

Minister for Victims and Community Safety
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Karen Adam MSP
Convener of the Equalities, Human Rights and Civil
Justice Committee
The Scottish Parliament
Edinburgh
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By email: ehrcj.committee@parliament.scot

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: SUMMARY

Title of Instrument or description of policy area 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.
Proposed laying date at Westminster and commencement date 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.
Date by which Committee has been asked to respond 26 June 2025
Power(s) under which SI is to be made The Private International Law (Implementation of Agreements) Act 2020 – Section 2(6).
Categorisation under SI Protocol Type 1
Purpose 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.
Other information

NOTIFICATION TO THE SCOTTISH PARLIAMENT

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 Conference¹.

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.

¹ 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**