



HOUSE OF LORDS

International Agreements Committee

2nd Report of Session 2022–23

**Scrutiny of international
agreements: Council of
Europe Convention on
Preventing and Combating
Violence against Women
and Domestic Violence**

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International Agreements Committee

The International Agreements Committee is appointed by the House of Lords in each session to consider matters relating to the negotiation, conclusion and implementation of international agreements, and to report on treaties laid before Parliament in accordance with Part 2 of the Constitutional Reform and Governance Act 2010.

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Declaration of interests

See Appendix.

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Committee staff

The current staff of the Committee are Jennifer Martin-Kohlmorgen (Clerk), Andrea Ninomiya (Policy Analyst) and Robert Cocks (Committee Operations Officer).

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CONTENTS

| | <i>Page</i> |
|---|-------------|
| Summary | 2 |
| Agreement reported for special attention | 3 |
| The Council of Europe Convention on preventing and combating violence against women and domestic violence (The Istanbul Convention) (CP 674, 2022) | 3 |
| Box 1: Reservations in international law | 4 |
| Reservation affecting certain migrant victims of domestic abuse and violence | 4 |
| Reservation to maintain dual criminality in certain circumstances | 5 |
| Box 2: Dual criminality | 6 |
| Governance and amendments | 7 |
| Human rights | 7 |
| Implementation and entry into force | 7 |
| Territorial scope and consultation | 7 |
| Appendix: List of Members, declarations of interest and Committee staff | 9 |

SUMMARY

This report addresses the following agreement, laid before Parliament in accordance with section 20 of the Constitutional Reform and Governance Act 2010 (CRAG), which we report to the special attention of the House:

- Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CP 674, 2022)

We bring the agreement to the attention of the House on the grounds that it is politically important and gives rise to issues of public policy that the House may wish to debate prior to ratification. While we welcome the ratification of the Convention, it is regrettable that this is only happening a decade after it was signed, and we are concerned about the Government's proposed reservations. In particular, we do not see any justification for the reservation to the Article that provides for the granting of autonomous residency permits to women who have suffered domestic violence and abuse, but who depend on their spouse or partner for their residence status. We regret that the Government has not ensured that the Convention can be ratified without such reservation and recommend that it be subject to review at the earliest opportunity, with clear criteria established for when the reservation might be withdrawn.

A motion which would provide for a debate on the Istanbul Convention will be tabled in the Committee Chair's name.

Scrutiny of international agreements: Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence

AGREEMENT REPORTED FOR SPECIAL ATTENTION

The Council of Europe Convention on preventing and combating violence against women and domestic violence (The Istanbul Convention) (CP 674, 2022)¹

1. The Council of Europe Convention on preventing and combating violence against women and domestic violence (commonly known as the Istanbul Convention) was laid on 17 May 2022, and the scrutiny period is scheduled to end on 29 June 2022. It was considered by the Committee on 16 June 2022.
2. The Istanbul Convention is a legally binding instrument providing a comprehensive framework to counter violence against women and girls. The Convention covers all forms of violence and includes offences such as rape and stalking. It highlights the need for preventative measures, such as establishing refuge shelters, providing education on equality between men and women, criminalising forced and underage marriages, collecting data on prosecutions of gendered crime, and promoting women's economic and social independence.
3. The Convention was opened for signature in 2011. The UK signed it in 2012, but then failed to ratify it. Almost a decade later, on 17 May 2022, the Home Secretary, the Rt Hon Priti Patel MP, announced that the Convention had been laid before Parliament (a pre-requisite of ratification).²
4. The Minister noted that ratification would be subject to UK reservations, with the reservation affecting migrant women of domestic abuse being of particular concern to us. It effectively excludes domestically abused migrant women dependent on their spouse or partner for UK residence from the full protection that the Convention provides for other victims of domestic violence.
5. Under a separate reservation, non-UK nationals resident in the UK may not face prosecution in the UK for certain crimes of sexual violence committed abroad (for example, marital rape); and a UK resident may not be prosecuted in the UK for forced abortion and sterilisation crimes committed abroad.

