

Education, Children and Young People Committee
Wednesday 11 March 2026
10th 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 Erasmus+ Programme (Data Processing) 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 Erasmus+ Programme (Data Processing) Regulations 2026.

3. On 19 February 2026, the Minister for Higher and Further Education 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 between 13-17 April 2026.
4. The Scottish Government has asked the Committee to respond to the consent notification by **23 March 2026**.
5. The proposed SI is to be made under the power in [section 31 of the European Union \(Future Relationship\) Act 2020](#). This is a power to make regulations to implement the UK-EU Trade and Cooperation Agreement ("TCA"). The TCA was agreed when the UK left the EU. Section 31 includes power to implement any future changes to the TCA that are agreed between the UK and EU. Under [Part Five \(article 710\) of the TCA](#), there is a list of EU programmes in which the UK participates, known as Protocol I. Protocol I is part of the TCA. It was inserted initially by [Decision No. 1/2023](#) of the relevant UK-EU Specialised Committee, and can be amended by agreement between the UK and EU. The notification does not say what the legal mechanism will be for implementing the UK's participation in Erasmus+. However, it is presumed that this would involve Erasmus+ being added to Protocol I, therefore becoming part of the TCA. Section 31 could then provide a mechanism for implementing this in law in the UK.
6. The notification is light on explanation behind the legislative choices behind this proposed UK SI: why the Scottish Government considers it appropriate that this provision is contained in a UK SI made by UK Ministers (only) and laid only at Westminster, as opposed to by an instrument laid (or laid also) in the Scottish

Parliament. The power being used here (section 31) is concurrent, that is, available to both UK Ministers and Scottish Ministers (by virtue of section 37 of the 2020 Act). It could be used to make an SI that is subject to joint procedure in the Scottish Parliament as well as the UK Parliament. The notification indicates that the latter option will be used for a further planned SI which will be a “broader joint SI” in respect of the establishment and governance of the proposed National Agency.

7. There is no statutory requirement on the UK Ministers to seek the consent of, or consult, Scottish Ministers before using this power. This means that, from a legal point of view, the UK Government can still go ahead with this instrument whether or not the Scottish Government consents.

Next steps

8. 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.
9. 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 give its consent to the provision being made in a UK SI and that the Scottish Government should instead produce 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; or
 - 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
March 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 Minister for Higher and Further Education

THE ERASMUS+ PROGRAMME (DATA PROCESSING) REGULATIONS 2026

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.

That protocol, as agreed between the Scottish Government and the Parliament, accompanied the letter from the then Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach a Type 1 notification which sets out the details of the (The Erasmus+ Programme (Data Processing) Regulations 2026) which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. This will enable the necessary data processing by the National Agency (NA) from 1 June 2026, the NA must formally begin mobilisation in order to be able to deliver the programme and be ready to support applicants with their applications from November 2026. The SI must also be in force before the NA commences processing personal data in order to ensure there is a lawful basis for that processing. Please note, we are yet to have sight of the final SI and they are 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 advise you as to whether the final SI is in keeping with the terms of this notification.

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

I look forward to hearing from you by Monday 23 March.

Kind regards

BEN MACPHERSON MSP

Minister for Higher and Further Education

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

The Erasmus+ Programme (Data Processing) Regulations 2026.

Is the notification Type 1 or Type 2

Type 1 - The Erasmus+ Programme (Data Processing) Regulations 2026.

These Regulations enable the processing of personal data as part of the Erasmus+ Programme. Regulation 3 enables the National Authority, National Agency and Independent Audit Body to process personal data for the purposes of enabling or facilitating the performance of the functions of those bodies under the Erasmus+ Programme and enable the sharing of personal data to persons undertaking functions in respect of the Erasmus + Programme for certain purposes. Regulation 4 enables the processing of personal data by a relevant person, being the Secretary of State, a devolved authority (the Scottish Ministers, the Welsh Ministers or a Northern Ireland Department), the National Agency or the Independent Audit Body for the purposes of certain statistical analysis and research or the provision of support to the National Agency in relation to specified functions of the National Agency, and enables a relevant to disclose personal data to another relevant person for those purposes.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 31 of the European Union (Future Relationship) Act 2020.

The SI is expected to be sent for registration, processing and laying approximately between 13-17 April and come into force on 1 June 2026.

