EXPLANATORY MEMORANDUM TO

THE PRIVATE INTERNATIONAL LAW (IMPLEMENTATION OF AGREEMENTS) ACT 2020 (EXTENSION OF OPERATIVE PERIOD) REGULATIONS 2025

2025 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 The Lord Ponsonby of Shulbrede, Parliamentary Under-Secretary of State at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 Kristen Tiley, Deputy Director for International Justice Policy at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Matthew Rowden at the Ministry of Justice Telephone: 07926702733 or email: PIL@justice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Instrument extends until the end of 12th December 2030 the powers to make regulations in connection with implementation of private international law agreements in section 2(1) to (3) of the Private International Law (Implementation of Agreements) Act 2020 ('the 2020 Act').

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 This Instrument will allow the appropriate national authority (see paragraph 6.3) to continue to use their existing powers to make regulations in connection with implementing relevant private international law (PIL) agreements.

5.2 PIL is a set of rules applied by courts and parties involved in legal disputes raising cross-border issues. The rules generally deal with matters such as jurisdiction of courts, applicable law (which law courts will apply to resolve a dispute), recognition

and enforcement of judgments from other states or other legal jurisdictions. The rules generally apply in the context of civil law, including specialist areas such as commercial, insolvency and family law.

5.3 PIL rules are generally found in domestic law. However, they also can be found in 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.

5.4 PIL agreements therefore are key to supporting cross-border legal co-operation, in ensuring access to justice for UK citizens, businesses and families and providing them with greater confidence that cross-border disputes can be resolved in a clear and efficient way.

5.5 The powers in section 2 of the 2020 Act to make regulations for the purpose of implementing PIL agreements were included to ensure that there was an effective mechanism available to appropriate national authorities to give effect to new PIL agreements without the need to use primary legislation which would typically be required. This would prevent legal gaps from developing, particularly after EU Exit when a number of reciprocal PIL instruments ceased to apply to the UK. It would allow for amendments to existing implementation frameworks quickly and efficiently without the need to pass primary legislation.

5.6 PIL agreements cover a discrete area of law. Agreements on PIL are generally considered beneficial and are typically predictable in topic and scope. The powers relate only to agreements which cover those matters within the definition of PIL in section 2(12) of the 2020 Act.

5.7 The key policy issues will have been addressed during negotiation of the agreement involving detailed consideration, typically with expert input, of the draft treaty provisions.

5.8 There are also safeguards relating to the powers including a requirement to use the affirmative procedure in many circumstances and the limiting of extension to five-year periods. The standard Parliamentary process for treaty scrutiny will also usually still apply. See more detail in section 6 below.

5.9 A recent example of the use of the powers was The Recognition and Enforcement of Judgments (2019 Hague Convention etc.) Regulations 2024. These Regulations incorporated and made further implementing provision for the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. These Regulations also made adjustments to the existing implementing provisions for the Hague Convention of 30 June 2005 on Choice of Court Agreements.

5.10 Extending the powers for another five years will ensure that there is a clear framework which supports the swift ratification of international agreements where domestic legislation is required to ensure compliance with the terms of the agreement. It also provides confidence in negotiations with international partners that the UK will be able to swiftly implement domestic legislation in order to abide by its commitments and without needing to allocate Parliamentary time for primary legislation.

5.11 Furthermore, extending the powers on a UK-wide basis gives more flexibility to co-ordinate implementation of PIL agreements across the UK, as appropriate.

What was the previous policy, how is this different?

5.12 The policy is unchanged from the policy underlying section 2 of the 2020 Act, and the reasons for extending the powers for a further five-year period are set out above.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 2(1) to (3) of and Schedule 6 to the 2020 Act make provision for the appropriate national authority to make regulations. Regulations may be made for the purpose of implementing relevant international agreements relating to private international law in their jurisdiction; for the purpose of applying such agreements as between the jurisdictions, with or without modifications; and in order to give effect in the jurisdictions to any arrangements between the UK Government and an Overseas Territory or Crown Dependency to apply such an agreement, with or without modifications, between that jurisdiction and the UK or a UK jurisdiction.

6.2 The effect of section 2(4) and (5) of the 2020 Act is that the operative period within which the powers in section 2(1) to (3) of that Act may be used expires on 13th December 2025. The effect of this instrument is that the operative period will expire instead at the end of 12th December 2030 for England and Wales, Scotland and Northern Ireland unless extended for further periods of five years by future regulations.

6.3 These Regulations are made under section 2(6) of the 2020 Act which provides for the appropriate national authority in relation to a part of the United Kingdom to make regulations extending the operative period by a period of five years. Section 2(12) provides that the appropriate national authority is (a) in relation to England and Wales, the Secretary of State; (b) in relation to Scotland, the Scottish Ministers or the Secretary of State acting with the consent of the Scottish Ministers and (c), in relation to Northern Ireland, a Northen Ireland Department or the Secretary of State acting with the consent of a Northern Ireland Department.

6.4 The conclusion of international agreements is a matter reserved to the UK Government, though operation and implementation of international obligations in devolved subject areas is not reserved. PIL is devolved in relation to Scotland and Northern Ireland. PIL is generally reserved to the UK Government in respect of Wales.

