



House of Commons

NOTICES OF AMENDMENTS

given up to and including

Wednesday 30 September 2020

New Amendments handed in are marked thus ★

☆ *Amendments which will comply with the required notice period at their next appearance*
Amendments tabled since the last publication: 5 to 11, NC5(a) to (g), NC5 to NC8 and NS4

COMMITTEE OF THE WHOLE HOUSE

PRIVATE INTERNATIONAL LAW (IMPLEMENTATION OF AGREEMENTS) BILL [*LORDS*]

NOTE

This document includes all amendments tabled to date and includes any withdrawn amendments at the end. The amendments have been arranged in the order in which they relate to the Bill.

Mr Jonathan Djanogly
 Sir Robert Neill

2

☆ Clause 1, page 2, line 20, at end insert—

“3F The 2007 Lugano Convention to have the force of law

- (1) The 2007 Lugano Convention shall have the force of law in the United Kingdom.
- (2) For the purposes of this Act the 2007 Lugano Convention is to be read together with any reservations or declarations made by the United Kingdom at the time of the approval of the Convention.
- (3) For convenience of reference the English text of the 2007 Lugano Convention is set out in Schedule 3H.”

Private International Law (Implementation of Agreements) Bill [Lords], continued

Mr Jonathan Djanogly
Sir Robert Neill

3

☆ Clause 1, page 2, line 21, leave out “3G” and insert “3H”

Mr Jonathan Djanogly
Sir Robert Neill

4

☆ Clause 1, page 2, line 22, leave out “4” and insert “(Schedule to be inserted as Schedule 3H to the Civil Jurisdiction and Judgments Act 1982)”

Mr Jonathan Djanogly
Sir Robert Neill

1

Clause 1, page 2, line 24, at end insert—

“(5) The 2007 Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters shall have the force of law in the United Kingdom, conditional upon the United Kingdom accession to such Convention.”

Alex Chalk

5

★ Clause 2, page 2, line 28, insert—

“(2) Regulations under section (*Implementation of other agreements on private international law*) may make provision binding the Crown.

(3) The reference to the Crown in subsection (2) does not include—

- (a) Her Majesty in Her private capacity,
- (b) Her Majesty in right of the Duchy of Lancaster, or
- (c) the Duke of Cornwall.”

Member’s explanatory statement

This amendment provides that regulations made under NC5 may make provision binding the Crown.

Alex Chalk

6

★ Clause 3, page 2, line 30, at end insert—

“(2) Her Majesty may by Order in Council provide for section (*Implementation of other agreements on private international law*) (including Schedule (*Regulations under section (Implementation of other agreements on private international law)*)) and section 2(2) and (3) to extend, with or without modifications, to the Isle of Man.”

Member’s explanatory statement

This amendment inserts a new subsection into Clause 3. This allows Her Majesty by Order in

Private International Law (Implementation of Agreements) Bill [Lords], continued

Council to extend to the Isle of Man NC5 (including NS4) and subsections (2) and (3) of Clause 2 inserted by Amendment 5.

Alex Chalk

NC5

★ To move the following Clause—

“Implementation of other agreements on private international law (No. 3)

- 5
- (1) The appropriate national authority may make regulations for the purpose of, or in connection with, implementing any international agreement, as it has effect from time to time, so far as relating to private international law (a “relevant international agreement”).
- (2) The appropriate national authority may make regulations for the purpose of, or in connection with, applying a relevant international agreement, with or without modifications, as between different jurisdictions within the United Kingdom.
- 10 (3) The appropriate national authority may make regulations for the purpose of, or in connection with, giving effect to any arrangements made between—
- (a) Her Majesty’s government in the United Kingdom, and
- (b) the government of a relevant territory,
- for applying a relevant international agreement, with or without modifications, as between the United Kingdom, or a jurisdiction within the United Kingdom, and that territory.
- 15 (4) Regulations under this section may make—
- (a) consequential, supplementary, incidental, transitional or saving provision;
- 20 (b) different provision for different purposes or for different parts of the United Kingdom.
- (5) Regulations under this section may include provision about—
- (a) enforcement of obligations arising under or by virtue of the regulations;
- (b) sharing of information;
- (c) legal aid.
- 25 (6) Schedule (*Regulations under section (Implementation of other agreements on private international law (No. 3))*) makes further provision about regulations under this section.
- (7) In this section—
- “appropriate national authority” means—
- 30 (a) in relation to England and Wales, the Secretary of State;
- (b) in relation to Scotland—
- (i) the Scottish Ministers, or
- (ii) the Secretary of State acting with the consent of the Scottish Ministers;
- 35 (c) in relation to Northern Ireland—
- (i) a Northern Ireland department, or
- (ii) the Secretary of State acting with the consent of a Northern Ireland department
- “international agreement” means a convention, treaty or other agreement to which the United Kingdom is, or is expected to become, a party;
- 40

Private International Law (Implementation of Agreements) Bill [Lords], continued

“private international law” includes rules and other provisions about—

- 45 (a) jurisdiction and applicable law;
- (b) recognition and enforcement in one country or territory of any of
the following that originate in another country or territory—
- 45 (i) a judgment, order or arbitral award;
- (ii) an agreement, decision or authentic instrument
determining or otherwise relating to rights and
obligations;
- 50 (c) co-operation between judicial or other authorities in different
countries or territories in relation to—
- (i) service of documents, taking of evidence and other
procedures, or
- (ii) anything within paragraph (a) or (b);

“relevant international agreement” has the meaning given in subsection (1);

55 “relevant territory” means—

- (a) the Isle of Man;
- (b) any of the Channel Islands;
- (c) a British overseas territory.

60 (8) This section and Schedule (*Regulations under section (Implementation of other
agreements on private international law (No. 3))*) have effect, with the following
modifications, in relation to a model law adopted by an international organisation
of which the United Kingdom is a member as it has effect in relation to an
international agreement to which the United Kingdom is, or is expected to
become, a party.

65 The modifications are—

- (a) a reference in this section or that Schedule to implementing or applying
a relevant international agreement is to be read as a reference to giving
effect to the model law (with or without modifications);
- (b) subsection (1) is to be read as if the words “as revised from time to time”
were substituted for the words “as it has effect from time to time”.

Member’s explanatory statement

This new clause contains a power to implement international agreements relating to private international law.

As an Amendment to Alex Chalk’s proposed New Clause (*Implementation of other agreements on private international law (No. 3)*) (NC5):—

Keir Starmer
Mr David Lammy
Alex Cunningham
Karl Turner
Mr Nicholas Brown

(a)

★ Line 3, leave out from “implementing” to “relevant ” in line 4 and insert “the”

Member’s explanatory statement

This amendment together with amendments (c), (d) and (g) is intended to ensure the powers in Government NC5 may be used only to implement the 2007 Lugano Convention.

Private International Law (Implementation of Agreements) Bill [Lords], continued

Mr Jonathan Djanogly
Sir Robert Neill

(b)

★ Line 3, leave out “any” and insert “an”

Member’s explanatory statement

This amendment with Amendment (f) is intended to ensure that order making powers are confined to the international treaties set out in clause 1 only.

Keir Starmer
Mr David Lammy
Alex Cunningham
Karl Turner
Mr Nicholas Brown

(c)

★ Line 7, leave out “a” and insert “the”

Member’s explanatory statement

See explanatory statement for Amendment (a).

Keir Starmer
Mr David Lammy
Alex Cunningham
Karl Turner
Mr Nicholas Brown

(d)

★ Line 12, leave out “a” and insert “the”

Member’s explanatory statement

See explanatory statement for Amendment (a).

Keir Starmer
Mr David Lammy
Alex Cunningham
Karl Turner
Mr Nicholas Brown

(e)

★ Line 24, leave out “Schedule (Regulations under section (*Implementation of other agreements on private international law (No.3)*))” and insert “Schedule (Regulations under section (*Implementation of other Agreements on Private International Law (No. 2)*))”

Member’s explanatory statement

This amendment would provide for super-affirmative procedure to be applied in accordance with NS3 to regulations made under Government NC5.

Mr Jonathan Djanogly
Sir Robert Neill

(f)

★ Line 39, after “party”, insert “and which is set out in section 1.”

Member’s explanatory statement

This amendment with Amendment (b) is intended to ensure that order making powers are confined to the international treaties set out in clause 1 only.

Private International Law (Implementation of Agreements) Bill [Lords], continued

Keir Starmer
 Mr David Lammy
 Alex Cunningham
 Karl Turner
 Mr Nicholas Brown

- (g)
- ★ Line 52, leave out “has the meaning given in subsection (1)” and insert “means the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters signed at Lugano on 30th October 2007 (the “2007 Lugano Convention”);”

Member’s explanatory statement

See explanatory statement for Amendment (a).

