



The Scottish Parliament
Pàrlamaid na h-Alba

Conveners Group

Agenda

7th Meeting, 2023 (Session 6) Wednesday 20 September 2023

The group will meet at 12.45pm in Committee Room 3.

1. **Minutes**
2. **Post EU scrutiny - CG Session 6 Strategic Priority:** The Group will consider an update on progress and implementation of new scrutiny arrangements which are relevant to its strategic priority on post-EU scrutiny.
3. **Post legislative scrutiny - CG Session 6 Strategic Priority:** The Group will receive a progress update on the actions it agreed for post legislative scrutiny.
4. **Participation, diversity and inclusion – CG Session 6 Strategic Priority:** Consideration of the Conveners Group strategy for participation, diversity and inclusion.
5. **Committee travel and meeting request - Consideration of two requests:**
 - Constitution, Europe, External Affairs and Culture Committee – approval for a visit to Belfast and Dublin to further consider ongoing work of the Committee.
 - Economy and Fair Work Committee in Aberdeen – approval for the Committee to formally meet in Aberdeen as part of its inquiry into a just transition for the North East and Moray.

The papers for this meeting are as follows –

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| 1. Minutes of last meeting | CG/S6/23/6/M(P) |
| 2. Post-EU progress report | CG/S6/23/7/1 |
| 3. Post-legislative scrutiny update | CG/S6/23/7/2 |
| 4. Participation, diversity, and inclusion strategy | CG/S6/23/7/3 |
| 5. Committee travel and meeting requests | CG/S6/23/7/4 |

Committee debates this Parliamentary year

1	21/09/2023	Criminal Justice Committee	Tackling online child abuse, grooming and exploitation
2	26/10/2023	Citizen Participation & Public Petitions Committee	Embedding Public Participation in the work of the Parliament
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Conveners Group

7th Meeting, 2023 (Session 6), Wednesday 20 September 2023

Cross-committee working: Post-EU scrutiny

Introduction

1. The purpose of this paper is to invite the Conveners Group to consider an update on progress and implementation of new scrutiny arrangements which are relevant to its strategic priority on post-EU scrutiny. This follows on from the update provided on 31 May 2023 and the agreement of an Action Plan. The Group agreed to receive regular updates using this action plan to frame its consideration and a summary update is also provided alongside the Action Plan at **Annexe A**.
2. The CEEAC Committee provided a written update to all committee conveners earlier this month. Included in that update was guidance to support subject committees with post EU scrutiny. The guidance is also attached to this paper (**Annexe B**). It has been developed by SPICe and legal services on behalf of the CEEAC Committee. The guidance is supported by a toolkit for use by SPICe and legal services in particular. Relevant guidance including [Guidance on Committees \(parliament.scot\)](#) and [Guidance on Public Bills | Scottish Parliament Website](#) will also be updated.

Progress and implementation of new scrutiny arrangements

3. While the CEEAC Committee has taken the lead in developing and delivering new scrutiny processes, it will be the subject committees which will be engaged in day to day post EU scrutiny. To support the subject committees in carrying out this scrutiny, the CEEAC Committee has—
 - commissioned an EU law tracker: [EU Law Tracker | Scottish Parliament Website](#);
 - reached agreement with the Scottish Government on the level of information to be provided in bills' accompanying documents, SSI policy notes and LCMs in policy areas previously within EU competence¹;
 - worked with the Scottish Government to increase the level of information provided in relation to non-alignment with EU law, and
 - circulated guidance on post EU scrutiny

EU Law Tracker

¹ The exception to this is the UK Internal Market Act 2020 where information is to be provided on every occasion given the potential for the Act to affect all devolved policy areas.

4. The first of a series² of EU Law Tracker and Reports has now been published on the [Parliament's website](#) and shared with relevant subject committees.
5. The purpose of the EU Law Tracker and Reports, and the research that underpins them, is to provide ongoing analysis of EU law and policy developments in areas **which are devolved to Scotland** and are therefore potentially in scope of the SG alignment commitment.
6. A number of case studies are provided in section 3 of the report which examine potential divergence between EU law and Scots law arising from EU tertiary legislation, the repeal and replacement of EU laws and the adoption of new EU laws.
7. The CEEAC Committee has written to the Cabinet Secretary for the Constitution, Europe, External Affairs and Culture inviting him to reflect on the findings in the forthcoming Continuity Act annual report on EU alignment/non-alignment.
8. The CEEAC Committee has also written to relevant subject committees inviting them to consider the case studies within their respective remits.
9. The CEEAC Committee has also arranged a joint event on the afternoon of 2 October with the Royal Society of Edinburgh which will provide an introduction to the EU law tracker. Dr Whitten is one of the speakers alongside Joel Reland, UK in a Changing Europe, which publishes a [UK-EU regulatory divergence tracker: seventh edition - UK in a changing Europe \(ukandeu.ac.uk\)](#). The panel will be chaired by the Convener followed by a Q&A.
10. Invitations have been issued to relevant subject committees and it would be helpful if at least one Member could attend from relevant subject committees.

Agreement with Scottish Government on the provision of information

11. The CEEAC Committee has reached an agreement with the Scottish Government on the level of information to be provided when introducing legislation which either impacts on the policy commitment to align with EU law, or is affected by certain specified constitutional arrangements³.
12. Ministers have agreed to provide information on the impact of the Scottish Government's commitment to align with EU law, which is "the default position of Scottish Ministers"⁴, noting that there will be circumstances as set out in the policy statement approved by Scottish Parliament where alignment is not pursued. This applies to primary and secondary legislation and Legislative Consent Memorandums (LCMs)

² The Parliament will receive two reports a year in January and September.

³ The specified constitutional arrangements are the operation of the market access principles under the UK Internal Market Act 2020, including exclusions from those principles; common frameworks; and the UK-EU Trade and Co-Operation Agreement,

⁴ [eu-alignment--draft-policy-statement-continuity-act.pdf \(parliament.scot\)](#)

13. Scottish Government officials are required to consider if legislative proposals are likely to impact on the Scottish Government's policy to maintain alignment with the EU and, if so, if this will assist further alignment or result in divergence and the reasons why. Scottish Government officials are also required to consider whether the specified constitutional arrangements impact on the policy objectives of the legislative proposal. The conclusions reached will be shared in the relevant Policy Memorandum, Policy Note or LCM.

14. Where relevant and appropriate, this information should include–

- details of which EU legislation is relevant to the legislative proposals and, where relevant, how the legislation will impact on the Scottish Government's commitment to align with EU law;
- details of whether and how proposals would result in divergence from EU law;
- the impact on access to EU markets for people, goods and services;
- whether the market access principles in the UK Internal Market Act 2020 may impact on the policy objectives of the legislative proposal⁵, whether consideration has been given to seeking an exclusion and, if so, provide details;
- whether and how common framework agreements may impact on the policy objectives of the legislative proposal and, if so, provide details;
- whether the Trade and Co-Operation Agreement with the EU may impact on the policy objectives of the legislative proposal and, if so, provide details;
- whether other obligations (e. g. international law) act as constraints on alignment.

15. There is an expectation that the subject committees will include consideration of the above information as part of their day-to-day legislative scrutiny. Scottish Parliament and Scottish Government officials are also continuing to consider how the above approach might be relevant to ongoing work to review the UK Statutory Instruments Protocol 2.

Non-Alignment

16. The CEEAC Committee has raised concerns that there is not sufficient transparency with regards to the Scottish Ministers' decision-making process on EU alignment, especially where decisions are taken not to align.

⁵ Given the market access provisions in UKIMA extend to many devolved policy areas this should include legislative proposals which may not impact on EU alignment.

17. In response to these concerns the Scottish Government has committed to increasing the information provided to Parliament and the public to understand how the commitment is being applied. Ministers have agreed to provide additional annual reporting from October 2023 to sit alongside the existing Continuity Act reporting process, to provide information including—

- how alignment has been considered in respect of legislation made in the Scottish Parliament over the reporting year;
- an assessment of EU legislation made over the reporting year that may be relevant to the commitment to align; and
- where Scotland’s policy priorities in respect of the EU lie in the coming year.

18. The CEEAC Committee will share these annual reports with relevant subject committees who will be invited to consider them as part of their scrutiny of the policy commitment to align with EU law.

Devolved policy areas not previously within EU competence

19. As noted above, there are additional scrutiny considerations arising from the new constitutional landscape which could also apply to those areas of devolved policy not previously within EU competence. For example, the market access principles in UKIMA extend to many such policy areas. The Scottish Government has agreed to provide information in accompanying documents where the market access principles may impact on legislative proposals in areas not previously within EU competence, including whether consideration has been given to seeking an exclusion.

20. Some Common Frameworks may also apply to policy areas not previously within EU competence. Scottish Parliament and Scottish Government officials are continuing to consider the appropriate levels of information to be provided by Ministers on the operation of Common Frameworks.

21. Officials also continue to work on a process for the provision and timing of information in relation to exclusions sought to the market access principles of the UK Internal Market Act 2020.

22. There is an expectation that the subject committees will include consideration of the above information as part of day to day legislative scrutiny including primary legislation, secondary legislation and LCMs.

Additional work strands

23. There are a number of additional post-EU work strands which Scottish Parliament and Scottish Government continue to progress including—

- Review of SI Protocol 2 and approach to UK Government delegated powers in devolved areas;

- Review of the Written Agreement on Inter-Governmental Relations;
- Scrutiny of the EU/UK Trade and Co-Operation Agreement;
- Scrutiny of the use of the powers within the Retained EU Law (Revocation and Reform) Act 2023.

24. The CEEAC Committee will consider proposals as they are progressed and will keep both the Conveners Group and subject committees updated.

25. In the meantime, three related matters are highlighted⁶:

26. Subject committees have scrutinised a number of Legislative Consent Memorandums (LCMs) to date in session 6. It is anticipated that LCMs will continue to be lodged throughout the remainder of the session, in broadly similar numbers. Many LCMs touch on the application of SI Protocol 2 and questions relating to UK Government powers in devolved areas. The Delegated Powers and Law Reform Committee reports to subject committees on technical aspects of these matters, while subject committees scrutinise the policy implications. It is expected that subject committees will continue to scrutinise these issues where they arise in LCMs, pending progress on the review of SI Protocol 2.

27. Subject committees also continue to scrutinise SI notifications under SI Protocol 2. Pending progress on the review of the Protocol, committees may wish to continue to scrutinise how Scottish Government proposals to consent to UK SIs impact on the policy commitment to align with EU law, or are affected by the specified constitutional arrangements identified above.

28. Lastly it is recognised that some legislation currently before committees may have been introduced in advance of the agreement with the Scottish Government on levels of information being fully embedded in the government's policy development and legislative processes. An example is the Circular Economy (Scotland) Bill. Where that is the case, support will be provided to committees in seeking any further information they need from the Government to facilitate scrutiny of the policy commitment to align with EU law, or the impact of the specified constitutional arrangements.

Recommendation

29. The Group is invited to note the progress which is being made in delivering the action plan, agree to build in a review of the progress being made in delivering the new scrutiny arrangements and ask officials to take this forward and report back.

30. The Group is invited to give further consideration to any additional CPD support which Committees and Members may find useful in supporting the mainstreaming of these issues.

