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## Justice Committee Comataidh a' Cheartais

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12th Report, 2019 (Session 5)

# What a 'no deal' Brexit means for civil and criminal law in Scotland - a summary of subordinate legislation considered by the Justice Committee to date

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## **Justice Committee**

What a 'no deal' Brexit means for civil and criminal law in Scotland - a summary of subordinate legislation considered by the Justice Committee to date, 12th Report, 2019 (Session 5)

# **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.



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# Introduction

1. As the UK continues the process of leaving the EU, the Scottish Parliament and other legislatures in the UK have been considering whether the current body of law within Scotland and the UK needs to be amended to reflect the fact that the UK will no longer be a member of the EU after exit day.
2. Many of Scotland's laws come from having been part of the EU. [The European Communities Act 1972](#) brought the UK into the EU and gave EU law precedence over UK law. A lot of EU law which is effective across the UK relies on the 1972 Act.
3. In June 2018, the UK Parliament passed the [European Union \(Withdrawal\) Act 2018](#). The effect of that Act is that most EU law is converted into domestic law (known as "retained EU law") and therefore continues to have effect in the UK post exit day.
4. In many cases the conversion into domestic law will be effective, but in others it has the potential to lead to the law being unclear or not working as intended unless changes are made to reflect that the UK is no longer a Member State of the EU. For example, any references to EU bodies and the EU itself will no longer be appropriate after the UK has left the EU.
5. Under the European Union (Withdrawal) Act 2018, both UK and Scottish Government Ministers have special powers to make regulations to correct deficiencies in converted EU law to ensure the statute book is ready for Brexit.
6. Some of the changes to the law in Scotland are being made at a UK level, with the consent of the Scottish Government. The changes are being made through Statutory Instruments (SIs) considered in the UK Parliament. A [protocol](#) governing the arrangement for this process has been agreed between the Scottish Government and Scottish Parliament. The approval of the Scottish Parliament is sought as these SIs will make changes in devolved areas, which it would be within the legislative competence of the Scottish Parliament to make. The Scottish Parliament's role is to scrutinise the Scottish Government's proposal to grant consent in each case, which is set out in a [consent notification](#). Any changes should be broadly technical in nature. Under the protocol, the lead committee in the Scottish Parliament has 28 days to consider the consent notification and to indicate whether the committee is content (although the Scottish Government may ask for an earlier response). [Insert flowchart of procedure under protocol]
7. In other areas, the necessary changes to retained EU law are being made by Scottish Statutory Instruments (SSIs) proposed by the Scottish Government and considered by the Scottish Parliament. These instruments follow the [standard negative or affirmative procedure](#) for the consideration of subordinate legislation in the Scottish Parliament. Before doing so, however, the lead committee considers whether the Scottish Government has chosen the appropriate procedure for these SSIs. This process is known as [sifting](#). A further [protocol](#) for these SSIs has been agreed to with the Scottish Government. [Insert flowchart of procedure under protocol]

8. In total, the Committee has considered 12 Brexit SI consent notifications and three Brexit SSIs to date. **Annex A** contains a full list of the statutory instruments considered by the Justice Committee to date.
9. These 15 different statutory instruments have made changes to the current body of law in Scotland in many different areas of civil and criminal law, including:
  - Family law, including cross-border residence and contact disputes and the recovery of maintenance
  - Civil and commercial law, including the recognition and enforcement of judgments
  - Criminal justice, policing and security
  - Other areas such as privileges and immunities, licensing, and the practising rights of lawyers from other EU Member States
10. The process of ensuring that domestic law is fit for purpose will continue after Brexit day. Due to the scale of the task, priority has been given to correcting those areas of law considered most important. Further primary and secondary legislation will be required to make sure that the whole of the Scottish statute book still works effectively following exit from the EU.
11. This report summarises the changes that have been made to date via subordinate legislation to civil and criminal law in Scotland in the justice field to prepare for a possible 'no deal' scenario for Brexit (i.e. the UK leaves the EU without a negotiated settlement). This report is not about the merits or otherwise of the UK's decision to cease being a member of the EU. As such, it does not set out the Committee's views on Brexit.

# Summary of subordinate legislation considered

## Family law

### International Recovery of Maintenance (Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance 2007) (EU Exit) Regulations 2018

12. Part of the EU's [cooperation in the field of civil justice](#) governs the interaction between different Member States' legal systems in cross-border situations. In other words, in which Member State's court a case will be heard, which law will apply, and how judgments obtained in one Member State can be enforced in another Member State.
13. In the field of EU family law, one important regulation is [Council Regulation \(EC\) No 4/2009](#) (the Maintenance Regulation). The Maintenance Regulation applies to obligations to pay maintenance (or financial support). It covers maintenance cases which have a connection with more than one Member State, for example, where one litigant is French-born and the other is UK-born. The Maintenance Regulation provides EU-level rules on which Member State's court should have authority to resolve such a dispute (jurisdiction). It also provides an EU system for the recognition and enforcement of a court judgment made in one country in another country.
14. In the event that the UK leaves the EU without a negotiated settlement - the 'no deal' scenario - the Maintenance Regulation would cease to operate on a reciprocal basis with the remaining EU Member States.
15. The [Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance](#) (the 2007 Hague Convention) provides a system for the international recovery of child support and other forms of family maintenance. It also provides a system for the recognition and enforcement of maintenance decisions across borders.
16. The UK has until recently participated in the 2007 Hague Convention by virtue of EU membership. This would have ceased after the UK's withdrawal from the EU. When the SI was introduced the UK was seeking to join the Convention as an independent contracting party; it has now done so.
17. The [International Recovery of Maintenance \(Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance 2007\) \(EU Exit\) Regulations 2018](#) are aimed at ensuring that the provisions of the 2007 Hague Convention will work effectively between the UK and all the existing contracting parties (including the EU) after the UK's exit from the EU. Further information can be found in the [SI consent notification](#).
18. In the event of a no deal scenario, had the SI not been approved then it is unclear what national rules would have applied to child support and maintenance. One

issue would be whether Members States would necessarily recognise and enforce UK maintenance orders, and vice versa (the 2007 Hague Convention includes a requirement of "prompt and effective enforcement of such orders"). The SI consent notification stated that, without continued participation in the 2007 Convention, there would no longer be "effective international arrangements" between Scotland and other countries for enforcement of maintenance agreements, causing difficulties for families.

### **Justice Committee consideration**

19. At its meeting on [2 October 2018](#), the Committee agreed that it was content for the Scottish Government to give its consent for the UK Ministers to lay the SI in the UK Parliament. The Committee's report on the SI consent notification can be accessed [here](#).

