

Equalities, Human Rights and Civil Justice Committee  
Tuesday 17 June 2025  
16th Meeting, 2025 (Session 6)

## **Note by the Clerk on UK subordinate legislation: consideration of consent notification**

### **Introduction**

1. This paper supports the Committee's consideration of a 'type 1' consent notification sent by the Scottish Government relating to the following proposed UK statutory instrument (SI): [Private International Law \(Implementation of Agreements\) Act 2020](#).
2. The process for the Scottish Parliament's consideration of consent notifications is set out in the [SI Protocol](#). Further details of this process are set out in Annexe A.

### **Private International Law (Implementation of Agreements) Act 2020**

3. On 27 May 2025, the Minister for Victims and Community Safety wrote to the Committee to give notice of the Scottish Government's proposal to consent to the UK SI. The Scottish Government has also provided an SI notification and a summary notification. These documents are set out in Annexe B. The UK Government intends to lay the UK SI on 1 September 2025.
4. The Scottish Government has asked the Committee to respond to the consent notification by 26 June 2025, to allow for recess.
5. These Regulations would be made under [section 2\(6\)](#) of the Private International Law (Implementation of Agreements) Act 2020 ("the 2020 Act"). This is a power to extend, for 5 years, powers in section 2(1)-(3) of the 2020 Act which enable Ministers to make regulations to implement international agreements on private international law. The powers in section 2(1)-(3) would otherwise expire on 13 December 2025.
6. Negotiating and joining international agreements on private international law is reserved, but implementing them in domestic law is devolved. The Bill provides that the Scottish Ministers may exercise the power to implement them in domestic law in relation to Scotland. However, the Secretary of State may also exercise the power in relation to Scotland, as is the case in this instance, with the Scottish Ministers' consent.
7. Policy background to the SI is provided by the Scottish Parliament Information Centre (SPICe) at Annexe C.

## **Next steps**

8. If the Committee wishes to approve the proposal to consent to the SI, it may, in doing so, set out in its letter to the Scottish Government any observations or concerns that it thinks are relevant.
9. If the Committee is not content with the proposal, it should include in its letter to the Scottish Government one of the following recommendations:
  - That the Scottish Government should not give its consent to the provision being made in a UK SI and that the Scottish Government should instead take forward an alternative Scottish legislative solution.
  - That the provision should not be made at all (that is, that the Scottish Government should not consent to the provision being included in a UK SI, nor should the Scottish Government take forward an alternative Scottish legislative solution).

**Clerks to the Committee**  
**June 2025**

## **Annexe A: Process for parliamentary scrutiny of consent notifications in relation to UK statutory instruments**

1. The Protocol provides for the Scottish Parliament to scrutinise the Scottish Government's decisions to consent to certain subordinate legislation made by the UK Government: specifically, UK Government subordinate legislation on matters within devolved competence in areas formerly governed by EU law. It sets out a proportionate scrutiny approach and categorises SI notifications as 'type 1' or 'type 2'.
2. Type 2 applies where all aspects of the proposed instrument are clearly technical (e.g., they merely update references in legislation that are no longer appropriate following EU exit) or do not involve a policy decision. These are notified retrospectively, after the Scottish Government has given its consent.
3. All other proposals are type 1. In this case, the Scottish Parliament's agreement is sought before the Scottish Government gives consent to the UK Government making subordinate legislation in this way. Each type 1 notification must be considered by the relevant Committee.
4. **The Committee's role in relation to type 1 notifications is to decide whether it agrees with the Scottish Government's proposal to consent to the UK Government making Regulations within devolved competence, in the manner that the UK Government has indicated to the Scottish Government.**
5. If Members are content for consent to be given, the Committee will write to the Scottish Government accordingly. The Committee may also wish to note any issues in its response or request that it be kept up to date on any relevant developments.
6. If the Committee is not content with the proposal, however, it may recommend that the Scottish Government should not give its consent. In that event, the Scottish Ministers have 14 days under the Protocol to respond to the Committee's recommendation. They could—
  - Agree. If so, the Scottish Ministers would then withhold their consent.
  - Not agree. If so, the Parliament will debate the issue.
7. If the Parliament agrees to the Committee's recommendation that the Scottish Ministers should not consent, the Protocol provides that the Scottish Ministers should "normally not consent" to the UK SI. However, the Protocol also provides that if the Scottish Ministers consider that the Committee's proposed alternative cannot be achieved, they may consent to the UK SI. If so, they must explain why they are doing so to the Scottish Parliament.