⁶ These matters are also covered in the guidance to subject committees, to support committee scrutiny.

**Conveners Group clerking team
September 2023**

Action plan

Proposed action plan to cover the following issues:

	Post EU area	Action	Update
1	Retained EU Law (Revocation and Reform) Act	Scottish Parliament and Scottish Government officials continue to work together to consider the likely impact of the amended REUL Bill on parliamentary scrutiny and Scottish Parliament officials will provide an update on this work at the Group's meeting on 31 May	<p>The CEEAC Committee wrote to relevant committees in June to help support consideration of any initial work in relation to Schedule 1 and officials provided oral briefings to a number of committees.</p> <p>Scottish Parliament and Scottish Government officials continue to discuss parliamentary scrutiny of the use of the powers in the REUL Act in devolved areas including reporting requirements.</p>
2	Alignment with EU Law	<p>The CEEAC Committee have agreed with Scottish Ministers the level of information to be provided on the impact of the Scottish Government's commitment to align with EU law when introducing legislation. This applies to primary and secondary legislation and Legislative Consent Memorandums (LCMs)</p> <p>Scottish Parliament and Scottish Government officials also</p>	<p>The CCEAC Committee has written to all committee conveners providing an update on the agreement alongside guidance provided by SPICe and Legal Services.</p> <p>The next annual report is due by the end of October. The CEEAC Committee has invited the Cabinet Secretary to reflect on the EU law tracker report in producing the annual report.</p>

		<p>continue to work constructively together in considering the appropriate and proportionate levels of information to be provided to the Parliament as part of the annual reporting on the policy commitment to align with EU law.</p> <p>An update will be provided in due course.</p> <p>It is expected that a draft scrutiny toolkit will be available for consideration by the CEEAC Committee and then the Conveners' Group before the end of June. The CEEAC Convener will then write to subject committees with an update setting out the new scrutiny arrangements.</p> <p>SPICe breakfast seminar on retained EU law on Wednesday 31 May 2023.</p>	<p>Guidance, its annexes and a post-EU scrutiny toolkit have been developed to assist Committee teams across scrutiny group to support efficient, effective scrutiny of policy issues in the post EU context.</p> <p>The seminar was delivered as planned.</p>
3	EU Law Tracker	<p>Two reports a year to be made to the CEEAC Committee. These reports will include a number of case studies outlining changes to EU law and will be published and</p>	<p>The first EU law tracker report has now been published and sent to relevant subject committees to support scrutiny of the SG policy commitment to align with EU law, where appropriate.</p>

		made available to the relevant subject committees. The first report will be presented to the CEEAC Committee and published in September 2023	
4	Inter-Governmental Relations Written Agreement	<p>Scottish Parliament and Scottish Government officials are currently discussing how to approach a review of the Written Agreement and the levels of information to be provided by the Scottish Government on the operation of Common Frameworks, the exclusions process for requesting and agreeing exclusions to the market access principles established by the UK Internal Market Act 2020, and the operation of the governance arrangements in the Trade and Cooperation Agreement with the EU</p> <p>An update will be provided in due course.</p>	On-going

5	Review of the Standing Orders	<p>The CEEAC Committee has agreed to carry out a review of EU related Standing Orders before reporting to the Standards, Procedures and Public Appointments Committee.</p> <p>An update will be provided in due course.</p>	<p>CEEAC Committee clerks have had an initial discussion with SPPA clerks and are working on a proposed approach to the review</p>
6	CPD support	<p>The Group is invited to give further consideration to any additional CPD support which Committees and Members may find useful in supporting the mainstreaming of these issues.</p>	

Annexe B**Guidance to subject committees of the Scottish Parliament on post EU scrutiny****Introduction**

1. The Convener's Group was asked in November 2022 *“to consider how post-EU constitutional issues can be mainstreamed into existing policy and legislative scrutiny”* and asked *“clerks, Legal Services and SPICe to develop a toolkit and guidance which will support Members and the Committees in addressing these issues as appropriate in carrying out regular scrutiny.”*
2. At the same meeting, the Convener's Group noted *“that Scottish Parliament officials continue to work with Scottish Government officials in considering the appropriate level and timing of information to be provided to the Parliament in relation to the Ministerial policy to align with EU law.”*
3. The aim of this paper is to provide subject committees with guidance on 'post EU scrutiny' in devolved policy areas including the new arrangements agreed with the Scottish Government.
4. 'Post EU scrutiny' is used as an umbrella term for the scrutiny of the Scottish Government's policy commitment to align with EU law where appropriate and new constitutional arrangements which have been introduced following the UK's exit from the EU.
5. As such, this guidance, its annexes and the post EU scrutiny toolkit⁷ fulfil both directions from the Convener's Group of November 2022. This guidance, its annexes and the post EU scrutiny toolkit have been developed to assist Committee teams across scrutiny group to support efficient, effective scrutiny of policy issues in the post EU context.
6. The Scottish Government's policy commitment to align with EU law and the post EU constitutional landscape are crucial context for the environment in which policy is developed and legislation made. As such, subject committees will need to understand and navigate such issues during routine scrutiny of policy and legislation within their remit.
7. To assist committees with post EU scrutiny, the Scottish Parliament and the Scottish Government have reached agreement on information which should be provided to the Parliament when it is asked to consider legislative proposals in the areas most affected by post EU arrangements and therefore within the scope of the Scottish Government's commitment to align with EU law where appropriate. The agreement reached with the Scottish Government on the provision of information to aid post EU scrutiny is attached at **Appendix A.**

⁷ [Draft toolkit](#)

8. The areas covered by the agreement are devolved matters which were formerly EU competences (with the exception noted in the paragraph below in relation to the UK Internal Market Act 2020). **Appendix B** provides a non-exhaustive list of areas considered to be former EU competences.
9. The agreement also provides that the Scottish Government will provide information on the UK Internal Market Act 2020, in particular market access principle considerations and exclusions to the market access principles, in any primary legislation, Scottish secondary legislation and legislative consent memorandums where the UK Internal Market Act 2020 is a consideration. This includes for legislation in areas which are not former EU competences.
10. **Appendix C** provides a visual aide-mémoire of the agreement reached with the Scottish Government.
11. The remainder of this paper provides high level information on the Scottish Government's policy commitment to align with EU law where appropriate and the constitutional arrangements covered in the agreement. **Appendix D** provides a summary of this, by setting out what information the Scottish Government should provide, what can be expected from it and why having such information is important for scrutiny undertaken by subject committees.
12. Work is ongoing to reach agreement with the Scottish Government on the provision of information in relation to:
 - a. Statutory Instrument notifications as part of the Statutory Instrument Protocol 2 process and approach to UK Government powers in devolved areas
 - b. Review of the written agreement on intergovernmental relations
 - c. Scrutiny of the EU/UK Trade and Co-Operation Agreement;
 - d. Scrutiny of the use of the powers within the Retained EU Law (Revocation and Reform) Act 2023.
 - e. Constitutional arrangements in areas which were not former EU competences (e.g., a process on the provision of information relating to exclusions from the market access principles of the UK Internal Market Act 2020).

Given that Committees will still wish to understand the nature of these arrangements; their influence on policy and legislative development and how they affect stakeholders, **Appendix E** provides a table of the key issues, a note on their importance and some suggestions on how they may be scrutinised.

In addition to this guidance, and as directed by Convener's Group, a scrutiny toolkit has been developed to assist Committee teams across scrutiny group to support efficient, effective scrutiny of policy issues in the post EU context⁸.

⁸[Draft toolkit](#)

The Scottish Government's policy commitment to align with EU law where appropriate

13. There is no longer a requirement to continue to comply with EU law. Scottish Ministers have indicated that, where appropriate, they would nevertheless like to see Scots Law continue to align with EU law.
14. Scottish Ministers have a number of different legislative options for securing that alignment. Part 1 (section 1(1)) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (the Continuity Act) confers a power on Scottish Ministers to allow them to make regulations with the effect of continuing to keep Scots law aligned with EU law in some areas of devolved policy. This is known as the “**keeping pace**” power. Scottish Ministers may also have existing powers in other Acts which would allow them to align Scots law with EU law. Primary legislation may also be used to introduce legislation with the purpose of keeping Scots law aligned with EU law.
15. The Continuity Act requires Scottish Ministers to lay reports annually (first in draft form for consultation and then a final version) before the Scottish Parliament on the intended and actual use of the keeping pace power.
16. The first Statement of Policy by the Scottish Ministers in exercise of the power in Section 1 of the UK Withdrawal from the EU (Continuity) (Scotland) Act 2021 states that:

“Scotland will seek to align with the EU where appropriate and in a manner that contributes towards maintaining and advancing standards across a range of policy areas.”⁹
17. To support scrutiny of the Scottish Government's alignment commitment, the Constitution, Europe, External Affairs and Culture Committee has commissioned Dr Lisa Whitten to produce an EU law tracker which will also see two reports a year delivered to the Committee. The reports will include a number of case studies which set out instances of potential divergence and/or alignment between EU Law and Scots Law that have taken place during the reporting period¹⁰. The reports will be published and made available to the relevant subject committees.
18. The first tracker and report will be presented to the Committee and published in September 2023. **Appendix F** provides a breakdown of the information which can be expected from the EU law tracker as well as a note on how the information will aid scrutiny.

⁹ [Statement of Policy by Scottish Ministers](#), May 2022

¹⁰ The tracker will not include all changes to domestic law that have been made by subordinate legislation (either at the Scottish Parliament or the UK Parliament) in areas not covered by the case studies.

The UK Internal Market Act 2020

19. The Scottish Government has committed to provide information on the market access principles of the UK Internal Market Act 2020 (UKIMA) when the Parliament is asked to consider relevant primary legislation, secondary legislation and legislative consent memorandums. In general terms, this is any legislation which affects goods, services and professional qualifications¹¹.
20. The Act establishes two market access principles: mutual recognition and non-discrimination. The market access principles are intended to facilitate trade, the provision of services and recognition of professional qualifications across the UK.
21. All devolved policy areas are potentially impacted by the market access principles although some exemptions are provided in the Act. For example, neither of the market access principles currently applies to healthcare services, social services or transport services.
22. The principles do not introduce any new statutory limitations on the competence of the Scottish Parliament or Scottish Ministers. But in practice, regulatory competition may constrain the ability of the devolved authorities to exercise their executive and legislative competences. Specifically, UKIMA may not affect the Scottish Parliament's ability to pass a law but may have an impact on whether that law is effective in relation to goods and services which come from another part of the UK.

Exclusions process for the UK Internal Market Act 2020

23. The market access principles set out in UKIMA apply unless there is an exclusion provided for in the Act.
 - a. Exclusions for goods are listed in [Schedule 1 to the Act](#). Existing regulations (i.e., those in force on 30 December 2020) are excluded if they were already unique to one part of the UK¹².
 - b. Exclusions for services are listed in [Schedule 2 of the Act](#). Existing regulations (i.e., those in force on 30th December 2020) are excluded from the market access principles for services.
24. Only UK Ministers have the power to create new exclusions/change the exclusions provided for in UKIMA.
25. As such, the UK Government and devolved administrations have agreed a process for considering exclusions to the market access principles of UKIMA.
26. The process requires that if a government wishes to seek an exclusion to the market access principles, it must set out the scope and rationale for this. The

¹¹ For example, the [Circular Economy \(Scotland\) Bill](#); the LCMs for the [Genetic technology \(Precision Breeding\) Act 2023](#) and [Professional qualifications Act 2023](#).

