

## ECONOMY AND FAIR WORK COMMITTEE

**2<sup>nd</sup> Meeting, 2021 (Session 6), Wednesday, 1 September 2021**

### **UK Statutory Instruments - consideration of consent notifications**

#### **Introduction**

1. This paper supports the Committee's consideration of a 'type 1' consent notification sent by the Scottish Government relating to the following UK statutory instrument (SIs) —
  - [The Public Procurement \(Agreement on Government Procurement\) \(Amendment\) \(No. 2\) Regulations 2021](#).
2. The Scottish Government notified the Committee of its consent to the above SI on [22 June 2021](#) ([Annex 1](#)).

#### **Process for parliamentary scrutiny of consent notifications for UK statutory instruments**

3. The process for the Scottish Parliament's consideration of consent notifications is set out in a protocol agreed between the Scottish Government and Scottish Parliament.
4. The protocol provides for the Scottish Parliament to scrutinise the Scottish Government's decisions to consent to certain secondary legislation made by the UK Government. Specifically, this relates to UK Government secondary legislation on matters which are within devolved competence and are in areas formerly governed by EU law.
5. The protocol establishes a proportionate scrutiny approach and categorises SIs into type 1 and type 2.
6. For type 1 SI notifications, the Scottish Parliament's agreement is sought before the Scottish Government gives consent to the UK Government making secondary legislation in devolved competence. Except in respect of urgent notifications, the Scottish Parliament will have a minimum of 28 days to consider type 1 notifications.
7. For type 2 SI notifications, however, the Scottish Government will notify the Scottish Parliament within five days after giving consent.
8. Type 2 applies where all aspects of the proposed instrument are either clearly technical, do not involve a policy decision or update references in legislation that are no longer appropriate following EU exit. All other proposals fall into the type 1 category. In line with the proportionate scrutiny approach, each type 1 notification will be considered by the

Committee. Committees will be notified of all type 2 notifications which fall within their remit; it is not, however, anticipated that these will normally be considered at a committee meeting. The protocol includes a number of review mechanisms and the categorisation of type 2 notifications will be monitored in this way.

9. At the end of Session 5, it was agreed that during the campaign period, the Scottish Government would give its consent certain urgent SIs and then notify the Parliament at the start of Session 6. These circumstances were explained in the letter to the Committee dated 22 June 2021.
10. For these SIs, the Parliament's consent is not sought but it still has an opportunity to hold the Scottish Government to account for its decision to consent.
11. The Scottish Government has advised that the above notification within the Committee's remit was consented to over the campaign recess.
12. **The Committee's role in relation to type 1 notifications is to decide whether it agrees with the Scottish Government's consent to the UK Government making regulations within devolved competence.**
13. If members are content that consent was given, the Committee will write to the Scottish Government accordingly. The Committee may wish to note any issues in its response or request that it be kept up to date on any relevant developments.
14. If the Committee is not content that consent was given, however, it may make one of the following two recommendations—
  - (1) that the Scottish Government should not have given its consent to the provision being made in a UK SI and that the Scottish Government should instead have produced an alternative Scottish legislative solution; or
  - (2) that the provision should not have been made at all (that is, that the Scottish Government should not have consented to the provision being included in a UK SI, nor should the Scottish Government take forward an alternative Scottish legislative solution).

## **For decision**

15. The Committee is invited to note the provisions set out in the notification.

**Clerk to the Committee  
27 August 2021**