



## Private International Law (Implementation of Agreements) Bill [HL] HL Bill 101 of 2019–21

### Summary

The [Private International Law \(Implementation of Agreements\) Bill \[HL\]](#) is a government bill, promoted by the Ministry of Justice. It was [introduced](#) in the House of Lords on 27 February 2020 and is scheduled to receive its second reading on 17 March 2020.

[Private international law](#) (PIL) consists of the principles and rules for dealing with certain cross-border legal disputes. Countries may enter into international PIL agreements, for example to:

- ensure reciprocal treatment;
- avoid parallel legal proceedings and conflicting decisions for private litigants; and
- streamline cross-border cooperation.

The UK has entered into PIL agreements [in its own right](#) in the past, but in recent decades has also done so through its membership of the EU. The EU's PIL framework will continue to apply to the UK during the transition period, but the arrangements that will apply after this are yet to be determined.

The bill has [two key functions](#) relating to PIL:

- It would provide for the implementation in domestic law of certain “[vital](#)” conventions to which the Government wishes the UK to continue to be bound after the end of the transition period. This is to ensure continuity and for the [continued benefit](#) of individuals, families and businesses. These are the 1996, 2005 and 2007 Hague conventions.
- The bill would also provide a mechanism for the implementation in domestic law of future PIL agreements to which the UK will be a party in its own right. This would be [via secondary legislation](#). The Government has [said](#) that the delegated powers in the bill would only be used to implement agreements to which Parliament had already agreed through the scrutiny process set out in the Constitutional Reform and Governance Act 2010.

Thomas Brown | 9 March 2020

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## I. Background

### I.1 What is private international law?

Private international law (PIL) consists of the principles and rules in place for dealing with certain cross-border legal disputes.<sup>1</sup> It is also sometimes known in the UK as ‘conflict of laws’.<sup>2</sup>

PIL agreements seek to “smooth over” any conflict between the domestic laws in different countries by creating sets of rules that can be applied in an international legal setting.<sup>3</sup> They cover matters such as which court should hear a case (jurisdiction); which country’s law should apply to a case (applicable law); and whether the decisions of a foreign court should be recognised and enforced.<sup>4</sup>

Private civil law cases handled under PIL agreements may involve a range of matters, including in the fields of commercial, insolvency or family law. To give examples, PIL rules may be used to determine:

- **Child maintenance, contact and custody:** how child maintenance obligations imposed in one country can be recognised and enforced in another. PIL may also be used to determine child contact and custody arrangements, and how children abducted by one of their parents can be returned to their home country.
- **Divorces:** how divorces can be recognised in other countries.
- **Business disputes:** how businesses entering into cross-border transactions can resolve any disputes that arise, for example with a supplier.

The Hague Conference on Private International Law, founded in 1893, has been the forum through which many PIL agreements have been signed.<sup>5</sup> It has facilitated multilateral conventions that have aimed to harmonise conflicting laws in a range of areas, and counts 85 countries plus the EU amongst its membership.<sup>6</sup> The UK has been a member since 15 July 1955 and has participated in numerous Hague conventions, either directly or via the EU.<sup>7</sup> Examples of agreements that the UK is party to in its own right include the 1970 conventions on the taking of evidence abroad and the recognition of divorces and legal separations.<sup>8</sup>

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<sup>1</sup> Institute of Advanced Legal Studies (IALS), ‘[Private International Law: IALS library guides](#)’, accessed 4 March 2020; and Thomas Pfeiffer, ‘[Private International Law](#)’, Max Planck Encyclopedia of Public International Law (L), January 2008. Note that the inclusion of the word ‘international’ in the term does not refer to the internationality of the source of law but to the internationality of the cases covered.

<sup>2</sup> [Explanatory Notes](#), p 2; and Peace Palace Library, ‘[Private International Law](#)’, accessed 5 March 2020.

<sup>3</sup> Department for Exiting the European Union, [Providing a Cross-border Civil Judicial Cooperation Framework](#), 22 August 2017, p 7.

<sup>4</sup> Ministry of Justice, [Private International Law \(Implementation of Agreements\) Bill: Policy Statement](#), 28 February 2020, p 1.

