

<b>Title:</b> Private International Law (Implementation of Agreements) Bill  <b>IA No:</b> MoJ048/2019 <b>RPC Reference No:</b> N/A <b>Lead department or agency:</b> MoJ <b>Other departments or agencies:</b> None	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 26.06.2020			
	<b>Stage:</b> Commons Introduction			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary Legislation			
<b>Contact for enquiries:</b> abbie.colwell@justice.gov.uk				
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> N/A	

**Cost of Preferred (or more likely) Option** (in 2016 prices)

<b>Total Net Present Social Value:</b> N/A	<b>Business Net Present Value:</b> N/A	<b>Net cost to business per year:</b> N/A	<b>Business Impact Target Status</b> Not a regulatory provision
--------------------------------------------	----------------------------------------	-------------------------------------------	--------------------------------------------------------------------

**What is the problem under consideration? Why is government intervention necessary?**

Private International Law (PIL) is the term used to describe the rules applied by courts and others to deal with private civil law cases involving foreign elements, including those relating to commercial, insolvency and family law matters. Having internationally agreed rules on these issues creates legal certainty, which benefits UK businesses, individuals and families. Following its departure from the EU, the UK has now regained full competence to enter into international agreements on PIL in our own right.

This Bill implements, in domestic law, three existing international agreements on PIL (or 'Hague Conventions') to which the UK will be an independent party in our own right at the end of the transition period (TP), by simply stating that their provisions have the force of law in the UK. These Hague Conventions previously applied in the UK during our membership of the EU and continue to do so for the duration of the transition period.

**What are the policy objectives and the intended effects?**

The primary policy objective is that UK business, individuals and families will continue to benefit from these international agreements on PIL with both new and existing international partners. This will mean that there continues to be a clear and consistent means of UK parties resolving cross-border disputes falling in scope of these agreements and will maintain the UK's position at the forefront of cooperation on PIL matters.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

- **Option 0/Do Nothing** – Do not provide new implementation in primary legislation of the Hague Conventions at the end of the TP. Instead rely on existing legislation including the European Union (Withdrawal) Act 2018 and other implementing legislation, to continue to operate these agreements on PIL in domestic law at the end of the TP. When future PIL agreements require implementation, take through further bespoke primary legislation for this purpose.
- **Option 1** – Provide a new approach to implementation in domestic law of the Hague Conventions only which would offer increased legal certainty. This would ensure the UK will continue to operate these conventions at the end of the TP, and in a way which is clearer for users of them. Under this option further bespoke primary legislation would be required to implement future PIL agreements.
- **Option 2** – Provide a new approach to implementation in domestic law of the Hague Conventions, which would offer increased legal certainty, and create a delegated power which allows the government to implement international agreements on PIL in future via secondary legislation.

**Will the policy be reviewed?** Yes, within 5 years of gaining royal assent.

Does implementation go beyond minimum EU requirements?	N/A			
Is this measure likely to impact on trade and investment?	Yes			
Are any of these organisations in scope?	<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions?	<b>Traded:</b> N/A		<b>Non-traded:</b> N/A	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister: \_\_\_\_\_

Date: \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description: Option 1** Provide a new approach to implementation in domestic law of the Hague Conventions only, which would offer increased legal certainty. This would ensure the UK will continue to operate these conventions at the end of the TP, and in a way which is clearer for users of them. Under this option further bespoke primary legislation would be required to implement future PIL agreements.

## FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

### Description and scale of key monetised costs by 'main affected groups'

There are no monetised costs to stakeholders in providing a new approach to the domestic implementation of the Hague Conventions.

### Other key non-monetised costs by 'main affected groups'

Costs to UK parties who might engage in cross-border private international law disputes

Not having a delegated power to implement PIL agreements by way of regulations could result in additional delays and costs for UK businesses individuals and families involved in legal disputes with a cross-border element. Without the delegated power the government would need to bring forward individual bills to implement each agreement, delaying the benefits of these agreements being harnessed by users. See paragraph 11 for further information.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

### Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to monetise the benefits of this option.

### Other key non-monetised benefits by 'main affected groups'

Hague Conventions

These Hague Conventions are hugely beneficial for the UK businesses, individuals and families who rely on the rules in them to establish a clear and effective legal framework for resolving cross-border disputes (see paragraph 6 for details). They previously applied to the UK during our membership of the EU and will continue to do so for the duration of the transition period. Prior to the transition period's conclusion, the UK will take steps to ensure our continued participation in these conventions in our own right. This legislation would enable us to continue to operate these conventions effectively at the end of the transition period in a way which is clearer for users of them. It would provide a new approach to implementation of these conventions by implementing them directly in UK law in the way commonly used for other non-EU treaties and making other consequential amendments to ensure an effectively functioning statute book.

