

# Education, Children and Young People Committee

## 26<sup>th</sup> Meeting, 2022 (Session 6), Wednesday, 2<sup>nd</sup> November

### UK subordinate legislation - consideration of consent notification

#### Introduction

1. This paper supports the Committee's consideration of the following 'type 1' consent notification for UK subordinate legislation—
  - The [European University Institute \(EU Exit\) Regulations 2022](#).
2. Background information relating to the process for parliamentary scrutiny of consent notifications for UK subordinate legislation is set out in [Annexe A](#).
3. A short SPICe briefing is provided at [Annexe B](#), to set out the context for the instrument.

#### The European University Institute (EU Exit) Regulations 2022

4. The Minister for Higher Education, Further Education, Youth Employment and Training wrote to the Committee in relation to the notification on 6 October 2022. A copy of his letter is included at [Annexe C](#).
5. This SI was laid in the UK Parliament on 17 October 2022. The coming into force date is 31 December 2022. This process is time limited given the expiry of powers in the EU (Withdrawal) Act 2018 at the end of this calendar year.
6. The SI will remove from domestic law any rights, powers, liabilities, obligations, restrictions remedies and procedures which derive from the UK being party to the European University Institute Convention and which would otherwise remain on the statute book as 'retained EU law'.
7. The notification states that the instrument pertains to the United Kingdom's participation as a contracting party in the European University Institute. The EUI in Florence is an international centre for postgraduate and post-doctoral studies and research with a European focus. It is not an EU institution. The UK, as a signatory to the EUI Convention, participates in the governance of the Institute, contributes to the EUI's operational budget and provides grants for up to 20 students at any one time to undertake postgraduate study at the Institute.

8. The notification states that the UK's membership of the EUI Convention ceased as a result of the UK exiting the EU. The regulations reflect this position while ensuring that certain previously derived rights and immunities of the staff of the EUI continue to apply acts carried out while in the service of the EUI (and up to the end of their existing contract terms).
9. In 2019 an earlier draft of this SI was previously notified under the Protocol. At that time the Education and Skills Committee of the Scottish Parliament wrote to the Scottish Government to give their approval to consenting to the SI but the legislation was not then taken forward. The previously notified draft SI did not include the provisions which now preserve certain existing rights and immunities of EUI staff. Given the passage of time, and the change to the draft notified, the SI is now being notified a second time.
10. The Scottish Ministers have not produced an impact assessment on the basis that "no or no significant impact on the private or voluntary sector is foreseen".
11. The notification sets out why Scottish Ministers consent to these legislative changes being made at the UK level—

"The Education and Skills Committee considered the consent notification at its meeting on the 4 September 2019 and agreed it was content for the Scottish Government to give its consent for UK ministers to lay the original SI in the UK Parliament.

The 2019 version of the SI provided for a complete revocation of the EU retained law relating to the EUI Convention.

The recent SI changes relate only to:

- preserving rights of immunity from legal proceedings for the Principal, Secretary and teaching and other staff for acts carried out while in the service of the EUI; and
- ensuring immunity from legal proceedings and income tax privileges of EUI staff which previously applied will continue for the duration of their contracts."

"The Scottish Government recognises that this SI is necessary to reflect the end of the UK's existing status as a contracting party to the EUI Convention and consider the additional provisions for the benefit of UK-linked EUI staff to be welcome."

12. No legal or policy issues have been identified in relation to this notification.

## For decision

13. **Committee is invited to consider whether it agrees with the Scottish Government's decision to consent to the provisions set out in the**

**notification being included in UK, rather than Scottish, subordinate legislation.**

**Education, Children and Young People Committee clerks  
27 October 2022**

## Annexe A

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

The [process for the Scottish Parliament's consideration of consent notifications is set out in a protocol agreed between the Scottish Government and Scottish Parliament.](#)

The protocol provides for the Scottish Parliament to scrutinise the Scottish Government's decisions to consent to certain secondary legislation made by the UK Government. Specifically, this relates to UK Government secondary legislation on matters which are within devolved competence and are in areas formerly governed by EU law.

The protocol establishes a proportionate scrutiny approach and categorises SIs into type 1 and type 2.

For type 1 SI notifications, the Scottish Parliament's agreement is sought before the Scottish Government gives consent to the UK Government making secondary legislation in devolved competence. Except in respect of urgent notifications, the Scottish Parliament will have a minimum of 28 days to consider type 1 notifications.

For type 2 SI notifications, however, the Scottish Government will notify the Scottish Parliament within five days after giving consent.

Type 2 applies where all aspects of the proposed instrument are either clearly technical, do not involve a policy decision or update references in legislation that are no longer appropriate following EU exit. All other proposals fall into the type 1 category. In line with the proportionate scrutiny approach, each type 1 notification will be considered by the Committee. Committees will be notified of all type 2 notifications which fall within their remit; it is not, however, anticipated that these will normally be considered at a committee meeting. The protocol includes a number of review mechanisms and the categorisation of type 2 notifications will be monitored in this way.

