

POLICY NOTE

THE MULTILINGUAL STANDARD FORMS (CONSEQUENTIAL AMENDMENTS) (SCOTLAND) REGULATIONS 2018

SSI 2018/374

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and all other powers enabling them to do so.

Policy Objectives

This Scottish Statutory Instrument (SSI) contributes to the implementation of Regulation (EU) 2016/1191 of the European Parliament and of the Council on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union¹ (“the EU Regulation”).

The EU Regulation is due to take full effect on 16 February 2019.

The aim of the EU Regulation is to help the free movement of people across the EU. In particular, when EU citizens present civil status documents in another EU Member State, some jurisdictions require a process of “legalisation” to confirm that the document is genuine. This often involves attaching an “apostille” to the document. In the UK, the Foreign and Commonwealth Office (FCO) provide a “legalisation” service².

The EU Regulation will remove the need for legalisation for some civil status documents being presented within the EU. The list of civil status documents covered is at Annex A.

In addition, for some documents, multilingual standard forms are being established to reduce the need for certified translations: the list of these documents is at Annex B. These multilingual standard forms do not have any legal value by themselves but when attached to the civil status document act as a translation aid. When they are so attached, the civil status document has to be accepted by the public authority without any further translation, so long as the authority to which the document is presented considers that the information included in the multilingual standard form is sufficient to process the document.

NRS are taking steps so that from 16 February 2019, they will be able, on request, to issue multilingual standard forms for:

- Birth
- Death
- Marriage

¹ The EU Regulation is at: <https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX%3A32016R1191>

² More information on the legalisation service provided by the FCO is at <https://www.gov.uk/get-document-legalised>.

- Capacity to marry³
- Civil partnership

This SSI amends the Marriage (Scotland) Act 1977 and the Civil Partnership Act 2004. The aim is to ensure that the provisions of those Acts reflect the EU Regulation's requirement that multilingual standard forms from other EU Member States are accepted as translation aids. The amendments to the 1977 and the 2004 Acts specifically relate to multilingual standard forms attached to civil status documents presented to registrars when couples submit notice of intention to marry or enter a civil partnership.

This SSI follows the negative procedure. This is because the amendments it contains involve minor changes in consequence of the directly applicable provisions of the EU Regulation to ensure the provisions of the 1977 Act and the 2004 Act are consistent with the Regulation.

The effect of leaving the EU

The EU Regulation is directly applicable to EU Member States, such as the United Kingdom.

The United Kingdom is expected to leave the EU on 29 March 2019.

If the UK should leave the EU without a negotiated settlement, the Scottish Government's planned approach to the EU Regulation is:

- At the moment (and without the EU Regulation being in place), Scottish public bodies accept the validity of civil status documents issued by other countries, whether in the EU or not). That will continue.
- Multilingual standard forms issued by EU Member States could continue to be accepted as translation aids for civil status documents presented in Scotland.
- Demand for multilingual standard forms issued by NRS might disappear as NRS would have to advise applicants that there is no guarantee EU Member States would accept them.

The current expectation is that if the UK reaches a negotiated settlement on EU withdrawal there will be a transitional period after the UK leaves the EU. This transitional period is expected to last from 29 March 2019 until 31 December 2020 (and there is the possibility of this being extended). The expectation is that the EU Regulation would continue to apply during any such transitional period.

Whether or not the EU Regulation will apply after the end of any such transitional period depends on the longer-term arrangements between the EU and the UK. Specific points in relation to the EU Regulation are:

- It is uncertain whether after any transitional period the EU-27 Member States (i.e. the EU without the UK) would continue to treat civil status documents issued by the UK as if they were civil status documents issued by a Member State.

³ "Capacity" in this context means legal capacity to marry: section 7 of the Marriage (Scotland) Act 1977 refers.

- Under Article 12 of the EU Regulation, the European e-justice Portal⁴ will contain model multilingual standard forms relating to a number of civil status documents. Whilst information on the European e-Justice Portal is available to all, it is uncertain if UK authorities will continue to have access to the Portal to upload information on to it after any transitional period.
- Under the EU Regulation (see Articles 14, 16 and 22), an EU Member State can use the EU's Internal Market Information System ("IMI") to send queries to another Member State about a civil status document. It is uncertain if UK authorities will continue to have access to IMI after any transitional period.

Consultation

The Scottish Government has worked closely with NRS on the implementation of the EU Regulation.

The Scottish Government issued and published a circular⁵ to alert public bodies to the implications of the EU Regulation and to ask any public body with concerns to alert the Scottish Government.

In relation to the UK's forthcoming departure from the EU, the Scottish Government carried out a short consultation on family and civil law and Brexit⁶ and included this EU Regulation as one of the areas affected.

Impact Assessments

The Scottish Government does not consider that the following Impact Assessments are required:

- Equality Impact Assessment. There is no effect on equalities.
- Child Rights and Wellbeing Impact Assessment. There is no specific impact on children and young people.
- Strategic Environmental Assessment. There is no significant impact on the environment.
- Data Protection Impact Assessment. There is no impact on data protection issues.
- Islands Impact Assessment. No differential impact on the islands is envisaged.
- Fairer Scotland Duty Assessment. These SSIs do not reduce inequalities of outcome caused by socioeconomic disadvantage, although in some cases they may reduce costs for UK nationals seeking to present civil status documents in other EU Member States.