### Key assumptions/sensitivities/risks

Discount rate (%)

N/A

It is assumed that the principle benefit of this option is greater legal certainty. It has, however, not been possible to monetise this benefit.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: N/A	Benefits: N/A	Net: N/A	

## Summary: Analysis & Evidence

## Policy Option 2

**Description: Option 2** – Provide a new approach to implementation in domestic law of the Hague Conventions, which would offer increased legal certainty, and create a delegated power which allows the government to implement international agreements on PIL in future via secondary legislation.

Price Base Year N/A	PV Base Year N/A	Time Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price)		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
	Years			
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		N/A	N/A

### Description and scale of key monetised costs by 'main affected groups'

There are no monetised costs to stakeholders in providing a new approach to the domestic implementation of the Hague Conventions. There are no monetised costs to stakeholders of providing a delegated power for the government to implement future international agreements on PIL via secondary legislation.

### Other key non-monetised costs by 'main affected groups'

There are no non-monetised costs to stakeholders.

BENEFITS (£m)	Total Transition (Constant Price)		Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
	Years			
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		N/A	N/A

### Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to monetise the benefits from this option.

### Other key non-monetised benefits by 'main affected groups'

#### Hague Conventions

See other key non-monetised benefits under policy option 1.

#### Creating a delegated power to implement PIL agreements

Having a delegated power to implement PIL agreements would enable the government to implement future agreements in a timely manner, so that the benefits for UK business, individuals and families can be enjoyed as quickly as possible. The power would mean that the government could enter into ambitious new agreements and frameworks on PIL with our international partners all over the world (including the EU), confident that it will be able to implement them in our domestic law in a timely manner for the benefit of the UK and its citizens. For example, the power could have been used to prevent a potential 'gap' in application of the Lugano Convention 2007 at the end of the transition period, thereby providing more legal certainty to UK individuals and families engaged in a cross-border dispute. The power would also allow the UK to remain at the forefront of efforts to promote global cooperation and best practice in this area. See paragraph 12 for further information.

### Key assumptions/sensitivities/risks

Discount rate (%)

N/A

It is assumed that the principle benefit of this option is greater legal certainty. It has, however, not been possible to monetise this benefit.

### BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/A	Benefits: N/A	Net: N/A	

# Evidence Base (for summary sheets)

## A. Background

1. Cross-border trade, travel and family relationships are a vital part of life for UK residents. Where disputes arise, private international law (PIL) helps ensure these can be resolved in a clear and efficient way. PIL therefore makes a real and positive impact to people's lives. It provides confidence and certainty for businesses, individuals and families that they can resolve cross-border disputes efficiently and effectively. That is why we need this Bill to continue to implement in UK domestic law any international agreements on PIL both now and in the future. Having internationally agreed rules on these issues, which are implemented in domestic law, creates legal certainty, which benefits UK businesses, individuals and families.
2. PIL provides a legal framework for resolving often difficult situations for those involved in cross-border disputes. That could be helping seek the return home of a child abducted by one of their parents, or it may be two parents living in different countries divorcing and agreeing arrangements in the best interests of their children. Alternatively, it could be a small business that has been left out of pocket by a supplier based in another country and is seeking redress, or it could be to enable the enforcement of a consumer rights in a consumer's home country.
3. PIL rules are applied by courts 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, and whether the decisions of a foreign court should be recognised and enforced. These rules apply to private civil law matters including commercial, insolvency and family law matters.
4. Countries may enter into international agreements on PIL with other countries to ensure the same rules are applied on a reciprocal basis. This helps to avoid legal uncertainty that could arise, for example, from two different court cases taking place in different countries on the same matter and reaching different decisions. PIL agreements can also be used to establish cross-border co-operation between courts and other public authorities involved in resolving legal issues. Such agreements mean, for example:
  - child maintenance obligations imposed in one country can be recognised and enforced in another
  - divorces can be recognised in other countries
  - children abducted by one of their parents can be returned to their home country, and
  - businesses can feel confident entering into cross-border transactions, knowing that in the event of a dispute there is a clear framework of rules for resolving it.
5. The UK has now regained full competence to enter into international agreements on PIL in our own right. This will allow us to agree ambitious new PIL frameworks with our international partners all over the world and to remain at the forefront of efforts to promote global cooperation and best practice in this area. Without a delegated power in this Bill we will not be able to implement these new agreements on PIL in domestic law without bringing forward separate primary legislation, which would mean the UK and its citizens would not be able to harness their benefits in a timely manner.
6. The Private International Law (Implementation of Agreements) Bill implements in domestic law the following three key international agreements on PIL (or 'Hague Conventions'):

