

## UK MINISTERS ACTING IN DEVOLVED AREAS

### **131 - The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019**

*Laid in the UK Parliament: 15 January 2019*

#### **Sifting**

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	18/02/2019
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 11
SICM under SO 30A (because amends primary legislation)	Paper 7

#### **Scrutiny procedure**

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	30/01/2019
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	18/02/2019

#### **Commentary**

These Regulations are proposed to be made by the UK Government pursuant to sections 1(1), 69(1), 71(4), 73(5), 84(7), 86(7) and 223(3) and (8) of the Extradition Act 2003, and sections 8(1) and 23(1) and (2) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

The UK currently participates in around 40 EU measures that are designed to 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.

Should the UK leave the EU without an agreement, 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.

The overarching purpose of this instrument is to make amendments to the UK's domestic statute book, including retained EU legislation, to

address deficiencies which arise from the UK ceasing to be an EU Member State. The instrument will do three main things:

- Revoke or amend retained directly applicable EU legislation and domestic legislation in the area 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;
- Make transitional or saving provisions to address 'live' cases, i.e. how cases 'live' on exit day should be dealt with; or how data received before exit day should be treated;
- In the case of extradition, ensure that the UK has the correct legal underpinning to operate the 'no deal' contingency arrangement (the 1957 Council of Europe Convention on Extradition) that would be used in lieu of the European Arrest Warrant.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 3 May 2019 regarding the effect of these Regulations:

The Welsh Government, in its written statement, indicates that the UK Government is of the view that the entire SI is reserved, and therefore did not seek the consent of the Welsh Ministers in bringing forward this instrument. However, Welsh Ministers are of the opinion that amendments to the Local Government (Miscellaneous Provisions) Act 1982 do fall within devolved competence, and therefore the consent of the Welsh Ministers should have been sought for this instrument. The Minister for Housing and Local Government has written to the UK Government on this point and has written a letter to CLAC setting out the Welsh Government's view. Although consent was not sought at the time, Welsh Ministers are content with the SI and would not withhold consent.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

In relation to paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks, Legal Advisers draw the Committee's attention to the commentary above on the statement by the Welsh Government.

However, Legal Advisers note the comments from the Minister for Housing and Local Government in her letter to the Committee of 2 May 2019, in which she highlights the unprecedented pressures under which the EU Exit SIs have been made, which did not allow for the usual time in considering more subjective elements of the devolution settlement. On

that basis, the Minister has indicated that she is content that the UK Government has acted in good faith under the Intergovernmental Agreement and has abided by its own interpretation of the devolution settlement in this case. Consent has been given by the Welsh Ministers without prejudice to the Welsh Government's position on legislative competence and they do not intend to take further action at this stage.

The Statutory Instrument Consent Memorandum states that amendments made by this instrument to the Local Government (Miscellaneous Provisions) Act 1982 are extremely minor, and there is no divergence between Welsh Government and UK Government policy for the correction.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.