

PRIVATE INTERNATIONAL LAW (IMPLEMENTATION OF AGREEMENTS) ACT 2020

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Private International Law (Implementation of Agreements) Act 2020 (c. 24) which received Royal Assent on 14 December 2020.

- These Explanatory Notes have been prepared by the Ministry of Justice in order to assist the reader of the Act and to help inform debate on it. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act means in practice; provide background information on the development of policy; and provide additional information on how the Act affects existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

- 1 The purpose of the Act is to provide for the implementation in domestic law of international agreements on private international law.
- 2 The Act contains two main sections:
 - Section 1 implements the following 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”).
 - Section 2 contains a delegated power which allows the Government to implement international agreements on PIL in domestic law in future via secondary legislation.

Policy background

- 3 Private international law (“PIL”) – sometimes known as “conflict of laws” – 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 typically includes 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 issues, 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.
- 4 Most countries have their own domestic PIL rules dealing with matters such as jurisdiction, applicable law and recognition and enforcement of foreign judgments, but they also enter into international agreements under which states agree to apply the same PIL rules to ensure reciprocal treatment, avoid parallel legal proceedings and conflicting decisions for private litigants, and establish streamlined cross-border co-operation. Such agreements mean that, for example, child maintenance obligations imposed by a court or public authority in one state can be recognised and enforced in another state; divorces can be recognised in other countries; and businesses feel confident entering into cross-border transactions knowing that, in the event of a dispute, there is a clear mechanism for deciding how it will be resolved and the outcome respected in different countries. Having internationally agreed rules on these issues creates legal certainty in cross border situations and saves time and costs, which benefits UK businesses, individuals and families.

- 5 Since the 1920s the UK has entered into bilateral treaties with Commonwealth and European countries on recognition and enforcement of civil judgments, service of documents and the taking of evidence. In addition to this, the Hague Conference on Private International Law (“the Hague Conference”), founded in 1893, has been working “for the progressive unification of the rules of private international law”, which cover civil, administrative and family proceedings. The work of the Hague Conference consists of developing new multilateral instruments and refreshing existing Conventions and guidance. The Hague Conference also supports States in the application of Conventions and works to promote wider accession by both member and non-member states. The UK has been a member of the Hague Conference for over 60 years and currently participates in 13 Conventions (a full list is provided at Annex C). Agreements containing PIL rules may also be negotiated through the Council of Europe, the United Nations Commission on International Trade Law (UNCITRAL) and the Institute for the Unification of Private Law (UNIDROIT).
- 6 Multilateral conventions between European states on jurisdiction, recognition and enforcement of civil judgments and the law applicable to contractual obligations were adopted from the 1960s within the framework of the European Communities. The EU subsequently adopted a comprehensive set of internal EU PIL rules and exercises competence on behalf of EU member states to enter into several multilateral PIL conventions with third countries.
- 7 PIL agreements cover a discrete area of law that is narrowly defined. Agreements on PIL are generally considered beneficial and are typically predictable in topic and scope. Key stakeholders, including representatives of the legal sector, have consistently made clear the importance of the UK continuing to take a leading role internationally on PIL.
- 8 During the transition period, the UK has continued to participate fully in the EU’s extensive framework of PIL rules, including those international agreements to which the EU is the contracting party. The UK has taken the necessary steps to ensure its continued participation in two of the international agreements covered by section 1 of the Act, namely the 2005 and 2007 Hague Conventions (see paragraphs 11 to 16).
- 9 From 1st February 2020, the UK has regained full competence to enter into international agreements on PIL in its own right. This will allow the UK to agree ambitious new PIL frameworks with international partners all over the world and to remain at the forefront of efforts to promote global cooperation and best practice in this area.
- 10 As the UK develops its wider trading policy with the EU and rest of the world, agreements on PIL will be key to supporting cross-border commerce by providing businesses, investors and consumers with greater confidence that disputes across borders can be resolved in a clear and efficient way. This Act will ensure that new PIL agreements which the UK decides to join can be implemented in a timely manner as well as providing a clearer implementation of the 1996, 2005 and 2007 Hague Conventions from the end of the transition period (see paragraph 11). These measures, which are explained in greater detail below, will support the Government’s ambition for the UK to be at the forefront of the development of international cooperation and best practice on PIL with countries all over the world. The Act will also allow UK businesses, individuals and families to harness the benefits of new agreements as quickly as possible, after the Government has taken a decision to participate in any such agreement and subject to any necessary Parliamentary approval and scrutiny under the Constitutional Reform and Governance Act (CRAG) 2010 (see paragraph 29).

