

## ECONOMY AND FAIR WORK COMMITTEE

**4<sup>th</sup> Meeting, 2021 (Session 6), Wednesday, 15 September 2021**

### **UK Statutory Instruments - 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 UK statutory instrument (SI) —
  - [The Recognition of Professional Qualifications \(Amendment etc.\) \(EU Exit\) Regulations 2021](#)
2. The Scottish Government [notified the Committee of its consent](#) to the above SI on 3 September 2021. This letter and notification are attached at **Annexe A**.

#### **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 approval is sought before the Scottish Government gives consent to the UK Government making secondary legislation in areas of 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. 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.**

### **UK statutory instruments over the Scottish Parliament campaign recess**

10. In advance of the Scottish parliamentary election, the Scottish Government sought the UK Government's agreement to delay, wherever possible, making or laying any UK SIs over the 'campaign recess' which would make provision in devolved competence. This was because the Scottish Parliament would not have the opportunity to scrutinise the notification, as per the terms of the protocol.
11. For a small number of UK SIs, however, this was not possible. In anticipation of this, the Scottish Government and Scottish Parliament agreed that, in these circumstances, the Scottish Government would give consent and would notify the Scottish Parliament at the start of Session 6.
12. The Scottish Government consented to this UK SI during the 'campaign recess' and the attached notification refers.
13. Although Scottish Ministers have already given their consent, the Committee is invited to note the decision and, if required, seek further information from the Scottish Government.

### **For decision**

14. The SI made technical changes to remove statutory requirements which became obsolete after the end of the implementation period for EU withdrawal. The Committee is invited to note the consent notification.

**Clerk to the Committee  
10 September 2021**

**NOTIFICATION LETTER FROM THE SCOTTISH GOVERNMENT****Constitution and Cabinet Directorate Cabinet, Parliament and Governance Division****3 Sept 2021**

Dear Ms Peat

**The Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2021**

In the immediate run up to and during the pre-election recess period it was agreed with Parliamentary officials that if Scottish Ministers were asked to consent to UK SIs containing devolved provision during this period that initially the UK Government would be asked to delay the SI until after the election. This was in order that the SI could be notified to the relevant committee of the Parliament as set out in the protocol between the Parliament and the Scottish Government. It was however recognised that there may be a few urgent cases where Scottish Ministers would have to consider consenting to an SI while Parliament was in recess.

I must apologise for the late arrival of this notification, the policy lead as been under intense pressure and was only recently able to turn his attention to this notification. There were four SIs, including the one above, that fell into this category. It was agreed that PLU would hold the relevant SI notification and forward this to the relevant committee when it was established after the Scottish election. I therefore belatedly attach the notification for the above SI which Scottish Ministers consented to on 18 March. The instrument was laid on the 13 May 2021 and is available at, <https://www.legislation.gov.uk/uksi/2021/574/contents/made>.

Yours sincerely

Gordon Johnstone

## NOTIFICATION TO THE SCOTTISH PARLIAMENT

### Name of the SI

The Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2021

<https://www.legislation.gov.uk/ukxi/2021/574/contents/made>

### Is the notification Type 1 or Type 2

Type 1 – the notification is retrospective

### A brief overview of the SI (including reserved provision)

This SI corrected legislative deficiencies arising from the withdrawal of the UK from the European Union. It made minor amendments to revoke savings provisions made in respect of the “alert mechanism” under the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019 (“the 2019 Regulations”) – SI 2019 No.312.

The alert mechanism is a specific type of notification that is made via the EU Internal Market Information (IMI) system in the area of ‘Recognition of Professional Qualifications’. Alerts were a requirement under 2005/36/EC The Directive on Recognition of Professional Qualifications (as amended by 2013/55/EU), to notify regulators in other member states of restrictions imposed in the home state on the practice of professionals working in professions subject to statutory forms of regulation in a majority of EEA and EFTA member states.

This legislation intersects with the devolved competence of the Scottish Parliament in relation to professions devolved either through historically separate systems such as education or law, or through professions brought into statutory regulation after devolution, either as new groups under UK-wide regulators (e.g. Operating Department Practitioners by the Health and Care Professions Council) or under wholly-devolved regulation by bodies such as the Scottish Social Services Council (under the Regulation of Care Act 2001).

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

In light of the decision by the European Commission that the UK would no longer have access to IMI from 31 December 2020, and that existing alert obligations would become inoperable for UK regulators, provision was made in the 2019

Regulations to address the requirement to update or revoke any alerts that were made before the end of the Transition Period by notifying the European Commission directly.

Following the end of the Transition Period, the European Commission confirmed that it had withdrawn all alerts made by UK regulators, making it necessary to amend the 2019 Regulations to remove these now-inoperable statutory obligations.

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

No. Though a UK Recognition of Professional Qualifications Bill is currently underway, the reserved implications of that legislation are currently being considered in the Legislative Consent Memorandum process. This SI simply revokes inoperative retained EU obligations.

### **Summary of stakeholder engagement/consultation**

Devolved regulators raised no concerns during general discussions with Scottish Government officials and with UK Government about the removal of this inoperable obligation. The largest regulated sectors within devolved competence are:

Social services - Scottish Social Services Council  
 Teachers - General Teaching Council for Scotland  
 Legal services – The Law Society of Scotland  
 Advocates – The Faculty of Advocates

Certain health professions regulated by UK regulators also fall within devolved competence by default, having been brought into regulation after devolution. These include Practitioner Psychologists, Operating Department Practitioners and members of the dental team.

### **Other Impact assessments (if applicable)**

No formal impact assessments were undertaken for this SI.

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

This was a technical amendment to remove a now inoperable saving provision and it is not considered contentious.

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

This Instrument was made on 11 May, 2021 and laid-as-made on 13 May, coming into force on 4 June and remaining in law at the conclusion of the objection period under the negative procedure.

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

The Professional Qualifications Bill, for which the UK government is currently seeking legislative consent, contains provisions to enable and encourage professional regulators to work with overseas counterparts to create Mutual Recognition Agreements (MRA) and share information to facilitate registration applications and alert counterparts to professionals subject to sanctions.

**Any significant financial implications?**

None known.

**SUMMARY NOTIFICATION TO THE SCOTTISH PARLIAMENT****SI NOTIFICATION: SUMMARY**

<b>Title of Instrument:</b> The Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2021
<b>Proposed laying date at Westminster:</b> This Instrument was made on 11 May, 2021 and laid-as-made on 13 May, coming into force on 4 June and remaining in law at the conclusion of the objection period under the negative procedure. <a href="https://www.legislation.gov.uk/ukxi/2021/574/contents/made">https://www.legislation.gov.uk/ukxi/2021/574/contents/made</a>
<b>Date by which Committee has been asked to respond:</b> Not applicable
<b>Power(s) under which SI is to be made:</b> Section 8(1) of, and paragraph 21(b) of Schedule 7 of EUWA 2018.
<b>Categorisation under SI Protocol:</b> Type 1
<b>Purpose:</b> The SI made minor amendments to revoke savings provisions made in respect of the “alert mechanism” under the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019 (“the 2019 Regulations”) – SI 2019 No. 312.

Following the end of the Transition Period, the European Commission confirmed that it had withdrawn all alerts made by UK regulators, making it necessary to amend the 2019 Regulations to remove these now-inoperable statutory obligations.

**Other information:**

Not Applicable

**SG Policy contact:**

Nigel Robinson