Mr Jonathan Djanogly
 Sir Robert Neill

NC1

To move the following Clause—

“Implementation of other agreements on private international law

- (1) The appropriate national authority may make regulations for the purpose of, or in connection with, implementing an international agreement, as it has effect from time to time, so far as relating to private international law (a “relevant international agreement”).
- (2) The appropriate national authority may make regulations for the purpose of, or in connection with, applying a relevant international agreement, with or without modifications, as between different jurisdictions within the United Kingdom.
- (3) The appropriate national authority may make regulations for the purpose of, or in connection with, giving effect to any arrangements made between—
 - (a) Her Majesty’s government in the United Kingdom, and
 - (b) the government of a relevant territory,
 for applying a relevant international agreement, with or without modifications, as between the United Kingdom, or a jurisdiction within the United Kingdom, and that territory.
- (4) This section applies (subject to subsection (5)) where the United Kingdom has authenticated a relevant international agreement.
- (5) This section applies only if the proposed agreement is not binding on the United Kingdom as a matter of international law unless it is ratified by the United Kingdom.
- (6) Before the United Kingdom ratifies the proposed agreement, a Minister of the Crown must lay before Parliament a report which gives details of the proposed agreement.
- (7) In this section a reference to authenticating a relevant international agreement is a reference to doing an act which establishes the text of the agreement as authentic and definitive as a matter of international law.
- (8) This section applies where a Minister of the Crown proposes to make regulations under subsections (1), (2) or (3) for the purpose of implementing a relevant international agreement to which the United Kingdom and another signatory (or other signatories) are signatories.
- (9) A draft of the statutory instrument containing the regulations may not be laid before Parliament unless, at least 10 Commons sitting days before the draft is laid,

Private International Law (Implementation of Agreements) Bill [Lords], continued

a Minister of the Crown has laid before Parliament a report which gives details of, and explains the reasons for, the relevant international agreement.

- (10) In this section “Commons sitting day” means a day on which the House of Commons begins to sit.
- (11) Regulations under this section may make—
- (a) consequential, supplementary, incidental, transitional or saving provision;
 - (b) different provision for different purposes or for different parts of the United Kingdom.
- (12) Regulations under this section may include provision about—
- (a) enforcement of obligations arising under or by virtue of the regulations;
 - (b) sharing of information;
 - (c) legal aid.
- (13) No regulations may be made under subsections (1),(2) or (3) after the end of the period of 2 years beginning with the date of enactment of this Act.
- (14) In this section—
- “appropriate national authority” means—
- (a) in relation to England and Wales, the Secretary of State;
 - (b) in relation to Scotland—
 - (i) the Scottish Ministers, or
 - (ii) the Secretary of State acting with the consent of the Scottish Ministers;
 - (c) in relation to Northern Ireland—
 - (i) a Northern Ireland department, or
 - (ii) the Secretary of State acting with the consent of a Northern Ireland department;
- “international agreement” means a convention, treaty or other agreement to which the United Kingdom is, or is expected to become, a party and which is set out in section 1 of this Act;
- “private international law” includes rules and other provisions about—
- (a) jurisdiction and applicable law;
 - (b) recognition and enforcement in one country or territory of any of the following that originate in another country or territory—
 - (i) a judgment, order or arbitral award;
 - (ii) an agreement, decision or authentic instrument determining or otherwise relating to rights and obligations;
 - (c) co-operation between judicial or other authorities in different countries or territories in relation to—
 - (i) service of documents, taking of evidence and other procedures, or
 - (ii) anything within paragraph (a) or (b);
- “relevant international agreement” has the meaning given in subsection (1);
- “relevant territory” means—
- (a) the Isle of Man;
 - (b) any of the Channel Islands;
 - (c) a British overseas territory.
- (15) This section has effect, with the following modifications, in relation to a model law adopted by an international organisation of which the United Kingdom is a

Private International Law (Implementation of Agreements) Bill [Lords], continued

member as it has effect in relation to an international agreement to which the United Kingdom is, or is expected to become, a party.

The modifications are—

- (a) a reference in this section or that Schedule to implementing or applying a relevant international agreement is to be read as a reference to giving effect to the model law (with or without modifications);
- (b) subsection (1) is to be read as if the words “as revised from time to time” were substituted for the words “as it has effect from time to time”.

Member’s explanatory statement

This new clause is a modified version of clause 2 removed from the Bill by the House of Lords. This new clause requires a Minister to lay a report before Parliament at least 10 Commons sitting days before regulations implementing a relevant international agreement are laid in draft under subsections (1), (2) and (3) requires a Minister to lay a report before Parliament before the UK ratifies a private international law agreement with another country and contains a sunset provision.

Joanna Cherry

NC2

☆ To move the following Clause—

“Implementation of the 2007 Lugano Convention

- (1) The Secretary of State may make regulations for the purpose of, or in connection with, implementing the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters signed at Lugano on 30th October 2007 (the “2007 Lugano Convention”), in the event that the United Kingdom becomes a party to the Convention in its own right.
- (2) The Secretary of State must consult the Scottish Ministers, the Welsh Ministers and a Northern Ireland Department before making regulations under subsection (1).
- (3) Regulations under subsection (1) are subject to super-affirmative resolution procedure (see Schedule (Super-affirmative resolution procedure)).”

Member’s explanatory statement

This new clause would enable the Secretary of State to make regulations implementing the Lugano Convention in the UK, subject to the super-affirmative resolution procedure in NS2.

Keir Starmer
Mr David Lammy
Alex Cunningham
Karl Turner
Mr Nicholas Brown

NC3

☆ To move the following Clause—

“Implementation of the 2007 Lugano Convention (No. 2)

- (1) The appropriate national authority may make regulations for the purpose of, or in connection with, implementing the 2007 Lugano Convention, as it has effect from

Private International Law (Implementation of Agreements) Bill [Lords], continued

time to time, so far as relating to private international law (the “relevant international agreement”).

- (2) The appropriate national authority may make regulations for the purpose of, or in connection with, applying a relevant international agreement, with or without modifications, as between different jurisdictions within the United Kingdom.
- (3) The appropriate national authority may make regulations for the purpose of, or in connection with, giving effect to any arrangements made between—
 - (a) Her Majesty’s government in the United Kingdom, and
 - (b) the government of a relevant territory,

for applying a relevant international agreement, with or without modifications, as between the United Kingdom, or a jurisdiction within the United Kingdom, and that territory.

- (4) Regulations under this section may make—
 - (a) consequential, supplementary, incidental, transitional or saving provision;
 - (b) different provision for different purposes or for different parts of the United Kingdom.
- (5) Regulations under this section may include provision about—
 - (a) enforcement of obligations arising under or by virtue of the regulations;
 - (b) sharing of information;
 - (c) legal aid.

- (6) In this section—

“appropriate national authority” means—

- (a) in relation to England and Wales, the Secretary of State;
- (b) in relation to Scotland—
 - (i) the Scottish Ministers, or
 - (ii) the Secretary of State acting with the consent of the Scottish Ministers;
- (c) in relation to Northern Ireland—
 - (i) a Northern Ireland department, or
 - (ii) the Secretary of State acting with the consent of a Northern Ireland department;

“private international law” includes rules and other provisions about—

- (a) jurisdiction and applicable law;
- (b) recognition and enforcement in one country or territory of any of the following that originate in another country or territory—
 - (i) a judgment, order or arbitral award;
 - (ii) an agreement, decision or authentic instrument determining or otherwise relating to rights and obligations;
- (c) co-operation between judicial or other authorities in different countries or territories in relation to—
 - (i) service of documents, taking of evidence and other procedures, or
 - (ii) anything within paragraph (a) or (b);

“relevant international agreement” means the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters done at Lugano 30 October 2007, to which the United Kingdom is, or is expected to become, a party;

“relevant territory” means—

- (a) the Isle of Man;

Private International Law (Implementation of Agreements) Bill [Lords], continued

- (b) any of the Channel Islands;
- (c) a British overseas territory.”

Member’s explanatory statement

This new clause would permit the necessary regulations to be made to incorporate the 2007 Lugano Convention into UK law after the UK leaves the EU.

