

Private International Law (Implementation of Agreements) Bill

Equalities Statement

1. This Equalities Statement considers the equalities implications of the provisions of the Government's Private International Law (Implementation of Agreements) Bill. This Bill provides for the implementation in domestic law of international agreements in the field of Private International Law (PIL).
2. International agreements on PIL provide a legal framework for resolving often difficult situations for those involved in cross-border legal disputes. Private international law rules typically determine matters such as which country's courts should hear a case (jurisdiction), which country's law should apply, and whether a foreign judgment should be recognised and enforced. Having rules on PIL which are agreed internationally creates legal certainty, which benefits UK businesses, individuals and families who work, live or travel abroad as they help avoid parallel court proceedings and conflicting decisions.

Summary of the Bill

3. The Bill has one main purpose, to implement in our domestic law three key agreements on PIL ("Hague Conventions"). On introduction in the House of Lords, it also contained a power to implement future PIL agreements via secondary legislation, but this power was removed during passage of the Bill in the House of Lords.
4. Two of the Hague Conventions implemented by the Bill are in the family law area and it is their implementation in domestic law which has the potential to engage equalities issues because the Conventions affect individuals or family members:
 - a. the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (or '1996 Hague Convention'); and
 - b. the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (or '2007 Hague Convention').
5. The third Private International Law agreement implemented by the Bill is the 2005 Hague Convention on Choice of Court Agreements. However, as this instrument concerns international commercial contracts we do not consider that it engages any equalities issues and it is not considered further in this memorandum.

Policy background

6. Following withdrawal from the EU, the UK has regained full competence to enter into international agreements on PIL in its own right. During the Transition Period (TP), the UK will continue to participate in the EU's extensive framework of PIL rules. This includes international agreements such as the 2007 Hague Convention to which the EU became a contracting party with effect from 2014, and the 1996 Hague Convention, to which the UK became a contracting party with effect from 2012 on behalf of the EU, because its subject matter fell partly within EU competence but the EU was unable to become a contracting party in its own right alongside the Member States. The Government's policy is that the UK individuals and families should continue to benefit from these agreements, which have been operating in the UK for several years, and the UK will take steps to

become a contracting party to the 2007 Hague Convention in its own right from the end of the TP.

7. The Bill ensures that these Hague Conventions will remain fully implemented in UK domestic law after the end of the transition period. Prior to exit day, the 1996 and 2007 Hague Convention provisions had direct effect in our domestic law as a matter of EU law, and Regulations were made under s2(2) of the European Communities Act 1972 (“ECA”) to give further effect to the Conventions. During the transition period the Government will rely on the European Union (Withdrawal Agreement) Act 2020 for the continued implementation of the Conventions. The Bill provides a new clearer approach to domestic implementation for users going forwards.

Equality duties

8. Section 149 of the Equality Act 2010 (“the Act”) requires Ministers and the Department, when exercising their functions, to have ‘due regard’ to the need to:
 - I. eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
 - II. advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
 - III. foster good relations between different groups (those who share a relevant protected characteristic and those who do not).
9. The “protected characteristics” relevant to the duty are: race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.
10. There is separate equality legislation in place for Northern Ireland including section 75 of the Northern Ireland Act 1998.

Equality considerations

11. We have considered whether the provisions in the Bill engage the general equality duties.
12. The two Hague Conventions in the family law field, which are implemented by clause 1 of the Bill, potentially engage the duties under the equalities legislation because they benefit individuals or family members who may have relevant protected characteristics:
 - a. The 1996 Hague Convention deals with 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. For example, it provides rules to determine which country’s authorities are responsible for taking decisions on the residence of a child and for that decision to be recognised and enforced in another contracting state;
 - b. The 2007 Hague Convention provides for the international recovery of child support and other forms of family maintenance. For example, in a situation where a relationship between two parents has broken down and one parent has moved abroad this convention would allow decisions of one country’s courts about the payment of child maintenance to be enforced in the country where the other parent is living (as long as both countries are parties to the convention).