## **Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019**

20. On exit day, under the European Union (Withdrawal) Act 2018, the Maintenance Regulation will become retained EU law. However, in a no-deal scenario, this retained EU law will cease to operate reciprocally between EU Member States and the UK. Accordingly, the [Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) revoke the Maintenance Regulation as retained EU law, with a series of savings for cases which are 'live' on exit day. Related domestic legislation for the Maintenance Regulation is amended accordingly.
21. The SI [consent notification](#) stated that where there is an alternative international Convention, this will be used instead. As discussed above, the UK is now a member of the 2007 Hague Convention on family maintenance.
22. The SI consent notification went on to state:
 

**”** As the UK already operates these other Conventions, either in its own right or by virtue of EU membership, the implementing legislation is mostly in place. The SI, however, makes a number of minor amendments to ensure that those Conventions now operate with respect to EU Member States where currently the EU Regulation takes precedence. Where there are no other international agreements which cover areas in the Maintenance Regulation, the intention of the Scottish Government is to revert to the pre-EU rules concerning jurisdiction to decide maintenance claims.
23. The SI also makes provision in relation to another key EU regulation in the area of family law - Council Regulation (EC) No. 2201/2003 - known as "Brussels Ila". Brussels Ila provides rules:
  - to determine which Member State's courts have jurisdiction over cross-border cases relating to matrimonial matters (including divorce) or parental responsibility matters (including child residence and contact, also sometimes known as custody and access)

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- on the recognition and enforcement of judgments relating to these matters between Member States
  - on the return of children abducted to, or wrongfully retained in, other Member States (which supplement the [Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction](#))
24. As with the Maintenance Regulation, on exit day Brussels IIa will become retained UK law. Again, in a no-deal scenario, this retained EU law will cease to operate reciprocally between EU Member States and the UK. The SI revokes Brussels IIa for England and Wales and Northern Ireland only. The SI consent notification indicated that the Scottish Government intended to bring forward a separate SSI relating to Brussels IIa in Scotland. It has subsequently done so and this SSI is discussed further below.
25. The UK SI does, however, make amendments for Scotland in legislation concerning international child abduction under Brussels IIa. Specifically, it repeals for Scotland the provisions within the Child Abduction and Custody Act 1985 that provide for Article 60 of Brussels IIa to take precedence over the 1980 Hague Convention on international child abduction. This is known as the "child abduction override".
26. The child abduction override allows a court in the country of a child's habitual residence to make an order for return which will prevail over the refusal of a court in another EU Member State to order the return of the child under the 1980 Hague Convention. The SI means that the 1980 Hague Convention remains in force in the UK but, from exit day, without the child abduction override for EU Member States. According to the SI notification, the override is rarely used and unilateral retention is not considered appropriate. Decisions not to return a child will instead be subject to appeal.

## **Justice Committee consideration**

27. The Committee considered the SI notification at its meeting on [4 December 2018](#). The Committee noted that the time allowed for scrutiny of the SI notification had been surprisingly short. The Committee also sought clarification from the Scottish Government that there were no substantive differences between the SI and what was proposed in the Scottish Government's consultation earlier this year on the effect of Brexit on family law. The Scottish Government responded that this was the case (see the Annex of the Committee's [report](#) on the SI notification).
28. The Committee agreed the Committee agreed that it was content for the Scottish Government to give its consent for the UK Ministers to lay to lay the SI in the UK Parliament. The Committee's report on the SI consent notification can be accessed [here](#).

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

29. The [Jurisdiction and Judgments \(Family, Civil Partnership and Marriage\) \(Same Sex Couples\) \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019](#) are a Scottish Statutory Instrument (SSI) laid in the Scottish Parliament on 25 January 2019. The SSI was laid subject to the affirmative procedure.
30. The SSI relates to Brussels IIA, which, as discussed [above](#), makes provision in relation to jurisdiction and the recognition and enforcement of judgments in matrimonial and parental responsibility matters.
31. As discussed above, under the European Union (Withdrawal) Act 2018, Brussels IIA would become retained EU law on exit day. The Scottish Government considers that, in a no deal scenario, the necessary reciprocity across the EU to ensure that Brussels IIA operates effectively would no longer exist.
32. The SSI therefore revokes Brussels IIA and makes amendments to existing domestic legislation to remove references to Brussels IIA and to provide a system of rules on jurisdiction and the enforcement and recognition of judgments, which will apply from exit day in cross-border family law cases which have an EU dimension. In general terms, this means reverting to the law that applied before there was EU law in this area.
33. According to the [policy note](#) accompanying the SSI, the Scottish Government's broad intention is:
  - to rely where possible on international conventions<sup>i</sup>
  - on matters such as the jurisdiction of the Scottish courts, to revert to the position that was in place before there was EU provision in this area and to carry out, in the longer term (i.e. after Brexit), a review of the jurisdiction of the courts in relation to family cases
  - to treat family cases involving same sex relationships in the same ways as family cases involving opposite sex relationships, so far as possible
34. Not all EU Member States are currently party to the relevant Hague Conventions. For example, the [Hague Convention on Divorce](#) applies to 12 EU countries; major EU countries which have not ratified the Convention include France, Germany, the Netherlands and Spain.
35. The policy note stated that SSI was laid under the affirmative procedure and categorised by the Scottish Government as "medium" because the SSI makes "significant amendments to primary legislation" and impacts "on one of the main EU provisions on family law".

### Justice Committee consideration

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<sup>i</sup> This includes: the Hague Convention on Divorce (1970) and the Hague Convention on Parental Responsibility (1996).

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36. At its meeting on **5 February 2019** the Committee agreed that the SSI had been laid under the appropriate procedure.
37. The Committee took evidence on the SSI at its meeting on **5 March 2019** from Ash Denham MSP, Minister for Community Safety, and Scottish Government officials.
38. The Committee heard that some practitioners have suggested that the enforcement of judgments under the Hague Conventions may be slower and more expensive than under Brussels Ila, although this was difficult to quantify [OR 5/3/19 cols 2,4]. However, the Scottish Government had also been told by the Scottish Legal Aid Board and the Scottish Courts and Tribunals Service that the changes would not significantly affect them. [OR 5/3/19 col 4].
39. In terms of the broad impact of Brexit on civil law more generally, the Scottish Government's view is that "on family law ... there are good fallbacks in relation to Hague, although there might be gaps in terms of recognition of judgments and so on, where some of the fallbacks might not be so good. ... on civil law more generally, the fallbacks are possibly not quite so good".[OR 5/3/19 col.4].
40. The Committee recommended to the Parliament that it approve the SSI. The Committee's report can be accessed [here](#).

