



**Northern Ireland
Assembly**

Committee for Justice

**Report on the Legislative Consent Motion –
Private International Law (Implementation of Agreements) Bill**

NIA 18/17-22

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Legislative Consent Memorandum: Private
International Law (Implementation of
Agreements) Bill

Background

1. 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 is available at <https://services.parliament.uk/Bills/2019-21/privateinternationallawimplementationofagreements/documents.html>
2. The purpose of the Bill is to provide for the implementation of international agreements on Private International Law (PIL) in domestic law. PIL comprises rules applied by courts and parties involved in legal disputes for dealing with cases with cross-border elements. The rules generally apply in the context of civil law, including commercial, insolvency and family law, and include rules to establish:
 - whether a court has jurisdiction to hear a claim which has cross-border elements;
 - which country's law applies; and
 - whether a judgement of a foreign court should be recognised and enforced.
3. The EU exercises competence on behalf of EU member states to negotiate and conclude PIL agreements. From 1 February 2020, the UK regained full competence to enter into international agreements on PIL in its own right. During the transition period for the UK's exit from the EU, the UK will continue to participate fully in the EU's extensive framework of PIL rules. The UK will need to take steps to ensure continued participation in key PIL international agreements prior to the end of the transition period.
4. The Bill has four clauses:

Clause 1	Implementation of the 1996, 2005 and 2007 Hague Conventions
Clause 2	Implementation of other agreements on private international law
Clause 3	Crown application
Clause 4	Extent, commencement and short title
5. As well as the Department of Justice, PIL impacts on the responsibilities of a number of Northern Ireland departments including the Department for the Economy, the Department of Finance and the Department of Health.
6. Negotiation of PIL agreements is an excepted matter. However, legislating to incorporate the UK's international obligations is within the competence of the Assembly where it relates to a devolved matter. To bring in the recommended devolved aspects of the Bill in Northern Ireland requires either local primary legislation or a Legislative Consent Motion (LCM). The Department of Justice has advised that, should the necessary provisions

of the Bill not be extended to Northern Ireland, primary legislation would need to be in place before the end of the transition period for the UK's exit from the EU. In the Department's view, this is not realistic time-wise, nor is it considered a proportionate use of resources.

7. Legislative Consent Motions will also be sought from the Scottish Parliament and the Welsh Assembly.

Purpose of the Legislative Consent Motion

8. The Assembly's consent will be required in respect of the provisions of the Bill's two main clauses:
 - **Clause 1** which implements three international agreements drawn up under the auspices of 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** which creates a delegated power which allows the Government to implement international agreements on PIL in domestic law in future via secondary legislation.
9. Application of Clause 1 of the Bill to Northern Ireland will secure the incorporation of the three Hague Conventions above across the UK at the same time. Although the ratification of an international treaty by the Government may be binding in international law, it does not alter the laws of the state unless and until it is incorporated into domestic law by legislation.
10. Application of Clause 2 – the regulation making power – will enable the implementation of future PIL agreements in domestic law by secondary legislation. This is drafted concurrently so that Westminster can legislate for Northern Ireland with the consent of a Northern Ireland department and a Northern Ireland department could also do so on its own. Primary legislation would be required for each new PIL agreement in the absence of this regulation-making power.

