February 2019

Dear Convener,

THE IMMIGRATION, NATIONALITY AND ASYLUM (EU EXIT) REGULATIONS 2019

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

POLICE ELIGIBILITY

CIVIL STATUS DOCUMENTS

REVOCATION OF REGULATION (EU) NO. 603/2013 – EURODAC

Introduction

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament.

I am also writing to inform you of the UK Government’s proposals in relation to Regulation (EU) 603/2013 establishing Eurodac for the comparison of fingerprints.

As you know, the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, wrote to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 11 September 2018 setting out the Scottish Government’s views on EU withdrawal. That letter also said that we must respond to the UK Government’s preparations for a No-Deal scenario as best we can, despite the inevitable widespread damage and disruption that would cause. It is our unwelcome responsibility to ensure that devolved law continues to function on and after EU withdrawal.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.loobyng.scot

St Andrew’s House, Regent Road, Edinburgh EH1 3DG
www.gov.scot
Protocol with the Scottish Parliament

I attach a notification which sets out the details of an SI which the UK Government proposes to make and the reasons why I am content that Scottish devolved matters are to be included in this SI.

The SI covers reserved matters in the main, but also some devolved. The fixes are technical and for reasons of efficiency a UK wide approach is proposed. The regulations will ensure a continuity of law and functioning statute book on exit from the EU.

Eurodac

I am also writing to inform you that the UK’s proposed SI includes provision revoking Regulation (EU) 603/2013 which establishes Eurodac. Saving provision is included in relation to the data security provisions in the EU Regulation.

The EU Regulation establishes the Eurodac database for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013, which relates to the determination of asylum claims. Article 20 of Regulation 603/2013 provides for conditions of access to the Eurodac data and includes provision on access for purposes which include prevention, detection or investigation of serious criminal offences.

While the Eurodac measures are broadly within the reserved sphere relating to asylum and immigration (and we are advised currently only accessed for asylum purposes due to the conditions attached), the capacity for access for law enforcement purposes in the Scottish Government’s view gives rise to devolved interest.

There is no disagreement over the revocation of Eurodac and if asked, Scottish Ministers would give consent to revocation of the Regulation. In the absence of any ongoing agreement between the UK and the EU for co-operation in this area, these measures are redundant.

Since consent has not been sought by the UK Government I am not in a position to notify the Scottish Parliament under the agreed protocol. I am simply writing to draw the proposals to the attention of the Committee.

Conclusion

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee. I look forward to hearing from you within 28 days from the date of this letter.

Best Wishes,

H. Yousaf

HUMZA YOUSAF
NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI(s) (if known) or a title describing the policy area

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

A brief explanation of law that the proposals amend

The SI makes amendments to legislation in the field of immigration, nationality and asylum. The SI covers reserved matters in the main, but does make provision in the following devolved areas.

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

Section 48 of the Police and Fire Reform (Scotland) Act 2012 provides that the 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 2013 and the Police Service of Scotland (Special Constables) Regulations 2013. These 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). The EEA includes EU countries and also Iceland, Liechtenstein and Norway.

Simplification Regulation

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. This Regulation achieves two main objectives:

- Promotes 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 acknowledgment of the document's official status (known as "legalisation"). Documents covered by this regulation include those relating to birth, death, marriage, and nationality.
- Provides for multi-lingual standard forms to be attached to original civil status documents as translation aids.

Summary of the proposals and how these correct deficiencies

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

The reference to “a national of an EEA State” in both sets of regulations will be deficient when the UK leaves the EU in that it will no longer encompass UK nationals. The proposed amendments will correct this deficiency by providing that a national of the United Kingdom as well as of an EEA State can apply to the Police Service or to be a special constable. It is also proposed to add a definition of “national of the United Kingdom.”
Simplification Regulation

If the UK leaves the EU without a deal, the EU 27 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. The European Commission has recently issued a guidance note which makes this clear: https://ec.europa.eu/info/sites/info/files/notice_to_stakeholders_brexit_civil_justice_rev1_final.pdf (see the final page). Therefore, the necessary reciprocity needed for the Regulation to function will no longer be in place.

An explanation of why the change is considered necessary

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

The change is necessary to ensure continuation of the status quo, i.e. that UK nationals and EEA nationals are eligible to apply to be a constable or special constable.