### **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:**

- A multilateral treaty aimed at improving the protection of children in cross-border disputes.
- The convention provides a framework for the resolution of issues such as residence of, and contact with, children where parents live in different countries, and establishes co-operation between national authorities involved in caring for children.
- This is important because it provides legal certainty that decisions relating to children (e.g. 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:**

- A multilateral treaty aimed at ensuring the effectiveness of exclusive choice of court agreements between parties to international commercial transactions.<sup>1</sup> Exclusive choice of court clauses are common in high value commercial contracts.
- The convention adds more legal certainty for parties to cross-border commercial contracts and maintains UK jurisdictions as an attractive choice for resolving disputes in commercial contracts.
- This is important because it provides legal certainty for resolving disputes relating to cross-border 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 and, in practice, reduces the incentive for parties to seek to renege on contracts.

### **The 2007 Hague Convention on the International Recovery of Child Support and other Forms of Family Maintenance:**

- 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 convention provides rules for recognition and enforcement of maintenance decisions across borders and for administrative cooperation between relevant countries on the processing of maintenance claims.
- This is important because having such a framework in place for maintenance matters may help reduce the financial hardship for the children of UK resident parents.

7. Previously (before 31 January 2020), the implementation of these Hague Conventions in domestic law relied mainly on section 2(1) of the European Communities Act 1972 and the principle of direct effect of EU law (together with accompanying regulations made under section 2(2) of the 1972 Act). During the transition period, the European Union (EU) (Withdrawal Agreement) Act 2020 will mean that these Hague Conventions continue to be implemented in domestic law. Prior to the end of the transition period, the UK will need to take steps to ensure our continued participation in these conventions in our own right, and ensure their provisions are implemented in UK domestic law in a way that is clear for users.
8. The Private International Law (Implementation of Agreements) Bill will allow us to continue to operate these Hague Conventions clearly and effectively at the end of the transition period by simply stating that their provisions have the force of law in the UK. They will be implemented directly in the Civil Jurisdiction and Judgments Act 1982 via the Bill using an approach commonly used in domestic legislation for implementing non-EU treaties. Other consequential amendments will be made to ensure an effectively functioning statute book.
9. In the absence of the Bill, it is the Government's view that we could choose to rely on existing legislation including section 4 of the European Union (Withdrawal) Act 2018, which saves directly effective rights, to continue to implement these Hague Conventions in domestic law at the end of the transition period.<sup>2</sup> However, it is considered that it will be clearer for users, and establish a sounder legal basis for these Hague Conventions in the future, for legal effect to be given to their provisions in our domestic law by expressly providing for this in legislation, rather than continuing to rely on the EU concept of direct effect

---

<sup>1</sup> Where a court (in a State that is a contracting party to the 2005 Hague Convention) has been designated by a choice of court agreement to deal with disputes arising under that agreement, the Convention requires that court to hear any such dispute (and other courts to decline to do so), and requires any judgment rendered by the chosen court to be recognised and enforced in the courts of all other contracting party States, as necessary.

<sup>2</sup> Section 4 of the EU (Withdrawal) Act 2018 has saved directly effective treaty rights contained in the Conventions, and section 2 has saved regulations originally made under s2(2) of the European Communities Act 1972 to give further effect to the Hague Conventions. In addition, two EU Exit SIs were also made under the EU (Withdrawal) Act 2018 dealing with the 2005 and 2007 Hague Conventions: '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' and 'The Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) (EU Exit) Regulations 2018'.

and the savings provisions for directly effective treaty rights in the EU (Withdrawal) Act 2018, at the end of the transition period.

