

Economy and Fair Work Committee
21 January 2026
3rd Meeting, 2026 (Session 6)

Note by the Clerk on UK subordinate legislation: consideration of consent notification

Introduction

1. This paper supports the Committee's consideration of a 'type 1' consent notification sent by the Scottish Government relating to the following proposed UK statutory instrument (SI): The Provision of Services (Amendment and Transitional Provision) Regulations 2026.
2. The process for the Scottish Parliament's consideration of consent notifications is set out in the [SI Protocol](#). Further details of this process are set out in **Annexe A**.

The Provision of Services (Amendment and Transitional Provision) Regulations 2026

3. On 12 December 2025, the Deputy First Minister and Cabinet Secretary for Economy and Gaelic wrote to the Committee to give notice of the Scottish Government's proposal to consent to the UK SI. The Scottish Government has also provided an SI notification and a summary notification. These documents are set out in **Annexe B**. The UK Government intends to lay the UK SI in February 2026.
4. The Scottish Government has asked the Committee to respond to the consent notification by 31 January 2026.
5. These Regulations are made under section 12 (1) (power to restate assimilated law) and section 14 (2) (power to revoke or replace) of the Retained EU Law (Revocation and Reform) Act 2023. They update the Provision of Services Regulations, which require competent authorities (mainly local authorities) to regulate service activities in a way that is proportionate and justified in the public interest.
6. They apply UK-wide and cover any service-based economic activity normally provided in exchange for remuneration (subject to exceptions), whether business-to-business or business-to-consumer. The proposed amendments make changes in seven key areas which are set out in the Scottish Government's SI notification (Annexe B).
7. In her letter to the Committee, the Deputy First Minister notes that the Scottish Government has some concerns about potential additional burdens on competent authorities as well as "apparently limited benefits for Scottish businesses and consumers."

8. However, the Scottish Government is proposing to consent to the Regulations in order to close compliance gaps with certain Free Trade Agreement provisions and ensure alignment with the UK's international obligations.
9. There is no statutory requirement on the UK Ministers to seek the consent of Scottish Ministers before making this SI. This means that, from a legal point of view, the UK Government could still go ahead with this instrument, whether or not the Scottish Government consents. However, the UK Government has made [a commitment](#) to the Scottish Government that it will seek agreement on RUEL Act Statutory Instruments including devolved provision.

Next steps

10. If the Committee wishes to approve the proposal to consent to the SI, it may, in doing so, set out in its letter to the Scottish Government any observations or concerns that it thinks are relevant.
11. If the Committee is not content with the proposal, it should include in its letter to the Scottish Government one of the following recommendations:
 - That the Scottish Government should not consent to the provision being made in a UK SI and that the Scottish Government should instead take forward an alternative Scottish legislative solution.
 - That the Scottish Government should not consent to the provision being made in a UK SI laid solely in the UK Parliament and should instead request that the provision be included in a UK SI laid in both Parliaments under the joint procedure. The Committee should note, however, that it may not be possible to achieve this due to the timing of the campaign recess/dissolution and the powers expiring in June.
 - That the provision should not be made at all (that is, that the Scottish Government should not consent to the provision being included in a UK SI, nor should the Scottish Government take forward an alternative Scottish legislative solution). The Committee should note, however, that the notification states that the provision is being made in order to ensure compliance with international law. Accordingly, it would be necessary that provision of this kind is made, either at UK or Scottish level.

Clerks to the Committee
January 2026

Annexe A: Process for parliamentary scrutiny of consent notifications in relation to UK statutory instruments

1. The Protocol provides for the Scottish Parliament to scrutinise the Scottish Government's decisions to consent to certain subordinate legislation made by the UK Government: specifically, UK Government subordinate legislation on matters within devolved competence in areas formerly governed by EU law. It sets out a proportionate scrutiny approach and categorises SI notifications as 'type 1' or 'type 2'.
2. Type 2 applies where all aspects of the proposed instrument are clearly technical (e.g., they merely update references in legislation that are no longer appropriate following EU exit) or do not involve a policy decision. These are notified retrospectively, after the Scottish Government has given its consent.
3. All other proposals are type 1. In this case, the Scottish Parliament's agreement is sought before the Scottish Government gives consent to the UK Government making subordinate legislation in this way. Each type 1 notification must be considered by the relevant Committee.
4. **The Committee's role in relation to type 1 notifications is to decide whether it agrees with the Scottish Government's proposal to consent to the UK Government making Regulations within devolved competence, in the manner that the UK Government has indicated to the Scottish Government.**
5. If Members are content for consent to be given, the Committee will write to the Scottish Government accordingly. The Committee may also wish to note any issues in its response or request that it be kept up to date on any relevant developments.
6. If the Committee is not content with the proposal, however, it may recommend that the Scottish Government should not give its consent. In that event, the Scottish Ministers have 14 days under the Protocol to respond to the Committee's recommendation. They could—
 - Agree. If so, the Scottish Ministers would then withhold their consent.
 - Not agree. If so, the Parliament will debate the issue.
7. If the Parliament agrees to the Committee's recommendation that the Scottish Ministers should not consent, the Protocol provides that the Scottish Ministers should "normally not consent" to the UK SI. However, the Protocol also provides that if the Scottish Ministers consider that the Committee's proposed alternative cannot be achieved, they may consent to the UK SI. If so, they must explain why they are doing so to the Scottish Parliament.