<sup>5</sup> [Explanatory Notes](#), p 2.

<sup>6</sup> Hague Conference on Private International Law, ‘[Hague Conference Members](#)’, accessed 5 March 2020.

<sup>7</sup> Hague Conference on Private International Law, ‘[United Kingdom of Great Britain and Northern Ireland](#)’, accessed 5 March 2020; and Department for Exiting the European Union, [Providing a Cross-border Civil Judicial Cooperation Framework](#), 22 August 2017, p 7.

<sup>8</sup> Formally the 1970 Convention on the Taking of Evidence Abroad in Civil or Commercial Matters and the 1970 Convention on the Recognition of Divorces and Legal Separations. For background information, see: Hague Conference on Private International Law, [Outline: Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters](#) and [Outline: Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations](#), accessed 5 March 2020.

## 1.2 Private international law and Brexit

The EU has an internal PIL framework and mostly exercises competence in this area externally on behalf of EU member states.<sup>9</sup> Prior to the UK's departure from the EU, conventions to which the EU had been a contracting party had legal effect in the UK under the European Communities Act 1972. Since 1 February 2020, the UK has held full competence to enter into PIL agreements in its own right.

The EU's PIL framework will continue to apply to the UK during the transition period, under the savings provisions in the European Union (Withdrawal) Act 2018 and European Union (Withdrawal Agreement) Act 2020. To what extent this framework will continue to apply to the UK at the end of the transition period will depend on the outcome of the current UK-EU negotiations.<sup>10</sup>

## 2. Overview of the bill

The bill comprises four clauses and six schedules. It has two key functions, reflected in its two substantive clauses. These both relate to the implementation of international agreements on PIL in UK domestic law following the UK's withdrawal from the EU.

**Clause 1**, together with schedules 1–5, would amend the Civil Jurisdiction and Judgments Act 1982 to implement three key PIL agreements in domestic law. These are known as 'Hague conventions', as they were agreed under the auspices of the Hague conference. The purposes of the three conventions are as follows:<sup>11</sup>

- **1996 Hague Convention:** improves the protection of children in cross-border disputes and helps families to resolve issues, such as determining residence and contact arrangements, in cases involving children in which parents live in different countries.<sup>12</sup>
- **2005 Hague Convention:** increases legal certainty in disputes relating to cross-border commercial contracts that include a choice of court clause, by ensuring there is no dispute over where a case should be heard and enabling any resulting judgment to be recognised and enforced across borders.<sup>13</sup>
- **2007 Hague Convention:** provides for the recovery of child support and other forms of family maintenance across borders.<sup>14</sup>

**Clause 2**, together with schedule 6, would create a delegated power for the Government to implement future PIL agreements via secondary legislation. Regulations made under this power would

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<sup>9</sup> [Explanatory Notes](#), pp 2–6.

<sup>10</sup> House of Lords, '[Written Question: Civil Proceedings](#)', 4 February 2020, HL607.

<sup>11</sup> Ministry of Justice, '[Private International Law \(Implementation of Agreements\) Bill: Fact Sheet](#)', 28 February 2020, p 1.

<sup>12</sup> Formally the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition and Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children. For background information, see: HCPIIL, [Outline: 1996 Hague Child Protection Convention](#), accessed 5 March 2020.

<sup>13</sup> Formally the 2005 Hague Convention on Choice of Court Agreements. For background information, see: HCPIIL, [Outline: Hague Convention of 30 June 2005 on Choice of Court Agreements](#), accessed 5 March 2020.

<sup>14</sup> Formally the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. For background information, see: HCPIIL, [Outline: Hague Child Support Convention](#), accessed 5 March 2020.

be subject to the affirmative resolution procedure, needing approval by both Houses of Parliament.<sup>15</sup> The Government has suggested PIL agreements that could be implemented by regulations include:<sup>16</sup>

- **2007 Lugano Convention**, which currently underpins the PIL relationship between the EU and Norway, Switzerland, and Iceland.
- **2019 Singapore Convention**, which concerns the enforcement of mediated settlement agreements in cross-border commercial disputes.
- **2019 Hague Convention**, which relates to the recognition and enforcement of civil and commercial judgments.
- **Current and future Hague conference agreements**, which may need implementation in domestic law after the end of the transition period.
- **Existing historical bilateral PIL agreements**, which may need to be updated or replaced. For example, those the UK has with Commonwealth countries such as Australia and Canada that may predate its accession to the EU.