Keir Starmer
 Mr David Lammy
 Alex Cunningham
 Karl Turner
 Mr Nicholas Brown

NC4

☆ To move the following Clause—

“Implementation of other agreements on private international law (No. 2)

- (1) The appropriate national authority may make regulations for the purpose of, or in connection with, implementing any international agreement, as it has effect from time to time, so far as relating to private international law (a “relevant international agreement”).
- (2) The appropriate national authority may make regulations for the purpose of, or in connection with, applying a relevant international agreement, with or without modifications, as between different jurisdictions within the United Kingdom.
- (3) The appropriate national authority may make regulations for the purpose of, or in connection with, giving effect to any arrangements made between—
 - (a) Her Majesty’s government in the United Kingdom, and
 - (b) the government of a relevant territory,
 for applying a relevant international agreement, with or without modifications, as between the United Kingdom, or a jurisdiction within the United Kingdom, and that territory.
- (4) Regulations may not be made under this section unless the appropriate national authority has consulted the Lord Chancellor’s advisory committee on private international law on the proposed draft regulations and has arranged for a copy of the response to the consultation to be laid before each House of Parliament.
- (5) Regulations under this section may make—
 - (a) consequential, supplementary, incidental, transitional or saving provision;
 - (b) different provision for different purposes or for different parts of the United Kingdom.
- (6) Regulations under this section may include provision about—
 - (a) enforcement of obligations arising under or by virtue of the regulations;
 - (b) sharing of information;
 - (c) legal aid.
- (7) Schedule (Regulations under section (*Implementation of other agreements on private international law (No. 2)*)) makes further provision about regulations under this section.
- (8) In this section—

“appropriate national authority” means—

 - (a) in relation to England and Wales, the Secretary of State;
 - (b) in relation to Scotland—

Private International Law (Implementation of Agreements) Bill [Lords], continued

- (i) the Scottish Ministers, or
 - (ii) the Secretary of State acting with the consent of the Scottish Ministers;
 - (c) in relation to Northern Ireland—
 - (i) a Northern Ireland department, or
 - (ii) the Secretary of State acting with the consent of a Northern Ireland department;
- “international agreement” means a convention, treaty or other agreement to which the United Kingdom is, or is expected to become, a party;
- “private international law” includes rules and other provisions about—
- (a) jurisdiction and applicable law;
 - (b) recognition and enforcement in one country or territory of any of the following that originate in another country or territory—
 - (i) a judgment, order or arbitral award;
 - (ii) an agreement, decision or authentic instrument determining or otherwise relating to rights and obligations;
 - (c) co-operation between judicial or other authorities in different countries or territories in relation to—
 - (i) service of documents, taking of evidence and other procedures, or
 - (ii) anything within paragraph (a) or (b);
- “relevant international agreement” has the meaning given in subsection (1);
- “relevant territory” means—
- (a) the Isle of Man;
 - (b) any of the Channel Islands;
 - (c) a British overseas territory.”

Member’s explanatory statement

This new clause would permit the necessary regulations to be made to incorporate other agreements on private international law into UK law after the UK leaves the EU, subject to the super-affirmative procedure set out in NS3.

Mr Jonathan Djanogly
Sir Robert Neill

NC6

★ To move the following Clause—

“Report on proposed free trade agreement

- (1) This section applies (subject to subsection (2) where the United Kingdom has authenticated a relevant international agreement in accordance with section *(Implementation of other agreements on private international law (No. 3))*).
- (2) This section applies only if the proposed agreement is not binding on the United Kingdom as a matter of international law unless it is ratified by the United Kingdom.
- (3) Before the United Kingdom ratifies the proposed agreement, a Minister of the Crown must lay before Parliament a report which gives details of the proposed agreement.

Private International Law (Implementation of Agreements) Bill [Lords], continued

- (4) In this section a reference to authenticating a relevant international agreement is a reference to doing an act which establishes the text of the agreement as authentic and definitive as a matter of international law.”

Member’s explanatory statement

This new clause requires a Minister to lay a report before Parliament before the UK ratifies a private international law agreement with another country.

Mr Jonathan Djanogly
Sir Robert Neill

NC7

- ★ To move the following Clause—

“Report to be laid with regulations under section 2(1), (2) or (3)

- (1) This section applies where a Minister of the Crown proposes to make regulations under section (*Implementation of other agreements on private international law (No. 3)*) (1), (2) or (3) for the purpose of implementing a relevant international agreement to which the United Kingdom and another signatory (or other signatories) are signatories.
- (2) A draft of the statutory instrument containing the regulations may not be laid before Parliament unless, at least 10 Commons sitting days before the draft is laid, a Minister of the Crown has laid before Parliament a report which gives details of, and explains the reasons for, the relevant international agreement.
- (3) In this section, “Commons sitting day” means a day on which the House of Commons begins to sit.”

Member’s explanatory statement

This new clause requires a Minister to lay a report before Parliament at least ten Commons sitting days before regulations implementing a relevant international agreement are laid in draft under subsections (1), (2) and (3) of Government NC5.

Mr Jonathan Djanogly
Sir Robert Neill

NC8

- ★ To move the following Clause—

“Sunset Provisions

No regulations may be made under subsections (1),(2) and (3) of section (*Implementation of other agreements on private international law (No. 3)*) after the end of the period of 2 years beginning with the date on which this Act is passed.”

Private International Law (Implementation of Agreements) Bill [Lords], continued

Alex Chalk

NS4

- ★ To move the following Schedule—

SCHEDULE

REGULATIONS UNDER SECTION (*IMPLEMENTATION OF OTHER AGREEMENTS ON PRIVATE INTERNATIONAL LAW (No. 3)*)*Restrictions on power to make regulations*

- 1 (1) Regulations under section (*Implementation of other agreements on private international law (No. 3)*) may not include—
- (a) provision that confers power to legislate by means of regulations, orders, rules or other subordinate instrument (other than rules of procedure for courts or tribunals);
 - (b) provision that creates an offence for which an individual who has reached the age of 18 (or, in relation to Scotland or Northern Ireland, 21) is capable of being sentenced to imprisonment for a term of more than two years (ignoring any enactment prohibiting or restricting the imprisonment of individuals who have no previous convictions).
- (2) Sub-paragraph (1)(a) does not prevent the modification of a power to legislate conferred otherwise than under section (*Implementation of other agreements on private international law (No. 3)*), or the extension of any such power to purposes of a similar kind to those for which it was conferred.
- (3) A power to give practice directions or other directions regarding matters of administration is not a power to legislate for the purposes of sub-paragraph (1)(a).

Regulations to be made by statutory instrument or statutory rule

- 2 The power to make regulations under section (*Implementation of other agreements on private international law (No. 3)*)—
- (a) is exercisable by statutory instrument, in the case of regulations made by the Secretary of State;
 - (b) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)), in the case of regulations made by a Northern Ireland department.

Parliamentary or assembly procedure

- 3 (1) This paragraph applies to a statutory instrument containing regulations made by the Secretary of State under section (*Implementation of other agreements on private international law (No. 3)*).
- (2) If the instrument contains (whether alone or with other provision)—
- (a) provision made for the purpose of implementing or applying, in relation to the United Kingdom or a particular part of the United Kingdom, any relevant international agreement that has not previously been the subject of any such provision (whether made by regulations under section (*Implementation of other agreements on private international law (No. 3)*) or otherwise),
 - (b) provision made for the purpose of giving effect, in relation to the United Kingdom or a particular part of the United Kingdom, to any relevant arrangements that relate to a particular territory and have not

Private International Law (Implementation of Agreements) Bill [Lords], continued

- previously been the subject of any such provision (whether made by regulations under that section or otherwise),
- (c) provision that creates or extends, or increases the penalty for, a criminal offence, or
 - (d) provision that amends primary legislation,
- it may not be made unless a draft of the instrument has been laid before each House of Parliament and approved by a resolution of each House.
- (3) In this Schedule “relevant arrangements” means arrangements of the kind mentioned in section (*Implementation of other agreements on private international law (No. 3)*)(3).
 - (4) If sub-paragraph (2) does not apply to the instrument, it is subject to annulment in pursuance of a resolution of either House of Parliament.
- 4
- (1) This paragraph applies to regulations made by the Scottish Ministers under section (*Implementation of other agreements on private international law (No. 3)*).
 - (2) The regulations are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010) (asp 10)) if they contain (whether alone or with other provision)—
 - (a) provision made for the purpose of implementing or applying, in relation to Scotland, any relevant international agreement that has not previously been the subject of any such provision (whether made by regulations under section (*Implementation of other agreements on private international law (No. 3)*) or otherwise),
 - (b) provision made for the purpose of giving effect, in relation to Scotland, to any relevant arrangements that relate to a particular territory and have not previously been the subject of any such provision (whether made by regulations under that section or otherwise),
 - (c) provision that creates or extends, or increases the penalty for, a criminal offence, or
 - (d) provision that amends primary legislation.
 - (3) If sub-paragraph (2) does not apply to the regulations, they are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).
- 5
- (1) A Northern Ireland department may not make regulations under section (*Implementation of other agreements on private international law (No. 3)*) that contain (whether alone or with other provision)—
 - (a) provision made for the purpose of implementing or applying, in relation to Northern Ireland, any relevant international agreement that has not previously been the subject of any such provision (whether made by regulations under section (*Implementation of other agreements on private international law (No. 3)*) or otherwise),
 - (b) provision made for the purpose of giving effect, in relation to Northern Ireland, to any relevant arrangements that relate to a particular territory and have not previously been the subject of any such provision (whether made by regulations under that section or otherwise),
 - (c) provision that creates or extends, or increases the penalty for, a criminal offence, or
 - (d) provision that amends primary legislation,
 unless a draft of the regulations has been laid before the Northern Ireland Assembly and approved by a resolution of the Assembly.
 - (2) Regulations under section (*Implementation of other agreements on private international law (No. 3)*) made by a Northern Ireland department are subject

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to negative resolution, within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954, if a draft of the regulations was not required to be laid before the Northern Ireland Assembly and approved by a resolution of the Assembly.

- (3) Section 41(3) of that Act applies for the purposes of sub-paragraph (1) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.

Interpretation

6 In this Schedule—

“amend” includes repeal or revoke;

“primary legislation” means any provision of—

- (a) an Act of Parliament,
- (b) an Act of the Scottish Parliament,
- (c) an Act or Measure of Senedd Cymru, or
- (d) Northern Ireland legislation;

“relevant arrangements” has the meaning given in paragraph 3(3);

“relevant international agreement” has the same meaning as in section

(Implementation of other agreements on private international law (No. 3)).”

Member’s explanatory statement

This new schedule makes further provision about regulations made under NC5.

Mr Jonathan Djanogly
Sir Robert Neill

NS1

☆ To move the following Schedule—

“SCHEDULE 4A

SCHEDULE TO BE INSERTED AS SCHEDULE 3H TO THE CIVIL JURISDICTION AND
JUDGMENTS ACT 1982

“SCHEDULE 3H

TEXT OF THE 2007 LUGANO CONVENTION

CONVENTION ON JURISDICTION AND THE RECOGNITION AND ENFORCEMENT OF
JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

(Concluded on 30 October 2007)

The High Contracting Parties to this Convention,
Determined to strengthen in their territories the legal protection of persons
therein established,
Considering that it is necessary for this purpose to determine the international
jurisdiction of the courts, to facilitate recognition, and to introduce an

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expeditious procedure for securing the enforcement of judgments, authentic instruments and court settlements,

Aware of the links between them, which have been sanctioned in the economic field by the free trade agreements concluded between the European Community and certain States members of the European Free Trade Association,

the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the Accession Conventions under the successive enlargements of the European Union,

the Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters, which extends the application of the rules of the 1968 Brussels Convention to certain States members of the European Free Trade Association,

Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, which has replaced the abovementioned Brussels Convention,

the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed at Brussels on 19 October 2005,

Persuaded that the extension of the principles laid down in Regulation (EC) No 44/2001 to the Contracting Parties to this instrument will strengthen legal and economic cooperation,

Desiring to ensure as uniform an interpretation as possible of this instrument, Have in this spirit decided to conclude this Convention, and have agreed as follows—

TITLE I

SCOPE

Article 1

- (1) This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.
- (2) The Convention shall not apply to—
 - (a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
 - (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
 - (c) social security;
 - (d) arbitration.
- (3) In this Convention, the term ‘State bound by this Convention’ shall mean any State that is a Contracting Party to this Convention or a Member State of the European Community. It may also mean the European Community.

Private International Law (Implementation of Agreements) Bill [*Lords*], *continued*

TITLE II

JURISDICTION

SECTION 1

General provision

Article 2

- (1) Subject to the provisions of this Convention, persons domiciled in a State bound by this Convention shall, whatever their nationality, be sued in the courts of that State.
- (2) Persons who are not nationals of the State bound by this Convention in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.

Article 3

- (1) Persons domiciled in a State bound by this Convention may be sued in the courts of another State bound by this Convention only by virtue of the rules set out in Sections 2 to 7 of this Title.
- (2) In particular the rules of national jurisdiction set out in Annex I shall not be applicable as against them.

Article 4

- (1) If the defendant is not domiciled in a State bound by this Convention, the jurisdiction of the courts of each State bound by this Convention shall, subject to the provisions of Articles 22 and 23, be determined by the law of that State.
- (2) As against such a defendant, any person domiciled in a State bound by this Convention may, whatever his nationality, avail himself in that State of the rules of jurisdiction there in force, and in particular those specified in Annex I, in the same way as the nationals of that State.

SECTION 2

Special jurisdiction

Article 5

A person domiciled in a State bound by this Convention may, in another State bound by this Convention, be sued—

- (1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be—
in the case of the sale of goods, the place in a State bound by this Convention where, under the contract, the goods were delivered or should have been delivered;
in the case of the provision of services, the place in a State bound by this Convention where, under the contract, the services were provided or should have been provided;
(c) if (b) does not apply then subparagraph (a) applies;
- (2) in matters relating to maintenance—
 - (a) in the courts for the place where the maintenance creditor is domiciled or habitually resident; or

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- (b) in the court which, according to its own law, has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties; or
 - (c) in the court which, according to its own law, has jurisdiction to entertain proceedings concerning parental responsibility, if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties.
- (3) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;
 - (4) as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seized of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;
 - (5) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;
 - (6) as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the State bound by this Convention in which the trust is domiciled;
 - (7) as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question—
 - (a) has been arrested to secure such payment; or
 - (b) could have been so arrested, but bail or other security has been given;

provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

Article 6

A person domiciled in a State bound by this Convention may also be sued—

- (1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;
- (2) as a third party in an action on a warranty or guarantee, or in any other third party proceedings, in the court seized of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;
- (3) on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;
- (4) in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights in rem in immovable property, in the court of the State bound by this Convention in which the property is situated.

Private International Law (Implementation of Agreements) Bill [Lords], continued

Article 7

Where by virtue of this Convention a court of a State bound by this Convention has jurisdiction in actions relating to liability from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that State, shall also have jurisdiction over claims for limitation of such liability.

SECTION 3

Jurisdiction in matters relating to insurance

Article 8

In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to Articles 4 and 5(5).

Article 9

- (1) An insurer domiciled in a State bound by this Convention may be sued—
 - (a) in the courts of the State where he is domiciled; or
 - (b) in another State bound by this Convention, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the plaintiff is domiciled; or
 - (c) if he is a co-insurer, in the courts of a State bound by this Convention in which proceedings are brought against the leading insurer.
- (2) An insurer who is not domiciled in a State bound by this Convention but has a branch, agency or other establishment in one of the States bound by this Convention shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

Article 10

In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

Article 11

- (1) In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.
- (2) Articles 8, 9 and 10 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.
- (3) If the law governing such direct actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

Article 12

- (1) Without prejudice to Article 11(3), an insurer may bring proceedings only in the courts of the State bound by this Convention in which the defendant is domiciled, irrespective of whether he is the policyholder, the insured or a beneficiary.
- (2) The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

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Article 13

The provisions of this Section may be departed from only by an agreement—

- (1) which is entered into after the dispute has arisen; or
- (2) which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section; or
- (3) which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same State bound by this Convention, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State; or
- (4) which is concluded with a policyholder who is not domiciled in a State bound by this Convention, except insofar as the insurance is compulsory or relates to immovable property in a State bound by this Convention; or
- (5) which relates to a contract of insurance insofar as it covers one or more of the risks set out in Article 14.

Article 14

The following are the risks referred to in Article 13(5)—

- (1) any loss of or damage to—
 - (a) seagoing ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes;
 - (b) goods in transit, other than passengers' baggage, where the transit consists of or includes carriage by such ships or aircraft;
- (2) any liability, other than for bodily injury to passengers or loss of or damage to their baggage—
 - (a) arising out of the use or operation of ships, installations or aircraft as referred to in point 1(a) insofar as, in respect of the latter, the law of the State bound by this Convention in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks;
 - (b) for loss or damage caused by goods in transit as described in point 1(b);
- (3) any financial loss connected with the use or operation of ships, installations or aircraft as referred to in point 1(a), in particular loss of freight or charter-hire;
- (4) any risk or interest connected with any of those referred to in points 1 to 3;
- (5) notwithstanding points 1 to 4, all large risks.

SECTION 4

Jurisdiction over consumer contracts

Article 15

- (1) In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Articles 4 and 5(5), if:
 - (a) it is a contract for the sale of goods on instalment credit terms; or

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- (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
 - (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the State bound by this Convention of the consumer's domicile or, by any means, directs such activities to that State or to several States including that State, and the contract falls within the scope of such activities.
- (2) Where a consumer enters into a contract with a party who is not domiciled in the State bound by this Convention but has a branch, agency or other establishment in one of the States bound by this Convention, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.
- (3) This section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

Article 16

- (1) A consumer may bring proceedings against the other party to a contract either in the courts of the State bound by this Convention in which that party is domiciled or in the courts for the place where the consumer is domiciled.
- (2) Proceedings may be brought against a consumer by the other party to the contract only in the courts of the State bound by this Convention in which the consumer is domiciled.
- (3) This Article shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 17

The provisions of this Section may be departed from only by an agreement—

- (1) which is entered into after the dispute has arisen; or
- (2) which allows the consumer to bring proceedings in courts other than those indicated in this Section; or
- (3) which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same State bound by this Convention, and which confers jurisdiction on the courts of that State, provided that such an agreement is not contrary to the law of that State.

SECTION 5

Jurisdiction over individual contracts of employment

Article 18

- (1) In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Articles 4 and 5(5).
- (2) Where an employee enters into an individual contract of employment with an employer who is not domiciled in a State bound by this Convention but has a branch, agency or other establishment in one of the States bound by this Convention, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

Article 19

An employer domiciled in a State bound by this Convention may be sued—

- (1) in the courts of the State where he is domiciled; or
- (2) in another State bound by this Convention—

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- (a) in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so; or
- (b) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

Article 20

- (1) An employer may bring proceedings only in the courts of the State bound by this Convention in which the employee is domiciled.
- (2) The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 21

The provisions of this Section may be departed from only by an agreement on jurisdiction—

- (1) which is entered into after the dispute has arisen; or
- (2) which allows the employee to bring proceedings in courts other than those indicated in this Section.

SECTION 6

Exclusive jurisdiction

Article 22

The following courts shall have exclusive jurisdiction, regardless of domicile—

- (1) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the State bound by this Convention in which the property is situated.
 - (a) However, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the State bound by this Convention in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same State bound by this Convention;
- (2) in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or of the validity of the decisions of their organs, the courts of the State bound by this Convention in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law;
- (3) in proceedings which have as their object the validity of entries in public registers, the courts of the State bound by this Convention in which the register is kept;
- (4) in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, irrespective of whether the issue is raised by way of an action or as a defence, the courts of the State bound by this Convention in which the deposit or registration has been applied for, has taken place or is, under the terms of a Community instrument or an international convention, deemed to have taken place.

Private International Law (Implementation of Agreements) Bill [*Lords*], *continued*

- (5) in proceedings concerned with the enforcement of judgments, the courts of the State bound by this Convention in which the judgment has been or is to be enforced.

SECTION 7

Prorogation of jurisdiction

Article 23

- (1) If the parties, one or more of whom is domiciled in a State bound by this Convention, have agreed that a court or the courts of a State bound by this Convention are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either—
 - (a) in writing or evidenced in writing; or
 - (b) in a form which accords with practices which the parties have established between themselves; or
 - (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.
- (2) Any communication by electronic means which provides a durable record of the agreement shall be equivalent to “writing”.
- (3) Where such an agreement is concluded by parties, none of whom is domiciled in a State bound by this Convention, the courts of other States bound by this Convention shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.
- (4) The court or courts of a State bound by this Convention on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.
- (5) Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to the provisions of Articles 13, 17 or 21, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22.

Article 24

Apart from jurisdiction derived from other provisions of this Convention, a court of a State bound by this Convention before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 22.

SECTION 8

Examination as to jurisdiction and admissibility

Article 25

Where a court of a State bound by this Convention is seized of a claim which is principally concerned with a matter over which the courts of another State

Private International Law (Implementation of Agreements) Bill [*Lords*], *continued*

bound by this Convention have exclusive jurisdiction by virtue of Article 22, it shall declare of its own motion that it has no jurisdiction.

Article 26

- (1) Where a defendant domiciled in one State bound by this Convention is sued in a court of another State bound by this Convention and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Convention.
- (2) The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.
- (3) Instead of the provisions of paragraph 2, Article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted pursuant to that Convention.
- (4) Member States of the European Community bound by Council Regulation (EC) No 1348/2000 of 29 May 2000 or by the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters, signed at Brussels on 19 October 2005, shall apply in their mutual relations the provision in Article 19 of that Regulation if the document instituting the proceedings or an equivalent document had to be transmitted pursuant to that Regulation or that Agreement.

SECTION 9

Lis pendens — related actions

Article 27

- (1) Where proceedings involving the same cause of action and between the same parties are brought in the courts of different States bound by this Convention, any court other than the court first seized shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established.
- (2) Where the jurisdiction of the court first seized is established, any court other than the court first seized shall decline jurisdiction in favour of that court.

Article 28

- (1) Where related actions are pending in the courts of different States bound by this Convention, any court other than the court first seized may stay its proceedings.
- (2) Where these actions are pending at first instance, any court other than the court first seized may also, on the application of one of the parties, decline jurisdiction if the court first seized has jurisdiction over the actions in question and its law permits the consolidation thereof.
- (3) For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Private International Law (Implementation of Agreements) Bill [Lords], continued

Article 29

Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seized shall decline jurisdiction in favour of that court.

Article 30

For the purposes of this Section, a court shall be deemed to be seized—

- (1) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have service effected on the defendant; or
- (2) if the document has to be served before being lodged with the court at the time when it is received by the authority responsible for service, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

SECTION 10

Provisional, including protective, measures

Article 31

Application may be made to the courts of a State bound by this Convention for such provisional, including protective, measures as may be available under the law of that State, even if, under this Convention, the courts of another State bound by this Convention have jurisdiction as to the substance of the matter.

TITLE III

RECOGNITION AND ENFORCEMENT

Article 32

For the purposes of this Convention, ‘judgment’ means any judgment given by a court or tribunal of a State bound by this Convention, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.

SECTION 1

Recognition

Article 33

- (1) A judgment given in a State bound by this Convention shall be recognised in the other States bound by this Convention without any special procedure being required.
- (2) Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Title, apply for a decision that the judgment be recognised.
- (3) If the outcome of proceedings in a court of a State bound by this Convention depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question.

Private International Law (Implementation of Agreements) Bill [*Lords*], *continued*

Article 34

A judgment shall not be recognised—

- (1) if such recognition is manifestly contrary to public policy in the State in which recognition is sought;
- (2) where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;
- (3) if it is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought;
- (4) if it is irreconcilable with an earlier judgment given in another State bound by this Convention or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the State addressed.

Article 35

- (1) Moreover, a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Title II, or in a case provided for in Article 68. A judgment may furthermore be refused recognition in any case provided for in Article 64(3) or 67(4).
- (2) In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the State of origin based its jurisdiction.
- (3) Subject to the provisions of paragraph 1, the jurisdiction of the court of the State of origin may not be reviewed. The test of public policy referred to in Article 34(1) may not be applied to the rules relating to jurisdiction.

Article 36

Under no circumstances may a foreign judgment be reviewed as to its substance.

Article 37

- (1) A court of a State bound by this Convention in which recognition is sought of a judgment given in another State bound by this Convention may stay the proceedings if an ordinary appeal against the judgment has been lodged.
- (2) A court of a State bound by this Convention in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the State of origin, by reason of an appeal.

SECTION 2

Enforcement

Article 38

- (1) A judgment given in a State bound by this Convention and enforceable in that State shall be enforced in another State bound by this Convention when, on the application of any interested party, it has been declared enforceable there.
- (2) However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland, or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

Private International Law (Implementation of Agreements) Bill [Lords], continued

Article 39

- (1) The application shall be submitted to the court or competent authority indicated in the list in Annex II.
- (2) The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement.

Article 40

- (1) The procedure for making the application shall be governed by the law of the State in which enforcement is sought.
- (2) The applicant must give an address for service of process within the area of jurisdiction of the court applied to. However, if the law of the State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative *ad litem*.
- (3) The documents referred to in Article 53 shall be attached to the application.

Article 41

The judgment shall be declared enforceable immediately on completion of the formalities in Article 53 without any review under Articles 34 and 35. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

Article 42

- (1) The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the State in which enforcement is sought.
- (2) The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the judgment, if not already served on that party.

Article 43

- (1) The decision on the application for a declaration of enforceability may be appealed against by either party.
- (2) The appeal is to be lodged with the court indicated in the list in Annex III.
- (3) The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.
- (4) If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning an appeal brought by the applicant, Article 26(2) to (4) shall apply even where the party against whom enforcement is sought is not domiciled in any of the States bound by this Convention.
- (5) An appeal against the declaration of enforceability is to be lodged within one month of service thereof. If the party against whom enforcement is sought is domiciled in a State bound by this Convention other than that in which the declaration of enforceability was given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.

Article 44

The judgment given on the appeal may be contested only by the appeal referred to in Annex IV.

Private International Law (Implementation of Agreements) Bill [Lords], continued

Article 45

- (1) The court with which an appeal is lodged under Article 43 or Article 44 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35. It shall give its decision without delay.
- (2) Under no circumstances may the foreign judgment be reviewed as to its substance.

Article 46

- (1) The court with which an appeal is lodged under Article 43 or Article 44 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged against the judgment in the State of origin or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.
- (2) Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the State of origin shall be treated as an ordinary appeal for the purposes of paragraph 1.
- (3) The court may also make enforcement conditional on the provision of such security as it shall determine.

Article 47

- (1) When a judgment must be recognised in accordance with this Convention, nothing shall prevent the applicant from availing himself of provisional, including protective, measures in accordance with the law of the State requested without a declaration of enforceability under Article 41 being required.
- (2) The declaration of enforceability shall carry with it the power to proceed to any protective measures.
- (3) During the time specified for an appeal pursuant to Article 43(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.

