

Private International Law (Implementation of Agreements) Bill

Memorandum concerning the Delegated Powers in the Bill

A. INTRODUCTION

1. This memorandum has been prepared to assist with scrutiny of the Private International Law (Implementation of Agreements) Bill (“the Bill”). The Bill was brought from the House of Lords on 30th June 2020. Upon introduction to the House of Lords, the Bill contained a delegated power, but this was removed from the Bill following a division at Report Stage. This means that the Bill, as currently drafted and amended in the House of Lords, does not contain any delegated powers. A description of the previous delegated power in the Bill is contained below.

B. SUMMARY OF THE BILL

Background and Purpose

2. The Bill implements in UK domestic law, under clause 1, three private international law agreements which help to resolve cross-border disputes, by providing legal certainty to those involved.
3. For example, if the relationship between parents has broken down, one parent lives in another country and they are trying to agree whom the child lives with, or if one parent is seeking child maintenance payments from another parent living abroad, the 1996 and 2007 Hague Conventions can help achieve a swift resolution.
4. The same, of course, goes for businesses entering into international contracts with exclusive choice of court clauses, as dealt with under the 2005 Hague Convention. This convention provides legal certainty to high value commercial contracts with cross-border implications, so that if a dispute arises there is certainty on where the resultant court case should be held, and that the resulting judgment can be recognised and enforced across borders.
5. Private international law agreements, such as the three Hague Conventions referred to above, provide a legal framework for resolving difficult situations for those involved in disputes across borders.
6. Without these agreements, UK businesses, individuals and families engaged in cross border disputes will struggle to resolve them. There may be parallel court cases in different countries, on substantially the same matter, which reach conflicting decisions, and the decisions made by UK courts may not be recognised and thereby enforced abroad. International agreements on PIL, such as the 1996 and 2007 Hague Conventions, also enable courts or public authorities to establish co-operation on procedural matters dealing with cross-border disputes particularly in the field of family law.

7. The certainty provided by PIL agreements is beneficial to the legal services sector in supporting litigants dealing with cross-border disputes. The sector contributes over £25bn gross value added to the economy and generates revenue of over £35bn. The UK's trade surplus in legal services has more than doubled over the past 10 years to £6.5bn.
8. The Bill has one main clause. Clause 1 implements in domestic law three existing international agreements on PIL (or 'Hague Conventions') to which the UK will be an independent contracting party in its own right at the end of the Transition Period (TP). These are:
 - The 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children ('1996 Hague Convention');
 - The 2005 Hague Convention on Choice of Court Agreements ('2005 Hague Convention');
 - and
 - The 2007 Hague Convention on the International Recovery of Child Support and other Forms of Family Maintenance ('2007 Hague Convention').

Note: The UK is already a contracting party to the 1996 Hague Convention. For more detail on these Hague Conventions, please refer to the Bill, Explanatory Notes, or Policy Statement. Also, a full list of Hague Conventions, including those conventions which the UK currently participates in either its own right or by virtue of EU contracting party status, can be found in **Annex A** of this memorandum.

C. DELEGATED POWERS

9. As outlined above, the Bill originally contained another clause which contained a clearly defined power to make regulations to implement in domestic law in future other international agreements on PIL, for example, subject to successful application, the 2007 Lugano Convention.
10. These agreements would have contained rules relating, for example, to one or more of the following areas:
 - Jurisdiction: rules which establish which country's courts or authorities should deal with a legal dispute which involves a foreign element.
 - Applicable law: rules which clarify which country's law applies to a dispute in a situation involving foreign elements
 - Recognition and enforcement of judgments: rules allowing for the mutual recognition and enforcement of judgments handed down by foreign courts, and for the enforcement of legally binding decisions issued abroad by bodies competent to resolve a dispute.
 - Cooperation between judicial or other authorities in different countries or territories on matters such as service of documents and taking of evidence, or in relation to any of the above matters, such as recognition and enforcement of each other's decisions in family cases.

11. The former delegated power in the Bill – the power to implement PIL agreements by regulations – described the types of international agreements falling within scope of the implementing power; and defined the term “private international law” for the purposes of the power. In most instances, and in all cases for new agreements, it was intended that the draft affirmative procedure would have been used to implement an agreement on private international law using the delegated power.
12. Given that private international law, including the implementation of agreements, is fully devolved to Scotland and Northern Ireland, the delegated power could have been exercised by the Secretary of State for England and Wales; by Scottish Ministers for Scotland; and by a Northern Ireland Department for Northern Ireland. The Secretary of State would also have been able to make UK-wide regulations using the power with the consent of the relevant devolved administrations. The devolved administrations have been closely engaged in the drafting of the Bill including the former delegated power. The Bill fully adheres to the devolution settlements in this area.
13. As referred to above, the delegated power was removed at Report Stage in the House of Lords.