**Clause 3** would provide for the amendments made to the Civil Jurisdiction and Judgments Act 1982 by clause 1 of the bill to be binding on the Crown.<sup>17</sup>

**Clause 4** provides that the bill extends to England and Wales, Scotland, and Northern Ireland. The Government has said that it is seeking legislative consent from the Scottish Parliament, National Assembly for Wales, and Northern Ireland Assembly under the Sewel convention.<sup>18</sup>

### 3. Rationale for the bill

Legislation relating to the UK's withdrawal from the EU, namely the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020, provides for the continued application of treaty rights in domestic law, including in respect of PIL agreements. However, the Government has said that clause 1 provides for a "clearer" means of implementing the three Hague conventions named in the bill following the end of the transition period.<sup>19</sup>

The Government has also argued that, post-Brexit, the UK is free to agree "ambitious" new PIL frameworks with international partners. It has said this is important because it wishes for the UK to "remain at the forefront of efforts to promote global cooperation and best practice in this area". Clause 2 therefore includes a mechanism designed to ensure that any new PIL agreements the UK decides to join can be implemented in domestic law in a "timely manner". Any such agreements would already be subject to parliamentary scrutiny separately under the Constitutional Reform and

<sup>15</sup> Ministry of Justice, [Private International Law \(Implementation of Agreements\) Bill: Policy Statement](#), 28 February 2020, pp 3–4.

<sup>16</sup> Ministry of Justice, [Private International Law \(Implementation of Agreements\) Bill: Fact Sheet](#), 28 February 2020, p 2; and [Explanatory Notes](#), pp 7–8. The UK has already received statements of support from Norway, Iceland and Switzerland for the UK's intention to accede to the 2007 Lugano Convention (Ministry of Justice, [Support for the UK's Intent to Accede to the Lugano Convention 2007](#), 28 January 2020).

<sup>17</sup> [Explanatory Notes](#), pp 12–13.

<sup>18</sup> *ibid*, p 9.

<sup>19</sup> *ibid*, pp 3–5. See also: Ministry of Justice, [Private International Law \(Implementation of Agreements\) Bill: Impact Assessment](#), 28 February 2020, p 2.

Governance Act 2010.<sup>20</sup> The Government has explained that this means it would only use the delegated power to implement PIL agreements to which Parliament had already agreed.

#### 4. Government statements on PIL agreements in the context of Brexit

In August 2017, the Government published a partnership paper entitled *Providing a Cross-border Civil Judicial Cooperation Framework*.<sup>21</sup> This said:

The UK is clear that international civil judicial cooperation is in the mutual interest of consumers, citizens, families and businesses in the EU and in the UK. With this in mind, we are seeking a close and comprehensive framework of civil judicial cooperation with the EU.<sup>22</sup>

In the political declaration on the future relationship between the UK and the EU, published in October 2019, both the UK and EU committed to the “effective application of the existing international family law instruments to which they are parties”.<sup>23</sup> In addition, the document noted the UK’s intention to accede to the 2007 Hague convention on family maintenance in its own right. It also noted the parties’ commitment to “explore options for judicial cooperation in matrimonial, parental responsibility and other related matters”.

In February 2020, the UK Government published a document setting out its approach to negotiations with the EU.<sup>24</sup> This stated that the UK proposed to continue “working together with the EU in the area of civil judicial cooperation through multilateral precedents” set by the Hague conference, and through the “UK’s accession as an independent contracting party to the Lugano Convention 2007”.<sup>25</sup>

#### 5. Legislative programme

Both the October and December 2019 Queen’s Speeches included undertakings to introduce a PIL bill in the context of Brexit.<sup>26</sup> Briefing notes released alongside the December 2019 Queen’s Speech said that the purpose of such a bill would be to:

- Maintain and strengthen the UK’s role as a world leader in delivering justice across borders on civil and family justice issues.
- Make it easier for UK individuals and families who become involved in international legal disputes to access justice.<sup>27</sup>

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<sup>20</sup> Ministry of Justice, [Private International Law \(Implementation of Agreements\) Bill: Policy Statement](#), 28 February 2020, pp 3–4. See also: Ministry of Justice, [Delegated Powers Memorandum](#), 28 February 2020.