**The Committee's role in relation to type 1 notifications is to decide whether it agrees with the Scottish Government's proposal to consent to the UK Government making regulations within devolved competence.**

If members are content for consent to be given, the Committee will write to the Scottish Government accordingly. The Committee may wish to note any issues in its response or request that it be kept up to date on any relevant developments.

If the Committee is not content with the proposal, however, it may make one of the following three recommendations—

- that the Scottish Government should not give its consent to the provision being made in a UK SI and that the Scottish Government should instead produce an alternative Scottish legislative solution;
- that the Scottish Government should not consent to the provision being made in a UK SI laid solely in the UK Parliament and should instead request that the provision be included in a UK SI laid in both Parliaments under the joint procedure (N.B. joint procedure is not available in every case so the option of making this recommendation will not always be available); or
- that the provision should not be made at all (that is, that the Scottish Government should not consent to the provision being included in a UK SI, nor should the Scottish Government take forward an alternative Scottish legislative solution).

## Annexe B

The logo for SPICe, featuring the letters 'SPICe' in a white, sans-serif font on a dark purple background.The logo for The Information Centre, featuring the text 'The Information Centre' and 'An t-Ionad Fiosrachaidh' in a white, sans-serif font on a dark blue background.

## **Education, Children and Young People Committee**

### **Wednesday 2<sup>nd</sup> November 2022**

## **The European University Institute (EU Exit) Regulations 2022**

This is a short briefing to support the committee's consideration of the SI notification from a procedural and policy perspective.

### **Background on the European University Institute (EUI)**

The European University Institute (EUI) is an international centre for postgraduate and post-doctoral studies and research with a European focus. While it is not an EU institution, it was established under a Convention - an international agreement, that sets out details on the structure, administration and finances of the Institute. The UK became a contracting state to the Convention in February 1976.

Under the terms of the EUI Convention, only EU member states can be contracting states. It is not possible for a non-EU member state to be a signatory to the Convention or participate in the EUI's programmes.

The UK's membership of the EUI Convention ceased as a result of the UK exiting the EU. The regulations reflect this position while ensuring that certain previously derived rights and immunities of the staff of the EUI continue to apply acts carried out while in the service of the EUI (and up to the end of their existing contract terms).

The EUI offers students from EU member states access to the postgraduate programmes in law, economics and political and social sciences. They gain access to funded places (which covers tuition fees, a monthly living cost stipend, return travel to the home country and insurance during the period of study).

For PhD studies, the living cost stipend for the first three years, plus travel and insurance costs are covered by the relevant member state. The fourth year of study

and the tuition costs are covered by the EUI. The Scottish Government (SAAS) previously paid the costs for Scottish domiciled students who attend the EUI.

## **Statutory Instrument**

This instrument terminates rights, powers, liabilities, obligations, restrictions, remedies and procedures arising from the Convention Setting up a European University Institute (EUI) in so far as they form part of domestic law. As the UK is no longer an EU Member State, membership of the EUI Convention has also ended.

The Education and Skills Committee in session five considered a consent notification previously at its meeting on the 4th of September 2019 and agreed it was content for the Scottish Government to give its consent for UK ministers to lay the original SI in the UK Parliament.

The new notification from the Scottish Government notes the 2019 version of the SI provided for a complete revocation of the EU retained law relating to the EUI Convention. However, this SI has been updated and protects employee rights for staff continuing to work for the EUI:

- preserving rights of immunity from legal proceedings for the Principal, Secretary and teaching and other staff for acts carried out while in the service of the EUI; and
- ensuring immunity from legal proceedings and income tax privileges of EUI staff which previously applied will continue for the duration of their contracts.

**Nicole Beattie, Senior Researcher Further and Higher Education, Children's Services, SPICe Research**

**27/10/2022**

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

The Scottish Parliament, Edinburgh, EH99 1SP [www.parliament.scot](http://www.parliament.scot)

## Annexe C

### Minister for Higher Education, Further Education, Youth Employment and Training

Jamie Hepburn MSP

6 October 2022

The Convener

Education, Children and Young People

Dear Convener

THE EUROPEAN UNIVERSITY INSTITUTE (EU EXIT) REGULATIONS 2022

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas arising from EU Exit.

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

I attach a Type 1 notification which sets out the details of the SI which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note, we are yet to have sight of the final SI as it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

In May 2019 an earlier draft of this SI was previously notified to the Committee under the Protocol. At that time the Education, Children and Young People Committee of the Scottish Parliament wrote to the Scottish Government to give their approval to consent to the SI but the legislation was not then taken forward. The previously notified draft SI did not include the provisions which now preserve certain existing rights and immunities of European University Institute staff. Given the passage of time and the change to the draft notified, the SI is now being notified a second time.

It is, nonetheless, important to note that the Scottish Government's overall position remains the same regarding future partnerships with the Institute: we believe that fostering international links between Scotland and our European neighbours is of the utmost importance, and would like to see the UK remain involved with the EUI in the future. My officials will continue to liaise with UK Government officials on this matter.



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

At this point it is unclear when the SI will be debated in Westminster but will confirm in due course.

JAMIE HEPBURN