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Bill Bowman MSP  
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Delegated Powers and Law Reform Committee  
Scottish Parliament  
Edinburgh  
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14 May 2020

Dear Bill,

### **Private International Law (Implementation of Agreements) Bill**

Thank you for your letter of 12 May regarding the UK Private International Law (Implementation of Agreements) Bill for which I have lodged a Legislative Consent Memorandum (LCM) with the Scottish Parliament. The LCM recommends the Scottish Parliament give consent to the Bill in terms of the provisions which include Scotland.

Your letter requests further information on the exercise of the delegated power created by clause 2 of the Bill. This delegated power allows future international agreements on private international law (PIL agreements) to be implemented in domestic law by regulations. Your questions concern the exercise of that power by the Secretary of State (with Scottish Ministers' consent).

Your first question is **in what circumstances does the Scottish Government consider that it will be appropriate for the power to be exercised by UK Ministers as opposed to by the Scottish Ministers, and vice versa?**

The Bill is drafted on the basis that the Scottish Ministers have power to implement PIL agreements but it also provides scope for that power to be exercised by UK Ministers with the consent of the Scottish Ministers, acknowledging that the implementation of international agreements is a devolved area.

The circumstances in which the Scottish Government consider that it will be appropriate for the power to be exercised by UK Ministers as opposed to by the Scottish Ministers would be driven by consideration of whether this would be in Scotland's best interests. It may be beneficial for implementation to take place in one set of UK rules depending on the context in some cases due to the benefits of simplicity for the user of the legislation depending on the surrounding legislation in implementing the PIL agreement in question. Legislation in this area has in the past been taken forward on a UK basis and it may be convenient and in Scotland's best interests in appropriate cases for it to be so in the future. For example, such as

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implementing the Lugano Convention where it may be convenient and sensible for the Convention to be implemented through a single set of regulations across the whole of the UK rather than having separate regulations for Scotland.

The delegated power under clause two is clearly defined and narrow, being only applicable to the field of PIL agreements. This places appropriate limitations on the scope with which this delegated power could be used by the Secretary of State for Scotland, in addition to the requirement that this power is only exercised with Scottish Ministers consent.

Circumstances in which the Scottish Government consider that it will be appropriate for the Scottish Ministers to exercise the power would be circumstances such as where this is more expeditious, or where the different legal systems throughout the UK warrant it due to the procedure and process differences, or where a convention was only going to be implemented in Scotland as was the case with the Hague Convention of 13 January 2000 on the Protection of Adults.

PIL agreements are generally comprised of technical sets of rules or procedures, the details of which have already been carefully negotiated, usually following consultation with relevant experts in the sector before ratification of the agreement. The substantive rules contained in the agreement cannot be amended on implementation and domestic legislation is likely to consist of stating the provisions of the agreement. Outwith the convention's provisions domestic implementing legislation tends to define uncontroversial matters such as which court or which public body fulfils a designated role under the convention.

The second question asks **Where the powers are exercised by UK Ministers with Scottish Ministers' consent, how will the Scottish Government help facilitate scrutiny by the Scottish Parliament?** As the Parliament is aware, the Scottish Government believes that the Scottish Parliament should be afforded the opportunity to effectively scrutinise the exercise of legislative powers within devolved competence. That is why the Parliament and the Scottish Government are in discussion on a new protocol for scrutiny of Scottish Ministers' consent to UK SIs in devolved areas arising from EU withdrawal, building on the existing protocol. Those discussions have been positive: the main elements of the new protocol have been agreed and I hope that it will be in place soon.

It is the Scottish Government's intention that the new protocol should cover all instruments proposed to be made by UK Ministers arising from EU exit and relating to devolved matters. This would include instruments under the UK's Private International Law (Implementation of Agreements) Bill, so the Parliament would be able to consider proposals by Scottish Ministers to consent to such instruments. My colleague Michael Russell wrote to the then Minister for the Cabinet Office, David Lidington, last year setting out our expectations for the new protocol and discussions with the UK Government have taken place at official level.

I hope the new protocol reassures the Committee that where this power is exercised by the Secretary of State, there will be formal means by which the Scottish Parliament can scrutinise such regulations, and be notified that the regulations had been laid before the UK Parliament.

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I trust the information in this letter assists the Committee in its consideration of the power in the Private International Law (Implementation of Agreements) Bill to make subordinate legislation.



**HUMZA YOUSAF**

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