Provision for the 1996, 2005 and 2007 Hague Conventions

- 11 The Act provides a clear approach to the domestic implementation of the 1996, 2005 and 2007 Hague Conventions at the end of the transition period by simply stating that their provisions have the force of law in the UK.

- 12 The 1996 Hague Convention is a multilateral treaty aimed at improving the protection of children. It provides a framework for the resolution of issues such as residence of, and contact with, children where parents have separated and live in different countries; and establishes co-operation between national authorities involved in protecting children. This is important because it provides legal certainty that decisions relating to children (e.g. contact/ access arrangements) made in one country will be respected in others, so that people do not have to incur the expense and trouble of bringing fresh proceedings when they move to another country.
- 13 The 2005 Hague Convention is a multilateral treaty aimed at ensuring the effectiveness of exclusive choice of court agreements between parties to international commercial transactions. 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 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. These “choice of court” clauses are common in high value commercial contracts. The Convention provides greater legal certainty for parties to cross- border commercial transactions and maintains UK jurisdictions as an attractive choice for the resolution of disputes in commercial contracts. For example, for the small UK business that has a contract with a supplier based in another state (which is a party to the 2005 Hague Convention) with whom it has agreed that any disputes should be resolved in the UK courts, it provides certainty that the 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 litigation in commercial cases which have a cross-border element.
- 14 The 2007 Hague Convention is a multilateral treaty which provides rules for the international recovery of child support and other forms of family maintenance, and for administrative cooperation between contracting States. It provides rules for recognition and enforcement of maintenance decisions across borders and for administrative cooperation between national authorities on the processing of maintenance claims. This makes it easier, for example, for one parent to put in place enforceable child maintenance obligations where the other parent lives abroad. This is important because having such a framework in place for maintenance matters helps reduce financial hardship for the children of UK resident parents.
- 15 As explained in paragraph 8, these international agreements on PIL have continued to apply to the UK for the duration of the transition period. At the end of the transition period, if no action had been taken, the UK would no longer be bound by the 2005 and 2007 Hague Conventions in respect of which the EU is the contracting party. However, during September 2020, the UK took the necessary steps to join these two conventions as an independent party in its own right. This included depositing the necessary instruments of accession and ratification with the depositary. Parliamentary scrutiny of these Conventions prior to accession and ratification took place under the CRAG Act 2010 during November and December 2018 (as part of the preparations for leaving the EU without a Withdrawal Agreement being in place) including the text of the declarations and reservation to those Conventions which the UK has now made. The Government intends to use the power in section 2 of the Act to amend the Civil Jurisdiction and Judgments Act 1982 to insert the text of the declarations and reservation in new Schedules to that Act, for reference purposes.
- 16 The UK has participated in both the 2005 and 2007 Hague Conventions since 2015 and 2014 respectively, with the EU being the contracting party. The UK has been a contracting party to the 1996 Hague Convention since 2012, however, the EU authorised its member states, including the UK at that time, to sign and ratify the 1996 Hague Convention because the EU

had competence in relation to some of its provisions, but was unable itself to become a contracting party under the terms of the Convention. The Act re-implements in domestic law these three existing international agreements on PIL to which the UK will be an independent party in its own right at the end of the transition period.

- 17 Prior to the UK's departure from the EU, implementation of these Conventions relied primarily on section 2(1) of the European Communities Act (ECA) 1972 and the principle of direct effect of EU law under which provisions of EU treaties which created legal rights or obligations were directly applicable in the national law of EU member states, provided they met the necessary conditions including that they were sufficiently clear and unconditional. This meant that the Convention provisions did not need to be replicated in domestic law in order to have legal effect. All three Hague Conventions constituted EU treaties under section 1 of the ECA 1972. There were also additional regulations made under section 2(2) of that Act to give further effect to the Conventions.
- 18 During the transition period, the current implementation in domestic law of these Conventions via the ECA 1972 is saved by the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020. However, this Act provides a new approach to domestic implementation which ensures that these Conventions will continue to operate effectively at the end of the transition period in a way which is clearer for users of them.
- 19 Whilst section 4 of the European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020) saves directly effective treaty rights in domestic law after the end of the transition period, the Government considers it would be clearer for users of the Conventions for legal effect to be given to their provisions in UK domestic law by expressly providing for this in primary legislation. This means that the UK will not have to continue relying on the EU concept of direct effect and the savings provisions for directly effective treaty rights in section 4 of the European Union (Withdrawal) Act 2018 after the end of the transition period. The Government is therefore implementing the Convention provisions directly on the face of the Civil Jurisdiction and Judgments Act 1982 via the Act using an approach commonly used in domestic legislation for implementing non-EU treaties. Other consequential amendments are being made to ensure an effectively functioning statute book. The additional regulations made under section 2(2) of the ECA 1972 which gave further effect to the Hague Conventions will also continue to apply in domestic law after the end of the transition period (these are saved by section 2 of the European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020)).
- 20 The Act will underpin the UK's future ability to meet its international treaty obligations by ensuring that there continues to be domestic implementing legislation in place relating to the 1996, 2005 and 2007 Hague Conventions at the end of the transition period, and that the legislation is clear for all users to understand.

Provisions for a delegated power to implement international agreements on private international law

- 21 As outlined above, the Government continues to believe that international co-operation to establish agreed rules on PIL can lead to significant benefits for individuals, families and businesses. The Government anticipates the UK playing a full role in the negotiation of future PIL agreements in the Hague Conference and elsewhere; and will decide to participate in them where that would be advantageous.
- 22 Any international agreements which the UK joins are likely to require implementing legislation in order to have legal effect in domestic law. The Act gives the UK Government

and the Devolved Administrations in Scotland and Northern Ireland a power to do this for 5 years. This 5 year sunset period can be extended, on a recurring basis, by regulations (which are made by statutory instrument (SI) subject to the affirmative procedure). There is existing legislation providing powers for the implementation of some types of international agreements on PIL. The Administration of Justice Act 1920 and the Foreign Judgments (Reciprocal Enforcement) Act 1933 enable the Government to implement bilateral agreements on recognition and enforcement of civil judgments, which conform to the requirements of the Acts. However, they are now very outdated and modern agreements (such as those adopted by the Hague Conference) cannot be implemented using these nearly 100-year-old powers.

- 23 The power allows international agreements on PIL to be implemented by regulations. Use of the power, including extension of the sunset period, by the Secretary of State, carries a requirement to consult as set out in Schedule 6. For clarity the Act provides a definition of PIL setting out a non-exhaustive list of the sorts of things such agreements may cover, which includes, in summary, rules on:

- Jurisdiction and applicable law
- recognition and enforcement of:
 - judgments, orders and arbitral awards
 - agreements and decisions determining or otherwise relating to rights and obligations
- co-operation between judicial or other authorities in different countries.

See section 2(12) for the full text of the definition of PIL.

- 24 The Act requires that regulations made under the power should always be subject to the affirmative procedure, and therefore always be subject to debate in and approval by both Houses of Parliament, if:

- the regulations implement a PIL agreement for the first time;
- the regulations create or extend, or increase the penalty for, a criminal offence;
- the regulations amend primary legislation; or
- the regulations extend the sunset period for another 5 years.