Simplification Regulation

The Regulation is due to come into force from 16 February 2019 and, as matters stand at the moment, is directly applicable in Scotland given the UK’s current status as an EU Member State. From that date, National Records of Scotland (NRS) will issue multi-lingual standard forms to go with certain documents they issue (eg birth certificates) to help the documents be accepted by other Member States. If the UK leaves without a deal, it seems unlikely that EU Member States would accept multi-lingual standard forms issued by the UK. Therefore, the Regulation needs to be repealed to relieve NRS of the obligation to issue these forms.

Scottish Government categorisation of significance of proposals

Category A, with the following characteristics:

- Minor and technical in detail;
- Ensuring continuity of law;
- Clear there is no significant policy decision for Ministers to make; and
- Proposals necessary for continuity where there may be a minor policy change, but limited policy choice and an “obvious” policy answer.

Impact on devolved areas

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

Policing is within devolved competence. The SI ensures continuation of the status quo in respect of nationality requirements.
Simplification Regulation

The UK/Scotland already tends to accept public documents from other countries (whether they are in the EU or not) without legalisation. Therefore, the EU Regulation makes little practical difference in this area in relation to incoming documents.

In relation to outgoing documents, the Regulation does mean that UK nationals should be able to present a range of documents in other Member States without any need for legalisation. However, if the UK leaves without a deal, it appears that UK documents would be treated in EU-27 countries in the same way as documents from other third countries.

The Regulation also makes provision for multi-lingual standard forms to be attached to a number of documents. NRS will cease to issue these if the UK leaves the EU without a deal.

The Scottish Government has made two SSIs to help implement Regulation 2016/1191.

The Multilingual Standard Forms (Fees) (Scotland) Regulations 2018 (SSI 2018/373) [http://www.legislation.gov.uk/ssi/2018/373/contents/made](http://www.legislation.gov.uk/ssi/2018/373/contents/made) makes provision on NRS charging fees for issuing multi-lingual standard forms. If the UK leaves the EU without a deal, the Scottish Government would intend to revoke this SSI in due course, as NRS would no longer be issuing multi-lingual standard forms.

The Multilingual Standard Forms (Consequential Amendments) (Scotland) Regulations 2018 (SSI 2018/374) [http://www.legislation.gov.uk/ssi/2018/374/contents/made](http://www.legislation.gov.uk/ssi/2018/374/contents/made) makes minor amendments to the Marriage (Scotland) Act 1977 and the Civil Partnership Act 2004. Parties to a proposed marriage or civil partnership must submit certain documents when giving the district registrar notice of intention to marry or enter a civil partnership. Where such a document is not in English a translation must be provided. SSI 2018/374 dis-applied that requirement where a multilingual standard form under the EU Regulation accompanies the document and it provides the district registrar with sufficient information. The Scottish Government’s current intention is to leave this SSI in place as being able to present a multilingual standard form in these cases may be helpful for some citizens.

Summary of stakeholder engagement/consultation

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

The Scottish Government considers that given the technical nature of the amendments a formal consultation is unnecessary.
Simplification Regulation

The Scottish Government has issued a Circular on Regulation 2016/1191: https://www2.gov.scot/Resource/0054/005441273.pdf. If the UK does leave the EU without a deal, the Scottish Government would intend to issue information about the impact on this Regulation.

The Scottish Government has also consulted on Brexit and family and civil law. This consultation and the responses are at https://www2.gov.scot/Topics/Justice/law/17867/brexit

A note of other impact assessments, (if available)

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation

As the UK Government is bringing forward legislation to address these deficiencies, the Scottish Government considers for reasons of efficiency that consent should be given to Scotland’s inclusion in the statutory instrument to make these minor and technical amendments.

Intended laying date (if known) of instruments likely to arise

The SI is subject to affirmative procedure and the Home Office have advised their intention is to lay the draft regulations on 7 February 2019. The Chancellor of the Duchy of Lancaster, Minister for the Cabinet Office, has given an undertaking that the UK Government will not schedule debates for affirmative SIs until the Scottish Parliament has given a view on the SI notification under the protocol. We would welcome a view from the committee as soon as possible. However the Scottish Parliament will have 28 days for consideration if needed under the agreed protocol to consider the proposal to consent to the SI.

Information about any time dependency associated with the proposal

No associated time dependency

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

No broader governance issues.

Any significant financial implications?

No significant financial implications