¹² UK Internal Market Act 2020 section 4(2)(b) which applies to the mutual recognition principle for goods but not to the other market access principles.

proposed exclusion is then considered by the appropriate common framework forum.

27. If the exemption is agreed, it is for UK Ministers to introduce a draft instrument to the UK Parliament to give effect to the exclusion. The UK Parliament will then consider the draft instrument.
28. The Scottish Parliament will receive an SI notification under Statutory Instrument Protocol 2 (SIP2). This allows the Parliament to scrutinise the decision of Scottish Ministers to consent to the SI being made. However, the scope of the exclusion will already have been agreed between the four UK governments by the time the Scottish Parliament is notified under SIP2.
29. The Scottish Government has committed to provide information on whether an exclusion to the market access principles of UKIMA is thought necessary and if one has been discussed when the Parliament is asked to consider relevant primary legislation, Scottish secondary legislation and legislative consent memorandums. As above, this is any legislation which affects goods, services and professional qualifications¹³. Scottish Parliament and Scottish Government officials continue to work on the level of information to be provided and the timing of that information.

Common frameworks

30. Common frameworks are agreements between the governments of the UK (often all four governments, but this does not have to be the case). They set out how the governments will work together, to discuss and agree an approach to decisions about when they should have the same rules and when they may have different rules in specific policy areas. Frameworks are agreements about how decisions will be made, rather than about what policy decisions will be taken.
31. Each framework sets out the areas of law and policy where it will be used to make decisions. This is known as the 'scope' of a framework.
32. Frameworks were only intended to be used to make decisions in areas previously governed at an EU level (matters now governed by retained EU law or assimilated law after 31 December 2023). However, it's clear that some frameworks will be used to make decisions about policies and laws which were not previously governed at an EU level.
33. The Animal Health and Welfare Framework is an example of this type of framework where matters previously decided at an EU level, as well as those which were not, are within its scope.
34. It is less clear where other frameworks will be used to make decisions. For example, the Ozone-Depleting Substances and Fluorinated Greenhouse Gases Framework, lists specific laws and policy areas where the framework

¹³ See footnote 4

must be used to take decisions, but the groups established by frameworks can also be used as the forums for discussion on much wider issues.

35. Given that frameworks are intergovernmental, information from the Scottish Government will be essential to understanding how common frameworks are operating, and how they influence the legislative and policy proposals put forward in framework areas or in areas which interact with frameworks. Scottish Parliament and Scottish Government officials continue to work on the level of information to be provided.

Appendix A

EU Alignment Guidance for Committees

Ministers have agreed with the Scottish Parliament to provide information on the impact of the Scottish Government’s commitment to align with EU law, which is “the default position of Scottish Ministers”, noting that there will be circumstances as set out in the policy statement approved by Scottish Parliament where alignment is not pursued¹⁴. This applies to primary and secondary legislation and Legislative Consent Memorandums (LCM). This guidance note provides details of this agreement for Committees.

Scottish Government officials are required to consider if legislative proposals are likely to impact on the Scottish Government’s policy to maintain alignment with the EU, and if so if this will assist further alignment or result in divergence, and the reasons why. The conclusions reached will be shared in the relevant Policy Memorandum, Policy Note or LCM.

Where relevant and appropriate, this information should include –

- details of which EU legislation, is relevant to the legislative proposals, and, where relevant, how the legislation will impact on the Scottish Government’s commitment to align with EU law;
- details of whether and how proposals would result in divergence from EU law;
- the impact on access to EU markets for people, goods, and services;
- whether the market access principles in the UK internal market Act may impact on the policy objectives of the legislative proposal¹⁵, whether consideration has been given to seeking an exclusion and, if so, provide details;
- whether and how common framework agreements may impact on the policy objectives of the legislative proposal and, if so, provide details;
- whether the Trade and Co-Operation Agreement with the EU may impact on the policy objectives of the legislative proposal and if so provide details;
- whether other obligations (e. g. international law) act as constraints on alignment.

¹⁴ [Statement of Policy by Scottish Ministers](#), May 2022

¹⁵ Given the market access provisions in UKIMA extend to many devolved policy areas this should include legislative proposals which may not impact on EU alignment.

Appendix B

Areas of former EU competence

The Treaty establishing the European Community sets out the areas where the EU has either exclusive or shared competence. For the purposes of this guidance, the policy areas listed below can be considered to be areas of former EU competence.

Areas of Exclusive EU Competence

Article 3 of the Treaty establishing the European Community details the areas of Union exclusive competence as:

- customs union
- competition rules for the functioning of the internal market
- monetary policy, for the member states which have adopted the euro
- conservation of marine biological resources under the common
- fisheries policy
- common commercial policy

Areas of Shared Competence between the EU and Member States

Article 4(2) is on 'shared competence', where the Union and the member states are both able to act.

The main areas of shared competence are as follows:

- (a) internal market;
- (b) social policy, for the aspects defined in this Treaty;
- (c) economic, social and territorial cohesion;
- (d) agriculture and fisheries, excluding the conservation of marine biological resources;
- (e) environment;
- (f) consumer protection;
- (g) transport;
- (h) trans-European networks;
- (i) energy;
- (j) area of freedom, security and justice;
- (k) common safety concerns in public health matters, for the aspects defined in this Treaty.

Appendix C

Information to be provided by the Scottish Government to Committees to accompany legislation

The Scottish Parliament and the Scottish Government have reached agreement on the information which should be provided to the Scottish Parliament where legislative proposals are brought forward. This agreement relates principally to areas of former EU competence¹⁶ and where, therefore, there is a question over the impact of the proposal on the Scottish Government's policy commitment to align with EU law where appropriate. The agreement is reflected in the document on the 'EU Alignment Guidance to Committees'.

The table below is intended to aid understanding of what the agreement means in practice. As such, it indicates what information should be provided by the Scottish Government in the case of different legislative proposals in areas of former EU competence¹⁷. For ease, it also shows where such information will not be provided. In the case of the UK Internal Market Act 2020 considerations, detail should be provided in every instance given that the market access provisions extend to many devolved policy areas, including those which were not a former EU competence.

What information is provided?	Primary legislation		Secondary legislation		UK primary legislation (which requires legislative consent)		Where will the information be?
	Bill in area of former EU competence	Bill not in area of former EU competence	SSI in area of former EU competence	SSI not in area of former EU competence	LCM in area of former EU competence	LCM not in area of former EU competence	
Detail on which EU legislation is relevant to the proposal and how the legislation will impact on the Scottish Government's commitment to align with EU law	✓	X	✓	X	✓	X	Bill – policy memorandum SSI – policy notes LCM – legislative consent memorandum

¹⁶ In the case of the UK Internal Market Act 2020 considerations, detail should be provided in every instance given that the market access provisions extend to many devolved policy areas, including those which were not a former EU competence.

¹⁷ At present the agreement between the Scottish Parliament and the Scottish Government on the provision of information does not extend to UK statutory instrument notifications but this may be expanded in the future and this table will be updated accordingly.

Detail on whether and how proposals would result in divergence from EU law	✓	X	✓	X	✓	X	Bill – policy memorandum SSI – policy notes LCM – legislative consent memorandum
Whether there are other obligations (e. g. international law) which act as constraints on alignment	✓	X	✓	X	✓	X	Bill – policy memorandum SSI – policy notes LCM – legislative consent memorandum
The impact of the proposal on access to EU markets for people, goods, and services	✓	X	✓	X	✓	X	Bill – policy memorandum SSI – policy notes LCM – legislative consent memorandum
If the UK Internal Market Act 2020 market access principles may impact on the policy objectives of the proposal	✓	✓	✓	✓	✓	✓	Bill – policy memorandum SSI – policy notes LCM – legislative consent memorandum
If an exclusion to the market access principles of the UK internal Market Act is thought necessary and if one has been discussed	✓	✓	✓	✓	✓	✓	Bill – policy memorandum SSI – policy notes LCM – legislative consent memorandum

If a common framework(s) may impact on the policy objectives of the proposal ¹⁸	✓	X	✓	X	✓	X	Bill – policy memorandum
Whether the Trade and Co-Operation Agreement with the EU may impact on the policy objectives of the proposal	✓	X	✓	X	✓	X	SSI – policy notes LCM – legislative consent memorandum

¹⁸ There is ongoing work between the Scottish Parliament and Scottish Government on what information will be provided on common frameworks.

Appendix D

The importance of the information Scottish Government will provide to subject committees for scrutiny

The information will be provided in the situations set out in Annexe C. This information will help subject committees to scrutinise the Scottish Government's commitment to align with EU law where appropriate and to scrutinise the impact of the new constitutional arrangements on policy development and legislation. The Scottish Government is working with its policy teams to embed the agreement to ensure that information appears in relevant Bill documents, SSI policy notes and LCMs.

Information provided by Scottish Government	Constitutional arrangement or policy commitment	Why is this information being provided?	How will it help scrutiny?
Detail on which EU legislation is relevant to the proposal and how the legislation will impact on the Scottish Government's commitment to align with EU law	Policy commitment	To explain whether legislative proposals will result in alignment or divergence with EU law, and which EU law is relevant.	Allows the Parliament to view proposals through the lens of the Scottish Government's commitment to align with EU law where appropriate.
Detail on whether and how proposals would result in divergence from EU law	Policy commitment	To explain whether proposals will result in divergence with EU law, including passive divergence (i.e., where inaction results in Scots law being different from EU law).	Allows the Parliament to view proposals through the lens of the Scottish Government's commitment to align with EU law where appropriate.
Whether there are other obligations (e. g. international law) which act as constraints on alignment	Policy commitment	The Scottish Government may be under statutory obligations to follow a course of action, this could include implementing the terms of UK bilateral trade agreement. This	Allows the Parliament to understand any duties on Scottish Ministers which affect their ability to fulfil the policy commitment to align EU law

Information provided by Scottish Government	Constitutional arrangement or policy commitment	Why is this information being provided?	How will it help scrutiny?
		may have an effect on whether the Scottish Government is able to pursue its policy of aligning Scots law with EU law where appropriate. This information should explain those considerations and their impact on the development and shape of the proposal before the Parliament.	with Scots law where appropriate.
The impact of the proposal on access to EU markets for people, goods, and services	Policy commitment	<p>To trade with the EU, goods manufactured in Scotland and Scottish service providers operating in the EU must comply with EU law for example, in terms of product standards.</p> <p>This information should explain how Scottish Government decisions to align or diverge with EU law might place different requirements on Scottish manufacturers and service providers depending on whether they are trading within the UK or with the EU.</p>	Allows the Parliament to understand how proposed legislation might affect the ability of manufacturers and service providers to trade with and in the EU.
If the UK Internal Market Act 2020 (UKIMA) market access	Constitutional arrangement	The market access principles of UKIMA apply in almost all	The market access principles may have an impact on whether

