

The Private International Law (Implementation of Agreements) Bill

Fact Sheet

Private International Law

Private International Law agreements provide a legal framework for resolving often difficult and desperate situations for those involved in cross-border disputes. That could be helping to seek to return home a child abducted by one of their parents, or two parents living in different countries divorcing and agreeing arrangements in the best interests of their children. Alternatively, it could be helping a small business that has been left out of pocket by a supplier based in another country to seek redress.

Without these agreements, UK businesses, individuals and families engaged in cross-border disputes will struggle to resolve them. There may be parallel court cases in different countries which reach conflicting decisions, and the decisions made by UK courts may not be recognised abroad. In family cases involving child maintenance, for example, this is clearly undesirable, as it could result in financial hardship for the children of UK-resident parents.

Private International Law rules assist courts and disputing parties to deal with cases involving foreign elements. The rules typically cover matters such as which court should hear a case (jurisdiction), which country's law should apply to resolve it (applicable law), and whether the decisions of a foreign court should be recognised and enforced (recognition and enforcement of judgments). These rules apply to private civil law matters including commercial, insolvency and family law matters. The UK has now regained the freedom to enter into international agreements on Private International Law in its own right.

The Bill:

Upon introduction to the House of Lords in February this year, the Bill had two key functions:

- It implements in domestic law three key Private International Law agreements ('Hague Conventions') (clause 1). This function is retained in the Bill.
- It also created a power to implement further Private International Law agreements in future via secondary legislation. This function no longer stands part of the Bill following a division in the House of Lords at Report stage.

Implementing three Hague Conventions (Clause 1):

- **1996 Hague Convention:** Improves the protection of children in cross-border disputes, and helps families to resolve issues such as residence of, and contact with, children, where parents live in different countries.
- **2005 Hague Convention:** Increases legal certainty in disputes relating to cross-border commercial contracts which include a choice of court clause, by ensuring there is no dispute over where a case should be heard, and enabling any resulting judgment to be recognised and enforced across borders.
- **2007 Hague Convention:** Provides for the recovery of child support and other forms of family maintenance across borders.

Implementing Future Agreements

Upon introduction to the House of Lords, the Bill originally included provisions for a delegated power which would have allowed the Government to implement international agreements in domestic law in future via secondary legislation. The Government lost the vote on this delegated power at Report Stage in the House of Lords; therefore this no longer stands part of the Bill. However, the Government intends to amend the Bill to re-insert this power at committee stage in the House of Commons.

The intention of this delegated power was to provide an efficient way to implement in domestic law new agreements on Private International Law while ensuring Parliament provided appropriate scrutiny. Under this power, any new agreements which required ratification (which is normally the case) would have been subject to Parliamentary scrutiny separately under the Constitutional Reform and Governance ('CRAG') Act 2010 before the Government decided that the UK should ratify them. The delegated power was intended to potentially implement in domestic law the following agreements on private international law:

The 2007 Lugano Convention

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 between the contracting parties. 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 transition period. 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 the UK's application, 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 transition period. A delegated power in the Bill would be the most efficient way to implement the Convention in a timely manner to minimise disruption to UK businesses, individuals and families who rely on its rules to resolve cross-border disputes. The UK submitted our application to accede to this convention on 8 April and the contracting parties are currently considering it.

The 2019 Singapore Convention

This is a new convention on the enforcement of mediated settlement agreements in cross-border commercial disputes. Mediation involves a neutral third-party assisting disputing parties to work towards a negotiated settlement. The Government is currently considering whether or not the UK should join this convention.

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 instruments on Private International Law, most recently the Hague Judgments Convention 2019 on the recognition and enforcement of civil and commercial judgments. If the UK wished to join these new agreements and other types of instruments in the future, they would also require implementation in domestic law.