

Draft Regulations laid before the Scottish Parliament under paragraph 1(6) of schedule 7 of the European Union (Withdrawal) Act 2018 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

**EXITING THE EUROPEAN UNION
FAMILY LAW
JUDGMENTS
LEGAL AID AND ADVICE
LEGAL PROFESSION
MEDIATION**

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

Made - - - - 2020

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by 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”)(1) and sections 12 and 14 and paragraph 12 of schedule 4 of the European Union (Withdrawal Agreement) Act 2020(2) and all other powers enabling them to do so.

In accordance with paragraph 4(b) of schedule 2 of the 2018 Act, they have consulted with the Secretary of State.

In accordance with paragraph 1(6) of schedule 7 of the 2018 Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

(1) 2018 c.16. Paragraph 11G was added by section 19 of the European Union (Withdrawal Agreement) Act 2020 (c.1) and paragraph 21(b) of schedule 7 was amended by section 41(4) of, and paragraph 53(2)(b) of the schedule of that Act.
(2) 2020 c.1. The powers in sections 12 and 14 are exercisable by the “appropriate authority” as to which see section 12(8) and section 14(6).

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Civil and Family Justice (EU Exit) (Scotland) (Amendment etc.) Regulations 2020.

(2) They come into force—

- (a) as regards regulations 15 and 16, immediately before IP completion day⁽³⁾,
- (b) as regards all other regulations, on IP completion day.

(3) These Regulations extend to Scotland and insofar as they extend beyond Scotland they do so as a matter of Scots law.

PART 2

Mediation

Amendment of the Prescription and Limitation (Scotland) Act 1973

2.—(1) The Prescription and Limitation (Scotland) Act 1973⁽⁴⁾ is amended as follows.

(2) In section 14 (computation of prescriptive periods)—

- (a) omit subsections (1A), (1B) and (1C) (extension of prescriptive periods: cross-border mediation),
- (b) in subsection (2), omit the definitions of—
 - (i) “the Directive”,
 - (ii) “mediation” and “mediator”,
 - (iii) “relevant cross-border dispute”.

(3) Omit section 19F (extension of limitation periods: cross-border mediation).

Amendment of the Civic Government (Scotland) Act 1982

3.—(1) The Civic Government (Scotland) Act 1982⁽⁵⁾ is amended as follows.

(2) In section 71 (right arising on disposal of property)—

- (a) in subsection (2), omit “subject to subsection (3) below”,
- (b) omit subsections (3) to (6).

Amendment of the Rent (Scotland) Act 1984

4.—(1) The Rent (Scotland) Act 1984⁽⁶⁾ is amended as follows.

(2) In section 37(3) (recovery from landlord of sums paid in excess of recoverable rent, etc.), omit “Subject to section 37A(1) below”.

(3) “IP completion day” means 31 December 2020 at 11.00 pm by virtue of section 39(1) of the European Union (Withdrawal Agreement) Act 2020.

(4) 1973 c.52. Subsections (1A), (1B) and (1C) of section 14, the definitions in section 14(2) listed in regulation 2(2)(b) and section 19F were added by S.S.I. 2011/234.

(5) 1982 c.45. Section 71(2) was amended, and subsections (3) to (6) of section 71 were added by S.S.I. 2011/234.

(6) 1984 c.58. Section 37(3) was amended, and section 37A was added by S.S.I. 2011/234.

(3) Omit section 37A (extension of time limits for recovery from landlord: cross-border mediation).

Amendment of the Family Law (Scotland) Act 2006

5.—(1) The Family Law (Scotland) Act 2006(7) is amended as follows.

(2) In sections 28(8) (financial provision where cohabitation ends otherwise than by death) and 29(6) (application to court by survivor for provision on intestacy), omit “Subject to section 29A”.

(3) Omit section 29A (extension of time limits for applications under sections 28 and 29: cross-border mediation).

Revocation of the Cross-Border Mediation (Scotland) Regulations 2011

6. The Cross-Border Mediation (Scotland) Regulations 2011(8) are revoked.

Saving: the Cross Border Mediation (Scotland) Regulations 2011: application of Article 69 of the withdrawal agreement – mediations begun before IP completion day

7. Nothing in this Part affects the application of paragraph 1(b) of Article 69 of the withdrawal agreement and legislation amended or revoked by this Part continues to have effect for the purposes of that paragraph as if the amendments or revocations had not been made.