- 25 It is anticipated that the majority of regulations made under the section 2 power will trigger the affirmative procedure because they will be implementing an agreement on PIL for the first time and there are likely to be consequential amendments to primary legislation that need to be made, or the implementing provisions will be inserted into primary legislation, such as the Civil Jurisdiction and Judgments Act 1982. However, it is possible that technical changes to the implementation of PIL agreements, which have previously been implemented in domestic law (by affirmative procedure regulations under the power or under other legislation), could follow the negative procedure. The Government does not anticipate using the power to create, extend or increase the penalty for a criminal offence very often, however it may be needed in order to implement effective enforcement provisions for future PIL agreements in some areas. For example if the UK were to enter into a future agreement on reciprocal recognition and enforcement of protection measures (such as non-molestation orders in England and Wales under Part 4 of the Family Law Act 1996 or breaches of injunctions under section 3 of the Protection from Harassment Act 1997) the power to extend criminal penalties for breach of

such orders may need to be extended to cover breach of a foreign order. Paragraph 1 of Schedule 6 means that it will not be possible to make regulations which creates an offence punishable by imprisonment...

- 26 The power to implement international agreements on PIL extends to the implementation of “model laws” on PIL adopted by an international organisation. Such model laws represent “legislative best practice” with regard to an aspect of PIL, so the UK may wish to adopt them, in order to remain at the forefront of such cooperation. An example of an existing PIL model law, which the UK has implemented, is the 1997 UNCITRAL Model Law on Cross-Border Insolvency.
- 27 Furthermore, the UK may enter into arrangements with the Crown Dependencies and Overseas Territories in the future to apply the terms of an international agreement on PIL between the UK and that territory or dependency (subject to necessary modifications). The Government believes that such arrangements could be mutually beneficial and would only be set up where a self-governing dependency or territory was content to do so. The power allows the UK to implement any such arrangements in domestic law in the UK. The domestic implementation in a Crown Dependency or Overseas Territory of any such arrangement with the UK would remain the responsibility of the Government of the territory in question. Such arrangements would likely take the form of Memoranda of Understanding (MoUs). There is a precedent for the Government agreeing such arrangements in section 39 of the Civil Jurisdiction and Judgments Act 1982 which enables provisions corresponding to the 1968 Brussels Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (an early precursor to the EU’s internal set of PIL rules) to be applied between the UK and the Crown Dependencies and Overseas Territories. However, in practice the UK has only used that power in relation to Gibraltar.
- 28 The delegated power to implement international agreements on PIL could enable efficient implementation in domestic law of, for example:
 - **The 2007 Lugano Convention:** The UK submitted its application to accede to this convention as an independent contracting party in April 2020 and the power in this Act will be used to implement it in UK domestic law in a timely manner, if this application is agreed by all of the contracting parties. 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 element 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 the UK’s PIL relationship with Norway, Iceland and Switzerland. As explained in paragraph 8, this convention has continued to apply to the UK during the transition period.
 - **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 disputing parties to work towards a negotiated settlement of their dispute, with the parties retaining control of the decision on whether or not they 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 51 other countries have now signed the Convention and it came into force on 12 September 2020.

- **2019 Hague Convention:** In 2019, the Hague Conference adopted a new international agreement on the recognition and enforcement of civil and commercial judgments (known as ‘the Hague Judgments Convention 2019’). Where countries join this new convention, it will make it easier to recognise and enforce each other’s judgments.
 - **Future Hague Conventions:** The Hague Conference continues to consider the development of new conventions and protocols on a range of PIL topics. If the UK wished to join these in the future, they would likely also require implementation in domestic law.
 - **Historical Bilateral Agreements** – The Government may also need to revisit, update or replace some existing historical bilateral agreements on PIL which the UK has entered into with other countries including some Commonwealth countries (e.g. Australia and Canada). Some of these agreements are no longer entirely fit for purpose. Therefore, the power in the Act could be used to implement a more modern PIL framework with these countries than is currently possible under existing legislation in this area (see paragraphs 5 and 22 for further information).
- 29 Any new agreements on PIL which the Government considers the UK should join, and which require ratification (which is normally the case), will be subject to Parliamentary scrutiny separately under the Constitutional Reform and Governance (‘CRAG’) Act 2010. Under the CRAG Act, the Government is required to lay copies of signed treaties before Parliament before they are ratified, providing Parliament with the opportunity at that stage to give its view on the detailed contents of the treaty and whether it should become binding in the UK. Regulations made under this Act will relate purely to the implementation in domestic law of international agreements on PIL which, where it applies, will have been scrutinised by Parliament under the CRAG Act. Therefore, the Government would only use the delegated power to implement an international agreement on PIL which Parliament had already agreed the UK should join.
- 30 There is one further delegated power in section 4 of the Act, which is a Permissive Extent Clause (PEC) which will enable the power to implement PIL agreements to be extended to the Isle of Man (IoM) by Order in (the Privy) Council. This will give the IoM Government the ability to implement, in their own jurisdiction, those PIL agreements which the UK has extended to them, and secondly any ‘arrangements’ which are agreed between the UK and the Isle of Man to apply the terms of an international agreement (subject to necessary modifications) as between them both.