10. The original policy intent was also that the Bill provide a delegated power which would allow the government to implement international agreements on PIL in domestic law in future via secondary legislation. The Bill carefully and narrowly defined the types of agreements on PIL which would fall within scope of the implementing power. PIL agreements are generally predictable in scope and content, covering issues such as jurisdiction, applicable law, recognition and enforcement of judgments, and related administrative co-operation. Such agreements are widely considered beneficial by stakeholders.
11. Having a delegated power to implement agreements on PIL would have enabled the Government to implement future agreements in a timely manner, so that the benefits for UK business, individuals and families could be enjoyed as quickly as possible. It would also have given the Government the ability to adjust our existing implementation of current international agreements on PIL to which the UK is an independent party. Notably, where international agreements on PIL are subject to ratification, the terms of those agreements would continue to be subject to the requirements of the Constitutional Reform and Governance ('CRAG') Act 2010's provisions on Parliamentary scrutiny.
12. The alternative, relying on the government bringing forward individual bills to implement each agreement once negotiated with an international partner, could result in significant delays in UK stakeholders harnessing the benefits. In particular, without bringing forward a separate primary legislative vehicle the Government would be unable to implement the Lugano Convention 2007 (see further detail at para 29). Needing to rely on a separate primary vehicle could result in a potential "gap" in application at the end of the transition period. The effects of such a gap could include potential uncertainty for stakeholders as to whether UK judgments will be recognised and enforced in the EU, Norway, Iceland and Switzerland, increased costs and delays resulting from parallel court proceedings in different countries, and possible damage to the reputation of the UK as a leading dispute resolution centre.
13. The power would also have allowed the government to enter into ambitious new PIL agreements with our international partners all over the world in a more efficient and timely manner which will support the UK remaining at the forefront of efforts to promote global cooperation and best practice in this area. For example, the power would also have provided an effective way for the UK to implement new agreements developed under the auspices of international fora such as the Hague Conference on Private International Law, allowing us to keep pace with changes that are widely considered beneficial by Parliament and stakeholders.
14. However, during the passage of the Bill through the House of Lords the Government was defeated on the proposed delegated power and it was removed from the Bill. This means that as at the time of introduction in the House of Commons the Bill represents the option set out under 'Option 1' of this impact assessment.

## **B. Policy Rationale and Objectives**

15. The conventional economic rationales for government intervention are based on efficiency and equity arguments. The government may consider intervening if there are failures in the way markets operate (e.g. monopolies overcharging consumers) or where there are failures with existing government interventions (e.g. waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and re-distributional reasons (e.g. to reallocate goods and services to the more disadvantaged groups in society).
16. The rationale for intervention in this instance is efficiency. Providing an effective and clearer implementation of the Hague Conventions, putting them on a sounder legal footing, will limit inefficiencies as there will be clear and reliable rules applicable to the resolution of cross-border disputes e.g. recognition of exclusive choice of court agreements for cross-border commercial transactions; recognition and enforcement of maintenance obligations across borders and administrative cooperation between

competent authorities; and the PIL aspects of parental responsibility and measures for the protection of children e.g. decisions regarding contact, residence and public care concerning children (See paragraph 6 above).

17. This level of legal certainty is only possible if countries agree to cooperate with each other in this area. This Bill will contribute to this policy objective by providing a clearer approach to implementation in domestic law of the Hague Conventions at the end of the transition period.
18. The associated policy objectives are to ensure the UK complies with its international legal obligations to implement the Hague Conventions and enable the UK's continued participation in them at the end of the transition period.

## C. Affected Stakeholder Groups, Organisations and Sectors

19. The Bill will apply to the three UK legal jurisdictions: England and Wales, Scotland, and Northern Ireland. The groups most likely to be affected by the options discussed in this Impact Assessment (IA) are as follows:
  - UK businesses, individuals and families
  - The providers of legal services
  - UK courts
  - UK Central Authorities (national authorities involved in protecting children and resolving cross-border family disputes)

## D. Description of Options Considered

20. In order to meet the above policy objectives, the following options are assessed in this IA:
  - **Option 0** – Do not provide new implementation in primary legislation of the Hague Conventions at the end of the transition period. Instead rely on existing legislation including the European Union (Withdrawal) Act 2018 and other implementing legislation, to continue to operate these agreements in domestic law at the end of the transition period. When future PIL agreements require implementation, take through further bespoke primary legislation for this purpose.
  - **Option 1** – Provide a new approach to implementation in domestic law of the Hague Conventions only, which would offer increased legal certainty. This would ensure the UK will continue to operate these conventions at the end of the transition period, and in a way which is clearer for users of them. Under this option further bespoke primary legislation would be required to implement future PIL agreements. This is the option given effect by the current draft of the Bill as at introduction and first reading in the House of Commons.
  - **Option 2** – Provide a new approach to implementation in domestic law of the Hague Conventions, which would offer increased legal certainty, and create a delegated power which allows the government to implement international agreements on PIL in future via secondary legislation.

