Ruth Maguire MSP  
Convener  
Equalities and Human Rights Committee  
Scottish Parliament  
Edinburgh  
EH99 1SP  
By email:  
equalities.humanrights@parliament.scot

15 November 2018

Dear Ruth,

THE EQUALITY (AMENDMENT AND REVOCATION) (EU EXIT) REGULATIONS 2018 EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament.

As you know, Mike Russell wrote to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 11 September setting out the Scottish Government’s views on EU withdrawal. It is our unwelcome responsibility to ensure that devolved law continues to function on and after EU withdrawal.

I attach a notification which sets out the details of the SI which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note, we are yet to have sight of the final SI and it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

I am content for this SI to cover devolved matters as:

- The amendments are relatively small and it saves Scottish Parliamentary time to make them at Westminster.  
- I agree with the proposed changes to section 21(6) of the Gender Recognition Act 2004 and to section 216(6) of the Civil Partnership 2004. Our aim is to ensure that, so far as possible under Brexit, EU rights are maintained. The changes proposed do not alter the effect of the provisions unless the retained EU law should be changed.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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after the UK’s exit from the EU. Any changes to retained EU law in these areas in relation to Scotland would be for the Scottish Ministers given that the recognition in Scotland of overseas gender recognition and of overseas civil partnerships are devolved matters.

- I recognise that the UK’s departure from the EU means that the UK will leave the European Institute for Gender Equality (EIGE). However, this would not stop the Scottish Government from co-operating with the EIGE in devolved areas, if that should be appropriate and helpful.
- The European Year of Equal Opportunities for All in 2007 has now passed.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you within 28 days from the date of this letter.

Best wishes,

Shirley-Anne Somerville

SHIRLEY-ANNE SOMERVILLE
NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI

The Equality (Amendment and Revocation) (EU Exit) Regulations 2018

A brief explanation of law that the proposals amend

The proposed Regulations are being brought forward by the UK Government under powers in the EU (Withdrawal) Act 2018. They make provision in relation to equalities legislation. The purpose of the proposed Regulations is to provide technical fixes to UK legislation to deliver a functioning statute book on exit from the EU. The Regulations revoke or amend relevant legislation and relate to a mixture of reserved and devolved matters, the latter of which are described below.

In relation to devolved matters, the Statutory Instrument will:

- Amend section 21(6) of the Gender Recognition Act 2004. This relates to the treatment of legal gender recognition obtained in another EU Member State.
- Amend section 216(6) of the Civil Partnership Act 2004. This relates to recognition of an overseas relationship as a (same sex) civil partnership if one of the parties has obtained legal gender recognition in another EU Member State.

Summary of the proposals and how these correct deficiencies

The changes to section 21(6) of the Gender Recognition Act 2004 and section 216 (6) of the Civil Partnership Act 2004 reflect that these provisions currently refer to “any enforceable EU right”. Following the departure of the United Kingdom from the EU, this wording is no longer appropriate.

The intention is to amend the Gender Recognition Act 2004 so that the treatment in the UK/Scotland of legal gender recognition obtained overseas will be subject to any right which forms part of retained EU law in domestic legislation, rather than any enforceable EU right. This does not change the effect of the provision. The position would alter were rights under retained EU law (in particular rights under section 4 of the EU Withdrawal Act 2018) to evolve after the UK’s exit.

The intention is to amend the Civil Partnership Act 2004 in relation to recognition of overseas same-sex relationships which would generally be recognised as civil partnerships in the UK. Section 216(6) of the Civil Partnership Act 2004 currently provides that where one of the parties to an overseas civil partnership has been granted legal gender recognition under the law of an EU country, their relationship
can be treated as a civil partnership in the UK, without the need to obtain a full gender recognition certificate under the Gender Recognition Act 2004. The amendment being made by the SI means that individuals will now benefit from a right which forms part of retained EU law rather than an enforceable EU right. The does not change the effect of this provision. The position would alter were rights under retained EU law (in particular rights under section 4 of the EU Withdrawal Act 2018) to evolve after the UK’s exit.

