
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

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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).