## **Civil and commercial law**

### **Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) (EU Exit) Regulations 2018**

41. In the civil and commercial law field, the key EU regulation is the [Recast Brussels Regulation](#) (also known as the Brussels Ia Regulation). It updates previous EU law on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. It aims to make the process easier and faster, for example, by providing for judgments in one Member State to be enforced in other EU countries without the need for any special procedure. The basic principle for jurisdiction is that a defendant should be sued in his/her country of domicile.
42. The Recast Brussels Regulation also contains a rule which allows the parties to agree in writing that a particular court will have jurisdiction irrespective of the parties' domicile. Businesses normally include clauses like this in their contracts so that it is clear up front where disputes will be heard. These are known as choice of court clauses or agreements.
43. There are a number of important exceptions and alternatives to the above rules. For example, consumers can require litigation to take place in the courts of their own country.
44. In a no deal scenario, the Recast Brussels Regulation will no longer operate on a reciprocal basis with the remaining EU Member States.
45. The [Hague Convention of 30 June 2005 on Choice of Court Agreements](#) (the 2005 Hague Convention) provides rules in relation to commercial choice of court

agreements relating to both jurisdiction and enforcement and recognition of judgements.

46. The UK has until recently participated in the 2005 Hague Convention by virtue of EU membership. This would have ceased after the UK's withdrawal from the EU. When the SI was introduced the UK was seeking to join the Convention as an independent contracting party; it has now done so.
47. The [Civil Jurisdiction and Judgments \(Hague Convention on Choice of Court Agreements 2005\) \(EU Exit\) Regulations 2018](#) are aimed at ensuring that the rules of the 2005 Hague Convention will work effectively between the UK and all the existing contracting parties (including the EU) after exit day. Further information can be found in the [SI consent notification](#).
48. The scope of the 2005 Hague Convention is narrower than the Recast Brussels Regulation as it only applies to exclusive choice of court agreements, whereas the Recast Brussels Regulation provides a larger suite of rules for determining court jurisdiction (for example in situations where the parties have not chosen jurisdiction). Article 2 of the 2005 Hague Convention also excludes a number of matters from the Convention's scope - for example, consumer and employment contracts and other specific matters. As a result, in a no deal scenario, national rules on court jurisdiction would apply to these matters.
49. The SI consent notification stated that, without continued participation in the 2005 Convention, there would "no longer be effective international arrangements between Scotland and other countries" for the enforcement of choice of court agreements, which could result in "costly and time consuming legal action" for Scottish businesses.

### **Justice Committee consideration**

50. At its meeting on [2 October 2018](#), the Committee agreed that it was content for the Scottish Government to give its consent for the UK Ministers to lay the SI in the UK Parliament. The Committee's report on the SI consent notification can be accessed [here](#).

## **Civil Jurisdiction and Judgments (Amendment etc.) (EU Exit) Regulations 2019**

51. The Recast Brussels Regulation was preceded by Council Regulation (EC) No 44/2001 (referred to as Brussels I). On exit day, the Recast Brussels Directive and Brussels I, and the related implementing domestic legislation, will become retained EU law. However, in a no deal scenario, the retained EU law will cease to operate reciprocally between the EU Member States and the UK. It will contain numerous deficiencies meaning that it will cease to operate effectively.
52. According to the [SI consent notification](#), the intention is to revert to the rules which pre-existed EU law on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters. The [Civil Jurisdiction and Judgments \(Amendment\) \(EU Exit\) Regulations 2019](#) therefore revoke the Recast Brussels

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Regulation (Brussels Ia), Brussels I and other related EU instruments and make necessary amendments to domestic legislation.

53. The SI consent notification stated that:

- ” Broadly, the effect of [the SI] will be to remove the Brussels regime rules from domestic law. In its place, jurisdiction and the recognition and enforcement of judgments will be determined by a combination of the common law; statutory provisions on (1) cross-border civil and commercial claims involving UK domiciled consumers and employees and (2) domicile of companies; and the Hague 2005 Convention on Choice of Court Agreements to which the UK is acceding as an independent Contracting State post exit (which is being taken forward in a separate statutory instrument to which the Scottish Ministers have consented, with agreement of the Committee ).<sup>ii</sup>

## **Justice Committee consideration**

54. At its meeting on [4 December 2018](#), the Committee agreed that it was content for the Scottish Government to give its consent for the UK Ministers to lay the SI in the UK Parliament. The Committee's report on the SI consent notification, which noted that the time allowed for scrutiny of the SI notification had been surprisingly short, can be accessed [here](#).

## **The European Enforcement Order, Order for Payment and Small Claims Procedure (Amendment etc.) (EU Exit) Regulations 2018**

55. The European Enforcement Order (EEO), European Order for Payment (EOP) and European Small Claims Procedure (ESCP) Regulations form part of a group of EU measures, adopted under the articles of the Treaty establishing the European Community (which preceded Article 81 of the Treaty on the Functioning of the EU), which deal with civil judicial co-operation in cross border matters. These Regulations will become retained EU law on exit day.

56. The EEO, EOP and ESCP Regulations establish procedures for national courts of participating EU Member States to deal with cross-border debt claims. Specifically:

- Regulation (EC) No 805/2004 (the EEO Regulation) creates the European Enforcement Order (EEO) procedure for uncontested claims. The EEO procedure is a simplified way of enforcing uncontested debt claims (i.e. claims where the debtor has admitted liability or not responded to the claim or not appeared at court having initially responded) across different EU Member States
- Regulation (EC) No. 1896/2006 (the EOP Regulation) creates the European Order for Payment (EOP) procedure. The EOP is a simplified procedure for pursuing uncontested EU cross-border monetary claims for a specific amount which are due at the time the application for the order is submitted

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<sup>ii</sup> See further the discussion [above](#) relating to the Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) (EU Exit) Regulations 2018.

- Regulation (EC) No 861/2007 (the ESCP Regulation) establishes the European Small Claims Procedure (ESCP). The ESCP is a simplified, uniform EU procedure for civil and commercial cross border claims of less than 5000 Euros which is designed for claimants to be able to use without needing to instruct lawyers
57. Each of the procedures operates on a reciprocal basis, requiring cooperation between relevant national courts in participating EU Member States. In a no deal scenario, cooperation between EU and UK courts will cease after exit day, as will mutual recognition of EEOs, EOPs and ESCP judgments. Further information can be found in the [SI consent notification](#).
58. According to that consent notification, the Scottish Government's view is that reciprocal recognition and cooperation between EU and UK courts is essential if the three procedures are to function effectively. The SI therefore revokes the EEO, EOP and ESCP Regulations and makes other amendments to related legislation.
59. The SI consent notification stated:
- ”** The impact of the removal of these procedures will be limited in that there are alternative domestic procedures that may be employed, albeit they may be more cumbersome. The impact will fall on foreign creditors who will no longer be able to take advantage of these procedures in Scotland (albeit they are not well used currently) and Scottish creditors who will be unable to take advantage of the streamlined procedures in EU Member States. The nature of this impact is not specific to Scotland and will be the same across the UK.