Information provided by Scottish Government	Constitutional arrangement or policy commitment	Why is this information being provided?	How will it help scrutiny?
principles may impact on the policy objectives of the proposal		<p>areas of devolved policy in relation to goods and services.</p> <p>This information should explain whether and how the market access principles in UKIMA have influenced the development and shape of the proposal before the Parliament.</p> <p>In particular, it should explain which market access principle(s) is/are relevant and why.</p>	<p>legislation passed by the Parliament is effective in relation to goods and services which come from another part of the UK. Is it crucial that committees are able to consider such factors during their scrutiny. As the deposit return scheme (DRS) has demonstrated, not considering fully the implications of UKIMA on Scottish legislation has real world impact.</p>
If an exclusion to the market access principles of the UK internal Market Act 2020 is thought necessary and if one has been discussed	Constitutional arrangement	<p>The market access principles of UKIMA apply in almost all areas of devolved policy in relation to goods and services but exclusions can be provided for.</p> <p>This information should explain whether the Scottish Government believes an exclusion to the market access</p>	<p>In order for Scottish legislation to be fully effective in relation to goods and services which come from another part of the UK there may need to be an exclusion to the market access principles. Not having an exclusion where one is required for Scottish legislation to be fully effective can have significant effect as DRS has shown.</p>

Information provided by Scottish Government	Constitutional arrangement or policy commitment	Why is this information being provided?	How will it help scrutiny?
		<p>principles is necessary for the legislation to have full effect.</p> <p>The information should also explain whether the Scottish Government is seeking an exclusion to the market access principles and, if so, how advanced any discussions on the relevant exclusion are¹⁹.</p>	<p>It is important that committees are able to consider such factors during their scrutiny.</p>
<p>If a common framework(s) may impact on the policy objectives of the proposal</p>	<p>Constitutional arrangement</p>	<p>Common frameworks are agreements between the governments of the UK which set out how the governments will work together, to discuss and agree an approach to decisions about when they should have the same rules and when they may have different rules in specific policy areas (largely those which are devolved but used to be governed at EU level).</p> <p>Decisions taken in common frameworks may therefore</p>	<p>The Parliament should have all of the relevant information around any proposal it is asked to consider. This includes transparent and clear information on inter-governmental agreements which may have influenced the thinking of Scottish Ministers.</p>

¹⁹ Work is ongoing between the Scottish Parliament and the Scottish Government to agree a process for the provision of information to the Parliament on the UK Internal Market Act 2020 exclusions process.

Information provided by Scottish Government	Constitutional arrangement or policy commitment	Why is this information being provided?	How will it help scrutiny?
		<p>influence legislative proposals which the Parliament is asked to consider.</p> <p>This information should explain whether a common framework(s) is/are operating in the policy area and, if so, whether and how that has influenced the proposal.</p>	
Whether the Trade and Co-Operation Agreement with the EU may impact on the policy objectives of the proposal	Constitutional arrangement	<p>The Trade and Cooperation Agreement governs the relationship between the EU and the UK.</p> <p>It covers trade arrangements along with measures for law enforcement and judicial cooperation in criminal matters. The Agreement is underpinned by a number of governance measures including the creation of a Partnership Council and a number of Specialised Committees to oversee the operation of the Agreement.</p>	The Scottish Parliament should know when it considers legislation whether any part of that legislation is required to implement an international agreement such as the Trade and Cooperation Agreement.

Information provided by Scottish Government	Constitutional arrangement or policy commitment	Why is this information being provided?	How will it help scrutiny?
		<p>The Partnership Council can make binding decisions which could include amendments to the terms of the TCA,</p> <p>As the TCA includes provisions affecting areas of devolved competence such as fisheries, the environment and justice, any binding decisions taken by the Partnership Council may require Scottish Parliament legislation to ensure continued compliance with the TCA.</p>	

Appendix E

Statutory Instrument Protocol 2 notifications and constitutional arrangements in areas not covered by the agreement with Scottish Government

Agreement has not yet been reached with the Scottish Government on the provision of information in relation to Statutory Instrument Protocol 2 notifications, and some constitutional arrangements (including where such arrangements operate in areas which are not former EU competences). The table below highlights some of the key issues subject committees may wish to consider as part of their scrutiny.

Key issue	Why is this important?	Why seek information?	Questions which a committee may wish to ask
<p>Retained EU Law or 'assimilated law' (REUL/AL) after 31 December 2023</p>	<p>REUL/AL is domestic law originating from the UK's membership of the EU. It is a snapshot of the EU law which applied in the UK at the end of the transition period on 31 December 2020. REUL/AL may already have been amended since that date.</p> <p>The Retained EU Law (Revocation and Reform) Act 2023 gives Scottish Ministers significant powers to change, revoke and replace REUL/AL by secondary legislation until 23 June 2026.</p> <p>The Act also confers powers on UK Ministers to act in</p>	<p>Understanding what is changing in REUL/AL is important for the following reasons:</p> <ul style="list-style-type: none"> • Accountability of Scottish and UK Ministers for exercise of powers in devolved areas - the powers of both UK and Scottish Ministers are wide and enable legal changes to be made which would normally be enacted by Parliament through a Bill. • Comprehension of domestic statute book 	<p>What power is being exercised?</p> <p>Which Ministers are exercising the power?</p> <p>Why is the legislation required?</p> <p>What is the effect of the legislation on the Scottish Government's policy commitment to align with EU law where appropriate?</p> <p>Is the REUL/AL within a common framework area? If so what discussions have taken place in the framework?</p>

Key issue	Why is this important?	Why seek information?	Questions which a committee may wish to ask
	<p>devolved areas. Where UK Ministers exercise these powers there is not a consent requirement.</p>	<p>in areas of former EU competence.</p> <ul style="list-style-type: none"> • Insights into how decisions are being made at an intergovernmental level through frameworks for example on future of REUL/AL. • Understanding of how evolution of REUL/AL sits with the Scottish Government's policy of alignment with EU where appropriate. 	<p>Will the proposal have UK Internal Market Act 2020 implications? If so, what are they?</p> <p>Have stakeholders been consulted on the change? What are their views?</p>
<p>Executive powers, particularly those for UK Ministers acting in devolved areas.</p>	<p>Bills often confer delegated powers on Ministers. The wider the powers, the greater the ability for Ministers to make significant updates or changes to the law by secondary legislation.</p> <p>An increasing number of UK Bills since EU exit have granted UK Ministers delegated powers to act in</p>	<p>Awareness of executive powers is important for the following reasons:</p> <ul style="list-style-type: none"> • recognising where significant executive powers affect the balance of powers between legislature and executive 	<p><i>For Bills/LCMs</i></p> <p>Is the Committee satisfied that these powers sit with the executive and not the legislature in the long term?</p> <p>Has the DPLRC raised any issues with the delegated powers?</p>

Key issue	Why is this important?	Why seek information?	Questions which a committee may wish to ask
	<p>devolved areas. Often, the same powers are granted to Scottish and UK Ministers concurrently. This means that either Scottish or UK Ministers can exercise the powers.</p>	<ul style="list-style-type: none"> • understanding the scrutiny challenge of UK Ministers acting in devolved areas • awareness of how the devolution settlement is working 	<p>Are powers given to UK Ministers and/or Scottish Ministers in devolved areas?</p> <p>For SIP 2 notifications If a UK SI is being made - is the Committee satisfied that the power is exercised by UK Ministers?</p> <p>What is the rationale for a UK SI being made rather than an SSI?</p>
<p>Consent provision where UK Ministers wish to act in devolved areas</p>	<p>Where UK Bills give UK Ministers powers to act in devolved areas these are sometimes granted on the basis that UK Ministers must seek the consent of Scottish Ministers or must get the consent of Scottish Ministers. In some UK Bills there is no consent requirement, meaning that UK Ministers can act in devolved areas without the consent of either the Scottish Ministers or the Scottish Parliament.</p>	<p>Important for the Parliament to:</p> <ul style="list-style-type: none"> • recognise where powers are being granted to UK Ministers in devolved areas • understand whether there is a consent provision and the nature of it. • be aware of where Scottish Ministers are recommending 	<p>For Bills/LCMs Is there a statutory consent provision where UK Ministers are given powers to act in devolved areas?</p> <p>If there is a statutory consent provision, what is the nature of it? E.g., must Scottish Ministers consent or only be consulted?</p> <p>Has the DPLRC Committee raised any issue with consent?</p>

Key issue	Why is this important?	Why seek information?	Questions which a committee may wish to ask
	<p>In some cases, Statutory Instrument Protocol 2 may be engaged.²⁰</p>	<p>legislative consent is granted for a Bill which confers powers on UK Ministers to act in devolved areas.</p> <ul style="list-style-type: none"> • monitor where UK Government Ministers are exercising powers in devolved areas with the consent of Scottish Ministers. Statutory Instrument Protocol 2 may be engaged. 	<p>If there is no statutory consent provision has there been a political commitment on consent?</p> <p>If there is a consent mechanism or commitment, will Statutory Instrument Protocol 2 be engaged?</p> <p><i>For SI notifications</i> Does the SI have implications for the Scottish Government's commitment to align with EU law where appropriate?</p> <p>Will the proposal have UK Internal Market Act 2020 implications? If so, what are they?</p> <p>Is the SI in a common framework area?</p> <p>Have stakeholders been consulted on the change? What are their views?</p>

²⁰ [Statutory Instrument Protocol 2](#)

Appendix F: EU law tracker

Although there is no longer a requirement for Scots law to be compatible with EU law, the Scottish Government has a policy commitment to align Scots law with EU law where appropriate. The [Continuity Act Policy Statement](#) May 2022 states:

“Scotland will seek to align with the EU where appropriate and in a manner that contributes towards maintaining and advancing standards across a range of policy areas. It will do so to protect the health and wellbeing of people in Scotland, maintain Scotland’s international reputation, and, by protecting the standards that Scotland enjoys, ease the process of Scotland’s return to the EU.”

The EU Law tracker has been designed to support the Parliament’s scrutiny of the Scottish Government’s policy commitment to align with EU law where appropriate. The tracker will be provided along with two reports each year (September and January). The first tracker and report are due to be published in September 2023. The tracker will chart how EU law has developed across a range of policy areas²¹. The reports will set out a series of case studies of instances of potential divergence and/or alignment between EU Law and Scots Law that have taken place during the reporting period²².

Information provided by tracker/report	What level of information will be provided?	Why is this information helpful?	How does the information support scrutiny?
Analysis of whether the law for EU member states (EU law ²³) has changed in policy areas which are devolved to Scotland.	The tracker will provide a detailed breakdown of EU law in devolved areas. Specifically, the tracker will identify:	The Scottish Government has agreed to provide information setting out how legislative proposals relate to its EU alignment commitment (see annexe A), but the Parliament will not receive information where EU law changes but	The tracker provides transparency and will allow Parliamentary Committees, stakeholders including business and the public to track relevant developments in EU law.

²¹ Policy areas will include Environmental protection, animal health and welfare, plant health, equality, non-discrimination and human rights, social protection, food standards, chemicals, economy and trade, police and judicial cooperation, public health and transport.

²² The tracker will not chart domestic law. This means that if domestic law changes but EU law does not, this divergence will not be shown.