Parliamentary scrutiny of UK joining PIL Agreements

14. The Government has prerogative powers to enter into international agreements on PIL and is responsible for negotiating new agreements; and for decisions on signing and ratifying new or existing (multilateral) agreements. Under the Constitutional Reform and Governance Act 2010 (“CRAG Act 2010”) Parliament has the opportunity to scrutinise the content of agreements and object to their ratification, before they become binding in the UK.
15. Parliament has had the opportunity to scrutinise the three Hague Conventions which are being implemented in UK domestic law through clause 1 of the Bill.
16. In November 2018, as part of preparations for the UK becoming an independent contracting party to the 2005 and 2007 Hague Conventions under a non-negotiated withdrawal from the EU scenario, the text of both conventions was laid in Parliament under the CRAG Act 2010, and no member raised any objections.¹ The 1996 Hague Convention was ratified by the UK before commencement of part 2 of the CRAG Act 2010, but the text of the Convention was in any event laid before Parliament as a command paper (number 7727) in 2009 under the Ponsonby Rule.

¹ Hague 2005 CRAG details : https://www.gov.uk/government/publications/ms-no112018-convention-on-choice-of-court-agreements?utm_source=39b98bb5-d064-4bfb-895e-896e9805cae1&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate; and Hague 2007 CRAG details: https://www.gov.uk/government/publications/ms-no102018-international-recovery-of-child-support-and-other-forms-of-family-maintenance?utm_source=89e03892-4dec-4d78-9e97-f30d4d9af7f1&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate

Conclusion:

17. As referred to above, the Bill, as currently drafted and amended in the House of Lords, does not contain any delegated powers. For more information on the three Hague Conventions being implemented under clause 1, please refer to the Bill, Explanatory Notes, or Policy Statement.

Ministry of Justice
June 2020

Annex A:

Overview of Conventions, Protocols and Principles of the Hague Conference of Private International Law

Note: *The Hague Conventions which the UK currently participates in its own right and / or by virtue of EU contracting party status are highlighted with an asterisk (**).*

1. Statute of the Hague Conference on Private International Law
2. Convention of 1 March 1954 on civil procedure
3. Convention of 15 June 1955 on the law applicable to international sales of goods
4. Convention of 15 April 1958 on the law governing transfer of title in international sales of goods
5. Convention of 15 April 1958 on the jurisdiction of the selected forum in the case of international sales of goods
6. Convention of 15 June 1955 relating to the settlement of the conflicts between the law of nationality and the law of domicile
7. Convention of 1 June 1956 concerning the recognition of the legal personality of foreign companies, associations and institutions
8. Convention of 24 October 1956 on the law applicable to maintenance obligations towards children
9. Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children
10. Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants
11. Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions*
12. Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents*
13. Convention of 15 November 1965 on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions
14. Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*
15. Convention of 25 November 1965 on the Choice of Court
16. Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations*
17. Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*
18. Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters
19. Supplementary Protocol of 1 February 1971 to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters
20. Convention of 4 May 1971 on the Law Applicable to Traffic Accidents

- 21.** Convention of 2 October 1973 Concerning the International Administration of the Estates of Deceased Persons²
- 22.** Convention of 2 October 1973 on the Law Applicable to Products Liability
- 23.** Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations*
- 24.** Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations
- 25.** Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes
- 26.** Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages
- 27.** Convention of 14 March 1978 on the Law Applicable to Agency
- 28.** Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*
- 29.** Convention of 25 October 1980 on International Access to Justice
- 30.** Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition*
- 31.** Convention of 22 December 1986 on the Law Applicable to Contracts for the International Sale of Goods
- 32.** Convention of 1 August 1989 on the Law Applicable to Succession to the Estates of Deceased Persons
- 33.** Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*
- 34.** Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*
- 35.** Convention of 13 January 2000 on the International Protection of Adults*³
- 36.** Convention of 30 June 2005 on Choice of Court Agreements*
- 37.** Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary
- 38.** Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance *
- 39.** Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations
- 40.** Principles on Choice of Law in International Commercial Contracts
- 41.** Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters

² The UK signed but never ratified this convention.

³ The only part of the UK which has ratified the Convention of 13 January 2000 on the International Protection of Adults is Scotland.