Legal background

- 31 The relevant legal background is explained in the policy background section of these notes

Territorial extent and application

- 32 Section 4(1) of the Act sets out the territorial extent of the Act as England and Wales, Scotland and Northern Ireland. These are the jurisdictions in which the Act forms part of the law and the Act applies throughout the whole of the UK.
- 33 Annex A summarises the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Act

Implementation of international agreements

Section 1: Implementation of the 1996, 2005 and 2007 Hague Conventions

- 34 This section amends the Civil Jurisdiction and Judgments Act 1982 ("the 1982 Act").
- 35 Section 1(1) inserts a definition of the 1996 Hague Convention into section 1(1) of the 1982 Act, which is the section dealing with interpretation of references to Conventions in that Act. The 1982 Act already contains definitions of the 2005 and 2007 Hague Conventions.
- 36 Section 1(2) inserts new sections 3C, 3D and 3E into the 1982 Act, providing for the 1996, 2005 and 2007 Hague Conventions respectively to have the force of law in the UK, subject to any reservations and declarations made by the UK. The UK made the declarations to the 1996 Hague Convention which are referred to in new section 3C(2) when it joined that Convention in 2012. The UK acceded to the 2005 Hague Convention, and ratified the 2007 Hague Convention, in September 2020 and made declarations and a reservation to those Conventions in the form already approved by Parliament when those Conventions were laid in Parliament for scrutiny under the CRAG Act 2010 in 2018 (see paragraph 15 above).
- 37 Section 1(3) inserts into the 1982 Act the Schedules set out in Schedules 1 to 4 to this Act, which comprise the text of the three Hague Conventions, and of the declarations which the UK made in 2012 in relation to the 1996 Hague Convention. The Government intends to use the power in section 2 of the Act to amend the 1982 Act to insert Schedules containing the text of the reservation and declarations the UK made in September 2020 in relation to the 2005 and 2007 Hague Conventions.
- 38 Section 1(4) introduces Schedule 5 which contains provisions consequential on section 1 of the Act and makes transitional provision.
- 39 Paragraph 1 of Schedule 5 adds the 1996 Hague Convention to the list of Conventions in relation to which the existing rule-making power in section 48 of the 1982 Act may be exercised, as a consequence of the 1982 Act being amended by the Act to insert provisions implementing that Convention. This power already applies in relation to the 2005 and 2007 Hague Conventions.
- 40 Paragraph 2 provides for section 4 of the European Union (Withdrawal) Act 2018 to cease to apply to directly effective rights derived from the 1996, 2005 and 2007 Hague Conventions. It will not be necessary to rely on these directly effective rights, saved by section 4 of the 2018 Act, once the provisions of section 1(2) of the Act have provided for those Conventions to have the force of law.
- 41 Paragraphs 3 and 4 make consequential amendments to the EU Exit Regulations made in exercise of the powers in section 8 of the European Union (Withdrawal) Act 2018 in relation to the directly effective treaty rights derived from the 2005 and 2007 Hague Conventions. In particular, the amendments revoke the savings provisions in the EU Exit Regulations, and the transitional provisions in the Conventions (which are given legal force by section 1 of the Act) will apply subject to the provisions in Part 2 of Schedule 5 (paragraphs 7 and 8).
- 42 Paragraph 5 makes minor amendments to headings in the 1982 Act.