PART 3

Legal Aid

Amendment of the Legal Aid (Scotland) Act 1986

8. In section 15 (financial conditions) of the Legal Aid (Scotland) Act 1986(9) omit subsection (4).

Amendment of the Civil Legal Aid (Scotland) Regulations 2002

9.—(1) The Civil Legal Aid (Scotland) Regulations 2002(10) are amended as follows.

(2) In regulation 46 (applications under the European Judgments Convention), in paragraph (1) (d)(ii) omit “other than an EU Member State”.

(3) Omit regulation 48 (cross-border disputes).

Amendment of the Legal Aid (Scotland) Act 1986 Amendment Regulations 2004

10. In the Legal Aid (Scotland) Act 1986 Amendment Regulations 2004(11), omit regulation 3.

Amendment of the Civil Legal Aid (Scotland) Amendment (No. 2) Regulations 2004

11. In the Civil Legal Aid (Scotland) Amendment (No. 2) Regulations 2004(12), omit regulation 5.

(7) 2006 asp 2. Section 29A was added by S.S.I. 2011/234.

(8) S.S.I. 2011/234.

(9) 1986 c.47. Section 15(4) was added by S.S.I. 2004/493.

(10) S.S.I. 2002/494. Regulation 46(1)(d) was added by S.S.I. 2012/301. Regulation 48 was added by S.S.I. 2004/491.

(11) S.S.I. 2004/493.

(12) S.S.I. 2004/491.

Saving: Council Directive 2003/8/EC: application of Article 69 of the withdrawal agreement – applications received before IP completion day

12. Nothing in this Part affects the application of paragraph 1(a) of Article 69 of the withdrawal agreement and legislation amended by this Part continues to have effect for the purposes of that paragraph as if the amendments had not been made.

Transitional provision

13.—(1) Nothing in regulations 8 to 11 affects an application for civil legal aid falling within paragraph (2).

(2) An application falls within this paragraph if it is an application submitted to the Board in accordance with Article 13(1)(b) of the Cross-Border Legal Aid Directive, reading that Article as if the United Kingdom were a member State, which—

(a) is made using the standard form for legal aid applications established under Article 16 of the Cross-Border Legal Aid Directive; and

(b) is received by the Board before 1700 hours on the 15th day following IP completion day.

(3) For the purposes of an application falling within paragraph (2), the provisions in regulations 8 to 11 have effect as if the United Kingdom were a member State.

(4) In this regulation—

“civil legal aid” has the meaning given in section 13(2) of the Legal Aid (Scotland) Act 1986,

“the Board” means the Scottish Legal Aid Board,

“the Cross-Border Legal Aid Directive” means Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

PART 4

Civil Status Documents

Revocation: the Multilingual Standard Forms (Fees) (Scotland) Regulations 2018

14. The Multilingual Standard Forms (Fees) (Scotland) Regulations 2018(13) are revoked.

PART 5

Legal Services

Amendment of the Services of Lawyers and Lawyer’s Practice (EU Exit) (Scotland) (Amendment etc.) Regulations 2019

15.—(1) The Services of Lawyers and Lawyer’s Practice (EU Exit) (Scotland) (Amendment etc.) Regulations 2019(14) are amended as follows.

(2) In each of the following provisions, for “exit day”, substitute “IP completion day”—

(a) regulation 4 (transitional provision: the European Communities (Services of Lawyers) Order 1978),

(13) S.S.I. 2018/373.

(14) S.S.I. 2019/127.

- (b) regulation 5 (transitional provision: the European Communities (Services of Lawyers Order 1978 and Switzerland),
 - (c) regulation 6 (transitional provision: the European Communities (Lawyer's Practice) (Scotland) Regulations 2000),
 - (d) regulation 7 (transitional provision: the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 and Swiss Lawyers),
 - (e) regulation 9 (transitional provision: disciplinary proceedings),
 - (f) regulation 11 (transitional provision: applications by Swiss lawyers for entry into profession of solicitor or advocate).
- (3) For regulation 5(3)(b), substitute—
- “(b) if the period referred to in sub-paragraph (a) is extended in accordance with Article 23(2) of the Swiss citizens' rights agreement (as that agreement is defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020(15)), the end of that period as extended.”
- (4) For regulation 6, substitute—

“Transitional provision: the European Communities (Lawyer's Practice) (Scotland) Regulations 2000

6.—(1) This regulation applies to a professional body in relation to a solicitor or advocate in the situations described in paragraphs (2) or (3).