### Justice Committee consideration

60. In advance of the Committee's consideration of the SI notification, written submissions were received from Dr Kirsty Hood QC and Professor Janeen Carruthers (see the Annexes of the Committee's [report](#) on the SI notification). Both submissions agreed with the proposals as set out in the SI notification.
61. At its meeting on [13 November 2018](#), the Committee agreed that it was content for the Scottish Government to give its consent for the UK Ministers to lay the SI in the UK Parliament. The Committee's report on the SI consent notification can be accessed [here](#).

## Service of Documents and the Taking of Evidence in Civil and Commercial Matters (Revocation and Saving Provision) (EU Exit) Regulations 2018

62. 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)

- 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)
63. 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 Regulations are designed to provide an efficient, effective and speedy system of facilitating requests from one EU Member State to the authorities of another.
64. The EU Service Regulation and the EU Evidence Regulation are reciprocal procedural measures, supporting civil judicial cooperation between EU Member States. After exit day, in a no deal scenario, these reciprocal EU Regulations will cease to have effect in relation to the UK.
65. The UK is party to two alternative Hague Conventions on service and the taking of evidence: the 1965 Hague Convention on the Service Abroad of judicial and extra judicial documents in civil or commercial matters (the 1965 Convention); and the 1970 Hague Convention of the taking of evidence abroad in civil or commercial matters (the 1970 Convention).
66. The [Service of Documents and the Taking of Evidence in Civil and Commercial Matters \(Revocation and Saving Provision\) \(EU Exit\) Regulations 2018](#) repeal the EU Service Regulation and EU Evidence Regulation and the relevant domestic implementing legislation. This is necessary to ensure the UK can fully participate in the two Hague Conventions after exit day and to clarify that the EU Service Regulation and EU Evidence Regulation will cease to have legal effect.
67. The SI [consent notification](#) from the Scottish Government stated:

- ” 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.

## **Justice Committee consideration**

68. In advance of the Committee's consideration of the SI notification, written submissions were received from Dr Kirsty Hood QC and Professor Janeen Carruthers (see the Annexes of the Committee's [report](#) on the SI notification). Both submissions noted that not all EU Members States currently participate in the 1965 and 1970 Conventions.<sup>iii</sup>

69. At its meeting on [13 November 2018](#), the Committee agreed that it was content for the Scottish Government to give its consent for the UK Ministers to lay the SI in the UK Parliament. The Committee's report on the SI consent notification can be accessed [here](#).
70. In that report, the Committee noted that the "alternative procedures" for countries not party to the 1965 and 1970 Conventions were not specified in the SI consent notification. The Committee wrote to the Scottish Government for more information on the impact these countries not being signatories will have on the issues covered by SI.
71. The Scottish Government responded by indicating that, for EU countries which are not signatories, the position would be to rely on the procedures that are already in place for other countries outwith the EU which have not ratified the 1970 Hague Convention.
72. The Government indicated that, with respect to requests for the taking of evidence in such states, there are two procedures available. The first option is to seek a commission to examine a witness who is abroad; this procedure is detailed in sections 10 and 38 of the Court of Session Act 1988 and rule 28.10 of the Ordinary Cause Rules. The second option is a letter of request, the procedure for which can be found in rule 35.15 of the Court of Sessions Rules and rule 28.14 of the Ordinary Cause Rules. In general an application is made to the court which will determine if a letter of request can be sent directly to the foreign court requesting assistance by directing the witness of the foreign state to attend before it to give evidence.
73. With respect to requests from non-Hague states for evidence from Scotland, the Scottish Government said that applications are made under rule 14.3 of the Court of Session Rules and the Act referred to therein, which is the Evidence (Proceedings in Other Jurisdictions) Act 1975. Under that Act and the Court of Session Rules, the Court of Session essentially has inherent discretion whether to order the taking of evidence so requested, based on the information put to it in the application.
74. The Scottish Government concluded that, as there are existing procedures in place which can be relied for Ireland, Austria and Belgium, this reduces considerably the impact of these countries not being signatories to the 1970 Convention.

## **Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment) (EU Exit) Regulations 2018**

75. Regulation (EC) No. 593/2008 on the law applicable to contractual obligations (Rome I) and Regulation (EC) No. 864/2007 on the law applicable to non-contractual obligations (Rome II) set out the rules, applicable by EU Member States, for determining, where there is conflict, which law applies to respectively: contractual obligations; and non-contractual obligations. This provides uniformity across the EU on which law applies where there is a cross-border element to a contractual obligation.

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iii Austria is not a party to the 1965 Convention. Austria, Belgium and Ireland are not parties to the 1970 Convention.

## **Justice Committee**

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76. The operation of Rome I and II is supported by provisions in the domestic law, as set out in the SI [consent notification](#). On the UK's exit from the EU, Rome I and II and the domestic legislation which gave effect to them will become retained EU law.
77. The SI consent notification stated:
  - ” In the main this set of rules are capable of continuing to be applied in the UK after exit day, as they do not depend on membership of the EU. Rather, they have universal application as the law which is determined to be applicable does not need to be that of an EU Member State. The policy behind the [SI] is to retain the status quo as far as possible with amendments limited to those required to make that work effectively in the context of the UK not being an EU Member State.
78. The SI therefore provides for the retention of the Rome I and II Regulations as part of domestic law and makes some amendments to ensure that the Rome I and II Regulations will operate effectively as domestic laws once the UK leaves the EU.
79. In addition, the [1980 Rome Convention](#) contains rules on the law applicable to contractual obligations which applied to all existing EU Member States up until the point that the Rome I Regulation was adopted in 2008. The Rome Convention continues to apply to contracts entered into between 1991 (when it came into force) and 16 December 2009. The 1980 Rome Convention was implemented in UK law via the Contracts (Applicable law) Act 1990 which came into force on 1 April 1991. This Convention will cease to apply once the UK leaves the EU. The SI therefore makes provision to ensure that the substantive rules of the 1980 Rome Convention can continue to be applied by UK courts to contracts entered into between 1 April 1991 and 16 December 2009.

## **Justice Committee consideration**

80. The Committee sought clarification from the Scottish Government on the suggestion in the SI notification that the amendments relating to the 1980 Rome Convention "will have an element of retrospective effect". The Scottish Government responded that, after further consideration, its view is that there the SI has no retrospective effect.
81. At its meeting on [18 December 2018](#), the Committee agreed that it was content for the Scottish Government to give its consent for the UK Ministers to lay the SI in the UK Parliament. The Committee noted that, once again, the time allowed for scrutiny had been less than the 28-day period set out in the protocol agreed by the Scottish Parliament and Scottish Government. The Committee therefore agreed to write to the Scottish Government to seek further information on the reasons for this breach of the protocol. The Government responded that complex drafting issues for the SI had led to a delay in providing the consent notification. The Committee's report on the SI consent notification can be accessed [here](#).