- 43 Paragraph 6 revokes the Council Decision, adopted by the EU, authorising Member States to join the 1996 Hague Convention. This Council Decision will otherwise be saved in domestic law by section 3 of the European Union (Withdrawal) Act 2018, but is redundant.
- 44 Paragraphs 7 and 8 provide that the 2005 and 2007 Hague Conventions should be treated as coming into force for the UK on the dates when the UK originally became bound by the Conventions as a result of the EU's accession to them, and as having continued in force since then without interruption. This will ensure, in particular, that in proceedings that take place after the end of the transition period, UK courts will, in accordance with Article 16 of the 2005 Hague Convention, apply the Convention rules to all relevant exclusive choice of court agreements made from 1st October 2015, which designate UK courts as the chosen court. Paragraph 8 ensures that, in maintenance proceedings taking place after the end of the transition period, UK courts will treat the 2007 Hague Convention as having come into force for the UK on 1st August 2014 for the purposes of Article 56 of that Convention.
- 45 Paragraph 9 contains definitions of the 2005 and 2007 Hague Conventions for purposes of Part 2 of Schedule 5.

Section 2: Implementation of other agreements on private international law

- 46 Section 2(1) gives an "appropriate national authority" (as defined in subsection (12)) the power to make regulations (secondary legislation) to implement international agreements on PIL. The power can also be used to amend existing domestic provisions implementing a PIL agreement if any changes to its implementation are required.
- 47 Section 2(2) provides that regulations may also be made to implement an international agreement on PIL for application between England & Wales, Scotland and Northern Ireland, so the same rules can be applied in cases raising cross-border issues between the three different legal jurisdictions in the UK, even if that is not a requirement of the international agreement itself.
- 48 Section 2(3) provides that regulations may be made to give effect in UK domestic law to any arrangements for applying a relevant international agreement on PIL (with or without modifications), entered into by the Government and the Crown Dependencies and Overseas Territories. The term "relevant territory" is defined in section 2(12).
- 49 Section 2(4) is a sunset provision which provides that regulations to implement an international agreement on PIL, made under subsections (1) to (3), may only be made during the operative period.
- 50 Section 2(5) sets out that the operative period is the period of five years beginning with the day on which this Act is passed.
- 51 Section 2(6) sets out that the appropriate national authority in relation to a part of the United Kingdom may by regulations extend the operative period for that part of the United Kingdom by a period of five years. Section 2(7) provides that the power under subsection (6) may be exercised more than once. However, Section 2(8) provides that the operative period may not be extended for any part of the United Kingdom after it has expired in relation to that part of the United Kingdom.
- 52 Sections 2(9) and (10) make further provision about the sorts of provisions regulations made under section 2 may include. In particular, section 2(10) makes clear that regulations may implement obligations in a PIL agreement which relate to the provision of legal aid or provisions which concern the sharing of information between courts or competent authorities dealing with cross border disputes. Section 2(10) also makes clear that regulations may

- include enforcement provisions, but these will be subject to the restrictions in paragraph 1 of Schedule 6.
- 53 Section 2(11) introduces Schedule 6.
- 54 Section 2(12) provides definitions of various terms used in section 2.
- 55 The effect of the definition of “appropriate national authority” is that the powers in section 2 could be exercised by a Secretary of State in relation to England and Wales, the Scottish Ministers in relation to Scotland, and a Northern Ireland department in relation to Northern Ireland. The Secretary of State may also make regulations in relation to Scotland and Northern Ireland but only with the consent of the relevant devolved administrations.
- 56 The definition of “international agreement” covers a convention, treaty or agreement to which the UK has already become a contracting party or to which it intends to become a contracting party (for example, it may have signed but not ratified the agreement). This ensures that it will be possible to exercise the power in section 2(1) to make implementing regulations before an agreement is ratified. It is normal practice to ensure that domestic implementing legislation is in place before the UK formally becomes bound by an international obligation, so that it is able to comply with it immediately.
- 57 The definition of “private international law” provides examples of the sorts of issues typically covered by international agreements in this field of law. The definition means that the power could be used, for example, to implement the 2007 Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, the 2019 Singapore Agreement on Enforcement of Mediated Settlement Agreements, and the 2019 Hague Convention on Recognition and Enforcement of Judgments in Civil and Commercial Matters, should the Government decide to join these in future.
- 58 Section 2(13) provides for the implementation of model laws relating to PIL adopted by an international organisation of which the UK is a member. It provides that the regulation making power in section 2(1) may be used to “give effect to” – rather than “implement” – a model law, because the text of a model law is not binding in the way that an international agreement is, and states may adapt a model law when giving effect to it.
- 59 As stated above Section 2(11) introduces Schedule 6 which sets out restrictions on the use of the power in section 2 and the legislative procedure to be followed when making regulations under section 2.
- 60 Paragraph 1(1)(a) of Schedule 6 provides that regulations made under section 2 may not themselves confer a new power to legislate, other than a power to make procedural rules for courts or tribunals, but can modify or extend an existing power. Paragraph 1(1)(b) prevents regulations being made under the power which create an offence which is punishable by imprisonment.
- 61 Paragraph 2 establishes a consultation requirement for the Secretary of State, namely that before the Secretary of State makes regulations under section 2 the Secretary of State must consult such persons as the Secretary of State thinks appropriate. The consultation requirement applies both to the power to implement PIL agreements and the power in section 2(6) to extend the operative period during which the implementing power may be exercised. The consultation obligation only applies to the Secretary of State and does not bind Ministers in the Devolved Administrations when making regulations which are subject to the procedural requirements applicable in relation to the Scottish Parliament or Northern Ireland Assembly.

- 62 Paragraphs 3 to 7 deal with the procedure and Parliamentary scrutiny for making regulations under section 2. Paragraph 3 provides that the power to make regulations is exercisable by statutory instrument, or in relation to Northern Ireland, by statutory rules. For regulations made by the Scottish Ministers, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010. Paragraph 4 deals with the procedure for regulations made by the Secretary of State. Paragraph 5 deals with the procedure for regulations made by the Scottish Ministers. Paragraph 6 deals with the procedure for statutory rules made by a Northern Ireland department. In each case, the affirmative procedure will be triggered if the regulations:
- are implementing a new international agreement on PIL for the first time in domestic law, or a new arrangement entered into between different jurisdictions in the UK, or between the UK and an Overseas Territory or Crown Dependency to apply an arrangement based on an international agreement (suitably modified) between them;
 - create, extend or increase the penalty for a criminal offence; or
 - amend primary legislation (defined by paragraph 6 to include an Act of the Scottish Parliament, and Act or Measure of the Welsh Assembly or any Northern Ireland legislation).
 - extend the operative period for that part of the United Kingdom by a period of five years.
- 63 It is anticipated that most regulations made under the power will trigger the affirmative procedure because they will be implementing new agreements which the UK has decided to join. However, it is possible that regulations may need to be made subsequently to make adjustments to technical or procedural aspects of the approach to implementation originally adopted when an agreement was first implemented. For example, an update to forms to be used, or as indicated above, to schedule the text of the declarations and reservation which will be made when the UK joins the 2005 and 2007 Hague Conventions as a contracting party in its own right after the end of the transition period. However, in the latter case it is also likely that the affirmative procedure will anyway be triggered because primary legislation is being amended.
- 64 International agreements on PIL rarely contain provisions about criminal offences, but it may be necessary when implementing some agreements, for example in the field of family law, to create enforcement provisions involving criminal offences. This is likely to be the case where there is already an equivalent domestic enforcement provision involving criminal offences. For example, breaches of “protection measures” such as non-molestation orders in England and Wales under Part 4 of the Family Law Act 1996 or injunctions under section 3 of the Protection from Harassment Act 1997, may be punishable as criminal offences. Paragraph 1 of Schedule 6 restricts national authorities from making regulations which create criminal offences imposing sentences of imprisonment.

General

Section 3: Crown Application

- 65 Section 3(1) provides that the amendments made by the Act to the Civil Jurisdiction and Judgments Act 1982 bind the Crown in accordance with section 51 of that Act which provides that the 1982 Act binds the Crown, subject to certain exceptions. Regulations made under

section 2 of the Act may also contain provisions binding the Crown, subject to the same exceptions.

Section 4: Extent, commencement and short title

- 66 Section 4(1) provides that the Act extends to England and Wales, Scotland and Northern Ireland.
- 67 Section 4(2) is a “permissive extent clause” which enables the power to implement PIL agreements - section 2 (including Schedule 6) and section 3(2) and (3) of the Act - to be extended by Order in Council to the Isle of Man subject to any appropriate modifications.
- 68 Section 4(3) provides that Sections 1 and 3 and Schedules 1 to 5, which are the provisions relating to the implementation of the 1996, 2005 and 2007 Hague Convention, come into force at the end of the transition period.
- 69 Section 4 (4) provides that the rest of this Act, which comprises the provisions relating to the power to implement PIL agreements, comes into force on Royal Assent.
- 70 Section 4(5) sets out the short title of the Act.

Schedules 1 to 6

- 71 See paragraphs 37-45 and 58-63.

Commencement

- 72 Sections 1 and 3 and Schedules 1 to 5, come into force automatically at the end of the transition period and require no further implementing legislation.
- 73 The remainder of the Act comes into force immediately on Royal Assent.

Annex A – Territorial extent and application in the United Kingdom

- 74 The Act extends and applied UK wide. Repeals and amendments made by the Act have the same territorial extent and application as the legislation that they are repealing or amending. The information provided is the view of the UK Government.¹

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Section 1 Hague Conventions	Yes	Yes	Yes	Yes
Section 2: Power to implement PIL agreements	Yes	Yes	Yes	Yes

¹ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Annex B – Hansard References

75 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Lords</i>		
Introduction	27 February 2020	Vol. 802 Col. 278
Second Reading	17 March 2020	Vol. 802 Col. 1440
Grand Committee (first sitting)	13 May 2020	Vol. 803 Col. 710
Grand Committee (second sitting)	3 June 2020	Vol. 803 Col. 1390
Report	17 June 2020	Vol. 803 Col. 2219
Third Reading	29 June 2020	Vol. 804 Col. 482
<i>House of Commons</i>		
Introduction	30 June 2020	No debate
Second Reading	2 September 2020	Vol. 679 Col. 215
Committee	6 October 2020	Vol. 681 Col. 782
Report	6 October 2020	No debate
Third Reading	6 October 2020	Vol. 681 Col. 841
Lords Consideration of Commons Amendments	19 November 2020	Vol. 807 Col. 1554
Commons Consideration of Lords Amendments	24 November 2020	Vol. 684 Col. 719
Royal Assent	14 December 2020	House of Commons Vol. 686 Col. 1
		House of Lords Vol. 808 Col. 1409

Annex C – Hague Conventions in the UK

Hague Conventions to which the UK is a contracting party:

- Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions.
- Convention of 5 October 1961 on Abolishing the Requirement of Legalisation for Foreign Public Documents.
- Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.
- Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations.
- Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.
- Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations.
- Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.
- Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition.
- Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.
- Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.
- Convention of 13 January 2000 on the International Protection of Adults.
- Convention of 30 June 2005 on Choice of Court Agreements.
- Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance.

In addition, the UK has signed:

- Convention of 2 October 1973 Concerning the International Administration of the Estates of Deceased Persons.

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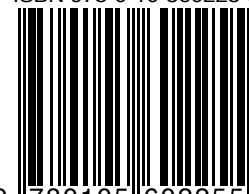
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