²³ The tracker will show whether there have been changes to EU secondary law (which includes directives and regulations) and tertiary law (including delegated acts and implementing acts – both of which are legally binding on member states. EU tertiary law is similar to secondary legislation in the UK/Scotland.

Information provided by tracker/report	What level of information will be provided?	Why is this information helpful?	How does the information support scrutiny?
	<ul style="list-style-type: none"> • New EU legislation made during the reporting period • EU law no longer in force during the reporting period • Updates or changes to EU law during the reporting period 	<p>there is no corresponding Scottish legislation.</p> <p>The tracker will set out all the EU legislative instruments that were fully or partially within devolved competence before the UK left the EU and show where changes have been made since the UK left the EU</p>	<p>This information will assist in the scrutiny of the Scottish Government's policy commitment to align with EU law by providing details of all changes to EU legislation that have taken place during the reporting period.</p>
<p>Policy case studies which will demonstrate changes in EU law during the reporting period.</p>	<p>The report accompanying the tracker will include a number of policy case studies which will:</p> <ul style="list-style-type: none"> • Provide an overview and narrative on areas of EU law which have evolved during the reporting period • Give analysis on the relevant EU policy and how it has evolved during the reporting period 	<p>The policy case studies will provide committees with specific examples in a number of policy areas to demonstrate how EU law has changed during the reporting period</p> <p>The analysis may indicate where alignment has occurred because Scots law has reflected the changes in EU law.</p> <p>The case studies may also highlight where passive divergence has occurred (i.e., where Scots law and EU law are different (not aligned) because EU law has changed</p>	<p>The policy case studies will support scrutiny of the Scottish Government's policy commitment to EU alignment by considering specific policy areas in detail.</p> <p>The case studies will provide tangible examples of how EU law has changed during the reporting period and whether similar changes have or have not been made to Scots law.</p> <p>The case studies will therefore give an indication of whether EU law and Scots law are aligned in specific policy</p>

Information provided by tracker/report	What level of information will be provided?	Why is this information helpful?	How does the information support scrutiny?
	<ul style="list-style-type: none"> • Provide a high-level overview of whether Scots law in the policy area has changed during the reporting period • Provide an indication of whether changes in EU and/or Scots law has led to alignment or divergence 	or is no longer in force and Scots law has not changed/remains in force.	areas. Where there may have been divergence the case studies will explain how this has occurred.
Analysis of the European Commission's Work Programme	The report will include a list of the relevant proposals in the European Commission Work Programme covered by the Scottish Government's alignment commitment.	Whilst the tracker and the case studies are retrospective, the analysis of the Commission Work Programme will provide details of planned changes to EU legislation which will take place over the following 12-18 months.	<p>This information will support scrutiny of the Scottish Government's policy commitment to EU alignment by providing a forward look on what changes are likely to occur in particular policy areas over the next year at the EU level.</p> <p>Information about proposed EU legislation will allow Committees to discuss the Scottish Government's future plans for alignment and to understand how EU policy areas may evolve in the future.</p>

Information provided by tracker/report	What level of information will be provided?	Why is this information helpful?	How does the information support scrutiny?
<p>Summary of use by Scottish Ministers of UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 power to 'keep pace' and Scottish primary legislation²⁴</p>	<p>The report will include information on how the Scottish Government has used the "keeping pace" power during the reporting period. Section 1(1) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 confers a power on Scottish Ministers to make secondary legislation with the aim of aligning with EU law – the "keeping pace power".</p> <p>The report will also provide a list of Scottish primary legislation made during the reporting period and highlight which legislation is within areas of previous EU competence.</p>	<p>This information will provide committees with an overview of the use of the 'keeping pace power' and a list of Scottish primary legislation which is relevant to the Scottish Government's alignment commitment (i.e., primary legislation used to align Scots law with EU law or primary legislation made at the Scottish Parliament which results in divergence between Scots law and EU law)²⁵.</p>	<p>This information will support scrutiny of the Scottish Government's policy commitment to EU alignment by demonstrating:</p> <ul style="list-style-type: none"> • where Scottish Ministers have used the power in section 1(1) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 <p>where primary legislation has been passed which affects the Scottish Government's policy commitment to alignment with EU law where appropriate.</p>

²⁴ Scottish Ministers may also use powers contained in other Acts to make subordinate legislation to align Scots law with EU law. Detail should be provided in the Scottish Government's annual report on alignment with EU law. As such, the tracker will not detail this subordinate legislation unless it forms part of one of the policy case studies provided in the report.

²⁵ The information to be provided by the Scottish Government to accompany legislation (see Annexe A) should include an assessment of whether it will lead to alignment or divergence with EU law.

Information provided by tracker/report	What level of information will be provided?	Why is this information helpful?	How does the information support scrutiny?
<p>Summary of UK primary legislation in devolved areas of former EU competence²⁶.</p>	<p>The report will include information on any UK primary legislation made during the reporting period which may affect the Scottish Government's commitment to align with EU law (i.e., primary legislation made at the UK Parliament in devolved areas which are also areas of former EU competence).</p> <p>UK primary legislation which relates to devolved policy areas and is in areas of previous EU competence is likely to have one of two effects:</p> <ul style="list-style-type: none"> • It may deliver on the Scottish Government's alignment commitment • It may lead to Scots and UK law diverging from the EU thereby preventing delivery of the alignment. 	<p>This information will provide committees with an overview of UK primary legislation which relates to devolved policy areas, and which sits in areas of former EU competence.</p> <p>This information will support committees in understanding where the Scottish Government's alignment commitment is delivered by UK wide legislation (made at the UK Parliament) and where such legislation means the alignment policy is undeliverable.</p>	<p>This information will support scrutiny of the Scottish Government's policy commitment to alignment with EU law by:</p> <ul style="list-style-type: none"> • highlighting where UK wide legislation affects the Scottish Ministers' decision on alignment • where alignment cannot be pursued as a result of UK wide legislation.

²⁶ UK Ministers may also use powers contained in primary legislation to make subordinate legislation in areas of former EU competence. The tracker will not detail this subordinate legislation (other than under the keeping pace power) unless it forms part of one of the policy case studies provided in the report.

Conveners Group

7th Meeting, 2023 (Session 6), Wednesday 20 September 2023

Update on the delivery of activities to promote post- legislative scrutiny, and

Post-legislative scrutiny activity in the Parliamentary year 2022-23

Introduction

1. The purpose of this paper is to provide an update on progress being made in delivering the Conveners Group's agreed actions in relation to its strategic priority on post-legislative scrutiny.
2. The paper provides a summary of post-legislative scrutiny over the previous parliamentary year as well as details of planned PLS over the coming parliamentary year.
3. Conveners will note the amount of PLS being conducted by committees so far this session has increased significantly in comparison with previous sessions.
4. The paper also provides updates on the other agreed actions in relation to PLS. These actions also aim to increase the amount of PLS activity taking place. Further updates on these actions will be provided on a regular basis as well as annual updates on PLS activity.
5. The Conveners Group is invited to consider this information.

**Conveners Group clerking team
September 2023**

Update on the delivery of activities to promote post-legislative scrutiny

Background

1. One of the current strategic priorities of the Convener's Group (CG) is to promote a greater level of post-legislative scrutiny (PLS) activity across the committees in the Scottish Parliament. A series of actions have been agreed by the CG to take this forward.
2. The first part of this paper provides an update on the delivery of the various actions agreed to by the CG. The second part provides an update on how much PLS activity has taken place across committees between May 2022 to May 2023 based on information collated from the annual reports that each committee published before summer recess.

Update on PLS actions

3. Five projects are now being taken forward by a small working of parliamentary officials from clerking, legislation team, SPICe and the participation and communities team (PACT) to implement the agreed actions.
4. The projects are as follows; with a short update on progress:

Project 1 – Committee Annual Reports – this consists of a yearly collation of PLS activity across parliamentary committees based on information collated from the annual reports that each committee published before summer recess. The aim would be to enable CG members to assess progress year-on-year each September.

Project 2 – Business Planning Day – all committee clerks and researchers were contacted by email in June and encouraged to provide members of their committees with ideas for possible PLS inquiries in each relevant committee, and present these at their business planning days (if one was being held). The aim is to enable members of committees to make informed decisions about PLS as part of their work programme discussions. It would be helpful to have feedback from conveners on how this went. The feedback from this process is set out in the **Annex**.

Project 3 – PLS and legislation – a group of officials from SPICe, legislation team and others are scoping out how to encourage use of Stage 1 scrutiny of bills and the reports as a means of highlighting where future PLS reviews are recommended and what data needs or reporting requirements would be needed. The group is also looking at how SPICe publications such as summaries of bill scrutiny can be used to highlight PLS ideas. The aim is to make it easier for future committees to understand whether a predecessor committee recommended a PLS review of a particular bill and what the main issues were when the bill was being passed.

Project 4 – liaison with the CPPP Committee and its participation inquiry

– a group of officials is meeting to discuss the outcome of the Citizens Participation and Public Petition Committee’s inquiry into improving public engagement. It is understood that this inquiry may come forward with several recommendations relating to PLS which will need to be implemented. This will be discussed separately under the item on participation, diversity and inclusion at today’s meeting.

Project 5 – SPICe tools – finally, officials are looking at tools such as Equality Impact Assessments and sustainable development assessments to assess whether they can be used to identify or encourage ideas for PLS in committees.

5. A progress paper on Project 1 (annual reports) has been provided separately to members of CG at today’s meeting.
6. Further updates on projects 2 to 5 will be provided to the CG in due course.

Other work that has been taken forward

7. Members of the CG may be interested to note that a new section of the **website** has been created to contain an updated list of PLS activity in the Parliament to make it easier for the user to find out what has been going on in committees. This can be found at:

<https://www.parliament.scot/bills-and-laws/legislative-consent-memorandums>

8. Two **training sessions** for parliamentary clerks and researchers have been run to brief all staff on the CG’s new focus on PLS and the various actions that are being taken forward. The aim was to provide for a higher level of awareness amongst these staff about PLS and what was being done and what was expected of them.
9. An **academic fellow**, Dr Tom Caygill of Nottingham Trent University, has been appointed on a short-term research contract to take forward an analysis of the success or otherwise of our efforts in this and previous sessions to promote PLS. His findings will be made available to the CG.
10. Officials are also planning to organise a **breakfast briefing** on PLS involving Dr Caygill and several conveners who have recently taken forward PLS inquiries. Other MSPs will be invited to this. This is being scheduled for the autumn. It is hoped that this will encourage other committees to participate in PLS work.
11. Finally, officials are now participating in the initiative launched by the **Westminster Foundation for Democracy** to establish a [network](#) of parliamentarians, parliamentary staff and other experts interested in PLS and sharing best practice. This has now been launched members of the CG interested in joining can be sent details to enable them to network with other elected representatives from around the world with a shared interest in PLS. The [first seminar](#) of the network is taking place on the morning of 22 September.

