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Justice Committee Comataidh a' Cheartais

Consent notification considered by the Justice Committee, 5 March 2019

DRAFT STATUTORY INSTRUMENTS

2019 No.

EXITING THE EUROPEAN UNION

IMMIGRATION

NATIONALITY

The Immigration, Nationality and Asylum (EU Exit)
Regulations 2019

Made - - - -

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of sections 8(1) and 23(1) of, and paragraph 21 of Schedule 7 to, the EU Exit Act 2018(a).

In accordance with paragraph 1(3) of Schedule 7 to the EU Exit Act 2018, these Regulations were laid before Parliament and approved by a resolution of each House of Parliament on 5 March 2019.

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Justice Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/justice-committee.aspx>



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Introduction

1. At its meeting on 5 March 2019, the Justice Committee considered a notification from the Scottish Government on a UK Statutory Instrument (SI) relating to the European Union (Withdrawal) Act 2018. This report summarises the Justice Committee's consideration of:
 - [The Immigration, Nationality and Asylum \(EU Exit\) Regulations 2019](#).
2. The Official Report for this session, which contains the full discussion of the instrument, is available on the Justice Committee webpage.¹

Background

3. The European Union (Withdrawal) Act 2018 (the 2018 Act), passed by the UK Parliament, allows the UK and Scottish parliaments to consider regulations to convert non-domestic European Union (EU) law into UK law.
4. 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.
5. 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

6. In order to prepare devolved legislation for UK withdrawal from the EU, 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.
7. In a letter ² to the Conveners of the Finance and Constitution Committee and the Delegated Powers and Law Reform Committee, Michael Russell MSP, Cabinet Secretary for 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."
8. 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."
9. 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 the UK Parliament.

The Immigration, Nationality and Asylum (EU Exit) Regulations 2019

10. The SI make amendments to legislation in the field of immigration, nationality and asylum. The SI covers reserved matters in the main, but does make provision in certain devolved areas, as detailed below. Further information can be found in the [notification](#) from the Scottish Government.

Eligibility to apply to join the Police Service or become a special constable

11. Section 48 of the Police and Fire Reform (Scotland) Act 2012 provides that Scottish Ministers must make regulations as to the governance, administration and conditions of service of constables and police cadets. The SI amends two sets of Regulations made under this provision: the Police Service of Scotland Regulations 2012 and the Police Service of Scotland (Special Constables) Regulations 2012.
12. These provide that one of the qualifications for appointment to the Police Service or as special constable is that a candidate is a national of a State which is a Contracting Party to the Agreement on the European Economic Area (EEA).
13. The reference to “a national of an EEA State” will be deficient when the UK leaves the EU in that it will no longer encompass UK nationals. The SI corrects this deficiency by providing that a national of the UK as well as of an EEA state can apply to the Police Service or to be a special constable.

Simplification Regulation

14. The SI revokes EU Regulation 2016/1191 on promoting the free movement of citizens by simplifying the requirement for presenting certain public documents in the EU (the Simplification Regulation). The Simplification Regulation (which came into force on 16 February 2019) achieves two main objectives
 - Promotes the free movement of citizens by making it easier for key civil status documents from one country to be accepted in another without undergoing a formal process of acknowledgement of the document's official status (known as "legalisation"). Documents covered by this regulation include those relating to birth, death, marriage, and nationality.
 - Provides for multi-lingual standard forms to be attached to original civil status documents as translation aids.
15. If the UK leaves the EU without a deal, the remaining EU Members States will treat documents issued by the UK in the same way as documents issued by other third countries that are not Members of the EU. Therefore, the necessary reciprocity needed for the Simplification Regulation to function will no longer be in place.

Views from officials and external bodies

16. Other parliamentary officials were notified of the proposals and the SI notification was placed on the Committee's website for public awareness. No issues were raised in relation to the SI notification.

Justice Committee consideration

17. On 5 March 2019, the Committee considered whether to consent to the Scottish Government's proposal that the instrument be made by the UK Parliament.
18. Members were content with the proposal of the Scottish Government as set out in the SI notification.

Conclusions

19. 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 Immigration, Nationality and Asylum (EU Exit) Regulations 2019.

- 1 Justice Committee, Official Report 5 March 2019 (Col 10): <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11975&mode=pdf>
- 2 Letter from the Cabinet Secretary for Government Business and Constitutional Relations to the Convener of the Convener of the Finance and Constitution Committee 11 Sept 2018: http://www.parliament.scot/S5_Delegated_Powers/20180911CabSec.pdf