# Criminal justice, policing and security

## Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019

82. The UK currently participates in around 40 EU measures that support and enhance security, law enforcement and judicial cooperation in criminal matters. The UK also participates in a number of security-related EU regulatory systems. In a no deal scenario, the UK's access to EU security, law enforcement and criminal justice tools and measures would cease, and the UK would no longer be bound by EU regulatory regimes.
83. The purpose of the [Law Enforcement and Security \(Amendment\) \(EU Exit\) Regulations 2019](#) is to revoke or amend retained EU law and domestic legislation in the areas of security, law enforcement, criminal justice and some security-related regulatory systems to ensure that the statute book continues to function effectively in a no deal scenario.
84. The SI relates to a mixture of reserved and devolved matters. Some parts of the SI relate to areas which are wholly reserved; others relate to areas where there is legislation which is a mix of reserved and within the legislative competence of the Scottish Parliament, including criminal justice, criminal law and policing. These areas include:
- child pornography
  - cross border surveillance
  - judicial cooperation and police powers
  - football disorder
  - joint investigation teams
  - mutual legal assistance in criminal matters
  - proceeds of crime serious crime and fraud
  - international agreements
  - financial sanctions
85. Further information on these areas can be found in the [SI consent notification](#).

### Justice Committee consideration

86. The SI consent notification stated that the impact of the SI on devolved areas will be to "reduce the scope of tools available to support tackling crime". Prior to formally considering the SI, the Committee asked the Scottish Government for further information on what could be done to mitigate this impact. It also sought clarity on a number of other points including what would happen in relation to cross-border cooperation on the day after a no deal exit. In its response, the Scottish Government stated:

- ” As the UK is the Member State, the UK Government is co-ordinating the preparation of robust contingency plans for our security, law enforcement and criminal justice cooperation with EU partners across the UK. The Scottish Government is working closely with the UK Government, our operational partners, Police Scotland and the Crown Office and Procurator Fiscal Services and officials in the Northern Ireland Civil Service (and Welsh Government where apt) to consider how these plans work for Scotland so these can be put into action, if required.

In the regrettable event of a no deal scenario, the Scottish Government shares the UK Government's view that the priority will be to ensure that we are able to transition our cooperation with European partners, and continue to work together through alternative channels. This includes, for example, non-EU mechanisms such as the relevant Council of Europe conventions which provide a basis upon which we can cooperation with European countries in this space.

87. The full response from the Scottish Government can be found in the [background paper](#) on the SI for the Committee's meeting on 23 October 2018 (see paper 6).
88. At its meeting on [23 October 2018](#), the Committee agreed that it was content for the Scottish Government to give its consent for the UK Ministers to lay the SI in the UK Parliament. The Committee's report on the SI consent notification can be accessed [here](#).

## **Criminal Justice (Arrangements for Compensation) (Revocation) (EU Exit) Regulations 2019**

89. The purpose of the [Criminal Justice \(Arrangements for Compensation\) \(Revocation\) \(EU Exit\) Regulations 2019](#) is to revoke, repeal or otherwise amend domestic legislation implementing certain EU criminal justice measures. This will include the revocation of the [Victims of Violent Intentional Crime \(Arrangements for Compensation\) \(European Communities\) Regulations 2005](#) (the 2005 Regulations).
90. The 2005 Regulations implemented Directive 2004/80/EC on compensation to crime victims. The Directive requires Member States to facilitate cross-border access to compensation and to establish compensation arrangements to victims of violent crime in their territory. Currently the access to compensation in cross-border situations is handled by the Criminal Injuries Compensation Authority which administers the Criminal Injuries Compensation Scheme to compensate victims of violent crime in Scotland, England and Wales. Northern Ireland has a separate scheme.
91. In a no deal scenario, the UK will no longer be party to the cooperation of Member States assisting and deciding authorities for compensation under the terms of the Directive. As a result the 2005 Regulations will be redundant, on the basis that reciprocal arrangements under the Directive would no longer be recognised by the remaining Members States. The SI is therefore removes redundant legislation which could not operate without reciprocity. Further information can be found in the [SI consent notification](#).

## Justice Committee consideration

92. At its meeting on [30 October 2018](#), the Committee Committee agreed that it was content for the Scottish Government to give its consent for the UK Ministers to lay the SI in the UK Parliament. The Committee's report on the SI consent notification can be accessed [here](#).

## Other areas

### The Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018

93. The [Inquiries Act 2005](#) (the 2005 Act) established a statutory framework for the conduct of public inquiries in the UK. The 2005 Act extends to the whole of the UK, and governs the establishment of inquiries by Scottish Ministers, as well as UK Ministers. Section 28 of the 2005 Act limits the terms of reference of an inquiry established by the Scottish Ministers to "Scottish matters", i.e. a devolved matter which relates to Scotland.
94. Before exit day a person can rely on an EU obligation or an enforceable EU obligation under certain sections within the 2005 Act. The [Inquiries and Coroners \(Amendment\) \(EU Exit\) Regulations 2018](#) amend references to "EU obligation" and "enforceable EU obligation" in the relevant sections of the 2005 Act, to ensure reference is now made to "retained EU obligation" and to "retained enforceable EU obligation" following exit day.
95. The references to EU obligations and enforceable EU obligations need to be amended to ensure retained EU law continues to apply to the 2005 Act once the UK leaves the EU. If the references to EU obligations and enforceable EU obligations are not amended then the relevant provisions will no longer operate correctly because those terms will no longer have a clear meaning. The terms need to be amended to refer to the new terminology relating to retained EU law to be introduced by the EU (Withdrawal) Act 2018. The SI does not amend any underlying policy in relation to the conduct of inquiries. Further information can be found in the [SI consent notification](#).

## Justice Committee consideration

96. At its meeting on [13 November 2018](#), the Committee Committee agreed that it was content for the Scottish Government to give its consent for the UK Ministers to lay the SI in the UK Parliament. The Committee's report on the SI notification can be accessed [here](#).

