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Justice Committee Comataidh a' Cheartais

Consent notification for the Rights, Equality and Citizenship Programme (Revocation) (EU Exit) Regulations 2019



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Contents

Introduction	1
Background	2
Protocol agreement between the Scottish Government and the Scottish Parliament	3
Purpose of the draft instrument	4
Current EU regulations	4
Why the draft instrument is necessary	4
Scottish Government categorisation of significance of proposals	5
Timescales	6
Consideration by the Justice Committee	7
Conclusions	8

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.



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Introduction

1. At its meeting on 10 September 2019, the Justice Committee ("the Committee") considered the following notification of a draft UK Statutory Instrument relation to the UK's withdrawal from the European Union:
 - [The Rights, Equality and Citizenship Programme \(Revocation\) \(EU Exit\) Regulations 2019](#)
2. The draft SI has not yet been laid in the UK Parliament. According to the SI notification, the SI will revoke an existing EU regulation and create the necessary powers for the UK Government to ensure the continuation of payments to an ongoing project in Scotland on Improving Justice in Child Contact: Children affected by domestic violence, until its completion in 2020.

Background

3. The European Union (Withdrawal) Act 2018 (the 2018 Act), 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.
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 from the Cabinet Secretary for Government Business and Constitutional Relations](#) to the Conveners of the Finance and Constitution Committee and the Delegated Powers and Law Reform Committee, Michael Russell MSP, 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."
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 be 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.

Purpose of the draft instrument

Current EU regulations

10. The Rights, Equality, and Citizenship (REC) Programme aims to contribute to the further development of equality and the rights of people, the EU's Charter on Fundamental Rights and Freedoms and international human rights conventions.
11. The relevant EU regulation is [\(EU\) No. 1381/2013 of the European Parliament and of the Council of 17 December 2013](#), establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020 ("the REC Programme").
12. The REC Programme has funded two projects based in Scotland, one of which is still active:
 - Improving Justice in Child Contact: Children affected by domestic violence. This is a 24-month long project being run by the University of Edinburgh with its final report due in January 2021 after the project ends in October 2020;
 - Prepare for Leaving Care - A Child Protection System that Works for Professionals and Young People. This was run by the University of Strathclyde, and completed its final report in January 2019.
13. The REC Programme is currently administered by the European Commission. In the event of a no-deal scenario, HM Treasury (HMT) has guaranteed payments of funds for UK based recipients. The SI would enable the UK Government to administer payments to Scotland in respect of the one live project in the case of a no-deal exit, as part of the HMT Guarantee.

Why the draft instrument is necessary

14. The SI would revoke the EU regulation and create the necessary powers for the UK Government to issue payments in Scotland for the sole purpose of the HMT Guarantee.
15. This change is necessary to ensure the continuation of payments to the ongoing project - Improving Justice in Child Contact: Children affected by domestic violence - until its completion in 2020.
16. Relevant policy teams within the Scottish Government have been consulted and agree that consent to this SI is within the interest of the project and stakeholders involved.

Scottish Government categorisation of significance of proposals

17. The Scottish Government categorises this SI as Category A (i.e. minor and technical in nature), as the SI only provides for the power to administer payments for one project within Scotland. There is no proposal to sub delegate new powers, or to legislate for public bodies in this instrument. The SI does not provide any new fees, nor involve any new financial implications for businesses, or seek to create any new fines or penalties.
18. The Scottish Government has stated that it considers this change to be consistent with both the devolution settlement and the Scottish Government position on the HMT Guarantee.

Timescales

19. The stated intention of the UK Government is that the affirmative SI would be laid in the UK Parliament, in draft, on 3 September 2019. However, the UK Parliament was prorogued on 10 September 2019 until 14 October 2019. At the point of prorogation, the draft instrument has not been laid in the UK Parliament.
20. The SI needs to be approved by the UK Parliament and made in advance of any no-deal exit of the UK from the EU on 31 October 2019 in order to secure the continuation of payments to the REC funded Scottish project.

Consideration by the Justice Committee

21. On 10 September 2019, the Committee considered its consent to the Scottish Government's proposal that the instrument be considered by the UK Parliament. The Official Report of this consideration is available online.¹
22. Members were content with the proposal of the Scottish Government in the SI Notification.

Conclusions

23. 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 Rights, Equality and Citizenship Programme (Revocation) (EU Exit) Regulations 2019.

Justice Committee

Consent notification for the Rights, Equality and Citizenship Programme (Revocation) (EU Exit) Regulations 2019, 16th Report, 2019 (Session 5)

- 1 Justice Committee, Official Report, 10 September 2019 (Cols 27-28):
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12243>

