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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 30 October, the Justice Committee considered a UK statutory instrument (SIs) related to the European Union (Withdrawal) Act 2018. This report summarises the Justice Committee's consideration of the Criminal Justice (Arrangements for Compensation) (Revocation) (EU Exit) Regulations 2019.

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 Criminal Justice (Arrangements for Compensation) (Revocation) (EU Exit) Regulations 2019

9. This Statutory Instrument is due to be laid in the UK Parliament on 5 November 2018. The [Scottish Government's notification of the instrument](#) can be found online.
10. The proposed Regulations revoke the Victims of Violent Intentional Crime (Arrangements for Compensation) (European Communities) Regulations 2005. The 2005 Regulations implemented Directive 2004/80/EC on compensation to crime victims. The Directive requires member states to facilitate cross-border access to compensation and to establish compensation arrangements to victims of violent crime in their territory. Currently the access to compensation in cross border situations is handled by the Criminal Injuries Compensation Authority which administers the Criminal Injuries Compensation Scheme to compensate victims of violent crime in Scotland, England and Wales. Northern Ireland has a separate scheme.
11. The proposed Regulations are necessary to address the deficiencies in these arrangements when the UK ceases to be a member of the EU whereby reciprocity between the UK and remaining Member States will not be possible.

Justice Committee's Scrutiny

12. On 30 October 2018, the Committee considered its consent to the Scottish Government's proposal that the instrument be considered by the UK Parliament. No comments were made.

13. 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 Criminal Justice (Arrangements for Compensation) (Revocation) (EU Exit) Regulations 2019.