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

97. The Treaty on the Functioning of the European Union ("TFEU") includes various Protocols which set out rules governing institutions and bodies of the EU. Specifically, provision is made regarding privileges and immunities for persons

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involved with the Court of Justice of the European Union ("CJEU") and the European Union itself. This includes privileges and immunities for Members of the European Parliament (MEPs) and officials and other servants of the EU. Immunity from legal proceedings in respect of acts performed in an official capacity are set out in the following Protocols:

- Protocol (No 3) of the TFEU on the statute of the Court of Justice of the European Union. Protocol (No 3) makes provision for the roles of judges and Advocates-General
  - Protocol (No 7) of the TFEU on the privileges and immunities of the European Union. Protocol (No 7) sets out the privileges and immunities granted to the EU and to a range of other EU institutions and officials
98. The [European Institutions and Consular Protection \(Amendment etc.\) \(EU Exit\) Regulations 2018](#) revoke the relevant provisions in Protocol (No 3) and Protocol (No 7) relating to immunity from legal proceedings as they will no longer be relevant for the UK. The [SI consent notification](#) stated that, after exit day, it would be inappropriate for individuals, such as MEPs, to continue to receive privileges and immunities once the UK has left the EU and its institutions. However, the SI does save the privileges and immunities in respect of acts performed by individuals in their official capacity before exit day.

### **Justice Committee consideration**

99. At its meeting on [4 December 2018](#), the Committee agreed that it was content for the Scottish Government to give its consent for the UK Ministers to lay the SI in the UK Parliament. The Committee's report on the SI consent notification, which noted that the time allowed for scrutiny of the SI notification had been surprisingly short, can be accessed [here](#).

## **Immigration, Nationality and Asylum (EU Exit) Regulations 2019**

100. The [Immigration, Nationality and Asylum \(EU Exit\) Regulations 2019](#) mainly cover reserved matters but also make provision in certain devolved areas, as detailed below. Further information can be found in the SI [consent notification](#).

### **Eligibility to apply to join the Police Service or become a special constable**

101. Section 48 of the [Police and Fire Reform \(Scotland\) Act 2012](#) provides that Scottish Ministers must make regulations as to the governance, administration and conditions of service of constables and police cadets. The SI amends two sets of Regulations made under this provision: the Police Service of Scotland Regulations 2012 and the Police Service of Scotland (Special Constables) Regulations 2012. These currently provide that one of the qualifications for appointment to the Police Service or as special constable is that a candidate is a national of a State which is a Contracting Party to the Agreement on the European Economic Area (EEA).
102. The reference to a national of an EEA State will be deficient when the UK leaves the EU in that it will no longer encompass UK nationals. The SI corrects this deficiency by providing that a national of the UK as well as of an EEA state can apply to the Police Service or to be a special constable.

## Simplification Regulation

103. The SI revokes EU Regulation 2016/1191 on promoting the free movement of citizens by simplifying the requirement for presenting certain public documents in the EU (the Simplification Regulation). The Simplification Regulation (which came into force on 16 February 2019) has two main objectives:
- to promote the free movement of citizens by making it easier for key civil status documents from one country to be accepted in another without undergoing a formal process of acknowledgement of the document's official status (known as "legalisation"). Documents covered by this regulation include those relating to birth, death, marriage, and nationality
  - to provide for multi-lingual standard forms to be attached to original civil status documents as translation aids
104. If the UK leaves the EU without a deal, the remaining EU Members States will treat documents issued by the UK in the same way as documents issued by other third countries that are not Members of the EU. Therefore, the necessary reciprocity needed for the Simplification Regulation to function will no longer be in place.

## Justice Committee consideration

105. At its meeting on [5 March 2019](#), the Committee agreed that it was content for the Scottish Government to give its consent for the UK Ministers to lay the SI in the UK Parliament. The Committee's report on the SI notification can be accessed [here](#).

## Licensing (Amendment) (EU Exit) (Scotland) Regulations 2019

106. The [Licensing \(Amendment\) \(EU Exit\) \(Scotland\) Regulations 2019](#) were laid in the Scottish Parliament on 17 January 2019, subject to the negative procedure. The SSI makes amendments to existing domestic legislation to ensure that it continues to operate effectively in a no deal scenario.
107. The main changes which would be achieved by the amendments are:
- to recognise a UK driving licence (as well as an EU one) as proof of age in relation to the sale of alcohol, and sale, letting or hire of crossbows and knives
  - to amend the residence requirements for obtaining a licence to run a sex shop so that applicants must be resident in the UK. The legislation currently extends to EU citizens to reflect the UK's obligations under the Services Directive 2006/123/EC, however, as the UK will no longer be party to the Directive after Brexit, the UK residence requirement is being reinstated. The practical effect of this is that going forward, bodies or people based outside the UK will no longer be able to apply for a sex shop licence in Scotland
108. The [policy note](#) accompanying the SSI stated that the SSI had been laid under the negative procedure and categorised as "medium" because the amendments made were "minor and technical", however "if they are not made presentational difficulties and reputational risk on our ability to deliver may arise".

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### **Justice Committee consideration**

109. At its meeting on [29 January 2019](#) the Committee agreed that the instrument had been laid under the appropriate procedure.
110. The Committee considered the policy content of the instrument at its meeting on [5 February 2019](#), and agreed to make no recommendation in relation to the instrument.

## **Services of Lawyers and Lawyer's Practice (EU Exit) (Scotland) (Amendment etc.) Regulations 2019**

111. The [Services of Lawyers and Lawyer's Practice \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019](#) were laid in the Scottish Parliament on 20 February, subject to the affirmative procedure.
112. EU law currently provides a framework to allow lawyers from one country to practice in other countries on the basis of the professional qualifications gained in their home state. The arrangements apply to EU and European Free Trade Association (EFTA) countries.
113. In the UK, the European Communities (Services of Lawyers) Order 1978 implements the Lawyer's Services Directive (77/249/EEC) which allows EU, EFTA and Swiss lawyers to provide services in the UK on a temporary or "fly in fly out" basis, under their home state professional title.
114. The European Communities (Lawyer's Practice) (Scotland) Regulations 2000 implemented the Lawyer's Establishment Directive (98/5/EC) in Scotland. The 2000 Regulations allow lawyers who have registered with the relevant legal services regulator to practise activities that are normally reserved to solicitors and advocates (with some restrictions) under their home state professional title on a permanent basis. Such lawyers, termed "registered European lawyers", may establish joint practices with solicitors or other lawyers or practise as sole practitioners in much the same way as Scottish solicitors or advocates. They may also seek admission as solicitors or advocates following three years of practice in Scotland or may seek to gain admission as solicitors or advocates through a transfer examination.
115. Directive 2002/309 EC implements the Swiss-EU Free Movement of Persons Agreement in EU law, extending the two relevant Directives – the Lawyers Services Directive and the Lawyers Establishment Directive - to Swiss Nationals.
116. The Services of Lawyers and Lawyer's Practice (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 end the preferential practising rights of EU and EFTA lawyers in Scotland, in the event that the UK leaves the EU without a deal.
117. The [policy note](#) accompanying the SSI stated that the preferential practising rights of EU and EFTA lawyers in Scotland "are provided for by a reciprocal European framework consisting of Directives and implementing legislation. The Directives will cease to apply in the UK on EU Exit and the reciprocity on which they depend will accordingly cease". The SSI therefore revokes the implementing legislation, "realigning the position of EU and EFTA lawyers with other "third country" lawyers".