The aforementioned Regulation definitions are as follows:

“National Authority” means the Secretary of State notified to the European Commission as being the person in charge, at national level, of monitoring and supervising the management of the Erasmus+ Programme in the United Kingdom;

“National Agency” means one or more bodies designated by the National Authority for the purpose of managing the implementation of the Erasmus+ Programme at national level in the United Kingdom and;

“Independent Audit Body” means the body designated by the National Authority for the purpose of issuing an audit opinion in respect of the National Agency’s yearly management declaration as part of the Erasmus+ Programme;

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

Summary of the proposals

- The definition of the Erasmus+ Programme is drafted to take advantage the definition of the Trade and Cooperation Agreement (TCA) in the EU (Future Relationship) Act 2020, which is ambulatory. This means that as the TCA is amended the definition continues to apply to the future amended versions of the agreement. Taking advantage of this ambulatory definition means that

we will not have to make an amending SI to reflect the next MFF (or any future MFFs should we continue to participate in the programme).

- The intention of reg 3 is to ensure a domestic legal basis for any processing which the National Authority, National Agency or Independent Audit Body need to undertake in order to fulfil their obligations under the E+ Programme. This is drafted in this way as would be very difficult to identify all the relevant functions to set them out in this instrument given they span across various sources of EU law and for the NA also the contribution agreement with the EU which we don't have sight of.
- The intention of reg 4 to enable processing for the Secretary of State and Scottish Ministers, Welsh Ministers and an NI Department to undertake research/statistical analysis and to be able to provide ad hoc support to the National Agency, for example, if there is a question relating to a particular individual in Scotland, Wales or NI's circumstances, reg 4 intends to enable the relevant Government to assist the National Agency in answering that.

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

No.

Summary of stakeholder engagement/consultation

Fortnightly engagement between DfE and devolved governments together with a separate SI specific working group is in place – which has supported associated stakeholder communications/engagement. No direct communication related to this specific SI has been shared with Scottish stakeholders at this point – given both the relevance at this point and due to the commercial nature/ sensitivities related to the appointment of a National Agency in summer 2026.

A note of other impact assessments, (if available)

As per above, n/a given the forums in place.

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

Consent to a sole UK SI will enable the necessary data processing by the National Agency from 1 June 2026, the National Agency must formally begin mobilisation in order to be able to deliver the programme and be ready to support applicants with their applications from November 2026. This will support the website launch, which is essential to ensure UK applicants are ready to engage with Erasmus+ and support applicants with their applications from November 2026, whilst ensuring delivery of the programme maximises opportunities to reach potential applicants.

The SI must also be in force before the National Agency commences processing personal data in order to ensure there is a lawful basis for that processing. The proposed SI will include: providing a statutory legal basis for the National Agency to process personal data for the purposes of Erasmus+, and facilitating the sharing of personal data between the National Agency and DGs (in addition to DfE, the EU, and an independent audit body). This is intended to ensure that all administrations can access and use relevant personal data where needed, to support analysis and oversight.

As noted, the EU (Future Relationship) Act 2020 is the legal route for a sole UK SI, limited to data processing powers, is acceptable in the circumstances. The UK Government have committed to developing a broader joint SI with DGs in respect of the establishment and governance of the National Agency with full engagement and scrutiny by the Scottish Government.

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

Mid-April – precise date unknown at this stage.

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

Yes.

Information about any time dependency associated with the proposal

As noted, the SI must be in force before the NA commences processing personal data in order to ensure there is a lawful basis for that processing.

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

A draft proposal for Erasmus+ governance, meetings and reporting has been shared by DfE with devolved governments for review and to shape its development – providing assurance in ongoing engagement and input from contract mobilisation of the National Agency from summer 2026.

Although the alignment policy is relevant for these specific regulations, Scotland having access to Erasmus+ will bring back advantages to Scottish Students that were lost to Brexit.

Reassociation with Erasmus+ is just one element of Scotland's policy of closer alignment with the EU and we will continue to seek alignment in other areas of devolved competence where it is beneficial and meaningful to do so.

Any significant financial implications?

There are no related financial costs.

SUMMARY NOTIFICATION TO THE SCOTTISH PARLIAMENT

SI NOTIFICATION: SUMMARY

Title of Instrument - The Erasmus+ Programme (Data Processing) Regulations 2026
Proposed laying date at Westminster Between 14-17 April
Date by which Committee has been asked to respond 16 March 2026
Power(s) under which SI is to be made section 31 of the European Union (Future Relationship) Act 2020
Categorisation under SI Protocol Type 1
Purpose To ensure a domestic legal basis for any processing which the National Authority, National Agency or Independent Audit Body need to undertake in order to fulfil their obligations under the Erasmus+ Programme. Also, to enable processing for the Secretary of State and Scottish Ministers, Welsh Ministers and an NI Department to undertake research/statistical analysis and to be able to provide ad hoc support to the National Agency.
Other information
SG Policy contact: Carron Flockhart