

Policy Statement

Private International Law (Implementation of Agreements) Bill

POLICY BACKGROUND

1. Cross-border trade and family relationships are a vital part of life for people in the UK. Where disputes arise, private international law (PIL) helps ensure these can be settled in a clear and efficient way. PIL makes a real and positive impact to people's lives, by providing confidence and certainty to businesses, individuals and families that they can settle cross-border disputes efficiently and effectively.
2. This Bill implements in UK domestic law three key international agreements on PIL (or 'Hague Conventions').
3. These PIL agreements provide a legal framework for resolving often difficult situations for those involved in cross-border disputes. That could be two parents living in different countries divorcing and agreeing arrangements in the best interests of their children. Alternatively, it could be two businesses resolving a cross-border commercial dispute pursuant to an exclusive choice of court agreement.
4. The UK has now regained full competence to enter into international agreements on PIL in our own right including two of the Hague Conventions being implemented under clause 1 of the Bill.

POLICY OBJECTIVES

5. During the transition period (TP), the UK will continue to participate fully in the EU's extensive framework of Private International Law rules. This includes those international agreements to which the EU is the contracting party. Prior to the end of the transition period, the UK will need to take steps to ensure our continued participation in key Private International Law agreements in our own right.
6. Our aim is that UK business, individuals and families will continue to benefit from international agreements on Private International Law with our existing partners after the end of the TP. The Private International Law (Implementation of Agreements) Bill allows us to do this.
7. The first clause implements in domestic law three existing international agreements to which the UK will become an independent party in its own right at the end of the transition period. This legislation will allow us to continue to operate these agreements effectively at the end of the transition period.
8. The Bill previously contained another clause which created a delegated power which would have allowed the Government to implement other international agreements on PIL in domestic law in future via secondary legislation. Any decision to ratify an international agreement on PIL would still have required full compliance with the provisions of the Constitutional Reform and Governance ('CRAG') Act 2010 on Parliamentary scrutiny. The delegated power was removed from the Bill during its passage in the House of Lords, however it is our intention to re-insert this power into the Bill during its passage through the House of Commons

Clause 1- Provision for Hague Conventions

9. Clause 1 of the Bill implements in domestic law the following three international agreements on PIL:

The 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition and Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (“1996 Hague Convention”):

- A multilateral treaty aimed at improving the protection of children in cross-border disputes.
- The 1996 Hague Convention provides a framework for the resolution of issues such as custody of, and contact, with children where parents live in different countries, and establishes co-operation between national authorities involved in protecting children.
- This is important because it provides legal certainty that decisions relating to children (e.g. custody and access arrangements) made in one country will be respected in others, so that people do not have to incur the expense and trouble of taking fresh proceedings in another country.

The 2005 Hague Convention on Choice of Court Agreements (“2005 Hague Convention”):

- A multilateral treaty aimed at ensuring the effectiveness of exclusive choice of court agreements between parties to international commercial transactions. Exclusive choice of court clauses are common in high value commercial contracts.
- The 2005 Hague Convention provides more legal certainty to parties to cross-border commercial contracts and maintains UK jurisdictions as an attractive choice for resolving disputes in commercial contracts.
- For example, for the small UK business that has a supplier based in another contracting state with whom it has agreed that any disputes should be resolved in the UK courts, it provides certainty that its supplier will not renege on that dispute resolution agreement and that any resulting judgment can be recognised and enforced in the supplier’s home state. This reduces the length and cost of sorting out a dispute.

The 2007 Hague Convention on the International Recovery of Child Support and other Forms of Family Maintenance (“2007 Hague Convention”):

- A multilateral treaty aimed at providing rules for the international recovery of child support and other forms of family maintenance, and for administrative cooperation between contracting States.
- The 2007 Hague Convention provides for the recognition and enforcement of maintenance decisions across borders and for administrative cooperation between national authorities on the processing of maintenance claims.
- This is important because having such a framework in place for maintenance matters helps reduce the financial hardship for the children of UK resident parents.

Provision for Delegated Powers

10. As referred to earlier, the Bill also originally included a delegated power which would have allowed the Government to implement international agreements on PIL in future via secondary legislation. The delegated power was removed from the Bill during its passage in the House of Lords.
11. This delegated power would have allowed the Government to implement a number of international agreements on PIL which it is currently considering joining, such as:

Lugano Convention 2007

This convention provides certainty on where a civil or commercial cross-border dispute should be heard, and ensures that the resulting judgment can be recognised and enforced across borders. It helps prevent multiple court cases taking place on the same subject matter in different countries and reduces the costs and expenses for the parties involved. For example, where a Norwegian company has failed to deliver goods to a UK buyer, the Convention means that the buyer can seek redress in the UK courts and the resulting judgment can be more easily recognised and enforced in Norway.

This is an important convention for UK businesses, consumers, legal services and families. It currently underpins the Private International Law relationship between the EU and Norway, Switzerland and Iceland, and our participation was due to our previous membership of the EU. The UK continues to participate in this convention for the duration of the TP. Our continued participation beyond then, is subject to the agreement of the other parties to this convention. Whilst we do not currently know the outcome of our application to accede to Lugano, this Government has been clear that the UK will seek to become an independent party to this important convention in our own right as soon as possible after the end of the TP.

The 2019 Singapore Convention

This is a new convention on the enforcement of mediated settlement agreements. Mediation is an important alternative dispute resolution (ADR) mechanism. It involves a neutral third party assisting parties to work towards a negotiated settlement of their dispute, with the parties retaining control of the decision on whether or not they settle and on what terms. This new convention allows for settlement agreements in cross border commercial disputes, which have been reached through mediation, to be enforceable in contracting states. China, the US and 44 other countries have now signed the convention. The government has not taken a formal decision yet on whether the UK should join this convention and further consideration is required including necessary engagement with the sector. But the former delegated power could have been used to quickly implement the convention if the Government decided to join it.

Current and future Hague Conference Agreements

The Hague Conference on Private International Law is the leading international forum for developing internationally agreed rules on Private International Law with a membership of 82 states and the EU. The UK currently participates in 13 of its conventions. The Hague Conference continues to develop new agreements and other types of instrument on Private International Law, most recently the Hague Judgments Convention 2019 which covers the recognition and enforcement of civil and commercial judgments. If the UK wished to join these in the future, they would also require implementation in domestic law. In the absence of the delegated power in the Bill, any other Hague Conventions which the UK decided to join in the future would require another legislative vehicle.

12. The Bill, as originally drafted, carefully defined the types of agreements which would have fallen within scope of the former delegated power. These included agreements on jurisdiction or applicable law, agreements on recognition and enforcement of court judgments or other forms of decisions or agreements that resolve legal disputes such those reached through alternative dispute resolution methods such as mediation. It also included agreements establishing co-operation between courts or competent

authorities relating to any of these matters, including service of documents and taking of evidence abroad.

13. Having a delegated power to implement international agreements on PIL by way of regulations would have enabled the Government to implement future agreements in a timely manner. Any new international agreements on PIL which require ratification (which is normally the case) would still have been be subject to Parliamentary scrutiny separately under the Constitutional Reform and Governance ('CRAG') Act 2010. The Government would only have used the delegated power to implement an international agreement on PIL which Parliament had already agreed was beneficial for the UK to join.
14. A delegated power in the Bill would have meant that the Government could have entered into ambitious new agreements on PIL with our international partners all over the world, confident that we would have been able to implement them in our domestic law in a timely manner for the benefit of individuals, businesses and families. This power would have allowed the UK to remain at the forefront of efforts to promote global cooperation and best practice in this area.