

## **NOTIFICATION TO THE SCOTTISH PARLIAMENT**

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

THE SERVICE OF DOCUMENTS AND THE TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL MATTERS (REVOCAION AND SAVING PROVISION) (EU EXIT) REGULATIONS 2018

### **A brief explanation of law that the proposals amend**

The civil judicial cooperation framework within the EU includes two regulations:

Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (“EU Evidence Regulation”); and

Council Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (“EU Service Regulation”).

The EU Service Regulation and EU Evidence Regulation establish frameworks for the transmission and fulfilment of requests for cross-border service of documents and the taking of evidence in civil and commercial matters between EU Member States. The procedures set out in both instruments are designed to provide an efficient, effective and speedy system of facilitating requests from one EU Member State to the authorities of another.

### **Summary of the proposals and how these correct deficiencies**

The Service of Documents and the Taking of Evidence in Civil and Commercial Matters (Revocation and Saving Provision) (EU Exit) Regulations 2018 (“the Service and Evidence SI”) repeals the EU Service Regulation and the EU Evidence Regulation and the domestic legislation that gives effect to the Regulations. This includes the following Scottish legislation:

The European Communities (Service of Judicial and Extrajudicial Documents) (Scotland) Regulations 2001; and

The European Communities (Service of Judicial and Extrajudicial Documents) (Scotland) Amendment Regulations 2008

The Service and Evidence SI also provides for the cessation of any rights, powers, liabilities, obligations, restrictions, remedies and procedures which are derived from the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters (“the Agreement”). Denmark opted out of both the EU Service Regulation and the EU

Evidence Regulation and a separate agreement was entered.

Savings and transitional provisions ensure the EU Service Regulation, the EU Evidence Regulation, the Agreement and relevant domestic legislation continue to apply to documents received for service by relevant UK authorities before EU Exit and to requests for the taking of evidence received by relevant UK courts and authorities before EU Exit. Section 8 of the EU (Withdrawal) Act provides the vires for a Minister of the Crown, by regulations, to make such provision as he or she considers appropriate to prevent, remedy or mitigate any failure of retained direct EU law to operate effectively, arising from the withdrawal of the UK from the EU. Section 8(2)(c) provides that deficiencies which may be remedied include where the Minister considers that the retained EU law makes provision for, or in connection with, reciprocal arrangements between the UK or any part of it, or a public authority in the UK, and a Member State or public authority in a Member State which no longer exist or are no longer appropriate.

### **An explanation of why the change is considered necessary**

The EU Service Regulation and the EU Evidence Regulation are reciprocal procedural measures, supporting civil judicial cooperation between EU Member States. Post EU-exit, as a third country, the United Kingdom will not have access to the civil judicial cooperation framework, and consequently post EU-exit these reciprocal EU Regulations will cease to have effect in relation to the UK. The UK cannot legislate to restore the necessary reciprocity. The UK is party to two alternative Hague Conventions on service and the taking of evidence. Repeal of the EU Service Regulation and EU Evidence Regulation and domestic implementing legislation is necessary to ensure the UK can fully participate in the two Hague Conventions post EU Exit and to clarify that the EU Service Regulation and EU Evidence Regulation will cease to have legal effect in the UK post EU Exit.

Most other EU Member States are also party to the Hague Conventions on service and the taking of evidence: the 1965 Convention on the Service Abroad of judicial and extra judicial documents in civil or commercial matters (“Hague 1965”); and the 1970 Convention of the taking of evidence abroad in civil or commercial matters (“Hague 1970”), although the EU Service Regulation and EU Evidence Regulation apply as between EU Member States.

Upon the EU Regulations ceasing to have effect in the UK, the UK will be able to fall back on the provisions of Hague 1965 and Hague 1970.

The EU Service Regulation and the EU Evidence Regulation are modelled in large part on the provisions of the Hague Conventions, but contain a more modern approach to the transmission of requests for service and taking of evidence across borders, including the imposition of time limits for confirming and responding to requests.

The Hague Conventions are potentially less effective and efficient in procedural terms, and not all EU Member States have ratified the Conventions, meaning that alternative procedures will need to be employed for those States.

However, the Conventions provide an appropriate international framework to enable requests to be transmitted and fulfilled which the UK can participate in.

### **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**

The Scottish Government has responsibility for civil law and procedure which relates to devolved matters. In absence of these EU frameworks, the fall-back position will be the application of the Hague Conventions which are already implemented in Scotland. The impact will be across the UK and is not specific to Scotland.

### **Summary of stakeholder engagement/consultation**

A formal consultation on this statutory instrument has not been carried out. This statutory instrument is designed to repeal EU legislation which provides for reciprocal effects between Member States. The changes proposed in this SI are necessary due to the fact that the required reciprocity will cease when the United Kingdom ceases to be a Member State of the EU.

The Scottish Government considers that in the circumstances formal consultation is disproportionate and impractical given the timescales.

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

The UK Government has conducted its own assessment for this SI. This will be available when the SI is published by the UK Government.

Due to the timescales involved in bringing forward this legislation, the Scottish Government has not conducted its own assessment, but is cognisant that there are operational differences between the EU Regulations and the Hague Conventions. Namely, the EU Service Regulation is implemented with the transmitting and receiving agents being Sheriff Officers and Messengers at Arms. The 1965 Hague Convention operates a different system with requests transmitted through the Central Authority, which in Scotland is the Scottish Ministers. The EU Evidence Regulation provides for direct court to court requests between Member States. Under the 1970 Hague Convention requests are received by the Central Authority which is the Scottish Ministers. Accordingly, requests are dealt with differently under the Hague Conventions with the result that the operational role of Sheriff Officers and Messengers at Arms is only engaged if it is requested that service is carried out

by Sheriff Officers and Messengers at Arms rather than by postal service.

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

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 minor and technical amendments. The current legislative regime is broadly the same across the UK and the policy position is the same across the UK.

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

These Regulations will be sent to the UK Parliament sifting committees on 29 October 2018. Sifting committees have 10 sitting days to consider the instrument starting the day after receipt. Due to a short recess in the UK Parliament from 6 to 12 November, this takes the sifting period to 15 November. The formal laying date will therefore be 20 November.

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

The Scottish Parliament will have 28 days to scrutinise the proposal to consent.

### **Information about any time dependency associated with the proposal**

No associated time dependency.

### **Any significant financial implications?**

None identified.