ANNEX**Planned post-legislative scrutiny work (from September 2023)**

Committee	Is any PLS being conducted from September 2023?	Details
Citizen Participation and Public Petitions Committee	No	Not holding a business planning day, and given the nature of its remit, has no scope for conducting post-legislative scrutiny (as that term is normally understood)
Constitution, Europe, External Affairs and Culture Committee	Yes, as part of day-to-day business	Given the nature of our remit we regularly conduct PLS of the impact of both SG and UK legislation which impacts on how devolution is working post-EU exit. For example, the use of the keeping pace powers in the Continuity Act and the impact of the market access principles in the UK Internal Market Act.
Criminal Justice Committee	Yes (pending final decision)	The clerks have been asked to review several previous Acts in the criminal justice area with a few to a future PLS inquiry in 2023/24 as time allows
Delegated Powers and Law Reform Committee	No	Given the Committee's remit, there is limited scope for post-legislative scrutiny.
Economy and Fair Work Committee	Yes	The Committee has agreed to undertake post-legislative scrutiny of the Procurement Reform (Scotland) Act 2014 and will take this forward in the autumn of 2023
Education, Children and Young People Committee	Yes	The Committee will be undertaking some PLS work into previously passed education legislation (details to be announced in October).
Equalities, Human Rights and Civil Justice Committee	Not at this stage	Other priorities (legislative scrutiny) have taken priority at the moment.
Finance and Public Administration Committee	Yes	A pilot of post-legislative scrutiny of a financial memorandum (Note: this is likely to be in 2024)
Health, Social Care and Sport Committee	Yes	At its business planning session on the 27 June, the Committee agreed to

		<p>undertake 3 items of post-legislative scrutiny this year in relation to the following:</p> <ul style="list-style-type: none"> • Social Care (Self-Directed Support) (Scotland) Act 2013 – evaluation of implementation of the Act and future areas of focus • Health and Care (Staffing) (Scotland) Act 2019 – in relation to delays to implementation of the Act and other related areas • Alcohol (Minimum Pricing) (Scotland) Act 2012 – evaluation of MUP before current provisions expire in April 2024
Local Government, Housing and Planning Committee	Not at this stage	<p>The Committee has recently completed its post-legislative inquiry of the Community Empowerment (Scotland) Act 2015. This work four phases looking at different Parts of the Act. The work concluded with a session with the Scottish Government and COSLA on 5 September 2024. Although the Committee has no plans for further post-legislative scrutiny the Committee will continue to monitor the impact of its recommendations under each of these phases, particularly in the context of the Scottish Government's review of the Act.</p>
Net Zero, Energy and Transport Committee	Yes in principle	<p>Detail still to be worked at following discussion at Business Planning Day but likely to begin with research on public engagement duties under the Climate Change Act 2009. Time allowing the committee hopes to hold mini-inquiries on other legislation later in this Parliamentary year.</p>
Public Audit Committee	Not at this stage	<p>The Committee's remit is largely to consider reports published by the Auditor General for Scotland (AGS). Should the AGS raise concerns in a section 22 or 23 report regarding how a particular item of legislation is operating, this would allow the Committee to explore these issues</p>

		further, in line with its remit. So far in Session 6, no issues have been raised by the AGS in this regard.
Rural Affairs and Islands Committee	Yes, as a component of annual budget scrutiny	The Committee's current legislative workload has prevented it from taking on much self-generated work. Aspects of its current work programme do, however, include an element of post-legislative scrutiny – ie, annual budget scrutiny includes a focus on implementation of Islands Act 2018.
Social Justice and Social Security Committee	Decision pending	The Committee had an initial discussion at its Business Planning Day on 12 June. Since then, there has been further membership changes and new primary legislation announced in the Programme for Government. The Committee will take a decision on conducting post-legislative scrutiny at its meeting on 21 September.
Standards, Procedures and Public Appointments Committee	Yes	An evaluation of the Lobbying Act is planned.

Post-legislative scrutiny activity in the Parliamentary year 2022-23

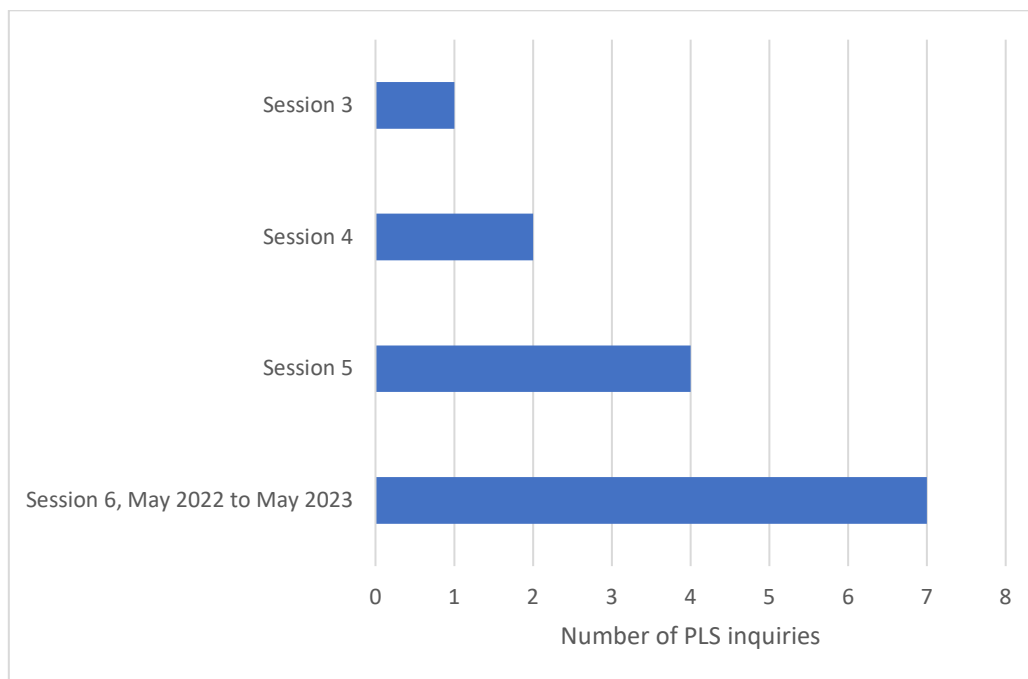
Background

12. One of the current strategic priorities of the Convener's Group (CG) is to promote a greater level of post-legislative scrutiny (PLS) activity across the committees in the Scottish Parliament. A series of actions have been agreed by the CG to take this forward.
13. One of these actions is a yearly review of the annual reports that all parliamentary committees are required to produce and which summarise their work over the period May to May.
14. These Annual Reports should now contain a section setting out any PLS work conducted over that year by each committee.
15. The PLS working group of parliamentary officials have collated the returns from each of the annual reports. These are set out in the **Annex** to this paper.

PLS activity between May 2022 to May 2023

16. There were six examples of PLS inquiries conducted between the 16 different committees in the Parliament. Additionally, there is one further PLS inquiry which is just about to get underway (Economy and Fair Work Committee). The committees who have been active are:
 - COVID-19 Recovery Committee
 - Criminal Justice Committee
 - Economy and Fair Work Committee
 - Education, Children and Young People Committee
 - Finance and Public Administration Committee
 - Local Government, Housing and Planning Committee
 - Social Justice and Social Security Committee
17. It should be noted that the remit of the Public Audit Committee has been changed since session 5 and this no longer contains an explicit reference to PLS as it did when the committee was the Public Audit and Post-Legislative Scrutiny committee in the previous session.
18. The impact of this change and the views of MSPs and officials on the merits of having a committee dedicated to PLS activity is being looked at by Dr Tom Caygill who has been appointed by SPICe as an academic fellow for this research.
19. Figure 1 below shows the growth in PLS activity compared to previous sessions.

Figure 1: PLS activity in this current parliamentary year compared to previous parliamentary sessions



20. Note that the above figure compares PLS inquiries in this current parliamentary year with the whole of the previous parliamentary sessions. A complete listing can be found in the new [PLS section](#) of the Parliament's website.

21. It is clear, therefore, that there has already been a marked increase in PLS activity in the Parliament in this session, which can be attributed to the efforts of the CG to promote and encourage this work.

22. The critical challenge for the CG and for the officials is sustaining this activity.

ANNEX

Post-Legislative Scrutiny and Committee Annual Reports, 13 May 2022 to 12 May 2023

Committee	Has any PLS been conducted in this parliamentary year?	Details
COVID-19 Recovery Committee	Yes	The COVID-19 Recovery Committee's scrutiny of the Coronavirus (Recovery and Reform) (Scotland) Bill included consideration of the emergency legislation introduced at the outset of the pandemic. The Scottish Government was given time-limited emergency powers to respond to COVID-19 in various Acts of the Scottish and UK parliaments. The Coronavirus (Recovery and Reform) (Scotland) Bill was introduced to make permanent some of the time-limited powers that were contained in the emergency legislation and extend others for a further period. The Committee has been reviewing which provisions contained in the relevant Acts were still required and those which should no longer be required without further parliamentary approval in the event of any future threats
Citizen Participation and Public Petitions Committee	No	Note, however, that the CPPPC's work during its Public Participation Inquiry has included considering how to engage the general public in generating ideas for PLS work.
Constitution, Europe, External Affairs and Culture Committee	No	
Criminal Justice Committee	Yes	Post-legislative scrutiny of the Domestic Abuse (Scotland) Act 2018. Report published in May 2023.
Delegated Powers and Law Reform Committee	No	

Economy and Fair Work Committee	Pending	The Committee has agreed to undertake post-legislative scrutiny of the Procurement Reform (Scotland) Act 2014 and will take this forward over summer recess and the Autumn.
Education, Children and Young People Committee	Yes	In relation to the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill, the Committee reports it has considered regular written updates from the Scottish Government on the operation of the redress scheme. No formal output noted.
Equalities, Human Rights and Civil Justice Committee	No	
Finance and Public Administration Committee	Yes	Post-legislative scrutiny of the Financial Memorandum that accompanied the Children and Young People (Scotland) Bill (now the 2014 Act). The Committee sent a letter to the then Deputy First Minister in October 2022 and the Government responded in December 2022.
Health, Social Care and Sport Committee	No	
Local Government, Housing and Planning Committee	Yes	Post-legislative scrutiny of Parts 9 and 2 of the Community Empowerment (Scotland) Act 2015. Published a report on Part 9 in October 2022 and now also on Part 2 .
Net Zero, Energy and Transport Committee	No	
Public Audit Committee	No (due to remit change)	
Rural Affairs and Islands Committee	No	
Social Justice and Social Security Committee	Yes	Review of the VoiceAbility scheme, resulting in a letter to the relevant Cabinet Secretary
Standards, Procedures and Public Appointments Committee	No	

Conveners Group

7th Meeting, 2023 (Session 6), Wednesday 20 September 2023

Conveners Group – Participation, Diversity and Inclusion Strategy

1. At its June meeting, CG agreed [the outline of its Participation, Diversity and Inclusion strategy](#) and agreed to sign off a final version at this meeting. This is attached at Annex A.
2. Since then the Citizen Participation and Public Petitions Committee has published its report on Embedding Public Participation in the Work of the Parliament: [Embedding Public Participation in the Work of the Parliament | Scottish Parliament](#). The Convener of the CPPP Committee will be able to give CG an update at the meeting on the next steps outlined in the report and how these fit with the PD&I strategy.
3. The CPPPC report has made some significant recommendations on deliberative democracy – in particular the use of Citizens' Panels (or "People's Panels") – and its potential contribution to increasing participation and this has therefore been suggested as a further action under the strategy. The anticipated next steps and timeline are set out in the infographic below and at paragraph 66 of the CPPPC report.



