

FROM THE OFFICE OF THE JUSTICE MINISTER



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FROM: Departmental Assembly Liaison Officer (DALO)

DATE: 5 MARCH 2020

TO: CHRISTINE DARRAH

THE PRIVATE INTERNATIONAL LAW (IMPLEMENTATION OF AGREEMENTS) BILL

Summary

Business Area: Civil Justice Policy Division

Issue: The Private International Law (Implementation of Agreements) Bill

Restrictions: None.

Action Required: The Justice Committee has requested an oral briefing on the Bill.

Officials Attending: Jo Wilson

Background

1. Private International Law (PIL) provides uniform rules on:
 - which state has jurisdiction in cross-border legal proceedings;
 - which state's law applies; and
 - whether a judgment of a foreign court should be recognised and enforced.
2. The rules generally apply in civil disputes, including commercial, insolvency and family cases. PIL can also encompass rules on co-operation between courts and

other public authorities in different countries involved in dealing with cross-border cases. PIL impacts on my department's responsibilities and on those of other Executive colleagues such as the Finance, Health and Economy Ministers.

3. The UK Government is bringing forward this Bill now as, from the end of the transition period, the UK will no longer participate in the EU's PIL measures and will regain full competence to enter into PIL international agreements with other states. (The EU has exclusive external competence in this field, i.e the EU alone, not Member States, has the power to negotiate and conclude these international agreements.)
4. The Bill has two key functions:
 - implementing three important PIL agreements, Hague Conventions, on the face of the Bill;
 - creating the power for implementation of future PIL international agreements in domestic law via secondary legislation.
5. The three Hague Conventions to be given the force of law are: the 1996 Hague Convention on protection of children in cross-border disputes, the 2005 Hague Convention on Choice of Court Agreements and the 2007 Hague Convention on the international recovery of child support and other forms of family maintenance. These Conventions currently apply in UK but the UK's participation in them is linked to its EU membership. The Bill re-implements in domestic law these three existing Conventions to which the UK will be an independent party in its own right at the end of the transition period.
6. The Bill also includes a power to make regulations to implement PIL international agreements in domestic law. This is drafted concurrently so that Westminster can legislate for Northern Ireland with the consent of a NI department and a Northern Ireland department can also do so on its own. (The same applies for Scotland and its ministers.) For clarity, the Bill provides a definition of PIL, setting out a non-exhaustive list of the matters these agreements may cover, such as jurisdiction and applicable law, recognition and enforcement of judgments and co-operation between authorities in different countries. Regulations made under this Bill will relate purely to the implementation in domestic law of international agreements on PIL which, where the Constitutional Reform and Governance Act 2010 applies, Parliament had already agreed the UK should join.

Timing Issues

7. The final date for Legislative Consent to be in place is expected to be around the end of April or start of May.

Discussion

8. The application of this Bill to Northern Ireland would secure incorporation of the three Hague Conventions in question across the UK at the same time. Otherwise, we would require separate primary legislation which would have to be in place for the end of the transition period and would not appear to be a proportionate use of resources. The regulation-making power a welcome step as otherwise we would need primary legislation each time we needed to make changes for new PIL treaties entered into by the UK. The concurrent approach offers flexibility to choose the most appropriate legislature for implementing future agreements on a case by case basis. This is a technical, procedural area of law, which tends to apply on a UK-wide basis and having the option to use Westminster legislation avoids parallel amendments to the same UK-wide provision.

Consultation

9. 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

10. The Bill is considered to comply with section 24 of the Northern Ireland Act 1998. 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

11. None.

Regulatory Impact

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

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