Article 48

- (1) Where a foreign judgment has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or competent authority shall give it for one or more of them.
- (2) An applicant may request a declaration of enforceability limited to parts of a judgment.

Article 49

A foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the State of origin.

Article 50

- (1) An applicant who in the State of origin has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in the procedure provided for in this Section, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the State addressed.
- (2) However, an applicant who requests the enforcement of a decision given by an administrative authority in Denmark, in Iceland or in Norway in respect of maintenance may, in the State addressed, claim the benefits referred to in paragraph 1 if he presents a statement from the Danish, Icelandic, or

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Norwegian Ministry of Justice to the effect that he fulfils the economic requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses.

Article 51

No security, bond or deposit, however described, shall be required of a party who in one State bound by this Convention, applies for enforcement of a judgment given in another State bound by this Convention on the ground that he is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought.

Article 52

In proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the State in which enforcement is sought.

SECTION 3

Common provisions

Article 53

- (1) A party seeking recognition or applying for a declaration of enforceability shall produce a copy of the judgment which satisfies the conditions necessary to establish its authenticity.
- (2) A party applying for a declaration of enforceability shall also produce the certificate referred to in Article 54, without prejudice to Article 55.

Article 54

The court or competent authority of a State bound by this Convention where a judgment was given shall issue, at the request of any interested party, a certificate using the standard form in Annex V to this Convention.

Article 55

- (1) If the certificate referred to in Article 54 is not produced, the court or competent authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production.
- (2) If the court or competent authority so requires, a translation of the documents shall be produced. The translation shall be certified by a person qualified to do so in one of the States bound by this Convention.

Article 56

No legalisation or other similar formality shall be required in respect of the documents referred to in Article 53 or Article 55(2), or in respect of a document appointing a representative *ad litem*.

TITLE IV

AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

Article 57

- (1) A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one State bound by this Convention shall, in another State bound by this Convention, be declared enforceable there, on application made in accordance with the procedures provided for in Article 38,

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et seq. The court with which an appeal is lodged under Article 43 or Article 44 shall refuse or revoke a declaration of enforceability only if enforcement of the instrument is manifestly contrary to public policy in the State addressed.

- (2) Arrangements relating to maintenance obligations concluded with administrative authorities or authenticated by them shall also be regarded as authentic instruments within the meaning of paragraph 1.
- (3) The instrument produced must satisfy the conditions necessary to establish its authenticity in the State of origin.
- (4) Section 3 of Title III shall apply as appropriate. The competent authority of a State bound by this Convention where an authentic instrument was drawn up or registered shall issue, at the request of any interested party, a certificate using the standard form in Annex VI to this Convention.

j Article 58

A settlement which has been approved by a court in the course of proceedings and is enforceable in the State bound by this Convention in which it was concluded shall be enforceable in the State addressed under the same conditions as authentic instruments. The court or competent authority of a State bound by this Convention where a court settlement was approved shall issue, at the request of any interested party, a certificate using the standard form in Annex V to this Convention.

TITLE V

GENERAL PROVISIONS

Article 59

- (1) In order to determine whether a party is domiciled in the State bound by this Convention whose courts are seized of a matter, the court shall apply its internal law.
- (2) If a party is not domiciled in the State whose courts are seized of the matter, then, in order to determine whether the party is domiciled in another State bound by this Convention, the court shall apply the law of that State.

Article 60

- (1) For the purposes of this Convention, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its—
 - (a) statutory seat; or
 - (b) central administration; or
 - (c) principal place of business.
- (2) For the purposes of the United Kingdom and Ireland ‘statutory seat’ means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.
- (3) In order to determine whether a trust is domiciled in the State bound by this Convention whose courts are seized of the matter, the court shall apply its rules of private international law.

Article 61

Without prejudice to any more favourable provisions of national laws, persons domiciled in a State bound by this Convention who are being prosecuted in the criminal courts of another State bound by this Convention of which they are not nationals for an offence which was not intentionally committed may be defended by persons qualified to do so, even if they do not appear in person.

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However, the court seised of the matter may order appearance in person; in the case of failure to appear, a judgment given in the civil action without the person concerned having had the opportunity to arrange for his defence need not be recognised or enforced in the other States bound by this Convention.

Article 62

For the purposes of this Convention, the expression ‘court’ shall include any authorities designated by a State bound by this Convention as having jurisdiction in the matters falling within the scope of this Convention.

TITLE VI

TRANSITIONAL PROVISIONS

Article 63

- (1) This Convention shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after its entry into force in the State of origin and, where recognition or enforcement of a judgment or authentic instruments is sought, in the State addressed.
- (2) However, if the proceedings in the State of origin were instituted before the entry into force of this Convention, judgments given after that date shall be recognised and enforced in accordance with Title III—
 - (a) if the proceedings in the State of origin were instituted after the entry into force of the Lugano Convention of 16 September 1988 both in the State of origin and in the State;
 - (b) in all other cases, if jurisdiction was founded upon rules which accorded with those provided for either in Title II or in a convention concluded between the State of origin and the State addressed which was in force when the proceedings were instituted.

TITLE VII

RELATIONSHIP TO COUNCIL REGULATION (EC) No 44/2001 AND OTHER INSTRUMENTS

Article 64

- (1) This Convention shall not prejudice the application by the Member States of the European Community of the Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as well as any amendments thereof, of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed at Brussels on 27 September 1968, and of the Protocol on interpretation of that Convention by the Court of Justice of the European Communities, signed at Luxembourg on 3 June 1971, as amended by the Conventions of Accession to the said Convention and the said Protocol by the States acceding to the European Communities, as well as of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed at Brussels on 19 October 2005.
- (2) However, this Convention shall in any event be applied—
 - (a) in matters of jurisdiction, where the defendant is domiciled in the territory of a State where this Convention but not an instrument referred to in paragraph 1 of this Article applies, or where Articles 22 or 23 of this Convention confer jurisdiction on the courts of such a State;

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- (b) in relation to *lis pendens* or to related actions as provided for in Articles 27 and 28, when proceedings are instituted in a State where the Convention but not an instrument referred to in paragraph 1 of this Article applies and in a State where this Convention as well as an instrument referred to in paragraph 1 of this Article apply;
 - (c) in matters of recognition and enforcement, where either the State of origin or the State addressed is not applying an instrument referred to in paragraph 1 of this Article.
- (3) In addition to the grounds provided for in Title III, recognition or enforcement may be refused if the ground of jurisdiction on which the judgment has been based differs from that resulting from this Convention and recognition or enforcement is sought against a party who is domiciled in a State where this Convention but not an instrument referred to in paragraph 1 of this Article applies, unless the judgment may otherwise be recognised or enforced under any rule of law in the State addressed.

Article 65

Subject to the provisions of Articles 63(2), 66 and 67, this Convention shall, as between the States bound by this Convention, supersede the conventions concluded between two or more of them that cover the same matters as those to which this Convention applies. In particular, the conventions mentioned in Annex VII shall be superseded.

Article 66

- (1) The conventions referred to in Article 65 shall continue to have effect in relation to matters to which this Convention does not apply.
- (2) They shall continue to have effect in respect of judgments given and documents formally drawn up or registered as authentic instruments before the entry into force of this Convention.

Article 67

- (1) This Convention shall not affect any conventions by which the Contracting Parties and/or the States bound by this Convention are bound and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments. Without prejudice to obligations resulting from other agreements between certain Contracting Parties, this Convention shall not prevent Contracting Parties from entering into such conventions.
- (2) This Convention shall not prevent a court of a State bound by this Convention and by a convention on a particular matter from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in another State bound by this Convention which is not a party to that convention. The court hearing the action shall, in any event, apply Article 26 of this Convention.
- (3) Judgments given in a State bound by this Convention by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognised and enforced in the other States bound by this Convention in accordance with Title III of this Convention.
- (4) In addition to the grounds provided for in Title III, recognition or enforcement may be refused if the State addressed is not bound by the convention on a particular matter and the person against whom recognition or enforcement is sought is domiciled in that State, or, if the State addressed is a Member State of the European Community and in respect of conventions which would have to be concluded by the European Community, in any of its Member States, unless the judgment may otherwise be recognised or enforced under any rule of law in the State addressed.

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- (5) Where a convention on a particular matter to which both the State of origin and the State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of this Convention which concern the procedures for recognition and enforcement of judgments may be applied.

