

Private International Law (Implementation of Agreements) Bill [HL]

LORDS AMENDMENTS TO CERTAIN COMMONS AMENDMENTS

[The page and line numbers refer to Bill 150, the Bill as first printed for the Commons]

COMMONS AMENDMENT 1

After Clause 1

1 Insert the following new 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 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 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) Schedule (*Regulations under section (Implementation of other agreements on private international law)*) makes further provision about regulations under this section.
- (7) 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;
- “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.
- (8) This section and Schedule (*Regulations under section (Implementation of other agreements on private international law)*) 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.
- 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”.”

LORDS AGREEMENT AND AMENDMENTS TO THE COMMONS AMENDMENT

The Lords agree with the Commons in their Amendment 1 and propose Amendments 1A and 1B as amendments thereto –

- 1A** After subsection (3) insert –
- “(3A) Regulations under subsections (1) to (3) may only be made during the operative period.
- (3B) The operative period is the period of five years beginning with the day on which this Act is passed.
- (3C) The appropriate national authority in relation to a part of the United Kingdom may by regulations extend the operative period for that part of the United Kingdom by a period of five years.
- (3D) The power under subsection (3C) may be exercised more than once.
- (3E) The operative period may not be extended for any part of the United Kingdom after it has expired in relation to that part of the United Kingdom.”
- 1B** In subsection (5) leave out “this section” and insert “subsections (1) to (3)”

COMMONS AMENDMENT 4

After Schedule 5

- 4** Insert the following new Schedule –

“SCHEDULE

REGULATIONS UNDER SECTION (*IMPLEMENTATION OF OTHER AGREEMENTS ON PRIVATE INTERNATIONAL LAW*)

Restrictions on power to make regulations

- 1 (1) Regulations under section (*Implementation of other agreements on private international law*) 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*), 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*) –
- (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*).
- (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*) 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 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*)(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*).

- (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*) 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*) 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*) 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*) made by a Northern Ireland department are subject 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*).

LORDS AGREEMENT AND AMENDMENTS TO THE COMMONS AMENDMENT

The Lords agree with the Commons in their Amendment 4 and propose Amendments 4A, 4B, 4C, 4D and 4E as amendments thereto –

- 4A** In paragraph 1(1), in paragraph (b), leave out from “offence” to end of paragraph (b) and insert “punishable by imprisonment.”
- 4B** After paragraph 1 insert –
- “*Consultation*
- 1A Before the Secretary of State makes regulations under section (*Implementation of other agreements on private international law*) the Secretary of State must consult such persons as the Secretary of State thinks appropriate.”
- 4C** In paragraph 3(2), after paragraph (d) insert “, or
- (e) provision made under section (*Implementation of other agreements on private international law*)(3C),”
- 4D** In paragraph 4(2), after paragraph (d) insert “, or
- (e) provision made under section (*Implementation of other agreements on private international law*)(3C).”
- 4E** In paragraph 5(1), after paragraph (d) insert “, or
- (e) provision made under section (*Implementation of other agreements on private international law*)(3C),”

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