### Option 0

21. As set out above in the absence of this Bill it is the Government's view that we could continue to rely on existing legislation including section 4 of the European Union (Withdrawal) Act 2018, which saves directly effective rights, to continue to implement these Hague Conventions in domestic law at the end of the transition period.
22. However, not providing a clearer approach to implementation in domestic law of the Hague Conventions at the end of the transition period, may create confusion for the UK businesses, individuals and families who rely on these Hague Conventions and would not provide the same level of legal certainty as giving

them legal effect on the face of primary legislation. In particular, stakeholders would need to continue to understand the concept of directly effective rights under Section 2(1) of the European Communities Act 1972 as it applies to these Hague Conventions, long into the future. Furthermore, under this option, the UK would not be able to give effect to any changes to the existing declarations and reservations for these conventions or to make decisions on how best to operate them in the future, without new primary legislation.

23. This is the 'do nothing' option or baseline in this case, as it compares the implementation in domestic law of the Hague Conventions under the Bill versus the preparations already made by the government as part of its 'No Deal' planning in 2018/19 to implement them in domestic law using the European Union (Withdrawal) Act 2018, at the end of the transition period.
24. As the UK has now left the EU, it has the opportunity to re-establish its leadership role in developing and negotiating new PIL agreements with our international partners, and to do this in a way that best suits our own priorities. We now have the ability to work with countries all over the world and to form new PIL agreements that will benefit UK businesses, individuals and families, maintaining the UK's reputation as a global leader in this area.
25. Under Option 0, however, many such new PIL agreements could not become operable in the UK until they had been implemented in domestic law via individual pieces of primary legislation for each agreement. This would-be time consuming and inefficient and there may be significant delays in implementing new agreements on PIL. This in turn would mean delays before UK businesses, individuals and families could realise the benefits of the new agreements (see further explanation in paragraph 11). It may well also risk tarnishing the UK's international reputation as the gap between signing and implementing new agreements on PIL could be extremely long. This aspect of the baseline compares clause two of the bill to a conventional 'do nothing' option.

#### **Option 1**

26. Under option 1, a clearer approach to the implementation in domestic law of the Hague Conventions would be adopted. This would ensure that these Conventions continue to operate effectively at the end of the transition period in a way which is clearer for users of them. It would establish a sounder legal basis for the implementation of the conventions, directly on the face of primary legislation, as opposed to continuing to rely on directly effective EU treaty rights saved under the European Union (Withdrawal) Act 2018, and the need for those using the conventions to understand the EU concept of directly effective treaty rights long after the end of the transition period.
27. Like Option 0, under Option 1 domestic implementation of future international agreements on PIL in this field would be done by the government needing to bring forward individual Bills to implement each agreement.

#### **Option 2**

28. Like Option 1, Option 2 also ensures a clearer approach to the implementation in domestic law of the Hague Conventions is adopted for the benefit of users. See paragraph 26 under Option 1 for a more detailed explanation.
29. This option also gives the Government a delegated power to domestically implement (via secondary legislation) bilateral and multilateral agreements on PIL, or to adjust our existing implementation in domestic law of current international agreements to which the UK is an independent party. By providing the government with such a power to implement new international arrangements on PIL, the Bill could enable efficient implementation in domestic law of, for example:

- **The 2007 Lugano Convention:** The UK has made clear its intention to seek to re-join this convention in our own right. This would require the agreement of all the contracting parties to the convention including the EU, Denmark, Iceland, Norway and Switzerland. The convention deals with jurisdiction



and the recognition and enforcement of judgments in civil and commercial matters. It provides certainty on where a relevant case involving a cross-border dispute should be heard and that the resulting judgment can be recognised and enforced across borders. This helps prevent multiple court cases taking place on the same subject matter and reduces the costs and expenses for the parties involved. This important convention currently underpins our PIL relationship with Norway, Iceland and Switzerland and will continue to apply to the UK for the duration of the transition period on a similar basis as the 2005 and 2007 Hague Conventions (see paragraph 7). Our continued participation in this convention beyond the transition period is subject to an application, and to engagement with other contracting parties to the convention.

- **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 settle and on what terms. This new convention allows for settlement agreements in 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 2019 Hague Judgments Convention:** The Hague Conference is the leading international forum for PIL. In 2019, it adopted a new international agreement on the recognition and enforcement of civil and commercial judgments. Where countries join this new convention, it will make it easier to recognise and enforce judgments relating to civil and commercial disputes in other contracting states.
  - **Future Hague Conventions:** The Hague Conference continues to consider the development of new conventions and other instruments on PIL. If the UK wished to join these in the future, they would also require implementation in domestic law.
30. The power will almost certainly allow new PIL agreements to be implemented more quickly and efficiently than if the government needs to bring forward individual Bills to implement each agreement. Therefore, UK businesses, individuals and families could realise the associated benefits sooner. PIL is an active area of international cooperation and the UK now has the opportunity to use its expertise and diplomacy to lead global efforts towards cooperation and developing best practice in this field. A legislative mechanism that provides swift and effective implementation of PIL agreements, such as the power in this bill would also enhance the UK's reputation as a global leader.