Financial Effects

The Minister for Community Safety confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has no significant financial effects on the Scottish Government, local government or on business.

There are potential savings for UK citizens in relation to presenting civil status documents in other EU Member States as requirements laid down by other Member States for legalisation of

⁴ <https://e-justice.europa.eu/home.do>

⁵ The Circular is at <https://www2.gov.scot/Resource/0054/00541273.pdf>.

⁶ <https://www.gov.scot/Topics/Justice/law/17867/brexit>

documents covered by the EU Regulation will be removed. The current fee charged by the FCO for legalisation is £30 per document, plus courier fees or postage⁷. In the context of the UK's departure from the EU, these potential savings will only arise so long as EU Member States accept UK civil status documents without legalisation as a consequence of the EU Regulation. If and when that ceases to be the case, UK civil status documents may need to be legalised again.

There are also potential savings for UK citizens in relation to the use of civil status documents in other EU Member States where other Member States currently require the documents to be accompanied by a translation. As indicated above, NRS intend to produce multilingual standard forms in relation to birth, death, marriage, capacity to marry and civil partnership. It may be cheaper for the citizen to provide the multilingual standard form with the underlying document rather than a translation. The Multilingual Standard Forms (Fees) (Scotland) Regulations 2018 set the fee for providing a multilingual standard form at £10. However, as with legalisation fees, these potential savings will only arise so long as EU Member States accept UK multilingual standard forms under the EU Regulation. Should that cease to be the case, translations will be required again.

There may also be some savings for the FCO if it no longer needs to provide the legalisation service in relation to UK civil status documents covered by this Regulation being presented in other Member States. However the FCO legalisation service will also lose income so long as EU Member States accept UK civil status documents as a consequence of this EU Regulation.

There may be some lost income to commercial translators who charge for translations of civil status documents for use in EU Member States, so long as EU Member States accept UK multilingual standard forms under the EU Regulation.

**Scottish Government
Justice Directorate
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⁷ <https://www.gov.uk/get-document-legalised>

ANNEX A: CIVIL STATUS DOCUMENTS COVERED BY EU REGULATION 2016/1191

Birth

A person being alive⁸

Death

Name⁹

Marriage, including capacity to marry and marital status¹⁰

Divorce, legal separation or marriage annulment

Registered partnership¹¹, including capacity to enter into a registered partnership¹² and registered partnership status¹³

Dissolution of a registered partnership, legal separation or annulment of a registered partnership.

Parenthood¹⁴.

Adoption

Domicile and/or residence¹⁵.

Nationality

Absence of a criminal record¹⁶

⁸ There is no official certificate on a person being alive in Scotland, although notaries public may issue such a certificate.

⁹ There is no specific certificate on name in Scotland although, of course, names are recorded in the entry in the birth register.

¹⁰ There is no official certificate on marital status in Scotland. Recital (13) of the preamble to the EU Regulation says that “The concept of ‘marital status’ should be interpreted as referring to an individual’s status of being married, separated or unmarried, including being single, divorced or widowed.”

¹¹ “Registered partnership” is the equivalent of civil partnership in Scotland.

¹² The only capacity to enter into a civil partnership certificate issued by registrars in Scotland relates to civil partnerships being entered into in England and Wales where one of the parties resides in Scotland and the other in England and Wales. Section 97 of the Civil Partnership Act 2004 refers.

¹³ There is no official certificate on civil partnership status in Scotland.

¹⁴ Recital (14) of the preamble to the EU Regulation says that “The concept of ‘parenthood’ should be interpreted as meaning the legal relationship between a child and the child’s parents”. It is possible to obtain a declarator of parentage from the courts in Scotland.

¹⁵ There is no official certificate on domicile or residence in Scotland.

¹⁶ Certificates to present overseas showing the absence of a criminal record are done on a UK basis: https://www.acro.police.uk/Police_Certificates_FAQs.aspx.

Notes

1. This list is taken from Article 2 of the EU Regulation.
2. Recital (7) of the preamble makes it clear that the EU Regulation does not require Member States to issue public documents that do not exist under their national law.

ANNEX B: CIVIL STATUS DOCUMENTS WHERE A MULTILINGUAL STANDARD FORM TO AID TRANSLATION IS BEING ESTABLISHED UNDER EU REGULATION 2016/1191

Birth

A person being alive¹⁷

Death

Marriage, including capacity to marry and marital status¹⁸

Registered partnership¹⁹, including capacity to enter into a registered partnership²⁰ and registered partnership status²¹

Domicile and/or residence²².

Absence of a criminal record

Note

This list is taken from Article 1 of the Regulation.

¹⁷ Notaries public in Scotland will not have to issue multilingual standard forms for certificates that a person is still alive as the UK has advised the European Commission that these certificates are not in an appropriate format for the multilingual standard forms.

¹⁸ There is no official certificate on marital status in Scotland.

¹⁹ "Registered partnership" is the equivalent of civil partnership in Scotland.

²⁰ The only capacity to enter into a civil partnership certificate issued by registrars in Scotland relates to civil partnerships being entered into in England and Wales where one of the parties resides in Scotland and the other in England and Wales. Section 97 of the Civil Partnership Act 2004 refers.

²¹ There is no official certificate on civil partnership status in Scotland.

²² There is no official certificate on domicile or residence in Scotland.