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Justice Committee Comataidh a' Cheartais

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Justice Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice.



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Introduction

1. At its meeting on 23 October, the Justice Committee considered a UK statutory instrument (SI) related to the European Union (Withdrawal) Act 2018. This report summarises the Justice Committee's consideration of the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2018.

Background

2. The European Union (Withdrawal) Act 2018, passed by the UK Parliament, allows the UK and Scottish parliaments to begin considering regulations to convert non-domestic European Union (EU) law into UK law.
3. As part of the process by which the UK leaves the EU, consideration must be given as to whether current UK law needs to be amended to the UK's new status as a non-EU member. For example, there are currently many references in regulations to EU bodies and the EU itself that will no longer be applicable after the UK has left the EU.
4. Some of the necessary changes to the statute book will be done through Scottish Statutory Instruments (SSIs) in the usual way. However, a number will be done through Statutory Instruments (SIs) passed in the UK Parliament with the consent of the Scottish Parliament which itself is based on the recommendation of the Scottish Government (these are called SI notifications). Consent will be sought as these SIs will make changes to devolved powers and/or executive competences. Such changes should be broadly technical in nature. Protocols governing arrangements for both of these processes have been agreed to with the Scottish Government (see below).

Protocol agreement between the Scottish Government and the Scottish Parliament

5. In order to prepare devolved legislation for UK withdrawal from the European Union, Scottish Government and Scottish Parliament officials developed a protocol governing UK Statutory Instruments. The protocol is intended to ensure the Scottish Parliament can scrutinise the Scottish Government's approach to instruments it considers are better dealt with by the UK Government.
6. In a [letter](#) to the Conveners of the Finance and Constitution Committee and the Delegated Powers and Law Reform Committee, Michael Russell, Cabinet Secretary Government Business and Constitutional Relations wrote that, "This [process] is not about the question of where devolved powers will be exercised after EU withdrawal. Instead it is about the technical task of ensuring that important schemes and regulations can continue to operate despite withdrawal."
7. He continued, "Where the policy outcome being sought is consistent across administrations, then it could be appropriate and in Scotland's interests to agree a UK-wide approach to statutory instruments (for example, to avoid duplication of

effort, or where only technical or minor amendments are required). Where a different way of dealing with EU withdrawal, or a different policy outcome, is required in Scotland, we will pursue our own statutory instruments in the Scottish Parliament.”

8. Under terms of the protocol, Scottish Ministers will notify the Scottish Parliament of any proposal to consent to the UK Government using its powers in devolved areas. Lead committees are then invited to scrutinise the proposal to consent, and report to Parliament with a recommendation as to whether consent should be given to the consideration of instrument in question taking place at Westminster.

The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2018

9. This Statutory Instrument is due to be laid in the UK Parliament in mid-November 2018.
10. The proposed Regulations relate to retained EU law in the area of security, law enforcement and criminal justice. Their purpose is to provide technical fixes to UK legislation to deliver a functioning statute book on exit. The Regulations will revoke or amend retained directly applicable EU legislation and domestic legislation for EU security, law enforcement and criminal justice measures where no negotiated agreement is reached with the EU – i.e. the "no deal" scenario.
11. The proposed Regulations cover a wide number of policy areas as set out in the Scottish Government's SI notification:
 - child pornography
 - cross border surveillance
 - judicial cooperation and police powers
 - football disorder
 - joint investigation teams
 - mutual legal assistance in criminal matters
 - proceeds of crime
 - serious crime and fraud
 - international agreements, and
 - financial sanctions
12. Further information about the areas covered by the instrument can be found in the [Scottish Government notification](#), and in the [background paper provided to the Committee](#) (paper 6).

Justice Committee's Scrutiny

13. On 23 October 2018, the Committee considered its consent to the Scottish Government's proposal that the instrument be considered by the UK Parliament. The discussion can be found in the [Official Report](#).
 14. In response to [written information received from the Scottish Government](#), the Committee agreed to write to the Scottish Government to seek clarification on what criteria it would use to determine whether any future legislation would be more or less likely to be taken forward at a UK level.
15. The Committee is content for the Scottish Government to give its consent for the UK Ministers to lay a Statutory Instrument in the UK Parliament on the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2018.

