which are necessary for the sound operation of the internal market.' Furthermore, it expressly recognizes that judicial differences between the national rules of member states governing jurisdiction and recognition of judgments ' hamper the sound operation of the internal market'. The Regulation seeks to establish the free movement of judgments in civil and commercial matters, and it can therefore be seen as a harmonizing measure. It replaced the Brussels Convention on jurisdiction. The Regulation is based upon the principle that there should be a high level of predictability in the area of judicial enforcement and recognition. This can be seen as in-keeping with the general aims of the Community as set out in the earlier Treaties.

Article 32 of the Regulation defines ' judgment' as ' any judgment given by a court or tribunal of a member state, whatever the judgment may be called,

including a decree, order, decision or writ of execution…' This deals with any semantic difficulties of interpretation throughout the Member States, and ensures that all judgments that should properly be described as judgments are so. The Regulation goes on to state that a judgment in one Member State will be recognized, without the need for any special procedure, in other Member States.

This can be seen as differing to some extent from the common law regime in England, under which a specific treaty with the country in which the original judgment was obtained is required in order for that judgment to be enforced. Such was the result of the Brussels and Legano Conventions, which the Regulation has sought to amend. If this is not in existence, the jurisdiction of an English court will depend upon where the process was served upon the defendant. At common law, there is a distinction between service upon a defendant within the jurisdiction, and service upon a defendant outside the jurisdiction. Where the defendant is outside the jurisdiction, service upon such a defendant requires the permission of the court (under the Civil Procedure Rules Part 6).

There are a number of other significant factors to which attention must be paid under the English common law relating to recognition of judgments. These factors include the nationality of the court which gave judgment (as was mentioned above relating to the question of whether a treaty exists with that country); the subject matter of the action (that is, whether it is an action in personam or in rem; a distinction which the Regulation also makes); as well as the nature of the order made by the court outside of the jurisdiction. The regime under the common law makes provision for the ' registration' of

judgments, particularly of those from the Commonwealth and other Western European countries (under the Administration of Justice Act 1920, s9(1)). Once registered, a judgment has the same force and effect as if the judgment had originally been obtained from the registering court on the day of registration. Furthermore, foreign judgments can be registered under the Foreign Judgments (Reciprocal Enforcement) Act 1933. The effect of this is the same as registered judgments under the AJA; namely that the judgment obtains the force and effect it would have if granted in the registering court.

These provisions, then, require a foreign judgment to be registered in the UK in order for it to be enforceable and recoverable on. This is considerably more protracted and complex than under the European regime brought in by Regulation 44/2001. This is more straightforward, although of course more limited. While a judgment obtained in a court of a Member State will be applicable throughout the Community, and actionable upon, this extends only to the other Member States as opposed to under British law, whereby the judgment of a court of any nationality will be recognized and enforced, so long as it is registered in accordance with the statutory provisions.

Further principles have developed under the common law in England regarding what judgments will be enforceable. It is established that the judgment in personam of a court of ' competent jurisdiction' will be enforceable in England provided that it is for a definite sum of money, and it is final and conclusive. These conditions add little to the statutory provisions other than a requisite degree of certainty. This can be seen to differ from the Regulation which stipulates that even a judgment for a ' periodic payment by way of penalty' will be enforceable but only if the amount has been finally

determined. There is no requirement, then, under Article 49, for the payment to be final and conclusive.

There are, then, certain important differences between the two regimes on recognition and enforcement of judgments to which the UK is subject. Despite this, however, the Regulation sought to harmonise the laws relating to enforcement to promote the free movement of judgments within the Community. It has achieved this without infringing too much on the existing English regime which maintains it applicability to judgments from courts of nationalities outside the Community.