Article 68

- (1) This Convention shall not affect agreements by which States bound by this Convention undertook, prior to the entry into force of this Convention, not to recognise judgments given in other States bound by this Convention against defendants domiciled or habitually resident in a third State where, in cases provided for in Article 4, the judgment could only be founded on a ground of jurisdiction as specified in Article 3(2). Without prejudice to obligations resulting from other agreements between certain Contracting Parties, this Convention shall not prevent Contracting Parties from entering into such conventions.
- (2) However, a Contracting Party may not assume an obligation towards a third State not to recognise a judgment given in another State bound by this Convention by a court basing its jurisdiction on the presence within that State of property belonging to the defendant, or the seizure by the plaintiff of property situated there—
 - (a) if the action is brought to assert or declare proprietary or possessory rights in that property, seeks to obtain authority to dispose of it, or arises from another issue relating to such property; or
 - (b) if the property constitutes the security for a debt which is the subject-matter of the action.

TITLE VIII

FINAL PROVISIONS

Article 69

- (1) The Convention shall be open for signature by the European Community, Denmark, and States which, at the time of the opening for signature, are Members of the European Free Trade Association.
- (2) This Convention shall be subject to ratification by the Signatories. The instruments of ratification shall be deposited with the Swiss Federal Council, which shall act as Depositary of this Convention.
- (3) At the time of the ratification, the Contracting Parties may submit declarations in accordance with Articles I, II and III of Protocol 1.
- (4) The Convention shall enter into force on the first day of the sixth month following the date on which the European Community and a Member of the European Free Trade Association deposit their instruments of ratification.
- (5) The Convention shall enter into force in relation to any other Party on the first day of the third month following the deposit of its instrument of ratification.
- (6) Without prejudice to Article 3(3) of Protocol 2, this Convention shall replace the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters done at Lugano on 16 September 1988 as of the date of its entry into force in accordance with paragraphs 4 and 5 above. Any reference to the 1988 Lugano Convention in other instruments shall be understood as a reference to this Convention.
- (7) Insofar as the relations between the Member States of the European Community and the non-European territories referred to in Article 70(1)(b) are concerned, this Convention shall replace the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed at

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Brussels on 27 September 1968, and of the Protocol on interpretation of that Convention by the Court of Justice of the European Communities, signed at Luxembourg on 3 June 1971, as amended by the Conventions of Accession to the said Convention and the said Protocol by the States acceding to the European Communities, as of the date of the entry into force of this Convention with respect to these territories in accordance with Article 73(2).

Article 70

- (1) After entering into force this Convention shall be open for accession by—
 - (a) the States which, after the opening of this Convention for signature, become Members of the European Free Trade Association, under the conditions laid down in Article 71;
 - (b) Member States of the European Community acting on behalf of certain non-European territories that are part of the territory of that Member State or for whose external relations that Member State is responsible, under the conditions laid down in Article 71;
 - (c) any other State, under the conditions laid down in Article 72.
- (2) States referred to in paragraph 1, which wish to become a Contracting Party to this Convention, shall address their application to the Depositary. The application, including the information referred to in Articles 71 and 72 shall be accompanied by a translation into English and French.

Article 71

- (1) Any State referred to in Article 70(1)(a) and (b) wishing to become a Contracting Party to this Convention—
 - (a) shall communicate the information required for the application of this Convention;
 - (b) may submit declarations in accordance with Articles I and III of Protocol 1.
- (2) The Depositary shall transmit any information received pursuant to paragraph 1 to the other Contracting Parties prior to the deposit of the instrument of accession by the State concerned.

Article 72

- (1) Any State referred to in Article 70(1)(c) wishing to become a Contracting Party to this Convention—
 - (a) shall communicate the information required for the application of this Convention;
 - (b) may submit declarations in accordance with Articles I and III of Protocol 1; and
 - (c) shall provide the Depositary with information on, in particular—
 - (i) their judicial system, including information on the appointment and independence of judges;
 - (ii) their internal law concerning civil procedure and enforcement of judgments; and
 - (iii) their private international law relating to civil procedure.
- (2) The Depositary shall transmit any information received pursuant to paragraph 1 to the other Contracting Parties prior to inviting the State concerned to accede in accordance with paragraph 3 of this Article.
- (3) Without prejudice to paragraph 4, the Depositary shall invite the State concerned to accede only if it has obtained the unanimous agreement of the Contracting Parties. The Contracting Parties shall endeavour to give their consent at the latest within one year after the invitation by the Depositary.

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- (4) The Convention shall enter into force only in relations between the acceding State and the Contracting Parties which have not made any objections to the accession before the first day of the third month following the deposit of the instrument of accession.

Article 73

- (1) The instruments of accession shall be deposited with the Depositary.
- (2) In respect of an acceding State referred to in Article 70, the Convention shall enter into force on the first day of the third month following the deposit of its instrument of accession. As of that moment, the acceding State shall be considered a Contracting Party to the Convention.
- (3) Any Contracting Party may submit to the Depositary a text of this Convention in the language or languages of the Contracting Party concerned, which shall be authentic if so agreed by the Contracting Parties in accordance with Article 4 of Protocol 2.

Article 74

- (1) This Convention is concluded for an unlimited period.
- (2) Any Contracting Party may, at any time, denounce the Convention by sending a notification to the Depositary.
- (3) The denunciation shall take effect at the end of the calendar year following the expiry of a period of six months from the date of receipt by the Depositary of the notification of denunciation.

Article 75

The following are annexed to this Convention—

- a Protocol 1, on certain questions of jurisdiction, procedure and enforcement,
- a Protocol 2, on the uniform interpretation of this Convention and on the Standing Committee,
- a Protocol 3, on the application of Article 67 of this Convention, Annexes I through IV and Annex VII, with information related to the application of this Convention,
- Annexes V and VI, containing the certificates referred to in Articles 54, 58 and 57 of this Convention,
- Annex VIII, containing the authentic languages referred to in Article 79 of this Convention, and
- Annex IX, concerning the application of Article II of Protocol 1.

These Protocols and Annexes shall form an integral part of this Convention.

Article 76

Without prejudice to Article 77, any Contracting Party may request the revision of this Convention. To that end, the Depositary shall convene the Standing Committee as laid down in Article 4 of Protocol 2.

Article 77

- (1) The Contracting Parties shall communicate to the Depositary the text of any provisions of the laws which amend the lists set out in Annexes I through IV as well as any deletions in or additions to the list set out in Annex VII and the date of their entry into force. Such communication shall be made within reasonable time before the entry into force and be accompanied by a translation into English and French. The Depositary shall adapt the Annexes concerned accordingly, after having consulted the Standing Committee in accordance

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with Article 4 of Protocol 2. For that purpose, the Contracting Parties shall provide a translation of the adaptations into their languages.

- (2) Any amendment of Annexes V through VI and VIII through IX to this Convention shall be adopted by the Standing Committee in accordance with Article 4 of Protocol 2.

Article 78

- (1) The Depository shall notify the Contracting Parties of—
- (a) the deposit of each instrument of ratification or accession;
 - (b) the dates of entry into force of this Convention in respect of the Contracting Parties;
 - (c) any declaration received pursuant to Articles I to IV of Protocol 1;
 - (d) any communication made pursuant to Article 74(2), Article 77(1) and paragraph 4 of Protocol 3.
- (2) The notifications will be accompanied by translations into English and French.

Article 79

This Convention, drawn up in a single original in the languages listed in Annex VIII, all texts being equally authentic, shall be deposited in the Swiss Federal Archives. The Swiss Federal Council shall transmit a certified copy to each Contracting Party.

In witness whereof, the undersigned Plenipotentiaries, have signed this Convention.

Done at Lugano, on 30 October 2007.””

Joanna Cherry

NS2

- ☆ To move the following Schedule—

“SCHEDULE

SUPER-AFFIRMATIVE RESOLUTION PROCEDURE

- 1 If the Secretary of State considers it appropriate to make regulations for the purpose of, or in connection with, implementing any international agreement, the Secretary of State Minister may lay before Parliament—
 - (a) draft regulations, and
 - (b) an explanatory document.
- 2 The explanatory document must introduce and give reasons for implementing the international agreement.
- 3 Subject as follows, if after the expiry of the 40-day period the draft regulations laid under subsection (1) are approved by a resolution of each House of Parliament, the Minister may make regulations in the terms of the draft regulations.
- 4 The procedure in paragraphs (5) to (8) shall apply to the draft regulations instead of the procedure in paragraph (3) if—
 - (a) either House of Parliament so resolves within the 30-day period, or

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- (b) a committee of either House charged with reporting on the draft regulations so recommends within the 30-day period and the House to which the recommendation is made does not by resolution reject the recommendation within that period.
- 5 The Secretary of State must have regard to—
- (a) any representations,
 - (b) any resolution of either House of Parliament, and
 - (c) any recommendations of a committee of either House of Parliament charged with reporting on the draft regulations, made during the 60-day period with regard to the draft regulations.
- 6 If, after the expiry of the 60-day period, the draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the draft regulations.
- 7 If, after the expiry of the 60-day period, the Secretary of State wishes to proceed with the draft regulations but with material changes, the Secretary of State may lay before Parliament—
- (a) a revised draft of the regulations, and
 - (b) a statement giving a summary of the changes proposed.
- 8 If the revised draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the revised draft regulations.
- 9 For the purposes of this Schedule regulations are made in the terms of draft regulations or revised draft regulations if they contain no material changes to their provisions.
- 10 In this paragraph, references to the “30-day”, “40-day” and “60-day” periods in relation to any draft regulations are to the periods of 30, 40 and 60 days beginning with the day on which the draft regulations were laid before Parliament.
- 11 For the purposes of paragraph 10 no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.”