Annexe B: Information from Scottish Government

Letter from the Deputy First Minister and Cabinet Secretary for Economy and Gaelic, 12 December 2025

Dear Convener,

THE PROVISION OF SERVICES REGULATIONS 2009 EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas arising from EU Exit.

The UK Government intends to bring forward changes to the Provision of Services Regulations 2009 under the Retained EU Law (Revocation and Reform) Act 2023 (“REUL Act”), that will make legislative provision relating to the administration and supervision of authorisation schemes by competent authorities in services sectors.

I attach a **Type 1 notification** which sets out the details of the SI as known, based on the UKG's explanation of the policy effect of the UK SI and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note, we are yet to have sight of the final SI and it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and confirm whether it is consistent with the terms of this notification.

The Scottish Government has some concerns relating to the potential additional burdens these reforms may place on competent authorities, as well as the apparently limited benefits for Scottish businesses and consumers. In addition, the Scottish Government will always seek to critically assess the use of powers under the REUL Act, which was enacted without the legislative consent of the Scottish Parliament.

However, on balance we recognise that there are minor but genuine gaps in compliance with certain Free Trade Agreement provisions. These gaps present a small but credible risk of non-compliance for the UK. Scottish Ministers have a duty under the Ministerial Code to uphold international law, and this proposed consent reflects that responsibility.

I look forward to hearing from you by **30 January 2026**.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

Yours sincerely,

KATE FORBES

SI notification

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

The Provision of Services (Amendment and Transitional Provision) Regulations 2026

Is the notification Type 1 or Type 2

Type 1 notification.

Details of the provisions that Scottish Ministers are being asked to consent to

The proposed UK Statutory Instrument (SI) will amend the Provision of Services Regulations 2009 (SI 2009/2999) under Sections 12(1) and 14(2) of the REUL Act 2023.

The existing Regulations place obligations on competent authorities to ensure that regulation of service activities is proportionate, transparent, and justified in the public interest.

The Regulations apply across the whole of the UK. This SI does not change the territorial extent to which the Regulations currently apply. These changes affect devolved areas such as local licensing and professional regulation.

PoSRs were introduced to implement the EU Services Directive 2006/123/EC. The proposed reforms neither hinder future alignment with EU law nor seek to promote closer alignment.

Scottish Ministers are proposing to consent because the SI addresses minor gaps in compliance with the UK's Free Trade Agreement obligations. Although the Scottish Government has reservations about the approach and the use of REUL Act powers (to which the Scottish Parliament did not consent), legislative amendment is considered a proportionate way to mitigate non-compliance risks.

The SI is expected to be laid before the UK Parliament in February 2026, with powers under the REUL Act expiring on 23 June 2026. Exact laying and commencement dates have not yet been confirmed.

Summary of the proposals

The Provision of Services Regulations place obligations on competent authorities, predominantly local authorities, to ensure that their regulation of service activity is proportionate and justified in the public interest. They apply UK-wide and remain in force following EU Exit, now covering only UK nationals and UK businesses.

Services covered by the Regulations are any self-employed economic activity normally provided in exchange for remuneration (subject to a number of exceptions) and can be industrial or commercial in nature, a craft, or the activity of a profession. The service can be business-to-business or business-to-individual activity.

The Regulations place the following duties on competent authorities and businesses.

For Competent Authorities:

- Must not impose disproportionate or unjustified requirements for granting an authorisation under an authorisation scheme
- Must process authorisations within reasonable, published timeframes
- Must avoid prohibited requirements (e.g., economic tests, pre-registration)
- Must allow electronic applications and maintain up-to-date information on GOV.UK
- Must notify BEIS of new rules affecting service access or delivery

For Businesses:

- Must provide clear, accessible information to service recipients, including:
 - Contact details, their legal status, VAT number, professional affiliations
 - Pricing, terms and conditions, contact details for sending complaints
- Must respond to complaints as quickly as possible and make their best efforts to seek a satisfactory solution to complaints from recipients of the service

UK Government is proposing the following amendments to the Regulations:

1. Extend the Regulations' Protections to All Providers

Some Regulation provisions apply only to UK providers. UKG proposes extending these to foreign providers operating in the UK, ensuring equal treatment. Authorities may still restrict access if justified by public interest.

