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Justice Committee Comataidh a' Cheartais

The Civil and Family Justice (EU Exit) (Scotland) (Amendment etc.) Regulations 2020



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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.



justicecommittee@parliament.scot



0131 348 5047

Committee Membership



Adam Tomkins
Scottish Conservative
and Unionist Party



**Deputy Convener
Rona Mackay**
Scottish National Party



Annabelle Ewing
Scottish National Party



John Finnie
Scottish Green Party



Rhoda Grant
Scottish Labour



Liam Kerr
Scottish Conservative
and Unionist Party



Fulton MacGregor
Scottish National Party



Liam McArthur
Scottish Liberal
Democrats



Shona Robison
Scottish National Party

Introduction

1. At its meeting on 1 December 2020, the Justice Committee considered the following instrument:
 - [The Civil and Family Justice \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2020 \[draft\]](#)
2. The Civil and Family Justice (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 [draft] was laid before the Scottish Parliament on 28 October 2020 and referred to the Justice Committee. The instrument is subject to the affirmative procedure.
3. The Committee is required to report to the Parliament on the instrument by 6 December 2020.

Purpose of the instrument

4. The Regulations are made under paragraphs 1(1) and (3) and 11G(1) of schedule 2, and paragraph 21(b) of schedule 7, of the European Union (Withdrawal) Act 2018 (“the 2018 Act”) to address failures of retained EU law to operate effectively and other deficiencies in retained EU law (in particular to address reciprocal arrangements which no longer exist and are no longer appropriate and EU references which are no longer appropriate) arising from the withdrawal of the UK from the European Union.
5. The Regulations amend a number of pieces of primary and secondary Scottish legislation relating to EU law requirements on mediation, legal aid, recognition of civil status documents (such as birth certificates), ability to practice as a lawyer, and cross-border family law disputes.
6. A number of the changes implement provisions of the Withdrawal Agreement, which makes provision in respect of ongoing judicial cooperation in civil and commercial matters relating to certain EU measures. Some of the changes reflect the fact that reciprocity with EU Member States is no longer in place once the implementation period comes to an end.

Consideration by the Delegated Powers and Law Reform Committee

7. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 10 November 2020 under the [SSI Protocol](#) agreed between the Scottish Government and the Scottish Parliament in respect of SSIs made using the powers under the European Union (Withdrawal) Act 2018.
8. The instrument has been categorised by the Scottish Government as of low significance under the SSI Protocol on the basis that the amendments made by the instrument are “predominantly concerned with technical detail including amendments to primary legislation to ensure the law operates after IP completion day. There is no significant policy choice involved.”
9. The DPLR Committee considers the low categorisation as insufficient, particularly in light of the revocation of the Multilingual Standard Forms (Fees) (Scotland) Regulations 2018. The 2018 Regulations make provision to allow National Records of Scotland to charge a fee of £10 for issuing multilingual standard forms to be attached to civil status documents for presentation in EU Member States. The Business and Regulatory Impact Assessment prepared for the instrument suggests the costs for translation are likely to be between £50 and £60, in comparison to the current £10 fee.
10. The DPLR Committee recommended that the instrument should be categorised as medium in terms of its significance under the SSI protocol.
11. In relation to its standard technical scrutiny of the instrument, the DPLR Committee agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.
12. The relevant extract from the [Delegated Powers and Law Reform Committee's report](#) can be found in the Annex.

Consideration by the Justice Committee

13. Motion S5M-23183 was lodged proposing that the Committee recommends approval of the instrument. The Committee took oral evidence from Minister for Community Safety("the Minister"), Ash Denham MSP at its meeting on 1 December 2020.
 14. The Minister outlined the purpose of the Order to the Committee, as set out previously.
 15. There being no questions from Members, the Minister moved the motion in her name: S5M-23183—That the Justice Committee recommends that the Civil and Family Justice (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 [draft] be approved.
 16. The motion was agreed to without debate or division.
17. The Justice Committee recommends to the Scottish Parliament that it approve the Civil and Family Justice (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 [draft] .

Annex

EXTRACT FROM THE DELEGATED POWERS AND LAW REFORM COMMITTEE'S REPORT ON THIS INSTRUMENT

Civil and Family Justice (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (SSI 2020/draft)

Purpose

The Regulations amend a number of pieces of primary and secondary Scottish legislation relating to EU law requirements on mediation, legal aid, recognition of civil status documents (such as birth certificates), ability to practice as a lawyer, and cross-border family law disputes.

A number of the changes implement provisions of the Withdrawal Agreement, which makes provision in respect of ongoing judicial cooperation in civil and commercial matters relating to certain EU measures. Some of the changes reflect the fact that reciprocity with EU Member States is no longer in place once the implementation period comes to an end.

Committee consideration on how the instrument has been categorised by the Scottish Government

The instrument has been categorised by the Scottish Government as of low significance under the SSI Protocol on the basis that the amendments made by the instrument are “predominantly concerned with technical detail including amendments to primary legislation to ensure the law operates after IP completion day. There is no significant policy choice involved.”

The Committee considers the low categorisation as insufficient, particularly in light of the revocation of the Multilingual Standard Forms (Fees) (Scotland) Regulations 2018. The 2018 Regulations make provision to allow National Records of Scotland to charge a fee of £10 for issuing multilingual standard forms to be attached to civil status documents for presentation in EU Member States. The Business and Regulatory Impact Assessment prepared for the instrument suggests the costs for translation are likely to be between £50 and £60, in comparison to the current £10 fee.

The Committee recommends the instrument should be categorised as medium in terms of its significance under the SSI protocol.