1 The Council of Europe Convention on preventing and combating violence against women and domestic violence, May 2011, CP 674:https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1076122/MS_3.2022_Council_of_Europe_Convention_on_Preventing_and_Combating_Violence_Against_Women_and_Domestic_Violence.pdf [accessed 16 June 2022]

2 Written Statement, [HCWS34](#), Session 2022–23

6. Any reservation could remain in place for a (renewable) period of 5 years.³

Box 1: Reservations in international law

Reservations are used by states seeking a carve-out from specific obligations in a treaty. Reservations are “a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State”.⁴ Reservations are explicitly allowed for under the Vienna Convention on the Law of Treaties, subject to certain conditions. These include that the treaty to which the reservation relates does not contain a general or specific prohibition on reservations, or that the reservation is incompatible with the object and purpose of the treaty.⁵

7. The reservations are considered in more detail below.

Reservation affecting certain migrant victims of domestic abuse and violence

8. The Istanbul Convention protects victims of domestic abuse and violence irrespective of their migration status.⁶ To support migrant victims who depend on their spouse or partner for their residence status, the Convention additionally includes an obligation to grant an autonomous residence permit for such victims, in the event of particularly difficult circumstances.⁷ It is this specific requirement that would not apply in the UK under the proposed reservation.
9. In February 2021, we held an evidence session with the then Minister for Safeguarding, Victoria Atkins MP. Over the course of that meeting, we discussed the position of migrant victims of domestic violence and the question of a reservation that would exclude some migrant women from the Convention’s protections was raised. Following the session, the then Chair, Lord Goldsmith, wrote to the Minister to express “serious doubts” about any such UK reservation. He argued that this “could result in the issue of non-discrimination remaining unaddressed for a prolonged period”.⁸
10. Amendments were put forward in the Lords during the passage of the Domestic Abuse Bill which would have had the effect of supporting victims of domestic abuse regardless of their immigration status. These were rejected by the Government, but it did undertake to run a pilot scheme to support migrant victims. The pilot scheme was established in April 2021 and findings were due to be reported in June 2022. At the time of writing, the results of that pilot had not been published. The EM notes that the review will not have concluded before summer 2022 and states that the rationale for

3 Article 79

4 Vienna Convention on the Law of Treaties 1969, [Article 2\(1\)\(d\)](#)

5 Vienna Convention on the Law of Treaties 1969, [Article 19](#)

6 Article 4(3)

7 Article 59

8 Letter from Baroness Hayter to Victoria Atkins MP, dated 11 February 2021: <https://committees.parliament.uk/publications/4670/documents/47065/default/>

entering a reservation at this stage is “to enable swift ratification”⁹ (despite a decade having passed).

11. The reservation regarding the obligation to provide autonomous residence permits to certain migrant women who are victims of domestic violence is, as the EM explains, “under review pending the results and evaluation of the Support for Migrant Victims Scheme”. However, the EM provides no timetable for such review, nor does it set out any criteria under which the success of the scheme might be measured and feed into the review. It is also far from clear to us how the pilot scheme, while important in ensuring that local authorities do not discriminate in their provision of support to migrant victims of domestic violence, ties into the obligation to grant autonomous residency permits to those women whose residency status is dependent on that of their partner or spouse.
12. **We do not see any justification for the reservation regarding the obligation to provide autonomous residence permits to migrant women whose residency depends on that of their spouse or partner and who have been victims of domestic abuse, and regret that the Government did not ensure that the Convention could be ratified without such a reservation.**
13. **We call on the Government to justify the exclusion and set out (1) how the pilot interacts with the obligation under the Convention to provide an autonomous residence permit, (2) the criteria that will be used for (a) measuring the success of the Support for Migrant Victims Scheme pilot and (b) the withdrawal of the reservation, and (3) a timetable for reviewing the reservation as soon as possible.**
14. This is the first occasion that we have examined an international agreement where the Government has expressed an intention to enter formal reservations. We note that this is a prerogative power and that Parliament has no role in authorising such reservations as part of the process under the Constitutional Reform and Governance Act 2010.

Reservation to maintain dual criminality in certain circumstances

15. This reservation relates to (a) the prosecution of certain crimes of sexual violence, including rape, committed abroad by UK residents who are not UK nationals,¹⁰ and (b) the prosecution of crimes related to forced abortion and sterilisation committed abroad by any UK residents.¹¹ The Convention states that signatories may not apply a dual criminality requirement for these (and other) offences.¹²

9 Home Office, *Explanatory memorandum: Council of Europe Convention on preventing and combating violence against women and domestic violence*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1076123/EM_MS_3.2022_Council_of_Europe_Convention_on_Preventing_and_Combating_Violence_Against_Women_and_Domestic_Violence.odt [accessed 16 June 2022]

10 Article 44(3) as it relates to offences under Article 36

11 Article 44(3) as it relates to offences under Article 39

12 Article 44(3)

Box 2: Dual criminality

In UK law extraterritorial jurisdiction usually applies only when the offending behaviour is a criminal offence in the country where it happened as well as in the UK. This is known as dual criminality. This rule is commonly associated with extradition law. In that context it provides that extradition should only take place in respect of conduct which is not only an offence against the law of the requesting State but also against the law of the requested State. The rule of dual criminality developed for two principal reasons. First, it was an aspect of the principle of reciprocity, that is, the principle of international law which denotes that when a State gives cooperation to another State, it does so on the basis that it will receive similar cooperation in return. Secondly, it reflected the idea that it was undesirable for a State to assist in the enforcement of criminal laws unknown in its own domestic legal order.

Source: Home Office, *A Review of the United Kingdom's Extradition Arrangements*, 2011: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/117673/extradition-review.pdf [accessed 16 June 2022]

16. In her latest correspondence with the Committee, Rachel Maclean MP, Minister for Safeguarding, explains that “Ministers in the UK, Scottish and Northern Ireland Governments have previously decided that such a condition [that the behaviour is also illegal in the country where it was committed] is necessary” and that “the provisions of the Domestic Abuse Act 2021 reflect those decisions”.¹³
17. The Explanatory Memorandum (EM) published alongside the Convention indicates that a dual criminality requirement “is the norm in UK law when dealing with extraterritorial jurisdiction”, suggesting that “it is not generally right to prosecute someone for doing something in another country for which they could not be prosecuted in that country”.
18. The EM gives some examples where the Government considers the removal of dual criminality in respect of sexual violence offences to be problematic if applied to non-UK nationals resident in the UK. It cites the example of a German national resident in the UK “who on return to Germany for a short period had sex with their 15-year-old partner, which is legal in Germany, where the age of consent is 14”.¹⁴ The EM also contends that the Government’s approach means that “it is less likely that other countries will make reciprocal provisions which affect our nationals in ways which we would not welcome”.¹⁵
19. The Government provides a rather less clear-cut rationale for why it is seeking to maintain the rule of dual criminality in respect of UK residents who have committed forced abortions and sterilisations abroad. The EM notes that the Domestic Abuse Act 2021 preserved the dual criminality requirement in respect of offences that would fall under this part of the Convention. Hence, prosecution of a UK resident (national or non-national) for forced abortion or sterilisation is only possible if it also qualifies as a crime in the other

13 Letter from Rachel Maclean MP to International Agreements Committee on Istanbul Convention, dated 19 May 2022: <https://committees.parliament.uk/publications/22513/documents/165915/default/>

14 EM, para 9.4

15 The EM suggests that this could occur, for example, with a country where same sex sexual activity is a crime. Such a country could theoretically prosecute a UK national who lived in that country, returned to the UK for a holiday, and whilst in the UK had sex with their same sex partner. The EM argues that “If we were to criminalise our non-national residents for doing things overseas which are not illegal there, such reciprocal action could become more likely.”

country. The EM notes, “However, a dual criminality requirement should not be a barrier to prosecution as we know of no jurisdiction which does not have general offences of violence equivalent to ours”.¹⁶

20. **We call on the Government to provide a more detailed justification for the reservation entered in respect of forced abortion and sterilisation offences.**
21. The EM also states that reservations to maintain dual criminality in certain circumstances have been entered by 12 countries, including France and Sweden.

Governance and amendments

22. A Group of Experts has been established under the Convention—an independent body whose task it is to monitor implementation. The Convention also makes specific provision for the role of national parliaments and the Parliamentary Assembly of the Council of Europe.¹⁷
23. Amendments can be proposed by any Party to the Convention.¹⁸ A Party must communicate a proposed amendment to the Secretary General of the Council of Europe, who must then forward it to all Council of Europe member states, signatories, Parties, the European Union and any state invited to sign or accede to the Convention. The EM notes that amendments may be adopted by majority as provided for in Article 20.d of the Statute of the Council of Europe,¹⁹ and that any amendments would be subject to scrutiny under the Constitutional Reform and Governance Act 2010.