4. In particular, CPPPC recommends two further People's Panels, one of which should contribute to post legislative scrutiny, and the other to consideration of a topical issue. PACT has capacity to deliver this panel in February 2024 and has been exploring with clerks and SPICe potential topics which would be of broad public interest and work for this participation method. We are in discussion with a couple of committees and the relevant conveners may be able to update CG at the meeting.
5. In considering possible topics we have used a set of principles which were developed for us by Dr Stephen Elstub of Newcastle University, who has both research and delivery experience of this kind of participation. These principles are listed in Annexe B. If this approach is likely to become a regular part of committee scrutiny, as the CPPPC committee is suggesting, we are likely to need a process for prioritising topics given the significant resource required to deliver such a panel. CG might be the most appropriate forum for this, given it already has an existing role in allocating limited resources such as committee debate slots.
6. **CG is asked to—**
 - **Agree the participation, diversity and inclusion strategy at Annex A**
 - **Agree the statement on trauma-informed working attached to the strategy**
 - **Endorse the principles on choice of topic for deliberative panels at Annex B and agree that CG should have a lead role in prioritising topics for people's panels**
 - **Agree that officials should continue to explore proposed topics for a panel on post-legislative scrutiny and proceed with the one which has best fit with the principles and can realistically be delivered in February.**
 - **Note that officials will report on progress with the strategy every six months and that the first evaluation report will be provided next summer.**

**Conveners Group clerking team
September 2023**

Annex A**FINAL DRAFT: Conveners Group Participation, Diversity & Inclusion strategy**

During session 6, the Conveners Group will focus on the following actions with the aim of enhancing the quality of scrutiny by hearing from a wider range of voices in committee work.

1. An annual participation evaluation report

At the end of each Parliamentary year in May, CG will consider an annual report on public participation in committee work. This will include information on:

- The methods used for participation
- Where it has taken place (in Holyrood, in communities by region, online)
- The numbers and types of participants
- Developments during the year to support increased participation (drawing on the recommendations of the CPPPC report on participation)

The report will include data from the witness diversity survey and will also incorporate relevant monitoring recommendations from the gender sensitive audit.

This will allow CG to take stock annually of the successes and gaps in committee public participation. It would cover some of the key areas highlighted in the CPPPC report and allow CG to evaluate progress over time.

2. Overcoming time/place barriers to participation

One of the challenges in making participation opportunities available to the public is the availability of members at times/locations which are most likely to attract public participants. PACT will work with committees to pilot some examples of participation without members present and explore how these can be made as impactful as possible for both members and participants. CG will review the potential to make more use of MSP reporters, to reduce the demands on the time of the committee as a whole.

3. Payment for participation policy

One of the key messages from the CPPPC inquiry was that among people from groups who are under-represented in the work of the Parliament, those who also have a low income are most likely to be under-represented. PACT is developing a payment for participation policy focused on under-represented groups, to set out the circumstances in which financial incentives to participate will be offered. This will include a framework for participation in people's panels, where CPPPC recognised that payment for all participants was an important recognition of the work they are undertaking. While this is for the SPCB to sign off, CG will input to ensure that it

meets committee needs and the use of payments can be reviewed as part of the annual evaluation report.

4. Public involvement in agenda setting

Members of the public are interested in shaping work programmes and remits/approaches, not just responding once the scope of work has been determined. CG will encourage PACT and committee clerks look for opportunities over the rest of this session to test how public participation might help to shape better inquiry remits and contribute ideas for work programmes.

5. Accessibility

Languages and formats have an important role in increasing the reach of committee calls for views and reports by allowing people to provide responses in formats and languages that work for them. Working within the SPCB Language Policy (which will be updated after the census results are published), CG will agree a best practice statement on using different formats and languages (eg EasyRead, BSL, Gaelic, other languages). The best practice statement will also incorporate giving feedback to members of the public who have taken part in committee activities. This would address a recommendation from the CPPPC report about the importance of feedback in helping people to see the impact of their participation.

6. Involving children and young people

The Parliament has working in partnership agreements with the Scottish Youth Parliament and the Children's Parliament and PACT is currently working with a much wider group of children and young people's organisations on how to embed UNCRC in the work of the Parliament. PACT will work with partners to gather views from children and young people between October 2023 and Easter 2024 and from this CG will consider specific proposals to support greater participation by children and young people in committee work.

7. Trauma-informed practice

CG has agreed the attached statement outlining the Parliament's commitment to trauma-informed working. This can be shared on the SP website and with partner organisations when working on potentially traumatic topics, with vulnerable people or with under 18s. As part of the CPD programme, training will be developed on trauma-informed engagement and facilitation, to be delivered to committees at the point where it is needed.

8. Deliberative democracy

The CPPP Committee report on participation set out the potential value of deliberative democracy to increase the diversity of public participation and increase trust in the political process. The report has recommended a pathway for the rest of this session which includes 2 further pilots of people's panels before the end of the session, one on a policy issue and one post-legislative scrutiny panel. CG will take a leading role in identifying topics and evaluating outcomes for this work.

9. Gender sensitive scrutiny

CG will agree guidance for committees and clerks on how to conduct gender sensitive scrutiny. This guidance will be practical, using the type of information and examples already shared with CG.

STATEMENT ON TRAUMA-INFORMED WORKING BY COMMITTEES

The Scottish Parliament encourages people from across Scotland to contribute their views and experiences to the work of Parliamentary committees. We aim to provide welcoming and inclusive activities, a safe space and services that reduce or remove barriers that might prevent people from engaging with us.

We recognise that when people have experienced trauma or adversity, this could create a significant barrier to being able to participate fully. Designing our services in a trauma-informed way is a crucial step to making them welcoming and inclusive.

Our commitments are:

- Staff and members will be trauma-informed, understanding the possible impact of trauma and taking it into account when working directly with the public
- The staff who support participation will be trauma-skilled, able to recognise when someone may be affected by trauma, to adjust how we work to avoid harm and support recovery, and to recognise and support people's resilience.

In designing participation activities, we will follow the Parliament's values of:

Stewardship – contributing to the Parliament's overall aim of improving the lives of the people of Scotland

Respect – collaborating with participants to give them choice and empower them

Inclusiveness – creating an atmosphere of safety and trust

Excellence – following best practice in the way we work, including assessing risk carefully when we engage.

We will also ensure that the wellbeing of our staff and our MSPs is cared for and supported as they support the needs of others; this includes recognising that some of our staff and MSPs will also have experienced trauma or adversity.

Annex B**Annexe B: Principles to support topic selection for deliberative engagement**

The following five principles were developed by the Participation and Communities Team in collaboration with Dr Stephen Elstub of Newcastle University. They have previously been used to support the selection of topics for the deliberative engagement delivered by the Parliament in the past four years.

The principles are presented below within the context of using deliberative engagement for post-legislative scrutiny:

- **Problem:** The topic focuses on an issue that needs solved & would benefit from deliberative input. In the context of post-legislative scrutiny this means assessing if a review of the implementation and impact of an Act would benefit from consideration by a panel of informed and broadly representative members of the public.
- **Scope:** The topic is sufficiently broad in scope; it is an issue that will affect various members of the public and have an impact on broader society
- **Framing:** the topic can be posed as a question or in the form of a problem to solve. For example, is an Act achieving its intended purpose? Is it benefitting people in the way originally intended by lawmakers?
- **Timing:** It is a timely topic - both the public and politicians are still in the process of forming opinions on the issue. In the context of post-legislative scrutiny, it would mean that the Act being scrutinised has the potential to be considered for amendment in the near future.
- **Impact:** the topic is relevant to a current or forthcoming committee inquiry, committee members and staff see potential benefit from a deliberative panel and there is a commitment to considering and responding to the panel recommendations as part of the committee's inquiry.

Conveners Group

7th Meeting, 2023 (Session 6), Wednesday 20 September 2023

Travel and meeting requests

Purpose of paper

1. The Conveners Group is asked to consider two requests for committee travel and meeting requests:
 - a. Constitution, Europe, External Affairs and Culture Committee – approve a visit to Belfast and Dublin (*page 2*)
 - b. Economy and Fair Work Committee – approve an external meeting in Aberdeen (*page 7*)
2. Under rule 12.3.2(a) committees are required to seek the approval of the Conveners Group to meet outwith Holyrood. Under rule 12.10 committees are required to seek the approval of the Conveners Group to travel outwith the United Kingdom.
3. These procedural requirements ensure that the Conveners Group is aware of formal committee activity taking place outwith the normal business arrangements. It is also to ensure that budget arrangements are in place. The Group is invited to note that budget has been identified to resource these travel requests.
4. The approval of the Parliamentary Bureau is also required under the rules. The Bureau has considered and approved both these requests.
5. **The Conveners Group is invited to approve these requests.**

**Conveners Group clerking team
September 2023**

Constitution, Europe, External Affairs and Culture Committee – request to approve a visit to Belfast and Dublin

Nature of request

1. As required under Rule 12.10 of Standing Orders, Conveners Group approval is sought for the CEEAC Committee to travel to Belfast and Dublin on 12-14 November.

Number of participants

2. It is intended that five members of the Committee and two clerks and one SPICe researcher will undertake the visit which would run from Sunday to Tuesday. Given the range of issues to be addressed on the visit it is likely that for some meetings Members will be split into two groups.

Consideration by the Parliamentary Bureau

3. The Parliamentary Bureau considered and approved the Committee's request on 5 September.

Justification

4. The purpose of the visit would be to further consider three of the Committee's ongoing workstreams for which it would be beneficial for members to meet with their counterparts (and others) in person in Belfast and Dublin—
 - Operation of the Windsor Framework / Northern Ireland Protocol and its implications for Scotland
 - Operation of the Trade and Co-operation Agreement (TCA) including parliamentary scrutiny of the Agreement and a possible committee inquiry which will input to the statutory review of the TCA
 - How Ireland prioritises, measures and evaluates the impact of its international work (so as to inform the Committee's scrutiny of the Scottish Government's National Outcomes)
 - The SG's commitment to align with EU law where appropriate (and overlap with the situation in Northern Ireland, which is required to align with a number of EU regulations as a result of the Windsor Framework)
5. More context is provided on each of these strands below.

Windsor Framework / Northern Ireland Protocol

6. In a recent briefing to our members, the Committee's adviser Professor Katy Hayward identified three main ways in which Scotland could be affected by the implementation of the Windsor Framework: agri-food Labelling (including the roll

out of GB-wide labelling on products 'not for sale in the EU'), UK Internal Market (any amendment to which may have implications for all-GB), and the tight timetable envisaged for next steps (and if the Border Target Operating Model is delayed further, the risks to consumers here from not having proper controls on goods entering GB increases).