13. Generally speaking, the two Hague Conventions establish rules which are applied by courts or competent authorities dealing with relevant cases, to determine whether they have jurisdiction to take a decision on an application (or whether it should be taken by the courts or authorities in another country) and whether they can recognise and enforce decisions taken by courts or authorities in another country. These sorts of matters do not, in principle, involve applying any different treatment to individuals on the basis of protected characteristics. UK courts and relevant authorities have been operating both Conventions (by virtue of the UK's EU membership) for several years and they have not to date been considered to give rise to any issues under our equalities legislation or be incompatible with the general equalities duties. No substantive changes are being made to the Conventions' provisions as they are implemented under the Bill, and the Bill only changes the technical approach to implementation in domestic law.
14. The impact on equalities legislation of our domestic implementation of both Conventions has been considered previously when implementing regulations were originally made under s2(2) of the ECA to give further effect to the Conventions in domestic law in 2010 (in relation to the 1996 Hague Convention) and 2010 (in relation to the 2007 Hague Convention). These sets of implementing regulations were considered by the then Lord Chancellor to be compatible with the European Convention on Human Rights (ECHR) and no concerns were raised about them (nor the directly effective Convention provisions) having any discriminatory impact at that time.¹ A separate set of section 2(2) ECA regulations were made to give further effect to the 2007 Hague Convention in relation to Northern Ireland which were screened in compliance with the section 75 of the Northern Ireland Act and no equality issues were identified.²
15. Further consideration of the impact on the equalities duties of legislation implementing the Conventions was given in 2018, when regulations were made under section 8 of the EU (Withdrawal) Act 2018 as part of the then Government's preparations for a 'no deal' Brexit scenario, to correct deficiencies arising in relation to the continued application of the 2007 Hague Convention (see SI 2018/1125). The then Parliamentary Under-Secretary of State for Justice

¹ See relevant SIs and accompanying explanatory memoranda including: The Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010 (<http://www.legislation.gov.uk/uksi/2010/1898/contents/made>); and The Parental Responsibility and Measures for the Protection of Children (International Obligations) (Scotland) Regulations 2010 (<http://www.legislation.gov.uk/ssi/2010/213/contents/made>). The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations 2012 (<http://www.legislation.gov.uk/uksi/2012/2814/contents/made>); The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations (Northern Ireland) 2012 (<http://www.legislation.gov.uk/nisr/2012/413/contents>); The Civil Jurisdiction and Judgments (Maintenance) and International Recovery of Maintenance (Hague Convention 2007 etc) (Amendment) Order 2015 (<http://www.legislation.gov.uk/uksi/2015/1489/contents/made>); The International Recovery of Maintenance (Hague Convention 2007) (Scotland) Regulations 2012 (<http://www.legislation.gov.uk/ssi/2012/301/resources>).

² See relevant SI and accompanying explanatory memorandum for The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations (Northern Ireland) 2012 (<http://www.legislation.gov.uk/nisr/2012/413/contents>).

made a statement that when making those regulations she had acted in compliance with the duties under the equalities legislation.³

Direct discrimination

16. Our assessment is that the provisions in the Bill which implement the 1996 and 2007 Hague Conventions to enable them to continue to have the force of law in the UK from the end of the transition period, would not be directly discriminatory within the meaning of the Act.

Indirect discrimination

17. We do not believe that the Bill will result in any indirect discrimination against users of the justice system. The Conventions implemented in clause 1 are designed to make the process easier for all court users engaged in cross-border disputes, reducing costs and providing more legal certainty.

Harassment and victimisation

18. We do not consider there to be a risk of harassment or victimisation as a result of the Bill's provisions.

Advancing equality of opportunity

19. Overall, the Hague Conventions implemented by clause 1 and referred to above contribute to making the justice system more accessible and will therefore advance equality of opportunity for those individuals and families engaged in cross-border legal disputes. This is because the ability to enforce judgements across borders will reduce the need for families to litigate issues twice in the courts of two separate countries. It will also mean that in many cases a parent is dealing with the courts of a country where they speak the language and have a certain level of familiarity with the justice system.

Fostering good relations

20. Consideration has been given to how these agreements could impact on the duty to advance the fostering of good relations between people who have a protected characteristic and those who do not. We do not think there are any particular implications for that duty in this proposal.

Mitigation

21. Our assessment of equality impacts is that the Bill will not result in any direct discrimination on stakeholders with protected characteristics.

Equality impact analysis

³ See relevant SI and accompanying explanatory memorandum for The International Recovery of Maintenance (Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance 2007) (EU Exit) Regulations 2018 (<http://www.legislation.gov.uk/uksi/2018/1125/contents/made>).

22. Given the above, an equality impact assessment is not considered necessary for the Bill.

Ministry of Justice
June 2020