Member’s explanatory statement

This new Schedule would apply the super-affirmative resolution procedure to regulations implementing the Lugano Convention in the UK (see NC2).

Private International Law (Implementation of Agreements) Bill [Lords], continued

Keir Starmer
 Mr David Lammy
 Alex Cunningham
 Karl Turner
 Mr Nicholas Brown

NS3

☆ To move the following Schedule—

“SCHEDULE

REGULATIONS UNDER SECTION (IMPLEMENTATION OF OTHER AGREEMENTS ON PRIVATE INTERNATIONAL LAW (NO. 2))

Restrictions on power to make regulations

- 1 (1) Regulations under section (*Implementation of other agreements on private international law (No. 2)*) may not include—
 - (a) provision that confers power to legislate by means of regulations, orders, rules or other subordinate instrument (other than rules of procedure for courts or tribunals);
 - (b) provision that creates an offence for which an individual who has reached the age of 18 (or, in relation to Scotland or Northern Ireland, 21) is capable of being sentenced to imprisonment for a term of more than two years (ignoring any enactment prohibiting or restricting the imprisonment of individuals who have no previous convictions).
- (2) Sub-paragraph (1)(a) does not prevent the modification of a power to legislate conferred otherwise than under section (*Implementation of other agreements on private international law (No. 2)*), or the extension of any such power to purposes of a similar kind to those for which it was conferred.
- (3) A power to give practice directions or other directions regarding matters of administration is not a power to legislate for the purposes of sub-paragraph (1)(a).

Regulations to be made by statutory instrument or statutory rule

- 2 The power to make regulations under section (*Implementation of other agreements on private international law (No. 2)*)—
 - (a) is exercisable by statutory instrument, in the case of regulations made by the Secretary of State;
 - (b) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)), in the case of regulations made by a Northern Ireland department.

Parliamentary or assembly procedure

- 3 (1) This paragraph applies to a statutory instrument containing regulations made by the Secretary of State under section (*Implementation of other agreements on private international law (No. 2)*).
- (2) If the instrument contains (whether alone or with other provision)—
 - (a) provision made for the purpose of implementing or applying, in relation to the United Kingdom or a particular part of the United Kingdom, any relevant international agreement that has not previously been the subject of any such provision (whether made by regulations

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under section (*Implementation of other agreements on private international law (No. 2)*) or otherwise),

- (b) provision made for the purpose of giving effect, in relation to the United Kingdom or a particular part of the United Kingdom, to any relevant arrangements that relate to a particular territory and have not previously been the subject of any such provision (whether made by regulations under that section or otherwise),
 - (c) provision that creates or extends, or increases the penalty for, a criminal offence, or
 - (d) provision that amends primary legislation,
- it may not be made unless it has been approved under the super-affirmative procedure (see paragraph 4).
- (3) In this Schedule “relevant arrangements” means arrangements of the kind mentioned in section (*Implementation of other agreements on private international law (No. 2)*) (3).
 - (4) If sub-paragraph (2) does not apply to the instrument, it may not be made unless a draft of the instrument has been laid before each House of Parliament and approved by a resolution of each House.

Super-affirmative procedure

- 4 (1) If the Secretary of State considers it appropriate to make regulations for the purpose of, or in connection with, implementing any international agreement, the Secretary of State may lay before Parliament—
 - (a) draft regulations, and
 - (b) an explanatory document.
- (2) The explanatory document must introduce and give reasons for implementing the international agreement.
- (3) Subject as follows, if after the expiry of the 40-day period the draft regulations laid under sub-paragraph (1) are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the draft regulations.
- (4) The procedure in sub-paragraphs (5) to (8) shall apply to the draft regulations instead of the procedure in sub-paragraph (3) if—
 - (a) either House of Parliament so resolves within the 30-day period, or
 - (b) a committee of either House charged with reporting on the draft regulations so recommends within the 30-day period and the House to which the recommendation is made does not by resolution reject the recommendation within that period.
- (5) The Secretary of State must have regard to—
 - (a) any representations,
 - (b) any resolution of either House of Parliament, and
 - (c) any recommendations of a committee of either House of Parliament charged with reporting on the draft regulations, made during the 60-day period with regard to the draft regulations.
- (6) If after the expiry of the 60-day period the draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the draft regulations.
- (7) If after the expiry of the 60-day period the Secretary of State wishes to proceed with the draft regulations but with material changes, the Secretary of State may lay before Parliament—
 - (a) a revised draft of the regulations, and
 - (b) a statement giving a summary of the changes proposed.

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- (8) If the revised draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the revised draft regulations.
- (9) For the purposes of this paragraph regulations are made in the terms of draft regulations or revised draft regulations if they contain no material changes to their provisions.
- (10) In this paragraph, references to the “30-day”, “40-day” and “60-day” periods in relation to any draft regulations are to the periods of 30, 40 and 60 days beginning with the day on which the draft regulations were laid before Parliament.
- (11) For the purposes of sub-paragraph (10) no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.

Scottish affirmative procedure

- 5 (1) This paragraph applies to regulations made by the Scottish Ministers under section (*Implementation of other agreements on private international law (No. 2)*).
- (2) The regulations are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).

Northern Ireland affirmative procedure

- 6 (1) A Northern Ireland department may not make regulations under section (*Implementation of other agreements on private international law (No. 2)*) unless a draft of the regulations has been laid before the Northern Ireland Assembly and approved by a resolution of the Assembly.
- (2) Section 41(3) of that Act applies for the purposes of sub-paragraph (1) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.

Interpretation

- 7 In this Schedule—
 - “amend” includes repeal or revoke;
 - “primary legislation” means any provision of—
 - (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament,
 - (c) an Act or Measure of Senedd Cymru, or
 - (d) Northern Ireland legislation;
 - “relevant arrangements” has the meaning given in paragraph 3(3);
 - “relevant international agreement” has the same meaning as in section (*Implementation of other agreements on private international law (No. 2)*).

Member’s explanatory statement

This new schedule makes provision for regulations made by the Secretary of State under NC4 to be subject to super-affirmative procedure, and for all regulations made under that section by Scottish Ministers or Northern Ireland departments to be subject to the relevant affirmative procedure.

Private International Law (Implementation of Agreements) Bill [Lords], continued

Alex Chalk

7

- ★ Title, line 1, at end insert “and to provide for the implementation of other international agreements on private international law.”

*Member’s explanatory statement**This amendment to the long title reflects the change to the Bill made by NC5.*Mr Jonathan Djanogly
Sir Robert Neill

8

- ★ Title, line 1, at end add “and the Lugano Convention of 2007;”

*Member’s explanatory statement**This amendment is consequential on either Amendment 1 or on Amendments 2 to 4 and NS1.*Mr Jonathan Djanogly
Sir Robert Neill

9

- ★ Title, line 1, at end add “and to provide for the implementation of other international agreements on private international law, subject to certain conditions.”

*Member’s explanatory statement**This amendment is consequential on NC1.*

Joanna Cherry

10

- ★ Title, line 1, at end add “and to provide, subject to a super-affirmative procedure, for the implementation of the Lugano Convention of 2007.”

*Member’s explanatory statement**This amendment is consequential on NC2 and NS2.*Keir Starmer
Mr David Lammy
Alex Cunningham
Karl Turner
Mr Nicholas Brown

11

- ★ Title, line 1, at end add “and the Lugano Convention of 2007; and to provide, subject to consultation and a super-affirmative procedure, for the implementation of other international agreements on private international law.”

*Member’s explanatory statement**This amendment is consequential on NC3, NC4 and NS3.*

ORDER OF THE HOUSE [2 SEPTEMBER 2020]

That the following provisions shall apply to the Private International Law (Implementation of Agreements) Bill [Lords]:

Committal

1. The Bill shall be committed to a Committee of the whole House.

Proceedings in Committee, on Consideration and up to and including Third Reading

2. Proceedings in Committee of the whole House, any proceedings on Consideration and any proceedings in legislative grand committee shall (so far as not previously concluded) be brought to a conclusion one hour before

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the moment of interruption on the day on which proceedings in Committee of the whole House are commenced.

3. Proceedings on Third Reading shall (so far as not previously concluded) be brought to a conclusion at the moment of interruption on that day.
4. Standing Order No. 83B (Programming committees) shall not apply to proceedings in Committee of the whole House, to any proceedings on Consideration or to other proceedings up to and including Third Reading.

Other proceedings

5. Any other proceedings on the Bill may be programmed.
-