## E. Cost and Benefit Analysis

31. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
32. Where possible, this IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in the United Kingdom with the aim of understanding what the overall impact on society might be from the options under consideration. These impacts are compared to those of the 'do nothing' option. As the 'do nothing' option would be compared to itself, it has no impacts and no associated net present value (NPV).
33. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts that cannot sensibly be monetised. Impacts in this IA are therefore interpreted broadly, to include both monetizable and non-monetizable costs and benefits, with due weight given to those that are non-monetizable.
34. The primary rationale for intervention in this instance is to promote efficiency. However, in this case, there is no formal measure for legal certainty or way for quantifying its impact on wider economic interaction, so the majority of any costs or benefits in this IA are non-monetizable in nature.

35. However, as noted above, PIL agreements do increase legal certainty and can potentially reduce the proportion of disputes which need to be resolved in courts. For example, where a dispute arises involving foreign elements, PIL agreements provide more certainty on which court will hear a particular case, which country's law should apply to resolve it, and that the resulting decision can be recognised and enforced across-borders. This avoids parallel or duplicate sets of legal proceedings and the potential for conflicting decisions.
36. PIL agreements relating to family law can be applied to many different types of cross-border family disputes. For example, there are around 1,800 cases of parental child abduction in the EU every year.<sup>3</sup> Generally, child abduction cases involving foreign elements are dealt with by the UK under the 1980 Hague Convention on the Civil Aspects of International Child Abduction ('the 1980 Hague Convention'). This convention is unaffected by the UK's departure from the EU.
37. The number of international families in the EU was estimated at 16 million in 2019 with about 140,000 international divorces per year in the EU.<sup>4</sup> Therefore, we want to continue collaborating with international partners on this and other areas of PIL.
38. Finally, providing a clearer and more flexible approach to the implementation in domestic law of the 2007 Hague Convention could reduce uncertainty when handling maintenance claims from the EU and other contracting party states to the Convention, as there will be no confusion over the applicable procedures and provisions for casework, under the terms of this Convention and relevant domestic legislation.

**Option 1 – Provide a new approach to implementation in domestic law of the Hague Conventions only, which would offer increased legal certainty. This would ensure the UK will continue to operate these conventions at the end of the transition period, and in a way which is clearer for users of them. Under this option further bespoke primary legislation would be required to implement future PIL agreements.**

### **Costs of Option 1**

*UK businesses, individuals and families, the providers of legal services, UK courts*

39. Considering the demands of the Parliamentary timetable, it is not realistic to suggest that Parliament will be able to implement all beneficial agreements on PIL through individual Bills in a timely manner. This would-be time consuming and inefficient, and there may be significant delays in implementing new agreements. This in turn would mean delays before UK businesses, individuals and families could realise the benefits of the new agreements (see examples in paragraph 28). For example, a potential 'gap' in application of the Lugano Convention at the end of the transition period, due to a delay in its implementation in domestic law, could have negative impacts on UK businesses, individuals and families who become engaged in a cross-border disputes in the future. It may well also risk tarnishing the UK's international reputation as the gap between signing and implementing these agreements could, in some cases, be extremely lengthy.

### **Benefits of Option 1**

40. Under Option 1, the Bill would directly implement in domestic law three key international agreements on PIL: the 1996, 2005 and 2007 Hague Conventions. This would ensure that these conventions continue to operate effectively at the end of the transition period in a way which is clearer for users of them. It would establish a sounder legal basis for the implementation of the conventions, directly on the face of primary

---

<sup>3</sup> 'Adoption of new rules to better protect children caught in cross-border parental disputes' Press Release, 25 June 2019 ([https://europa.eu/rapid/press-release MEMO-19-3374\\_en.htm](https://europa.eu/rapid/press-release_MEMO-19-3374_en.htm))

<sup>4</sup> 'Adoption of new rules to better protect children caught in cross-border parental disputes' Press Release, 25 June 2019 ([https://europa.eu/rapid/press-release MEMO-19-3374\\_en.htm](https://europa.eu/rapid/press-release MEMO-19-3374_en.htm))

legislation, as opposed to continuing to rely on the saving of directly effective EU treaty rights under the European Union (Withdrawal) Act 2018 from the end of the transition period. For ease of exposition, the impacts of each of three Hague Conventions are described in turn.

