

## **Extending the Regulatory Powers Granted by the Private International Law (Implementation of Agreements) Act 2020**

### **Resolution's response to the Ministry of Justice**

Resolution's 6,500 members are family lawyers, mediators, collaborative practitioners, arbitrators and other family justice professionals, committed to a non-adversarial approach to family law and the resolution of family disputes. Resolution members abide by a Code of Practice which emphasises a constructive and collaborative approach to family problems and encourages solutions that take into account the needs of the whole family and the best interests of any children in particular.

Resolution is committed to developing and promoting best standards in the practice of family law amongst both its members and amongst family lawyers in general.

We also campaign for better laws and better support for families and children undergoing family change.

This response has been prepared by Resolution's International Committee.

### **Response to consultation questions**

**Question 1: Do you think that the powers the Secretary of State has to make regulations for the purposes of implementing private international law agreements contained in Section 2 of the PILA should be extended for five years from 13th Dec 2025? Please give reasons for your answer.**

#### **Yes**

The powers facilitate the speedy and efficient implementation of private international law (PIL) agreements into domestic law through the use of secondary legislation. The powers also allow for the quick and efficient updating or amending of PIL agreements that have already been implemented into domestic law through secondary legislation.

We consider that that the powers are carefully and sufficiently circumscribed to protect against abuse:

- They can only be used in relation to PIL agreements as defined in section 2(12) of the PILA;
- Under the Constitutional Reform and Governance Act 2010, Parliament has the opportunity to review PIL agreements signed by the UK and to object to their ratification and therefore implementation into domestic law;
- The operative period of the regulation is limited to an initial period of 5 years; and
- An affirmative procedure applies under paragraph 4 of Schedule 6 of the PILA giving Parliament the opportunity to review and object to any measure which would:
  - implement a PIL agreement for the first time;

- create or extend the penalty for a criminal offence;
- amend primary legislation; or
- extend the operative period of a regulation (initially 5 years from when the regulation is introduced) by a further five years.

Without an extension of the power, primary legislation would be needed to implement PIL agreements. This could:

- Create delay and uncertainty, having in mind all the many and competing demands on Parliamentary Bill time.
- Delay UK citizens from enjoying the rights arising from PIL agreements ratified by the UK but not yet implemented into domestic law.
- Potentially cause the UK reputational damage. Taking a long time to implement PIL agreements could be negatively viewed by other members of the Hague Conference on PIL. States could be dissuaded from entering into PIL agreements with the UK if they have the impression that it would take a long time for the UK to implement PIL agreements.

**Question 2: Do you think the powers the Scottish Ministers have under Section 2 of the PILA to make regulations or to agree that the Secretary of State may make regulations on their behalf should be extended for Scotland for 5 years from 13th Dec 2025? Please give reasons for your answer.**

**Yes**

For the same reasons as set out in our response to Question 1.

**Question 3: Do you think the powers a Northern Ireland Department has under Section 2 of the PILA to make regulations or to agree that the Secretary of State may make regulations on its behalf should be extended for Northern Ireland for 5 years from 13th Dec 2025? Please give reasons for your answer.**

**Yes**

For the same reasons as set out in our response to Question 1.

**Question 4: Would you foresee any intra-UK considerations if the power to make regulations under Section 2 of the PILA was to be extended in only certain parts of the UK? Please give reasons for your answer.**

**Yes**

If the power was extended in only certain parts of the UK this could lead to PIL agreements being implemented in different manners and at different times in Northern Ireland, Scotland and England and Wales. This would unnecessarily increase complexity and costs for UK citizens in availing of their rights under PIL agreements.

**Resolution  
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