

UK MINISTERS ACTING IN DEVOLVED AREAS

The European Institutions and Consular Protection (Amendment etc.) (EU Exit) Regulations 2018

Laid in the UK Parliament: 26 November 2018

Sifting

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| Subject to sifting in UK Parliament? | Yes |
| Procedure: | Proposed negative |
| Date of consideration by the House of Commons European Statutory Instruments Committee | 11 December 2018 |
| Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee | |
| Date sifting period ends in UK Parliament | 12 December 2018 |
| Written statement under SO 30C: | Paper xx |
| SICM under SO 30A (because amends primary legislation) | Not required |

Scrutiny procedure

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| Outcome of sifting | Not known |
| Procedure | Negative or Affirmative |
| Date of consideration by the Joint Committee on Statutory Instruments | Not known |
| Date of consideration by the House of Commons Statutory Instruments Committee | Not known |
| Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee | Not known |

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21(b) of Schedule 7 of the European Union (Withdrawal) Act 2018.

The SI has been drafted on the basis of a no deal scenario where the UK ceases to remain part of any of the EU's institutions and bodies. If a withdrawal agreement is agreed whereby the UK negotiates to remain party of some of those institutions and bodies, then parts of this instrument may be delayed or revoked.

This instrument revokes, amends or makes savings in respect of Directly Effective Treaty Rights (DETRs") arising from Articles of the Treaty on the Functioning of the European Union and its Protocols ("TFEU"). It also makes amendments or revocations in respect of retained direct EU law

("RDEUL") which relates to the functioning of institutions and bodies of the European Union and the applications of its rules in EU legislation.

This instrument also addresses two Articles which are not directly related to the institutions of the EU but relate to consular protection in non-EU countries. These provide that if an EU citizen is in a country outside of the EU, where their country does not have consular or diplomatic representation, then that EU citizen is entitled to protection by the diplomatic or consular authorities of any Member State, on the same condition as the nationals of that State.

This instrument also addresses protocols relating to the Court of Justice of the European Union and the privileges and immunities of the European Union.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 27 November 2018 regarding the effect of these Regulations:

Paragraph 10.1 of the Explanatory Memorandum states that as per the Intergovernmental Agreement on the European Union (Withdrawal) Act 2018 ("EUWA"), the Welsh Government were consulted with regard to these Regulations. Consent from the Welsh Government to the UK government was given in a letter by Mark Drakeford AM dated 22 November 2018. Notwithstanding the requirement to consult, the Welsh Government's statement does not identify which legislative powers of the Assembly or executive powers of the Welsh Ministers are affected by this instrument. In fact, the instrument appears to relate to non-devolved areas. Legal advisors recommend that clarification is sought on which devolved powers are affected.

While the Welsh Government's statement indicates that there is no divergence between the Welsh Government and UK Government on the policy for the correction, the statement fails to highlight to what degree devolved areas are affected by this instrument, and the extent to which consent was needed from the Welsh Government. The statement only says that consent was given for reasons of efficiency, expediency and due to the technical nature of the amendments.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations