

*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.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**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.

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(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<sup>(3)</sup>,
- (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<sup>(4)</sup> 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<sup>(5)</sup> 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<sup>(6)</sup> 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”.

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(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.

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(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),

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(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