

LEGISLATIVE CONSENT MEMORANDUM

PRIVATE INTERNATIONAL LAW (IMPLEMENTATION OF AGREEMENTS) BILL

Draft legislative Consent Motion

1. The draft motion, which will be tabled by the Minister of Justice is:

“That this Assembly endorses the principle of the extension of the provisions of the Private International Law (Implementation of Agreements) Bill to Northern Ireland.”

Background

2. This memorandum has been laid before the Assembly by the Minister of Justice under Standing Order 42A(2). The Private International Law (Implementation of Agreements) Bill was introduced in the House of Lords on 27 February 2020. The latest version of the Bill can be found at:

<https://services.parliament.uk/bills/2019-21/privateinternationallawimplementationofagreements.html>

Summary of the Bill and its policy objectives

3. The purpose of the Bill is to provide for the implementation in domestic law of international agreements on Private International Law (PIL). It has two policy objectives: firstly, to implement three international agreements drawn up under the Hague Conference on Private International Law and secondly, to allow the implementation of international agreements on PIL in domestic law in the future via secondary legislation
4. PIL comprises rules applied by courts and parties involved in legal disputes for dealing with cases raising cross-border issues. The rules generally apply in the context of civil law, including specialist areas such as commercial, insolvency and family law. PIL provides rules to establish whether a court has jurisdiction to hear a claim which has cross-border elements, which country’s law applies to such a claim, and whether a judgment of a foreign court should be recognised and enforced. It can also encompass rules on co-operation between courts and other public authorities in different countries

involved in dealing with cross-border cases, such as service of documents or taking of evidence abroad, or establishing efficient procedures to assist with the resolution of cross-border disputes, for example, in the family law area.

5. The Bill contains two main clauses:

Clause 1 implements three international agreements drawn up under the Hague Conference on Private International Law:-

- 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 (“the 1996 Hague Convention”);
- the 2005 Hague Convention on Choice of Court Agreements (“the 2005 Hague Convention”); and
- the 2007 Hague Convention on the International Recovery of Child Support and other Forms of Family Maintenance (“the 2007 Hague Convention”).

Clause 2 creates a delegated power which allows the appropriate national authority (the Secretary of State, the Scottish Ministers or a Northern Ireland department) to implement international agreements on PIL in domestic law in future via secondary legislation. The power may be exercised for Northern Ireland by the Secretary of State, at Westminster, with the consent of a Northern Ireland department or a Northern Ireland department can also do so on its own, in the Assembly. The regulations are subject to the affirmative resolution procedure if they implement a PIL international agreement for the first time, create or extend a criminal offence, or increase a criminal penalty or amend primary legislation.

Provisions which deal with a Devolution Matter

6. While negotiating PIL international agreements is an excepted matter, legislating to observe and implement the UK’s PIL international obligations, so far as they relate to devolved issues, is within the competence of the Assembly.
7. A legislative consent motion is being sought from the Scottish Parliament and Welsh Assembly.

Reasons for making the Provisions

8. The provisions are required for two reasons. Firstly, to enable the re-incorporation of the 1996, 2005 and 2005 Hague Conventions in Northern Ireland. The UK has a dualist legal system, in which an international treaty ratified by the Government, although binding in international law, does not alter the laws of the state unless and until the treaty is incorporated into domestic law by legislation. Secondly, to enable the efficient implementation of future PIL international agreements in domestic law via secondary legislation. Without this power, primary legislation would be required for each new PIL international agreement.

Reasons for utilizing the Bill rather than an Act of the Assembly

9. The development of an Assembly Bill specifically for the purpose of re-incorporating the 1996, 2005 and 2007 Hague Conventions for the end of the transition period would be unrealistic time-wise and would be a disproportionate use of resources. The Bill would secure incorporation of the three Hague Conventions in question across the UK at the same time. Again, developing an Assembly Bill specifically for the purpose of creating implementing regulation-making powers would be a disproportionate use of resources and risks Northern Ireland not having implementation powers in place in line with the rest of the UK. (The powers may be required shortly after the end of the transition period. The UK Government, for example, has made clear its intention to seek to re-join the Lugano PIL Convention in its own right after Brexit.)
10. A legislative consent motion, is, therefore, considered to be the most timely, reasonable and proportionate way forward in the circumstances.

Consultation

11. There has been no formal public consultation on the Bill. The re-incorporation of the existing Hague Conventions is a technical issue, to make it clearer for users of the Conventions that legal effect is to be given to their provisions in UK domestic law by expressly providing for this in the Bill. The regulation-making powers are likely to be welcomed by users of PIL as otherwise primary legislation would be required each time a PIL agreement had to be implemented.

Human Rights and Equality

12. Private international law, including the three Hague Conventions, involve cases which potentially engage Articles 6 and 8 of and Article 1, Protocol 1 to the European Convention on Human Rights. Certain articles under the UN Convention on the Rights of the Child may also be potentially engaged by private international law agreements in the family law field. In relation to equality and good relations, there are no differential impacts.

Financial Implications

13. Not applicable.

Summary of Regulatory Impact

14. There is no impact on business and the voluntary sector.

Engagement to date with the Committee for Justice

15. I have written to the Committee Chair on the intention to extend this Bill to cover Northern Ireland and of the need for a legislative consent motion.

Conclusion

16. My view is that, in the interests of good government, the Assembly should support the terms of the draft legislative consent motion as set out in paragraph 1 of this memorandum.

Minister of Justice
[Insert date of laying]