#### Implementing the 1996 Hague Convention

41. This option would provide the new approach to the implementation in domestic law described above for the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children at the end of the transition period, delivering the following benefits:

##### *UK individuals*

42. Under this option, there would be an effective international framework, implemented in a clear way in UK domestic legislation, for the resolution of issues such as residence of, and contact with, children where parents live in different countries, and establishes co-operation between national authorities dealing with cases involved in protection of children. Under this option, individuals would benefit from greater legal certainty that, for example, child protection or parental responsibility decisions made in other contracting states can be recognised and enforced in the UK and vice versa, where appropriate, thereby reducing the complexity of these cross border cases.

##### *The providers of legal services and the UK courts*

43. A new clearer approach to implementation of this convention in domestic law would help ensure that cases continue to benefit from the provisions of the Convention in terms of reducing the length, complexity and cost of cross-border cases on parental responsibility and child protection, and certainty over whether decisions can be recognised and enforced in the UK, while also avoiding the prospect of costly and complex legal arguments being raised over the interpretation of saved directly effective EU treaty rights long after the transition period has ended.

##### *UK central authorities*

44. This option would ensure co-operation between national authorities involved in protecting children and resolving cross-border family disputes, can continue in an effective way and that national authorities are clear on the legal basis for their obligations. This would reduce uncertainty when handling relevant child protection or parental responsibility applications under the terms of this convention and relevant domestic legislation.

#### Implementing the 2005 Hague Convention

45. This option would provide a new approach to implementation in domestic law for the 2005 Hague Convention on Choice of Court at the end of the transition period, as described above delivering the following benefits:

##### *UK businesses*

46. These 'choice of court' clauses are common in high value commercial contracts. Under this option, there would be an effective international framework clearly implemented in UK domestic legislation governing the effectiveness of exclusive choice of court agreements in civil and commercial transactions with relevant 2005 Hague Convention contracting party States. This legal certainty would mean that businesses would be more confident in entering into cross-border contracts with choice of court clauses, as they would know there is a clear legal basis giving effect in UK domestic law to the 2005 Hague Convention and therefore that the parties to a cross-border contract can be sure that the choice of court provisions in their contract will be respected in the UK, and that any resulting judgment of a court of another contracting state will be recognised and enforced in the UK. The Government's engagement with the legal sector has indicated that this certainty in outcome is valued by businesses and individuals involved in cross-border civil and commercial disputes.

### *The providers of legal services*

47. The UK has a strong reputation as the leading global centre for the provision of international legal services with 40% of all global corporate arbitration using English law in 2018.<sup>5</sup> The 2005 Hague Convention adds more legal certainty to the effectiveness of choice of court clauses in commercial contracts and maintains UK jurisdictions as an attractive choice in new contracts. A clearer approach to implementing the 2005 Hague Convention in domestic law, on the face of primary legislation, will help ensure that our UK legal services sector can continue to be at the forefront of resolving legal disputes in civil and commercial matters.

### *The UK courts*

48. The 2005 Hague Convention's provisions considerably limit scope for costly and time-consuming disputes over where a case should be heard (jurisdiction) and whether the resulting judgment should be recognised and enforced abroad. Where a court (in a State that is a contracting party to the Convention) has been designated by a choice of court agreement to deal with disputes arising under that agreement, the 2005 Hague Convention requires that court to hear any such dispute (and other courts to decline to do so), and requires any judgment rendered by the chosen court to be recognised and enforced in the courts of all other contracting party States, as necessary. A clearer approach to the implementation of this Convention in domestic law would make the application of the Convention more straightforward for UK courts.

### Implementing the 2007 Hague Convention

49. This option would provide the new approach to implementation in domestic law described above for the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance at the end of the transition period, delivering the following benefits:

### *UK individuals*

50. Under this option, there will be an effective international framework implemented in a clear way in UK domestic legislation governing the recognition and enforcement of maintenance decisions with relevant 2007 Hague Convention contracting party States. Individuals would continue to benefit from rules for the international recovery of child support and other forms of family maintenance, making it easier, for example, for one parent to put in place enforceable child maintenance obligations where the other parent lives. This may reduce the financial hardship for the children of UK-resident parents.

### *Providers of legal services and the UK courts*

51. Ensuring the clearer implementation of this convention in domestic law, means that the benefits of the Convention in terms of reducing the length, complexity and cost of maintenance cases with a cross-border element would continue to be enjoyed, avoiding uncertainty over whether maintenance decisions can be recognised and enforced in the UK or how these cases should be handled. The clearer implementation of the Convention in domestic law would avoid the prospect of costly and complex legal arguments being raised over the interpretation of saved directly effective EU treaty rights long after the transition period has ended.