<sup>21</sup> Department for Exiting the European Union, [Providing a Cross-border Civil Judicial Cooperation Framework](#), 22 August 2017.

<sup>22</sup> *ibid*, p 9.

<sup>23</sup> HM Government, [Political Declaration Setting Out the Framework for the Future Relationship Between the European Union and the United Kingdom](#), 19 October 2019, p 11.

<sup>24</sup> HM Government, [The Future Relationship with the EU: the UK’s Approach to Negotiations](#), February 2020, CP 211.

<sup>25</sup> *ibid*, p 30.

<sup>26</sup> Prime Minister’s Office, [Queen’s Speech 2019: Background Briefing Notes](#), 14 October 2019, pp 30–1; and [Queen’s Speech 2019: Background Briefing Notes](#), 19 December 2019, pp 28–9.

<sup>27</sup> Prime Minister’s Office, [Queen’s Speech 2019: Background Briefing Notes](#), 19 December 2019, p 28.

The document said that the bill would clarify how the three “vital” named Hague conventions would be implemented in domestic law. It would also provide the Government with a power to implement further PIL agreements to maintain the UK’s “status as a world leader in facilitating international cooperation on civil justice issues”.<sup>28</sup>

It also highlighted the following ‘key facts’ to support the Government’s case for the bill:

- Legal services contribute over £25 billion per annum to the UK economy.
- The UK accounts for around 6.5 percent of global legal services fee revenue.
- Over 50 states take part in the 1996 Hague Convention including all EU member states, Australia, Switzerland, and Norway.
- 31 states take part in the 2005 Hague Convention including all EU member states, Montenegro, Singapore, and Mexico.
- Nearly 40 states take part in the 2007 Hague Convention including all EU member states (bar Denmark), the United States of America, Norway, and Brazil.<sup>29</sup>

### 5.1 Debate on the Queen’s Speech

Speaking in the debate on the December 2019 Queen’s Speech, Lord Keen of Elie, Advocate-General for Scotland, elaborated on the Government’s reasoning on the need for such a bill:

After Brexit, United Kingdom businesses, individuals and families will still need to be able to settle cross-border disputes. That is why we are bringing forward a bill enabling us to operate agreements on private international law after we leave the EU [...] Without these agreements, people involved in cross-border disputes will find it more difficult to resolve them. This bill will give United Kingdom businesses, citizens and families the confidence to work, live and trade across borders, and will help the UK to flourish as a trading nation, as we leave the EU.<sup>30</sup>

However, Lord Marks of Henley-on-Thames, the Liberal Democrats’ spokesperson on justice matters, contended that the bill would be “an inadequate substitute for the comprehensive cooperation and, importantly, the international reciprocity guaranteed by the existing provisions of EU law”.<sup>31</sup>

## 6. Further information

- Ministry of Justice, [‘Private International Law \(Implementation of Agreements\) Bill’](#), 28 February 2020
- Ministry of Justice, [Delegated Powers Memorandum](#), 28 February 2020
- House of Lords European Union Committee, [Brexit: Justice for Families, Individuals and Businesses?](#), 20 March 2017, HL Paper 134 of 2016–17; [Government Response](#), 1 December 2017; and [‘Follow-up inquiry’](#), accessed 5 March 2020

<sup>28</sup> Prime Minister’s Office, [Queen’s Speech 2019: Background Briefing Notes](#), 19 December 2019, pp 28–9.

<sup>29</sup> *ibid*, p 29.

<sup>30</sup> [HL Hansard, 8 January 2020, cols 187–8](#).

<sup>31</sup> *ibid*, col 212.