The revocation of Regulation 1922/2006 on establishing a European Institute for Gender Equality (EIGE) reflects that the UK will no longer be a member of EIGE once it leaves the EU. Work in this area may be a mixture of reserved and devolved matters.

The revocation of Decision 771/2006/EC on establishing the European Year of Equal Opportunities for All (2007) – towards a just society reflects that the year has now passed. Work in this area may be a mixture of reserved and devolved matters.

An explanation of why the change is considered necessary

The amendments to the Gender Recognition Act 2004 and the Civil Partnership Act 2004 reflect that with the departure of the UK from the EU, references are needed to retained EU law rather than rights derived from membership of the EU. The revocation of Regulation 1922/2006 on establishing a European Institute for Gender Equality (EIGE) reflects that the UK will no longer be a member of EIGE once it leaves the EU.

The revocation of Decision 771/2006/EC on establishing the European Year of Equal Opportunities for All (2007) – towards a just society reflects that the year has now passed.

Scottish Government categorisation of significance of proposals

Category A – lowest level of scrutiny.

These changes are relatively minor and technical in detail. In the cases of the changes to the Gender Recognition Act 2004 and the Civil Partnership Act 2004, the existing position is maintained as far as possible. In relation to the European Institute for Gender Equality, the UK will leave EIGE when it leaves the EU. The revocation of Decision 771/2006 on the 2007 European Year of Equal Opportunities for All is just a tidy-up measure.

Impact on devolved areas

The provisions in section 21(6) of the Gender Recognition Act 2004 and section 216(6) of the Civil Partnership Act can benefit those who can claim these rights. As indicated above, the intention is to retain existing rights.
After leaving the EU, the Scottish Government could still choose to co-operate with the European Institute for Gender Equality (EIGE) on devolved matters, if that should be appropriate and helpful.

**Summary of stakeholder engagement/consultation**

There has been no formal consultation on this SI. The proposal is to make technical changes to legislation to reflect the UK withdrawal from the EU. The Scottish Government considers that in the circumstances formal consultation is disproportionate and impractical given the timescales.


Unrelated to Brexit, there is a current consultation on the Civil Partnership Act 2004 [https://consult.gov.scot/family-law/the-future-of-civil-partnership-in-scotland/](https://consult.gov.scot/family-law/the-future-of-civil-partnership-in-scotland/) This discusses two options for the future of civil partnership in Scotland (no new civil partnerships registered in Scotland from a date in the future or the introduction of opposite sex civil partnerships) and discusses the recognition of civil partnerships registered in other jurisdictions.

**A note of other impact assessments, (if available)**

None available.

**Summary of reasons for Scottish Ministers proposing to consent to UK Ministers’ legislation**

- The amendments are relatively small and it saves Scottish Parliamentary time to make them at Westminster.
- The Scottish Government agrees with the proposed changes to section 21(6) of the Gender Recognition Act 2004 and to section 216(6) of the Civil Partnership 2004. Our aim is to ensure that, so far as possible under Brexit, EU rights are maintained. The changes proposed do not alter the effect of the provisions unless the retained EU law should be changed after the UK’s exit from the EU. Any changes to retained EU law in these areas in relation to Scotland would be for the Scottish Ministers given that the recognition in Scotland of overseas gender recognition and of overseas civil partnerships are devolved matters.
- The UK’s departure from the EU means that the UK will leave the European Institute for Gender Equality (EIGE). However, this would not stop the Scottish Government from co-operating with the EIGE in devolved areas, if that should be appropriate and helpful.
• The European Year of Equal Opportunities for All in 2007 has now passed. Revoking the legislation underpinning this year is just a tidy-up measure.

Intended laying date (if known) of instruments likely to arise

December 2018.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Ministers proposal to consent, why not?

Not applicable. The Scottish Parliament will have 28 days to scrutinise Scottish Ministers proposal to consent. The UK Government has confirmed that the SI will not be laid at Westminster before the Scottish Parliament has consented.

Information about any time dependency associated with the proposal

None

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

No.

Any significant financial implications?

No.

Family Law Team
Scottish Government
November 2018