NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI(s) (if known) or a title describing the policy area

THE EUROPEAN INSTITUTIONS AND CONSULAR PROTECTION (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2018

A brief explanation of law that the proposals amend

The Treaty on the Functioning of the European Union (“TFEU”) includes various Protocols which set out rules governing institutions and bodies of the EU. Specifically, provision is made regarding privileges and immunities for persons involved with the Court of Justice of the European Union (“CJEU”) and the European Union itself. This includes privileges and immunities for Members of the European Parliament (MEPs) and officials and other servants of the European Union. This instrument relates to a mixture of reserved and devolved matters, the latter of which are described below.

The relevant provisions relate to immunity from legal proceedings in respect of acts performed in an official capacity and are set out in:

- Protocol (No 3) of the TFEU on the statute of the Court of Justice of the European Union. Protocol (No 3) makes provision for the roles of judges and Advocates-General; and
- Protocol (No 7) of the TFEU on the privileges and immunities of the European Union. Protocol (No 7) sets out the privileges and immunities granted to the EU and to a range of other EU institutions and officials.

The privileges and immunities granted to the EU are uniform across Member States. The EU and other institutions are granted such privileges and immunities as are necessary for the performance of their tasks. Privileges and immunities are a standard feature of international law, and are considered necessary for the proper functioning of international organisations. The privileges and immunities that the UK grants to the EU are similar to the privileges and immunities afforded to international organisations in the UK. This is consistent with UK policy to afford such privileges and immunities as are necessary for international organisations to perform their functions.

The effect of the European Union (Withdrawal) Act 2018 is that direct EU law is converted into domestic law (known as “retained direct EU law”) and therefore continues to have effect in the UK post exit day. After the UK’s withdrawal from the EU, the abovementioned provisions will become deficient. Specifically, the UK will no longer be party to the institutions and bodies of the EU in a no deal scenario.

Summary of the proposals and how these correct deficiencies

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

The proposal is to remove the relevant provisions in Protocol (No 3) and Protocol (No 7) relating to immunity from legal proceedings in the UK after exit day because they will no longer be relevant for the UK. However, the instrument does save the privileges and immunities in respect of acts performed by individuals in their official capacity before exit day.

An explanation of why the change is considered necessary

The UK will no longer be part of the EU and so arrangements of this kind are no longer appropriate. These privileges and immunities are being removed for persons such as Members of the European Parliament, because it would be inappropriate for those individuals to continue receiving those privileges and immunities once the UK has left the EU and its institutions.

Scottish Government categorisation of significance of proposals

Category A, with the following characteristics:

- Minor and technical in detail;
- Ensuring continuity of law;
- Clear there is no significant policy decision for Ministers to make; and
- Proposals necessary for continuity where there may be a minor policy change, but limited policy choice and an “obvious” policy answer.

Impact on devolved areas

Privileges and immunities apply across the UK and across devolved and reserved legislation.

Criminal law and policing are within devolved competence. The impact of the removal of these immunities in respect of devolved areas will be limited to in the activities of relevant individuals in those devolved areas for which they will no longer enjoy immunity, namely immunity from legal proceedings as described above.

Summary of stakeholder engagement/consultation

A formal consultation on this statutory instrument has not been carried out. The Scottish Government considers that in the circumstances formal consultation is impractical given the timescales and unnecessary given the limited impact on devolved areas.
A note of other impact assessments, (if available)

Due to the timescales involved in bringing forward this legislation, the Scottish Government has not conducted an assessment of impact but does not consider it necessary given the limited impact.

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

The proposed Regulations relate to a complex mixture of reserved and devolved matters. As the UK Government is bringing forward legislation to address these deficiencies, the Scottish Government considers for reasons of efficiency that consent should be given to Scotland’s inclusion in the statutory instrument to make these technical amendments as the policy is the same across the UK jurisdictions.

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

The instrument is expected to go the sifting committee on 26 November and will be laid no earlier than 10 days later.

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

Drafting issues emerged late. As a consequence, this leaves less than the 28 days for consideration of the notification. If the Committee is able to consider the notification in a shorter timescale that would be appreciated.

Information about any time dependency associated with the proposal

No associated time dependency.

Any significant financial implications?

None identified.