(2) The first situation is where the solicitor or advocate has a pending application under Article 10(1), (3) and (4) of the Directive as referred to in Article 28 of the withdrawal agreement or Article 27 of the EEA EFTA separation agreement (as those agreements are defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020).

(3) The second situation is where Article 30(2), 31(1) (to the extent it applies Articles 2 and 10 of the Directive) or (2), or 32(3) or (4) of the Swiss citizens' rights agreement (as that agreement is defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020) applies to a solicitor or advocate.

(4) Where this regulation applies, the provisions of the 2000 Regulations mentioned in paragraph (5) continue to have effect as if they had not been revoked by regulation 3, but with the modifications specified in that paragraph.

(5) The provisions referred to in paragraph (4) are—

- (a) regulation 2 (interpretation),
- (b) regulation 4(1)(b) and (d) and (2)(b) and (d) (competent authorities),
- (c) regulation 5 (exchange of information), modified so that it has effect as if—
 - (i) for paragraph (1) there were substituted—

“(1) In order to facilitate compliance with Article 29 of the withdrawal agreement, Article 28 of the EEA EFTA separation agreement and Article 33 of the Swiss citizens' rights agreement (as those agreements are defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020), a professional body must cooperate with any authority in any of the States listed in regulation 2(4) which has been designated under the Directive by that State as a competent authority in that State and supply or receive from any such authority, information relating to a solicitor or advocate, or to any person with whom that solicitor or advocate jointly practices.”, and

(ii) in paragraph (2) the reference to “European lawyer” were a reference to “solicitor or advocate”,

(d) regulation 28 (disciplinary proceedings against a solicitor or advocate).

(6) In this regulation the terms “advocate”, “Directive”, “professional body” and “solicitor” have the same meaning as in regulation 2(1) of the 2000 Regulations as it had effect immediately before IP completion day.”

(5) For regulation 7(5), substitute—

“(5) The provisions of the 2000 Regulations referred to in paragraph (3) cease to continue to have effect in relation to an individual where that individual ceases to be registered with one of the relevant professional bodies under regulation 17 of the 2000 Regulations (as it has effect by virtue of this regulation) at or after the end of the period of 4 years beginning with IP completion day and that individual—

- (a) was a registered European lawyer before the end of the period of 4 years beginning with IP completion day,
- (b) is a Swiss lawyer of the description in paragraph (4)(b) who became a registered European lawyer at or after the end of the period of 4 years beginning with IP completion day,
- (c) is a Swiss lawyer of the description in paragraph (4)(c) whose suspension as a registered European lawyer ended or was terminated at or after the end of the period of 4 years beginning with IP completion day, or
- (d) is a Swiss lawyer of the description in paragraph (4)(d) whose registration as a registered European lawyer was restored at or after the end of the period of 4 years beginning with IP completion day following the final determination of an appeal.”

(6) For regulation 7(6)(d), substitute—

“(d) except where regulation 11(4)(a) (transitional provision: applications by Swiss lawyers for entry into profession of solicitor or advocate) of these Regulations applies, regulation 5 (exchange of information), modified so that it has effect as if—

(i) for paragraph (1) there were substituted—

“(1) In order to facilitate the application of the Directive and to prevent its provisions from being misapplied, and to facilitate compliance with Article 33 of the Swiss citizens’ rights agreement (as that agreement is defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020), a professional body must cooperate with any authority which has been designated by Switzerland under the Directive as a competent authority in Switzerland and supply or receive any information relating to a European lawyer, or to any person with whom that European lawyer jointly practices, with other professional bodies, the Faculty of Advocates or Law Society of Scotland or an authority which has been designated by Switzerland under the Directive as a competent authority in Switzerland.”, and

(ii) paragraph (3) were omitted.”

(7) For regulation 7(6)(g), substitute—

“(g) regulation 8 (joint practice), modified so that it has effect as if for it there were substituted—”

“Joint Practice

8. A registered European lawyer may carry out professional activities under that lawyer’s Swiss professional title as part of a joint practice—