## **Annexe B: Information from Scottish Government**

### **Letter from the Minister for Victims and Community Safety**

27 May 2025

Dear Convener

#### **Private International Law (Implementation of Agreements) Act 2020 – Renewal of Powers**

I am writing in relation to the protocol on scrutiny by the Scottish Parliament of consent by the Scottish Ministers to UK secondary legislation in devolved areas arising from EU exit.

I attach a Type 1 notification which sets out the details of an SI which the UK Government proposes to make and the reasons why I am content that Scottish devolved matters are to be included in this SI.

We will, in accordance with the protocol, advise you when the final SI is made and advise you as to whether the final SI is in keeping with the terms of this notification.

We have been advised that the UK Government intend to lay the draft SI on 01 September 2025. We would be grateful if a response could be received by 26 June 2025, to allow for recess. This will still allow the Committee the full 28 days provided for in the protocol to consider the notification.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

Yours sincerely

**SIOBHIAN BROWN**

**SI notification**

**Name of the SI(s) (if known) or a description of the policy area**

The renewal of powers under the Private International Law (Implementation of Agreements) Act 2020 (the 2020 Act).

**Is the notification Type 1 or Type 2**

Type 1

**Details of the provisions that Scottish Ministers are being asked to consent to.**

The UK Government have advised that they intend to renew the powers granted by section 2 of the Private International Law (Implementation of Agreements) Act 2020. The Scottish Ministers intend to consent to a UK wide SI being made to renew these powers for an additional 5 years.

**Summary of the proposals**

Private International Law (or PIL) agreements provide a legal framework for resolving cross-border disputes that would otherwise be very difficult to resolve in areas such as, for example international child maintenance. A number of PIL Conventions are made under the auspices of what is known as the Hague Conference<sup>1</sup>.

Section 2 of the 2020 Act enables the Scottish Ministers to implement international agreements relating to PIL through regulations. In addition, under section 2 the Secretary of State may make regulations extending to Scotland and Northern Ireland with the consent, respectively, of the Scottish Ministers and a Northern Ireland Department.

The powers under section 2 expire 5 years after the 2020 Act was passed but can be renewed. The proposal now is that these powers be renewed for a further 5 years.

**Does the SI relate to a common framework or other scheme?**

No.

**Summary of stakeholder engagement/consultation**

The UK Government carried out a targeted consultation across the UK. There were four responses from Scotland.

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<sup>1</sup> Information on the Hague Conference on Private International Law is available at <https://www.hcch.net/en/home>

One respondent said that as a general proposition, they did not favour the use of secondary legislation to make significant changes to domestic law but added that despite these general reservations, they did not object to the specific powers contained in section 2 being extended for a further five years.

Two other respondents agreed with the powers being renewed.

One respondent was against. This respondent noted that PIL agreements could often have practical importance to individuals, consumers and/or businesses and treating them as technical issues could undermine their importance. The respondent also noted that keeping track of draft and final secondary legislation is far from straightforward.

The Scottish Government has carefully considered the points made by this respondent. Our conclusion is that the powers should still be renewed but the Scottish Government should take two steps to try and deal with the concerns raised.

First of all, the Scottish Government will provide more public-facing information on how ratification and implementation of PIL agreements takes place. This would include:

- The consultation process.
- The regulations to be made by Ministers.
- The notification to the Parliament of any SIs proposed to be made at Westminster.
- Court rules, which in Scotland are made by the courts.

Secondly, the Scottish Government will do more to keep key bodies and individuals in Scotland informed of major developments in PIL such as SIs; SSIs and court rules implementing PIL agreements. This could be done by short letters giving weblinks to relevant instruments when they are published. The audience in Scotland for these updates includes bodies representing the legal profession and PIL academics. The Scottish Government would also, of course, keep Parliamentary committees informed of developments.

### **A note of other impact assessments, (if available)**

As no significant regulatory impact on businesses is expected, UKG have not carried out an impact assessment.

### **Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation**

Private International Law agreements provide a legal framework for resolving cross-border disputes that would otherwise be very difficult to resolve. Renewing the powers under the Private International Law (Implementation of Agreements) Act 2020 for a further 5 years will allow Ministers to continue to implement other international agreements relating to international private law.

As the policy intention in relation to the extension of powers for the Private International Law (Implementation of Agreements) Act 2020 is the same across the UK, it seems appropriate and a practical use of resources for the SI made by the Secretary of State to cover Scotland as well.

**EU Alignment**

Since Brexit, PIL agreements have grown in importance as there is no longer any reciprocity with EU Member States under EU provisions. PIL agreements may be ratified by the EU as well as by the UK and so they can be a way of increasing co-operation and alignment with EU Member States.