Committee consideration of the Legislative Consent Motion

11. On 20 February 2020, the Committee considered correspondence from the Minister of Justice regarding a potential LCM in relation to the Private International Law (Implementation of Agreements) Bill due to be introduced at Westminster. The Minister advised that the Bill would clarify the domestic implementation of three Hague Private International Law Conventions on Child Protection in cross-border disputes, Choice of Court in cross-border contracts and Maintenance in relation to rules for the international recovery of child support and other forms of family maintenance. The Committee noted that the Minister was prepared to support, in principle, an LCM on the extension of the Bill to Northern Ireland and agreed to schedule an oral evidence session at the earliest opportunity to allow as much time as possible for appropriate scrutiny.
12. A Department of Justice official attended the Committee meeting on 12 March 2020 to give oral evidence and take Members' questions on the proposed LCM. During the evidence session, concerns were raised with regard to the regulation-making powers at Clause 2 of the Bill including how the decisions will be made on whether Westminster or the Assembly will legislate; the role of the Assembly and/or Assembly Committees if Westminster is legislating on behalf of a Northern Ireland department; and why the regulations will not be made in the Assembly if the power is there to do so. Members also questioned the timeframe within which the LCM should be completed.
13. Following the evidence session, the Committee wrote to the Department to request a definitive timeline for passage and completion of the LCM. In addition, the Department was invited to take the opportunity to respond to concerns raised during the evidence session regarding the regulation-making provisions in the Bill.
14. The Committee also agreed that further information on the position of the relevant committees in the Scottish Parliament and the Welsh Assembly should be obtained to assist its consideration of the proposed LCM.
15. The Department wrote to the Committee on 18 March 2020 to advise that the LCM should be completed before the Report stage in the House of Commons in late May/early June 2020, which will be the last amending stage for the Bill. In line with the Westminster timetable, the Department would therefore expect the Motion to be debated in the Assembly on 11 or 12 May 2020.
16. In the response, the Department also stressed that the Secretary of State can only act in relation to Northern Ireland with the consent of a Northern Ireland department. The Committee was advised that, where Justice is the

Department in question, the Committee will be told in advance whether the Minister of Justice intends to provide or withhold consent. The Department stated that regulations would not entail significant policy choices but “simply state that a new international agreement has the force of law and ... make any requisite supporting procedural changes.”

17. At the meeting on 2 April 2020, the Committee considered the handling arrangements for a range of work items in light of the Covid-19 pandemic and agreed to consider this proposed LCM by written correspondence. Members also agreed to draw the regulation-making powers in the Bill to the attention of the Committee for the Economy, the Committee for Finance and the Committee for Health, as those Executive Departments could be required to provide consent to the Secretary of State for future regulations made under these provisions.
18. Written papers were issued to Committee Members on 10 April 2020, which included the Department of Justice letter responding to the previous concerns raised. Members were also advised that the LCM had been laid at the Scottish Parliament but a date for consideration by the relevant Committee had not been scheduled and the LCM had not yet been considered or laid at the Welsh Assembly. Members subsequently indicated that no further information was required to assist consideration of the LCM.
19. The Department of Justice laid the Legislative Consent Memorandum on 20 April 2020.
20. The Committee considered the Memorandum at its meeting on 23 April 2020 and agreed that it was content with the proposal to extend the provisions to implement three Hague conventions in domestic law and create the power to implement future PIL international agreements in domestic law via secondary legislation in the Private International Law (Implementation of Agreements) Bill to Northern Ireland by way of a Legislative Consent Motion.

Conclusion

21. **Following consideration of the Legislative Consent Memorandum laid on 20 April 2020, the Committee for Justice agreed to support the Minister of Justice in seeking the Assembly’s endorsement of the Legislative Consent Motion**

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

Appendix 1 – Department of Justice Memoranda

[Minister of Justice, 13 February 2020 – Letter regarding the introduction of the Private International Law \(Implementation of Agreements\) Bill](#)

[Department of Justice, 5 March 2020 – Briefing paper: The Private International Law \(Implementation of Agreements\) Bill](#)

[Correspondence with the Department of Justice on issues raised during the evidence session on 12 March 2020](#)

Appendix 2 – Minutes of Proceedings

[20 February 2020](#)

[12 March 2020](#)

[23 April 2020](#)

[30 April 2020](#)

Appendix 3 – Hansard

[Department of Justice Oral Evidence, 12 March 2020](#)

Appendix 4 – Legislative Consent Memorandum

[Department of Justice, 20 April 2020 – Legislative Consent Memorandum](#)