

Criminal Justice Committee
Wednesday 28 January 2026
4th 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): North Atlantic Salmon Conservation and North-East Atlantic Fisheries Commission Privileges and Immunities Revocation 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 Annex A.

North Atlantic Salmon Conservation and North-East Atlantic Fisheries Commission Privileges and Immunities Revocation Regulations 2026

3. On 22 December 2025, the Cabinet Secretary for Justice and Home Affairs 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 Annex B.
4. **The Scottish Government has asked the Committee to respond to the consent notification by 2 February 2026.**
5. The purpose of the regulations is to revoke existing Orders for the North Atlantic Salmon Conservation Organisation ("NASCO") and the North-East Atlantic Fisheries Commission Regulations ("NEAFC") made under the European Communities Act 1972 ("the 1972 Act"), and pave the way for replacing them with new Orders under the International Organisations Act 1968 ("the 1968 Act"). This will clarify privileges and immunities and improve and maintain compliance with international law obligations.
6. This instrument is subject to negative procedure and is proposed to be laid in draft at Westminster by 23 June 2026. The instrument will not come into force until such point that replacement Orders come into force.
7. The Foreign, Commonwealth & Development Office have indicated that they anticipate a laying date for the revocation Order in April or May 2026
8. These Regulations are made under section 14 of the Retained EU Law (Revocation and Reform) Act 2023 (power to revoke or replace). They will

revoke two SIs which give immunities and privileges to international organisations (NASCO and NEAFC).

9. The two SIs which are being revoked are the [European Communities \(Immunities and Privileges of the North Atlantic Salmon Conservation Organization\) Order 1985](#) and the [European Communities \(Immunities and Privileges of the North-East Atlantic Fisheries Commission\) Order 1999](#).
10. The SIs which are being revoked were made under the European Communities Act 1972. The policy intention is that new subordinate legislation will then be made to replace them, under the International Organisations Act 1968, in line with current practice for this type of provision.
11. There is no statutory requirement on the UK Ministers to seek the consent of, or consult, Scottish Ministers before using this power. This means, from a legal point of view, that the UK Government could still go ahead with the proposed SI whether or not the Scottish Government consents. However, the UK Government has made a political commitment in relation to consent when using REUL Act powers, which has been reaffirmed by the current UK administration (as reported in a Third Bi-annual Scottish Government REUL Act Update, 7 February 2025).

Next steps

12. 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.
13. 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.
 - 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).

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

Name of the SI(s)

North Atlantic Salmon Conservation Organisation and North-East Atlantic Fisheries Commission Privileges and Immunities Revocation Regulations 2026

Is the notification Type 1 or Type 2

Type 1

Brief overview of the SI (including reserved provision)

The purpose of the regulations is to revoke existing Orders for the North Atlantic Salmon Conservation Organisation (“NASCO”) and the North-East Atlantic Fisheries Commission Regulations (“NEAFC”) made under the European Communities Act 1972 (“the 1972 Act”), and pave the way for replacing them with new Orders under the International Organisations Act 1968 (“the 1968 Act”). This will clarify privileges and immunities and improve and maintain compliance with international law obligations.

This instrument is subject to negative procedure and is proposed to be laid in draft at Westminster by 23 June 2026. The instrument will not come into force until such point that replacement Orders come into force.

The Foreign, Commonwealth & Development Office have indicated that they anticipate a laying date for the revocation Order in April or May 2026.

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

The Foreign, Commonwealth & Development Office (“FCDO”) propose to revoke existing Orders for NASCO and NEAFC, which were originally made under the 1972 Act. These are the European Communities (Immunities and Privileges of the North Atlantic Salmon Conservation Organization) Order 1985 (S.I. 1985/1773) and the European Communities (Immunities and Privileges of the North-East Atlantic Fisheries Commission) Order 1999 (S.I. 1999/278). These Orders confer privileges and immunities on the organisations and their staff.

The NASCO Order contains a stipulation that any staff who benefit from the conferred privileges and immunities must work for the organisation full-time, potentially creating ambiguity for part-time staff, and potentially affecting compliance with international law obligations. The NEAFC Order does not contain this provision, but the policy position is to revoke P&I legislation made under the now repealed 1972 Act and to re-make under the 1968 Act, in accordance with current practice for P&I provision. The Orders are assimilated law (formerly known as retained EU law), and powers to amend or revoke them under the Retained EU Law (Revocation and Reform) Act 2023 will expire on 23 June 2026.

The revocations are proposed with a view to replacing the revoked Orders with new Orders under the 1968 Act, improving and maintaining compliance with international law obligations.

EU Alignment

The revocation and re-making of the NASCO and NEAFC Orders is an administrative exercise to transition from the 1972 Act to the 1968 Act framework. The coming-into-force date for the revocation SI will be set later than the laying date to ensure continuity of privileges and immunities until replacement Orders are in force. As a result, there will be no gap and no practical misalignment with EU law. The approach maintains compliance with international obligations and does not alter regulatory standards.

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

No

Summary of stakeholder engagement/consultation

This is a consequential instrument so no stakeholder engagement is necessary. We will consider alerting relevant stakeholders as required to the SI once the draft is laid at Westminster.

A note of other impact assessments, (if available)

N/A

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

Practice to date between the UK and Scottish Governments has been to legislate for privileges and immunities in respect of international organisations collaboratively, and in parallel. This is because due to the extent that the UK's obligations in respect of international organisations fall within devolved competence, the function of advising His Majesty in relation to Orders under the 1968 Act is devolved. This conclusion is based on the terms of paragraph 7(2) of Part 1 of schedule 5 of the Scotland Act 1998, under which the observance and implementation of international obligations is excepted from the reservation.

On this basis we are content to recommend granting consent to the proposal to revoke the Orders made under the 1972 Act which will allow for the Orders to be re-made and updated as needed, both by UK SI and a parallel SSI.

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

This instrument is subject to the negative procedure and is proposed to be laid in draft at Westminster prior to 23 June 2026.

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

N/A

Information about any time dependency associated with the proposal

N/A

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

N/A

Any significant financial implications?

N/A