118. This means that the provision of temporary services under the Lawyer's Services Directive will cease. Registered European lawyers will also no longer be able to practise under their home state professional title or be able to seek admission as a solicitor or advocate under the three years' experience route in Scotland. However, they will be able to gain admission as a solicitor or advocate through alternative examination routes open to third country qualified lawyers.
119. In a no deal scenario, the UK will still be subject to World Trade Organisation (WTO) General Agreement on Trade in Services rules. Specifically, 'most favoured nation' rules prohibit preferential treatment of any signatory state above another (unless one of the permitted exceptions applies). The SSI therefore ensures alignment with the UK's WTO commitments.
120. EU and EFTA lawyers who have transferred to the Scottish legal profession through the three years' practice route under the 2000 Regulations or who have taken any transfer examination will be able to retain their Scottish professional title.
121. This is subject to transitional provision, up to 31 December 2020, to give certain EU and EFTA lawyers the time to make the necessary changes to their practice to comply with the new regulatory framework.
122. The SSI also reflects provisions of the UK-Swiss separation agreement<sup>iv</sup> which are applicable to legal services.
123. The [policy note](#) accompanying the SSI stated that it had been laid subject the affirmative procedure and categorised as "medium" because "Ministers have a limited policy choice but with more significant implications in so far as the instrument removes existing individual rights to practise and establish in Scotland".

### **Justice Committee consideration**

124. At its meeting on [26 February 2019](#) the Committee agreed that the SSI had been laid under the appropriate procedure.
125. The Committee took evidence on the SSI at its meeting on [19 March 2019](#) from Ash Denham, Minister for Community Safety, and Scottish Government officials. The Minister set out the purpose of the SSI, as discussed above. The Minister told the Committee that officials "have kept in close contact with the relevant representative organisations", including the Law Society of Scotland and the Faculty of Advocates. [OR 19/3 col.4].
126. In advance of the meeting, the Committee received a [written submission](#) from the Law Society. The Committee welcomed the indication from the Law Society in that submission that it "fully intended whatever the future relationship with the EU after exit to keep open, accessible yet robust routes to requalification for lawyers from any jurisdiction which allowed them to practise within Scotland whilst also reassuring clients of their competence".
127. The Committee agreed to recommend to the Parliament that the SSI be approved. The Committee's report on the SSI can be accessed [here](#).

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<sup>iv</sup> The UK Government has negotiated a separation agreement with Switzerland, dealing with the bilateral issues arising from EU law ceasing to apply to the UK, when the UK leaves the EU.

# Conclusions

128. This report summarises the changes to the law in Scotland that have been made by subordinate legislation considered by the Justice Committee in order to prepare for a potential 'no deal' Brexit (where the UK leaves the EU in the absence of a negotiated agreement). This report does not set out the Committee's views on the merits or otherwise of Brexit.
129. The nature of the UK's future relationship with the EU still remains unclear. To date, the Committee has considered 15 pieces of subordinate legislation aimed at addressing deficiencies in domestic law once the UK leaves the EU and, in particular, to prepare for a no deal scenario. We expect this process to continue over the coming months.
130. Some of the changes that have been made to date have been minor and technical. Others may have much more substantial implications for the effective functioning of the justice system and policing in Scotland. In some areas there are international agreements which will provide a fallback if there is no deal, although it is not clear whether relying on such international agreements will prove to be more cumbersome than the current arrangements as a Member State of the EU. In other areas, it appears there are no such fallbacks.
131. The Committee fully appreciates the need to prepare for a no deal scenario. We are, however, concerned that, to date, no detailed assessment has been made (or at least published) of the cumulative impact of the changes being made by subordinate legislation. The Committee considers that as a matter of priority such an assessment should be undertaken by the Scottish Government, to review the potential impact for the justice system in Scotland. Such an impact assessment should be published so that others are clear how the justice system in Scotland will function in a no deal scenario.
132. The Committee also notes that the time it has had to scrutinise Brexit subordinate legislation has been limited and, on at least four occasions, has not complied with timetables set out in the protocol agreed between the Scottish Parliament and Scottish Government. The Committee accepts that these situations have not been of the Scottish Government's making. Going forward, it is essential that the Committee is afforded as much time as possible for scrutiny and that as much information as possible be provided on the potential impact of the instruments being considered. This means providing clear impact assessments where possible.
133. In addition to the scrutiny of Brexit-related statutory instruments, the Committee has held a number of **evidence sessions** on the implications of Brexit for the civil and criminal justice systems and policing in Scotland. The Committee intends to publish a report on this matter in the coming months.

# Annex A - Summary table of Brexit-related statutory instruments considered to date

## Brexit SI consent notifications

|   |                  |   |
|---|------------------|---|
| The Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) (EU Exit) Regulations 2018   | 2 October 2018   | Committee content   |
| The International Recovery of Maintenance (Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance 2007) (EU Exit) Regulations 2018 | 2 October 2018   | Committee content   |
| The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019   | 23 October 2018  | Committee content   |
| The Criminal Justice (Arrangements for Compensation) (Revocation) (EU Exit) Regulations 2019  | 30 October 2018  | Committee content   |
| The European Enforcement Order, Order for Payment and Small Claims Procedure (Amendment etc.) (EU Exit) Regulations 2018  | 13 November 2018 | Committee content   |
| The Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018   | 13 November 2018 | Committee content   |
| The Service of Documents and the Taking of Evidence in Civil and Commercial Matters (Revocation and Saving Provision) (EU Exit) Regulations 2018                                  | 13 November 2018 | Committee content   |
| The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019   | 4 December 2018  | Clarification sought from the Scottish Government on a number of points but Committee content |
| The Civil Jurisdiction and Judgments (Amendment etc.) (EU Exit) Regulations 2019  | 4 December 2018  | Clarification sought from the Scottish Government on a number of points but Committee content |
| The European Institutions and Consular Protection (Amendment etc.) (EU Exit) Regulations 2018   | 4 December 2018  | Clarification sought from the Scottish Government on a number of points but Committee content |
| The Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment) (EU Exit) Regulations 2018  | 18 December 2018 | Clarification sought from the Scottish Government on a number of points but Committee content |
| Immigration, Nationality and Asylum (EU Exit) Regulations 2019  | 5 March 2019     | Committee content   |