- (a) to the same extent and in the same manner as a member of the professional body with which the lawyer is registered may do so, with—
 - (i) a member of the professional body with which the lawyer is registered,
 - (ii) a registered European lawyer who is registered with the same professional body, or
 - (iii) any other person permitted by the professional body with which the lawyer is registered, or
 - (b) with another individual who is—
 - (i) a national of the United Kingdom, a member State of the European Union, Iceland, Liechtenstein, Norway or Switzerland, and
 - (ii) practising on a permanent basis under that individual’s Swiss professional title in Switzerland.”.
- (8) In regulation 9—
- (a) in paragraphs (2)(a)(ii), (3)(a)(ii) and (4)(a)(ii), for “regulation 6 or 7”, substitute “regulation 7”,
 - (b) omit paragraphs (2)(b), (3)(b) and (4)(b),
 - (c) in paragraph (6), before paragraph (a) insert—
 - “(aa) regulation 2 (interpretation),”.
- (9) In regulation 10—
- (a) for paragraph (1), substitute—
 - “(1) This regulation applies where an application under regulation 29 of the 2000 Regulations (as that regulation had effect immediately before IP completion day) for an exemption from a requirement to pass an aptitude test is made before IP completion day and—
 - (a) that application has not been determined before IP completion day,
 - (b) any appeal against the determination of that application has not been finally determined or withdrawn before IP completion day, or
 - (c) the time limit for bringing an appeal against the determination of the application has not expired. ”.
 - (b) before paragraph (4)(a) insert—
 - “(aa) regulation 2 (interpretation),
 - (bb) regulation 4(1)(b) and (d) and (2)(b) and (d) (competent authorities),
 - (cc) regulation 5 (exchange of information), modified so that it has effect as if for paragraph (1) there were substituted—
 - “(1) In order to facilitate compliance with Article 29 of the withdrawal agreement and Article 28 of the EEA EFTA separation agreement (as those agreements are defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020), a professional body must cooperate with any authority in any of the States listed in regulation 2(4) which has been designated under the Directive by that State as a competent authority in that State and supply or receive any information relating to a European lawyer or to any person with whom that European lawyer jointly practices.”.
- (10) In regulation 11—
- (a) for paragraph (2), substitute—

“(2) Where this regulation applies, regulation 5 (exchange of information) and Part 5 (entry into the profession of solicitor or advocate) of the 2000 Regulations continue to have effect in relation to a Swiss lawyer referred to in paragraph (1) as if not revoked by regulation 3, subject to paragraph (3) and the modifications specified in paragraph (4).”

(b) for paragraph (4), substitute—

“(4) The modifications to the 2000 Regulations referred to in paragraph (2) are—

(a) regulation 5 is modified so that it has effect as if for paragraph (1) there were substituted—

“(1) In order to facilitate compliance with Article 33 of the Swiss citizens’ rights agreement (as that agreement is defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020), a professional body must cooperate with an authority which has been designated by Switzerland under the Directive as a competent authority in Switzerland and may supply to or receive from any such authority, information relating to a European lawyer or to any person with whom that European lawyer jointly practices.”

(b) regulation 29 (application by a registered European lawyer) is modified so as to have effect as if—

(i) in paragraph (1), “under regulation 6(1)(b)(ii) of the Qualifications Regulations” were omitted,

(ii) in paragraphs (2)(b) and (3)(b) and (c), for “home professional title” there were substituted “Swiss professional title”,

(c) regulation 36 (practice under the title of solicitor or advocate) is modified so as to have effect as if—

(i) in paragraph (2)—

(aa) for “home professional title”, in both places where it occurs, there were substituted “Swiss professional title”, and

(bb) for “his home State”, in both places where it occurs, there were substituted “Switzerland”, and

(ii) in paragraph (3) for “home professional title”, in both places where it occurs, there were substituted “Swiss professional title”.

(11) In the schedule, for paragraph 2(1), substitute—

“(1) The provisions of the Solicitors (Scotland) Act 1980(16) mentioned in paragraph (2) continue to have effect on and after IP completion day, as applied by regulation 37(2) and schedule 2 of the 2000 Regulations as if the 2000 Regulations had not been revoked by regulation 3, in relation to an individual who—

(a) was a registered European lawyer (within the meaning of regulation 2(1) of the 2000 Regulations as it had effect immediately before IP completion day), registered with the Law Society of Scotland, at a time before IP completion day, but