**Intended laying date (if known) of instruments likely to arise**

01 September 2025

**If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?**

N/A

**Information about any time dependency associated with the proposal**

Unless renewed, the powers under section 2 will cease to apply on 13 December 2025.

**Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?**

There are no broader governance issues in relation to this proposal.

**Any significant financial implications?**

There are no significant financial implications.

**Justice Directorate  
Scottish Government  
May 2025**

**Summary notification**

<b>Title of Instrument or description of policy area</b>
The extension of powers under the Private International Law (Implementation of Agreements) Act 2020. The title of the instrument is not yet advised by UK Government.
<b>Proposed laying date at Westminster and commencement date</b>
The UK Government intend to lay the draft instrument on 01 September 2025. It is intended to come into force on the day after it is made. The UK Government has indicated that this is planned to be by 29 November 2025.
<b>Date by which Committee has been asked to respond</b>
26 June 2025
<b>Power(s) under which SI is to be made</b>
The Private International Law (Implementation of Agreements) Act 2020 – Section 2(6).
<b>Categorisation under SI Protocol</b>
Type 1
<b>Purpose</b>
The UK Government intend to renew the powers under section 2 of the Private International Law (Implementation of Agreements) Act 2020 for a further five years. Scottish Ministers intend to consent to this UK wide SI being made to implement the extension of powers.
<b>Other information</b>



## **Annexe C: Policy background – Scottish Parliament Information Centre (SPICe)**

### **What does the SI do?**

In simple terms, the SI is aimed at extending the powers under section 2 of the Private International Law (Implementation of Agreements) Act 2020 for a further five years so that any future private international law agreements (i.e. treaties) can be implemented across the UK (including in Scotland) by regulation rather than by primary legislation.

### **Policy Background to the SI**

“Private international law” is a term which covers matters such as which country’s law applies to a cross-border dispute, or which country’s court should deal with a dispute. It provides a framework for cross-border disputes in fields including commercial law, insolvency, consumer law and family law. At an international level there are many treaties laying down rules in this area.

Negotiating and joining international agreements on private international law is reserved, but implementing them in domestic law is devolved, hence the involvement of the Scottish Parliament in this area.

When the UK was part of the EU, many of these issues were governed by EU law when a dispute involved an EU Member State.

When the UK left the EU, it also left the EU’s private international law framework. The UK-EU Trade and Cooperation agreement (the deal between the UK and EU) didn’t deal with this matter and the EU didn’t agree to the UK’s proposal that the EU should permit it to accede to [the Lugano Convention](#) (a treaty between the EU and Iceland, Norway and Switzerland on which countries’ courts can hear disputes). See [the SPICe blog from 2021 “The Brexit deal and UK-EU justice policy”](#).

Brexit meant that there was also a lack of legal clarity as regards the UK’s participation in certain Hague Conventions dealing with private international law as, in the majority of cases, the EU, and not the UK, was the contracting party. The Conventions in question are:

- The 1996 Hague Convention - a multilateral treaty aimed at improving the protection of children
- The 2005 Hague Convention - a multilateral treaty aimed at ensuring the effectiveness of exclusive choice of court agreements in international commercial transactions
- The 2007 Hague Convention - a multilateral treaty which provides rules for the international recovery of child support and other forms of family maintenance.

As a result of these issues caused by Brexit, the UK Government enacted the Private International Law (Implementation of Agreements) Act 2020 (“the 2020 Act”).

The 2020 Act did two main things. It:

1. Stated that that provisions in the above Hague Conventions have the force of law in the UK (section 1)
2. Provided delegated powers to implement future international agreements which the UK joins in this area by regulation (section 2). In Scotland, these regulations can be made by the Scottish Ministers or the UK Secretary of State acting with the consent of the Scottish Ministers (section 2(12) of the 2020 Act). There is also a requirement to consult before making regulations (see Schedule 6 of the 2020 Act).

The powers were recently used to implement the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. The UK signed this treaty on 12 January 2024. The Committee consented to the UK Ministers making these regulations. For details see the Committee's webpage on [UK SI Notification: The Recognition and Enforcement of Judgments \(2019 Hague Convention etc.\) Regulations 2024](#).

The delegated powers in the 2020 Act are, however, limited to a 5 year "sunset period" which can be extended by statutory instrument. Hence, the current statutory instrument which extends the powers for a further five years.

For further background see: [the UK Government's Explanatory Notes on the 2020 Act](#) (these include detailed background to the legislation), [the House of Commons Library's Briefing Paper on the Bill which led to the 2020 Act](#), and [the Scottish Government's Legislative Consent Memorandum on the Bill which led to the 2020 Act](#).

The Notification document on the SI provided by the Scottish Government also summarises these issues and the consultation carried out by the UK Government on the SI.