2. Improve 'Find a Licence' Information

Authorities must update gov.uk database with clearer licensing details. UKG also proposes removing the obligation to publish external contact details and public databases

3. Clarify Tacit Authorisation Rules

Authorities must publish when tacit authorisation applies—where silence implies approval—and explain when it doesn't. This improves transparency and helps applicants understand when automatic approval isn't possible.

4. Define 'Complete Application' Criteria

Authorities must state what constitutes a complete application and confirm receipt. If completeness must be checked, they must set a deadline. Incomplete applications must be flagged in writing.

5. Ensure Application Status Updates

Authorities must provide written confirmation of outcomes promptly. If no response is given, applicants may request a status update.

6. Increase Application Flexibility

Applications must be accepted year-round. Authorities must allow applicants to correct incomplete submissions and cannot reject applications solely due to past refusals.

7. Clarify Fee Charging Rules

Application fees must only cover direct processing costs. Enforcement and management costs can't be included unless permitted by sectoral legislation. These may be charged only once a licence is granted.

Does the SI relate to a common framework or other scheme?

The Regulations were originally introduced to implement the EU Services Directive and now form part of assimilated law (the law formerly known as retained EU law).

They do not currently sit within a formal UK Common Framework, though it touches on devolved regulatory responsibilities and principles similar to those underpinning frameworks (cooperation and consistency across the UK).

Summary of stakeholder engagement/consultation

A 2023 independent evaluation of the existing Provision of Services Regulations, commissioned by the previous UK Government, highlighted widespread lack of awareness amongst competent authorities and service providers, leading to competent authority non-compliance. The evaluation recommended several improvements but did not recommend legislative reform.

UKG has held further engagement with business as the reforms have been refined. While UKG considers that the reforms have received broad support from businesses and competent authorities, the Scottish Government has not had the opportunity to engage fully with stakeholders and therefore cannot confirm the level of support within Scotland.

A note of other impact assessments, (if available)

UKG have completed a Growth Impact Assessment that indicates that the reforms will better meet the needs of UK businesses by reducing regulatory burdens, enhancing transparency, and streamlining authorisation processes.

While we reference this Impact Assessment, UK Government has not yet conducted other assessments but has indicated that further ones will be published in 2026.

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

We recognise that there are minor but genuine gaps in compliance with certain Free Trade Agreement provisions. These gaps present a small but credible risk of non-compliance for the UK. Scottish Ministers have a duty under the Ministerial Code to uphold international law, and this proposed consent reflects that responsibility.

Accordingly, our agreement is provided solely on the understanding that the proposed Statutory Instrument is targeted at closing these compliance gaps and ensuring alignment with the UK's international obligations.

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

UKG intend to lay this SI in February 2026.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

Not applicable – 28 day requirement met.

Information about any time dependency associated with the proposal

This SI is being brought forward under powers in the REUL Act. In order to rely on powers within the REUL Act, UK Ministers must operate within a defined legislative timetable, with the powers expiring on 23 June 2026. UKG is of the view there are no other enabling powers.

The UK Government has requested confirmation of Scottish Ministers consent by 30 January 2026

Any significant financial implications?

UK Government engagement suggests these proposals will place minimal additional costs on competent authorities, however a full range of impact assessments are not expected to be published until early 2026. Given the timescales being pursued by UKG, Scottish Government has not been able to engage with stakeholders on this issue and as such we cannot confirm whether the costs associated with implementing the amended Regulations would be offset by benefits from a smoother authorisation processes.

Summary notification

Title of Instrument: The Provision of Services (Amendment and Transitional Provision) Regulations 2026

Proposed laying date at Westminster: February 2026.

Date by which Committee has been asked to respond: Friday 30th January 2026

Power(s) under which SI is to be made: Sections 12(1) and 14(2) of the Retained EU Law (Revocation and Reform) Act 2023 ('REUL Act').

Type 1 notification.

Purpose: The UK Government intends to bring forward changes to the Regulations under the REUL Act, that will make legislative provision relating to the administration and supervision of authorisation schemes by competent authorities in services sectors.

Other information: Our agreement is given solely on the basis that the proposed SI addresses minor gaps in compliance with the UK's Free Trade Agreement obligations.

SG Policy contact: Thomas Stewart