6.5 Although negotiating and concluding international treaties is a prerogative power, Part 2 of the Constitutional Reform and Governance Act 2010 involves a process for Parliamentary scrutiny of qualifying international agreements which require ratification. This process would normally apply in the case of PIL agreements and is not affected by the extension of the operative period.

6.6 Schedule 6 to the Act sets out the procedures which must be followed before Regulations are made by the Secretary of State (at paragraph 4), the Scottish Ministers (at paragraph 5) or a Northern Ireland Department (at paragraph 6). Regulations under section 2(1) to (3) are likely to fall into one of the categories to which the extra scrutiny of the relevant affirmative procedures applies, meaning they cannot be made unless Parliament, the Scottish Parliament or the Northern Ireland Assembly (as the case may be) has debated and approved the making of them.

6.7 The categories of regulations requiring the affirmative procedure can be summarised as: those which make provision made for the purpose of implementing or applying in

relation to the UK or a territory part of the UK, (excluding the Overseas Territories and Crown Dependencies) a relevant international agreement that has not previously been the subject of implementing provision; provision made for the purpose of giving effect, in relation to the UK or a part of the UK, to any arrangement between the UK Government and an Overseas Territory or Crown Dependency to apply a relevant international agreement; provision that creates, extends or increases the penalty for a criminal offence; and provision that amends primary legislation. In other cases, such as the amendment of an existing implementing framework, the negative Parliamentary procedure will apply. Regulations under section 2(6) which extend the operative period for the exercise of the powers will always require the affirmative procedure.

6.8 The powers may not be used to make regulations which confer powers to legislate by means of regulations, orders, rules or other subordinate instrument, with the exception that regulations may confer powers to make rules of procedure for courts or tribunals. In addition, the powers may not be used to create any offence punishable by imprisonment.

6.9 Paragraph 2 of Schedule 6 to the Act requires the Secretary of State to consult 'such persons as they consider appropriate' before making regulations under the Act.

Why was this approach taken to change the law?

6.10 The reasons for extending the operative period for the powers in Section 2(1) to (3) are explained above.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Ministry of Justice conducted a targeted 6-week consultation of experts, academics and practitioners comprising individuals and groups from England and Wales, Scotland and Northern Ireland. Consultees were selected based principally on their expertise and experience with PIL matters. The consultees were asked if they agreed that the powers should be extended for a further five years by the Secretary of State, if they agreed that the powers should be extended in their jurisdiction and if they foresaw any intra-UK considerations if the powers were only extended in certain UK jurisdictions. The consultees were invited to submit their replies in writing.

7.2 Those consulted included the International Law Committee, Resolution, the Faculty of Advocates, the Law Society of Scotland, the Law Society of Northern Ireland and the Law Society PIL Working Group.

7.3 The great majority were in favour of extending the regulation making powers described in section 4.1 above. Reasons given in favour of extending included that it allows for the timely and uniform implementation of PIL Agreements by a common mechanism throughout the UK's jurisdictions whilst making the best use of limited parliamentary time and ensures gaps left after EU Exit can be effectively plugged, as well as other lacunae caused by inconsistent incorporation across the UK's different jurisdictions.

7.4 The majority of respondents also agreed that the powers should be extended throughout the UK.

7.5 Observations were made by some consultees around the broader constitutional principles of PIL agreements being implemented via secondary rather than primary

legislation, which some felt was inappropriate, as PIL Agreements may cover policy areas with significant practical impact. For most consultees, however, any negative observations were outweighed by the benefits of extending the powers.

7.6 The Parliamentary Under-Secretary of State for Justice has considered the results of the consultation and decided to extend the regulation making powers in respect of England and Wales.

7.7 In accordance with section 2 (12) of the 2020 Act, the Scottish Ministers have consented to the Secretary of State including Scotland within the scope of this Instrument, as has the Northern Ireland Department of Justice in respect of Northern Ireland.

7.8 The Scottish Parliament was notified of the Scottish Ministers' decision to consent to the Secretary of State making regulations which would extend the powers in relation to Scotland. The Scottish Parliament confirmed they were content with this.

7.9 The Northern Ireland Executive agreed to the Northern Ireland Department of Justice's decision to consent to the regulations extending to Northern Ireland.

8. Applicable Guidance

8.1 This Instrument does not implement or require guidance.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this Instrument because it is a continuation of existing policy and no, or no significant, impact on the private, voluntary or public sector is foreseen.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because it is a continuation of an existing policy and the Instrument does not affect their operation or impose financial liability.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because this is a continuation of an existing policy that is not expected to directly create any additional legal or financial obligations.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that in advance of expiry of the operative period for the exercise of the regulation-making powers, the Ministry of Justice will consider whether it is appropriate to take steps with a view to extending the operative period for a further five-year period.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary of State for Justice has made the following statement regarding Human Rights:

"In my view the provisions of the Private International Law (Implementation of Agreements) Act 2020 (Extension of Operative Period) Regulations 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").