7. More generally the Framework and Protocol are a key element of UK-EU relations and therefore also impact on relations between Scotland and the EU.
8. The Committee intends to monitor these developments and a visit, with contacts made and face-to-face conversations not only with politicians north and south but the business community and others, would very much benefit that work.
9. Furthermore, scrutiny of the Scottish Government's commitment to alignment with EU law is an important strand of the Committee's work (and for which we have commissioned the [EU Law Tracker](#), the first report of which is due in September). It will be useful therefore for members to discuss EU alignment in the context of how Northern Ireland is required to align with EU law under the Protocol/Framework.

Trade and Cooperation Agreement

10. The Framework for the UK's relationship with the EU is the Trade and Cooperation Agreement (TCA). Following the February agreement of the Windsor Framework, designed to address the difficulties associated with the Protocol on Ireland/Northern Ireland, relations between the EU and UK have improved.
11. This improvement may allow both sides to explore ways to ensure full implementation of the TCA and ensure it can operate more effectively. An example of this is both sides having reached [an agreement](#) for UK participation in the Horizon research programme which has been envisaged in the TCA. In addition, new challenges are arising for which solutions must be found within the framework of the TCA, an example of this is the possibility of tariffs being imposed on electric vehicles which are traded between the UK and the EU from the start of 2024.
12. The Committee is due to consider a possible inquiry which would input into a forthcoming review of the TCA and any work which the Parliamentary Partnership Assembly (PPA) might also carry out as part of this review at its meeting on 14 June. This would allow the Committee to examine the operation of the TCA and how it could operate more effectively from a devolved perspective as well as whether new areas for EU-UK cooperation could be explored. The inquiry findings could then be fed into considerations by the UK and Scottish Governments and the PPA.
13. The Committee would, therefore, find it useful to explore how the operation of the TCA is viewed both in Ireland, as an EU member state, and Northern Ireland, which has a slightly different relationship with the EU as a result of the Windsor Framework.

National Outcomes

14. The Scottish Government is undertaking a review of its [National Outcomes](#), the broad policy aims which inform its [National Performance Framework \(NPF\)](#).
15. To input to that review, and in light of our [Inquiry into the Scottish Government's international work](#), the report we published in April 2022, the Committee is focusing on the current National Outcomes and Indicators relating to international policy.
16. The areas on which we have taken evidence in June cover—
- An overview of the Scottish Government's international work in relation to the National Outcomes and Indicators (with a panel session of academics on [1 June](#)) and
 - A focus on how trade and culture are promoted (with a panel session of trade and culture bodies on [15 June](#))
17. The areas on which we will be taking evidence after the summer cover—
- A look at how Ireland measures and evaluates the impact of its international work
 - The approach taken to evaluation and measurement of international policy by a selection of smaller states and
 - The approach of Scotland's international offices
18. In order to understand how Ireland prioritises, measures and evaluates the impact of its international policies it would be highly beneficial for the Committee to visit and speak in person with relevant stakeholders both in Belfast and in Dublin. This will allow the Committee to learn about Ireland's approach to evaluation and measurement of the impact of its international work.

Commitment to align with EU law

19. The Statement of Policy by the Scottish Ministers in exercise of the power in Section 1 of the UK Withdrawal from the EU (Continuity) (Scotland) Act 2021 states that—
- “Scotland will seek to align with the EU where appropriate and in a manner that contributes towards maintaining and advancing standards across a range of policy areas.”¹
20. The Statement of Policy notes this will be achieved in a range of different ways, legislative and non-legislative, and that this commitment will be implemented primarily through the existing policy development process. It notes there will be instances where primary legislation is more appropriate than secondary legislation to maintain alignment. It also notes that, where those instances where secondary legislation is appropriate, it may be possible to align with EU law using

¹ [eu-alignment--draft-policy-statement-continuity-act.pdf \(parliament.scot\)](#)

specific domestic powers that cover the subject matter of the EU legislation rather than using the 'keeping pace power'. Specific domestic powers should be preferred, unless there is good reason for not using these powers.

21. The visit will provide an opportunity to explore any overlap with the situation in Northern Ireland, where alignment is required with a number of EU regulations due to the Windsor Framework.

Inter-parliamentary relations

22. A key priority for the Committee this session is developing inter-parliamentary relations. While the Northern Ireland Assembly is not currently sitting there may nevertheless be opportunities to meet with MLAs, Assembly officials and officials from the Northern Ireland Executive. The Committee also intend to meet with our counterpart Committee in the Dail in Dublin and the Irish Government
23. Meeting with parliamentarians will allow the Committee to discuss different approaches to scrutiny, including of the governance arrangements in the TCA and scrutiny of international policies.

Draft programme

24. The Committee's programme is yet to be finalised, but meetings are likely to include—
- MLAs
 - TDs
 - Policy think tanks
 - Academics
 - Businesses
 - Trade bodies
 - Cultural organisations
25. It is expected that the visit will help to enhance Members' awareness of the work under the three strands outlined earlier in the paper.

Travel and costs

26. In order to maximise the time available for Members to engage in a full programme of meetings during the visit it will be necessary for Members to travel on the Sunday. This means that they will have almost two full days away in which to meet with as broad a range of people as possible.
27. The anticipated costs for the visits are set out below. The option to travel by train and ferry would be a similar cost but require lengthy waits and almost an entire day of travelling overall, resulting in a shorter day for meetings in Dublin on the Tuesday.

Flights and train for 8 people

Costs	£
Return flights from Edinburgh to Belfast returning to Edinburgh from Dublin	1,426
Rail travel from Belfast to Dublin	140
Overnight Allowance for 2 nights x 8 people (Belfast on the Sunday, Dublin on the Monday)	2,028
TOTAL	3,594

Decision

28. The Conveners Group is asked to approve the request and anticipated costs from the Constitution, Europe, External Affairs and Culture Committee to travel to Dublin and Belfast on 12-14 November 2023.

**CEEAC Committee Clerks
September 2023**

Economy and Fair Work Committee – request to approve an external meeting in Aberdeen

Nature of request

- As required under Rule 12.3.2 of Standing Orders, Conveners Group approval is sought for the Economy and Fair Work Committee (EFWC) to meet in Aberdeen on Monday 6 November 2023, as part of its inquiry into a just transition for the North East and Moray.

Number of participants

- It is expected that all nine Committee members will attend the meeting and four members of the clerking team. In-person support will also be provided by SPICe, Security, the Parliament Communications Office (PCO), and the Participation and Communities Team (PACT). The anticipated costs of the external meeting are set out in the annexe to this paper.

Consideration by the Parliamentary Bureau

- The Parliamentary Bureau considered and approved the Committee's request to meet in Aberdeen at its meeting on 29 August.

Justification

- The EFWC recently [launched an inquiry into a just transition to net zero for the North East and Moray](#). The purpose of the inquiry is to consider how the transition can be supported, incentivised and de-risked in a way that benefits both companies and individuals and is the second part of a wider piece of work. Part one [concluded in June 2023](#) and focused on the Grangemouth area.
- The Committee will—
 - Explore the skills landscape in the area and its preparedness for the transition to net zero.
 - Scrutinise how policy is supporting the development and adoption of emerging technologies that present opportunities for the area.
 - Scrutinise the Scottish Government's Just Transition Fund, specific to this area and the effectiveness of participatory budgeting and whether this provides a model for community engagement in a Just Transition.
 - Consider the Scottish National Investment Bank (SNIB)'s role in leveraging in private capital to support a just transition.
- The meeting in Aberdeen will be the first formal evidence session of part 2 of the inquiry. Members are yet to agree witnesses, but it is expected that the session will include bodies such the local authorities from the region, North East Scotland Climate Action Network (NESCOAN), and Opportunity North East.

- Additionally, work is underway with PACT to arrange engagement activities around the formal meeting.
- Aberdeen has been selected as the location for the formal committee meeting due to its transport links with the wider area and the readily available hotel accommodation and suitable meeting spaces.
- If agreed, this will be the first external meeting held by the EFWC in the current session.

Venue

- The Aberdeen Town House has been provisionally booked as the venue for the formal meeting and will be provided free of charge by Aberdeen City Council. This is a well-known civic space in the city centre. It is suitable in terms of public access and meets security and broadcast requirements.

Programme

- To ensure members and staff can be at the venue in time for the morning engagement sessions, it will be necessary for most to travel to Aberdeen on the Sunday and stay overnight.

Date	Time	Activity
Sunday 5 November	Evening	Travel to Aberdeen and stay overnight.
Monday 6 November	Morning	Engagement events with community groups and other local organisations.
	Afternoon	Formal Committee meeting.
	Evening	Return to constituencies.

Travel and cost

- The proposed meeting will take place on a Monday to minimise the impact on parliamentary business. It is anticipated that most members and staff will use public transport to attend, though some members may opt to use their own vehicles.
- The anticipated costs are **£4,149.00**. A breakdown is set out in the annexe to this paper.

Conclusion

- **The Conveners Group is asked to—**
 - **approve the request from the Economy and Fair Work Committee to meet in Aberdeen on Monday 6 November 2023; and**
 - **approve, in principle, the anticipated costs outlined in the annexe.**

**Economy and Fair Work Committee Clerks
September 2023**

Annexe

The total estimated cost for the external meeting across all business areas is **£4,149**.

A breakdown is set out below. This assumes that all 9 Members will attend and use public transport.

Committee Office (13 (9 Members and 4 staff) attending)

Travel	
Return rail travel for 12*	£754
Subtotal	£754
Accommodation and Expenses	
Hotel accommodation for 12* (£89/room incl. breakfast)	£1,068
Evening meal on Sunday 5 November for 13	£364
Catering for formal meeting	TBC
Parking	TBC
Engagement workshop venue hire	£110
Lunch for workshop participants, members, and staff (£8.80/head for 50 people)	£440
Subtotal	£1,982
Total	£2,736

* One Committee member lives locally so should not require rail travel or hotel accommodation

Security (3 members of staff attending)

Travel	
Return rail travel for 3	£183
Subtotal	£183
Accommodation and Expenses	
Lunch on Monday 6 November for 3	£24
Subtotal	£24
Total	£207

Broadcasting (3 members of staff attending)

Travel	
Van hire for 2 days	£200
Fuel costs (approx. 45p per mile for 250-mile round trip)	£113
Subtotal	£313
Accommodation and Expenses	
Hotel accommodation for 3 (£89/room incl. breakfast)	£267
Evening meal on Sunday 5 November for 3	£84
Lunch on Monday 6 November for 3	£24
Staff overtime charges	TBC
Parking charges	TBC
Subtotal	£375
Total	£688

SPICe (1 member of staff attending)

Travel	
Return rail travel for 1	£61
Subtotal	£61
Accommodation and Expenses	
Hotel accommodation for 1 (£89/room incl. breakfast)	£89
Evening meal on Sunday 5 November for 1	£28
Subtotal	£117
Total	£178

PCO (1 member of staff attending)

Travel	
Return rail travel for 1	£61
Subtotal	£61
Accommodation and Expenses	
Hotel accommodation for 1 (£89/room incl. breakfast)	£89
Evening meal on Sunday 5 November for 1	£28
Subtotal	£117
Total	£178

PACT (1 member of staff attending)

Travel	
Return rail travel for 1	£45
Subtotal	£45
Accommodation and Expenses	
Hotel accommodation for 1 (£89/room incl. breakfast)	£89
Evening meal on Sunday 5 November for 1	£28
Subtotal	£117
Total	£162