## Brexit SSIs

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|   |                        |   |
|---|------------------------|---|
| Licensing (Amendment) (EU Exit) (Scotland) Regulations 2019 (SSI 2019/6)  | 29<br>January<br>2019  | Instrument laid under the appropriate procedure |
| Licensing (Amendment) (EU Exit) (Scotland) Regulations 2019 (SSI 2019/6)  | 5<br>February<br>2019  | No recommendation made                          |
| Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 [draft] | 5<br>February<br>2019  | Instrument laid under the appropriate procedure |
| Services of Lawyers and Lawyer's Practice (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 [draft]  | 26<br>February<br>2019 | Instrument laid under the appropriate procedure |
| Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 [draft] | 5 March<br>2019        | Instrument approved                             |
| Services of Lawyers and Lawyer's Practice (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 [draft]  | 19<br>March<br>2019    | Instrument approved                             |

# Annex B - Extracts from the minutes

## Extracts from the minutes of the Justice Committee

### 25th Meeting, 2018 (Session 5) Tuesday 2 October 2018

**European Union (Withdrawal) Act 2018:** The Committee considered a proposal by the Scottish Government to consent to the UK Government legislating using the powers under the Act in relation to the following UK statutory instrument proposals—

The Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) (EU Exit) Regulations 2018;

The International Recovery of Maintenance (Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance 2007) (EU Exit) Regulations 2018.

The Committee agreed to recommend to the Scottish Parliament that it gives consent to the UK Parliament to pass the two statutory instruments.

### 26th Meeting, 2018 (Session 5) Tuesday 23 October 2018

**European Union (Withdrawal) Act 2018:** The Committee considered a proposal by the Scottish Government to consent to the UK Government legislating using the powers under the Act in relation to the following UK statutory instrument proposal—

The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2018.

The Committee agreed to delegate to the Convener responsibility for finalising its report to the Parliament on the proposal.

### 27th Meeting, 2018 (Session 5) Tuesday 30 October 2018

**European Union (Withdrawal) Act 2018:** The Committee considered a proposal by the Scottish Government to consent to the UK Government legislating using the powers under the Act in relation to the following UK statutory instrument proposal—

The Criminal Justice (Arrangements for Compensation) (Revocation) (EU Exit) Regulations 2019.

The Committee agreed to delegate to the Convener responsibility for finalising its report to the Parliament on the proposal.

### 29th Meeting, 2018 (Session 5) Tuesday 13 November 2018

**European Union (Withdrawal) Act 2018:** The Committee considered a proposal by the Scottish Government to consent to the UK Government legislating using the powers under the Act in relation to the following UK statutory instrument proposals—

The European Enforcement Order, Order for Payment and Small Claims Procedure (Amendment, Revocation, Transitional and Savings Provisions) (EU Exit) Regulations 2018;

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The Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018;

The Service of Documents and the Taking of Evidence in Civil and Commercial Matters (Revocation and Saving Provision) (EU Exit) Regulations 2018.

The Committee agreed to delegate to the Convener responsibility for finalising its report to the Parliament on the proposals.

### **32nd Meeting, 2018 (Session 5) Tuesday 4 December 2018**

**European Union (Withdrawal) Act 2018:** The Committee considered a proposal by the Scottish Government to consent to the UK Government legislating using the powers under the Act in relation to the following UK statutory instrument proposals—

The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2018;

The Civil Jurisdiction and Judgments (Amendment etc.) (EU Exit) Regulations 2018;

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

The Committee agreed (a) to write to the Scottish Government seeking clarification of issues raised by the proposals; and (b) to delegate to the Convener responsibility for finalising its report to the Parliament on the proposals.

### **33rd Meeting, 2018 (Session 5) Tuesday 18 December 2018**

**European Union (Withdrawal) Act 2018:** The Committee considered a proposal by the Scottish Government to consent to the UK Government legislating using the powers under the Act in relation to the following UK statutory instrument proposal—

The Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment) (EU Exit) Regulations 2018.

The Committee gave its consent and agreed (a) to write to the Scottish Government seeking clarification of issues raised by the proposal; and (b) to delegate to the Convener responsibility for finalising its report to the Parliament on the proposal.

### **4th Meeting, 2019 (Session 5) Tuesday 29 January 2019**

**European Union (Withdrawal) Act 2018:** The Committee agreed that the following instrument had been laid under the appropriate procedure—

Licensing (Amendment) (EU Exit) (Scotland) Regulations 2019 (SSI 2019/6).

### **5th Meeting, 2019 (Session 5) Tuesday 5 February 2019**

**Subordinate legislation:** The Committee considered the following negative instrument—

Licensing (Amendment) (EU Exit) (Scotland) Regulations 2019 (SSI 2019/6).

The Committee agreed to make no recommendation in relation to the instrument.

**European Union (Withdrawal) Act 2018:** The Committee agreed that the following instrument has been laid under the appropriate procedure—

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

### 7th Meeting, 2019 (Session 5) Tuesday 26 February 2019

**European Union (Withdrawal) Act 2018:** The Committee agreed that the following instrument has been laid under the appropriate procedure—

Services of Lawyers and Lawyer's Practice (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 [draft].

### 8th Meeting, 2019 (Session 5) Tuesday 5 March 2019

**Subordinate legislation:** The Committee took evidence on the Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 [draft] from—

Ash Denham, Minister for Community Safety, and Simon Stockwell, Civil Law Division, Scottish Government.

**Subordinate legislation:** Ash Denham (Minister for Community Safety) moved—

S5M-15920—that the Justice Committee recommends that the Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 [draft] be approved.

The motion was agreed to without debate or dissent.

**European Union (Withdrawal) Act 2018:** The Committee considered a proposal by the Scottish Government to consent to the UK Government legislating using the powers under the Act in relation to the following UK statutory instrument proposal—

The Immigration, Nationality and Asylum (EU Exit) Regulations 2019.

The Committee gave its consent and agreed to delegate to the Convener responsibility for finalising its report to the Parliament on the proposal.

### 10th Meeting, 2019 (Session 5) Tuesday 19 March 2019

**Subordinate legislation:** The Committee took evidence on the Services of Lawyers and Lawyer's Practice (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 [draft] from—

Ash Denham, Minister for Community Safety, Scottish Government.

**Subordinate legislation:** Ash Denham (Minister for Community Safety) moved—

S5M-16239—that the Justice Committee recommends that the Services of Lawyers and Lawyer's Practice (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 [draft] be approved.

The motion was agreed to without debate or dissent.

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**13th Meeting, 2019 (Session 5) Tuesday 30 April 2019**

**Brexit subordinate legislation (in private):** The Committee considered a draft report. Various changes were agreed to and the Committee agreed its report to the Parliament.