### *UK central authorities*

52. The UK currently operates over 100 reciprocal enforcement of maintenance orders treaties and agreements with countries all around the world and the Central Authority for England and Wales, the Reciprocal Enforcement of Maintenance Orders Unit (REMO) received 2,841 new cases in the 2012/2013 financial year.<sup>6</sup> However, this figure does not include maintenance cases under the 2007 Hague Convention, as the UK only began operating the Convention from 1 August 2014, when the EU formally

---

<sup>5</sup> Legal Excellence, Internationally Renowned – UK Legal Services 2019: <https://www.thecityuk.com/assets/2019/Report-PDFs/294e2be784/Legal-excellence-internationally-renowned-UK-legal-services-2019.pdf>

<sup>6</sup> The Official Solicitor and the Public Trustee Annual Report 1 April 2012 to 31 March 2013, Annex 3 ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/348806/ospt-annual-report-2012-13.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/348806/ospt-annual-report-2012-13.pdf)) (Note: This is the last year for which we have official published statistics from REMO.)

became a contracting party to it. The 2007 Hague Convention also provides rules for administrative cooperation between relevant contracting party States on the processing of maintenance claims. A clearer approach to implementing the Convention in domestic law would ensure the Convention benefits of cross-border co-operation between authorities dealing with maintenance decisions from the contracting States can continue to be enjoyed.

**Option 2 – Provide a new approach to implementation in domestic law of the Hague Conventions, which would offer increased legal certainty, and create a delegated power which allows the government to implement international agreements on PIL in future via secondary legislation.**

**Costs of Option 2**

*UK individuals, businesses and families, the providers of legal services, UK courts*

53. There are no costs associated with this option.

**Benefits of Option 2**

Implementing the 1996, 2005 and 2007 Hague Conventions:

54. Like option 1, option 2 has the same benefits associated with providing a new approach to the implementation in domestic law of the Hague Conventions at the end of the transition period (see paragraphs 40-52).

Creating a delegated power to implement PIL agreements:

55. Additionally, Option 2 has benefits associated with establishing a delegated power to implement agreements on PIL in the future in domestic law via secondary legislation.

*UK individuals, businesses and families*

56. As outlined above, the government continues to believe that international co-operation to establish agreed rules on PIL is mutually beneficial. The government anticipates the UK playing a full role in the negotiation of future PIL agreements at the Hague Conference on Private International Law and elsewhere, and deciding to participate in new PIL agreements where they would be advantageous. Option 2 will support this by providing a delegated power to implement new agreements on PIL in domestic law. It will allow the UK to begin operating new PIL agreements in a timely manner, instead of having to seek individual pieces of primary legislation once each new agreement has been negotiated. This means that UK businesses, individuals and families could realise the associated benefits sooner and the UK can remain at the forefront of international best practice on PIL, and continue to support individuals and organisations that rely on PIL agreements. For example, the power would prevent a potential ‘gap’ in application of the Lugano Convention 2007 at the end of the transition period, providing more legal certainty to UK, EU, Iceland, Norway and Switzerland businesses, individuals and families engaged in a cross-border dispute.

*Providers of legal services*

57. Legal services are a strong contributor to the economy and have a strong record of growth. The sector contributes over £25bn gross value added to the economy and generates revenue of over £35bn. The UK’s trade surplus in legal services has more than doubled over the past 10 years to £6.5bn. For example, 75% of cases in the UK commercial court in 2018 were international in nature.<sup>7</sup> The certainty provided by private international law rules is beneficial to the sector in supporting litigants dealing with cross-border disputes.

---

<sup>7</sup> Legal Services internationally renowned: <https://www.thecityuk.com/assets/2019/Report-PDFs/294e2be784/Legal-excellence-internationally-renowned-UK-legal-services-2019.pdf>

## **F. Wider Impacts**

58. This Bill does not amend, repeal or revoke any part of the Equality Acts 2006 or 2010 or subordinate legislation made under those Acts. An equalities impact statement has been published separately.
59. Due regard has been taken on the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010. Equivalent regard has been taken on the need to eliminate discrimination, harassment and victimisation in relation to Northern Ireland & Scotland.

## **G. Monitoring and Evaluation**

60. The MoJ will evaluate the policy the between 3 and 5 years of the Bill gaining Royal Assent and submit a memorandum to the justice select committee.

## **H. Business Impact Target**

61. This measure is out of scope of the business impact target.