(16) 1980 c.46, as relevantly amended by section 56 and schedule 1, paragraphs 12, 21, 22, 23, 24, 26, 27, 28, 29 and 35 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 c.73, sections 21B and 31(3), schedule 8, paragraphs 29(9), 29(10), 29(12), 29(17)(a)(i) to (iii), 29(17)(b) to (e), 29(17)(f)(ii), and 29(17)(g), 31(3)(b) and schedule 9 of, the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 c.40, S.I. 1992/2890, S.I. 1999/1042, S.I. 1999/1820, S.S.I. 2000/121, S.I. 2001/3649, section 2(3) to, the Enterprise Act 2002 c.40, sections 13(b) and (c)(i) to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), S.S.I. 2004/383, sections 56(1) to (2), 57(1), 58(2) to (6), 60(2), and schedule 5, paragraphs 1(6), 1(13), 1(14), 1(15), 1(16), 1(17), 1(18)(a) to (c), (19), (20), (21) and (26) of, the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), schedule 23, paragraph 1, of the Legal Services Act 2007 (c.29), S.S.I. 2008/332, 124(2) (a), 128(1) to (2), 129(1), 130(a), 136(2) and 139 of, the Legal Services (Scotland) Act 2010 (asp 16), S.S.I. 2011/235, S.I. 2017/692, S.I. 2018/1337, and schedule 1, paragraph 4 of, the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (asp 10). There are other amending instruments not relevant to these Regulations.

(b) is not a Swiss lawyer to whom regulation 7 applies,
as those provisions had effect before IP completion day in relation to an individual who had ceased to be registered with the Law Society of Scotland under regulation 17 of the 2000 Regulations.”.

PART 6

Family Law

Amendment of the Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019

16. For regulation 6 (saving and transitional provisions) of the Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019(17) substitute—

“Saving and transitional provisions

6. Nothing in these Regulations affects the application of paragraphs 1, 2(b) and 3(a) of Article 67 of the withdrawal agreement and legislation amended or revoked by these Regulations continues to have effect for the purposes of those paragraphs as if the amendments and revocations had not been made. ”

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These 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.

The Regulations are also made under sections 12 and 14 of the European Union (Withdrawal Agreement) Act 2020 (“the 2020 Act”) which make provision for recognition of professional qualifications and equal treatment and provisions implementing the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the Atomic Energy Community (“the withdrawal agreement”), the EEA EFTA separation agreement and the Swiss citizens’ rights agreement (as those agreements are defined in section 39(1) of the 2020 Act).

The Regulations also make savings and transitional provision in respect of matters and procedures begun but not completed before the end of the implementation period (referred to as “IP completion day”, being 31 December 2020 at 11.00 pm) and in light of Title VI of Part 3 of the withdrawal agreement. Title VI makes provision in respect of ongoing judicial cooperation in civil and commercial matters relating to certain EU measures. Generally, it preserves the application of particular EU measures in respect of any matters or procedures begun but not completed before the end of the implementation period. By virtue of sections 7A and 7C of the 2018 Act, rights, powers, obligations, remedies etc. as they arise or are created from time to time in the withdrawal agreement are given legal effect in the United Kingdom.

The Regulations make amendments to a number of Scottish statutory instruments that made provision in relation to the United Kingdom’s exit from the European Union.

Part 2 revokes the Cross-Border Mediation (Scotland) Regulations 2011 (“the 2011 Regulations”). The 2011 Regulations partially implemented [Directive 2008/52/EC](#) of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (“the Mediation Directive”). The Regulations also ensure alignment with the United Kingdom’s obligations under Article 69 of the withdrawal agreement.

Part 3 makes amendments to the Legal Aid (Scotland) Act 1986 and related statutory instruments to remove references to Council [Directive 2003/8/EC](#), which make provision for civil legal aid for cross-border disputes, and to remove an exception relating to EU Member States in respect of the Convention on the International Recovery of Child Support and other forms of Family Maintenance (“the Hague Convention 2007”). It also provides transitional and saving provisions.

Part 4 revokes the Multilingual Standard Forms (Fees) (Scotland) Regulations 2018 given that the obligation to issue such forms will fall away on IP completion day.

Part 5 makes amendments to legislation in the field of legal services and amends the Services of Lawyers and Lawyer’s Practice (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 in light of Article 28 of the withdrawal agreement and sections 12 and 14 of the 2020 Act and to update references to “exit day” to “IP completion day”. It also makes consequential amendments and transitional provision.

Part 6 relates to family law. Regulation 16 amends the Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations

2019 before they come into force. It replaces regulation 6 (saving and transitional provisions) of those Regulations with provision which makes it clear that nothing in those Regulations affects the application of the relevant paragraphs of Article 67 of the withdrawal agreement, so that for the purposes of those paragraphs, in respect of legal proceedings begun before IP completion day, the changes made by those Regulations do not have effect (and so the relevant EU instruments will continue to apply as provided by those paragraphs for jurisdiction, recognition and enforcement of judgments and co-operation between authorities).