

## WHY THE UNITED KINGDOM HAS NOT RATIFIED THE CISG

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The short answer is that Ministers do not see the ratification of the Convention as a legislative priority. Ratification would need legislation and the CISG must take its place in the queue with the Government's many other legislative priorities. In the last Parliamentary session we had legislation covering employment, civil partnerships, energy and company law—issues which Ministers currently feel are of greater importance.

The question, therefore, is why Ministers do not consider it a priority. One of the main reasons is that there seems to be relatively little interest in the country to ratify the Convention. Let me give you a couple of examples of why this is the perception.

First, about every six months we might get a letter to our Ministers asking about ratification, usually from the same person, asking why the U.K. has not yet ratified the Convention and when it is going to do so. This does not demonstrate to us that failure of the U.K. to implement the Convention is having an adverse effect on the U.K. economy. Rather it is the opposite; there doesn't seem to be a problem with the current position as business is not suffering. If it were a problem, we would expect Ministers to have this raised with them at every available opportunity. Our usual answer is that the U.K. will ratify if and when Parliamentary time allows.

Second, we have held two formal consultations on whether we should ratify the Convention. Neither consultation can be said to have shown a strong desire for the U.K. to ratify. In 1989, we issued 1,500 documents and received only 55 responses—28 in favour, 17 against and 10 neutral. Again in 1997, we issued 450 documents and received 36 replies. Of these, 26 favoured implementation, 7 opposed and 3 were neutral. Hardly a ringing endorsement for accession.

It might be argued that we should not have been surprised at the low level of responses, given the technical nature of the subject and its relatively uncontroversial nature. However, what stood out from the few responses we had is that some very large and influential organisations were against ratification. In 1989, this list included ICI, BP, Shell, the CBI and the Commercial Courts Committee. In 1997, those organizations against ratification included BP, the Law Society of England and Wales and the Commercial Bar Association.

Those in favour included British Telecom (provided they were able to contract out of it), British Airways, the Law Commission of England and Wales and British Gas. Interestingly, some who were in favour in 1989 seemed to have had a change of heart by 1997. As you can see from these examples, it is not surprising that Ministers have failed to see it as a priority.

However, after the 1997 consultation, the Ministers did give approval for the U.K. to proceed towards accession and a draft bill was prepared. The bill was to have been introduced as a Private Member's Bill, rather than a Government Bill. This type of bill is introduced by a Member of Parliament or Peer who has an interest in a particular subject.

Unfortunately, the Peer in question fell seriously ill and progress on the bill consequently stalled and remained that way due to a lack of resources in the Department. However, it continued to be our stated aim that we would accede to the Convention.

Now forward the clock to January 2004. After a change in the structure of the unit of which I am head, a member of my team became available to look more closely at implementing the Convention. We quickly realised that if we were to go down the primary legislation route, we had little chance of gaining a place during the particularly busy Parliament at the time. Therefore, we decided to look to see whether there were other methods, not involving primary legislation, of ratifying the Convention.

The other alternative we identified was the use of a Regulatory Reform Order (RRO). For us to go down the RRO route a burden in legislation must always be either removed or reduced. Our legal advice was that the changes introduced by implementing the CISG would not qualify as removal of a burden or a reduction under the tests contained in the Regulatory Reform Act. Moreover, an RRO would apply only to England and Wales, leaving us to determine separately how to implement the CISG in Scotland and Northern Ireland.

So the RRO route is not the way forward. We have, therefore, returned to look again at how we might prompt ratification via primary legislation. We decided to conduct an informal mini-consultation to elicit evidence. We hosted two meetings, the first for members of the business community and the second for arbitrators and academics. Some interesting views were gleaned.

At the meeting with the business community, the general view was "if it ain't broke, don't try to fix it." Arguments put forward against implementation included:

- The Convention would be good news for lawyers but bad news for clients.
- Implementation would involve a greater number of disputes.

- There was a danger that London would lose its edge in international arbitration and litigation.

Our second meeting with arbitrators and academics was altogether more positive. The arguments put forward included:

- Failure to adopt the Convention may adversely affect the City of London as a forum for litigation and arbitration.
- A political benefit is rebutting the negative perception of the U.K. as being a reluctant participant in international trade law initiatives.
- Even if we do not adopt the Convention, U.K. companies will not be able to ignore it completely. If the contract is with a company in a country which has adopted the Convention, they may well press for the Convention to apply.

Both meetings were useful but were poorly attended and we were left with the feeling that we had not received a truly representative view from those affected by the CISG.

So how will we proceed from here? In an attempt to raise the profile of the Convention in Ministers' eyes, we are aiming to go out to consultation once again. This time, we hope to produce a document that will result in more robust support for U.K. implementation. We need to demonstrate that implementation will bring strong, quantifiable economic benefits to the U.K. It will also be important to demonstrate that small business will not be adversely affected in the long term and that the Convention will make international trading simpler.

We have tried to put together a document that is user friendly, setting out clearly the differences between current English law and the provisions of the Convention and how the Convention would work in practice.

We have tested our questions on a small business panel to ensure that the document is accessible to them.

We will target our consultation to ensure that those who would be affected have a chance to consider the implications for them and their business.

Finally, I must underline how vital it is that if the business community really does want the U.K. to ratify the Convention, it must make this desire clear to the government and lobby hard for it. Do not wait for us to consult. There is only so much that we can do through consultation, whether informal or written. If it is in the interest of the business community for the U.K. to accede to the Convention, the onus is on business to make those feelings known to government as robustly as possible.