Human rights

24. We are surprised that the EM supplied by the Home Office indicates that the Convention will “entail no significant human rights implications”. While we acknowledge that the rights which are protected by the Convention already form part of UK domestic law, we hope that the UK’s ratification of the Convention will have a positive impact on the protection of women and girls and will enable the UK to take a leadership role on this issue internationally.

Implementation and entry into force

25. The Convention is already implemented in UK law (save in relation to the reservations). The EM sets out more than 40 pieces of relevant legislation and the Government indicates that no further legislation is required.
26. The Convention will enter into force for the UK three months after the date it deposits its instrument of ratification with the Secretary General of the Council of Europe.

Territorial scope and consultation

27. The Convention applies only to the United Kingdom and does not apply to the Crown Dependencies and Overseas Territories. The EM highlights that the UK Government has informed all Crown Dependencies and British

¹⁶ EM, para 9.8

¹⁷ Article 70

¹⁸ Article 72

¹⁹ This provision notes that any such resolutions require a two-thirds majority of the representatives casting a vote and of a majority of the representatives entitled to sit on the Committee.

Overseas Territories that it will be ratifying the Istanbul Convention, and that ratification could extend to them in the future if they wish.

28. The EM makes clear that the Devolved Administrations were consulted on the drafting of the Convention and on the preparation of the EM. The EM does not set out any issues and notes that the Devolved Administrations all support ratification. However, it is not entirely clear whether the Devolved Administrations have expressed any views on the proposed reservations. The EM implies that issues around dual criminality would have a similar impact on each part of the UK and that a consistent approach would need to be adopted. However, the EM makes no comment on the question of the reservation on migrant victims.
29. **We report the Istanbul Convention to the special attention of the House on the grounds that it is politically important and raises issues of public policy that the House may wish to debate prior to ratification.**
30. **While we strongly support ratification of the Convention, we are concerned about the Government's proposed reservations. We recommend, in particular, that its reservation relating to migrant victims of domestic violence should be lifted as soon as possible, with clear criteria established to indicate the circumstances in which the reservation should be withdrawn.**
31. **We make this report for debate.**

APPENDIX: LIST OF MEMBERS, DECLARATIONS OF INTEREST AND COMMITTEE STAFF

International Agreements Committee Members and staff

Lord Astor of Hever

No relevant interests

Lord Gold

Director, Gold Collins Associates Ltd

Principal, David Gold & Associates LLP

Baroness Hayter of Kentish Town

Senior Non-Executive Director, Association of British Insurers

Lord Kerr of Kinlochard

No relevant interests

Lord Lansley

Director, LOW Associates Ltd

Chair, UK-Japan 21st Century Group

Trustee, Radix

Baroness Liddell of Coatdyke

Association Member, Bupa

Chair, Annington Ltd

Honorary Vice President, Britain-Australia Society Education Trust

Trustee, Northcote Educational Trust

Lord Morris of Aberavon

No relevant interests

Lord Oates

Chair, Advisory Committee, Weber Shandwick UK

Director, H&O Communications Ltd

Lord Razzall

Director, North Atlantic Mining Associates Limited

Director, ZeU Technologies Inc

Shareholdings, ZeU Technologies Inc

Shareholdings, St-Georges Eco-Mining Corporation

Shareholdings, Tindra plc

Earl of Sandwich

No relevant interests

Lord Udny-Lister

Advisor to the Group Chairman of HSBC

Lord Watts

No relevant interests

The Committee staff are Jennifer Martin-Kohlmorgen (Clerk), Andrea Ninomiya (Policy Analyst), and Robert Cocks (Committee Operations Officer).

Specialist Adviser

Alex Horne acted as Specialist Adviser to the Committee and declared the following interests:

Counsel, Hackett & Dabbs LLP; Visiting Professor at Durham University; Special Adviser, United Nations Development Programme (Pacific Region); Special Adviser, House of Commons' Women and Equalities Committee.

