

# Net Zero, Energy and Transport Committee

## 32<sup>nd</sup> Meeting, 2023 (Session 6)

Tuesday, 14 November 2023

### UK subordinate legislation: consideration of consent notification

#### Introduction

1. This paper supports the Committee's consideration of a 'type 1' consent notification sent by the Scottish Government relating to the following proposed UK statutory instrument (SI) — The Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) (Revocation and Consequential Amendments) Regulations 2023
2. The process for the Scottish Parliament's consideration of consent notifications is set out in a [Protocol on scrutiny by the Scottish Parliament of consent by Scottish Ministers to UK secondary legislation in devolved areas arising from EU Exit](#). Further details of this process are set out in **Annexe A**.

### The Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) (Revocation and Consequential Amendments) Regulations 2023

3. On 18 October, the Minister for Transport wrote to the Committee to notify a proposal to consent to the UK SI. This correspondence is in **Annexe B**. The SI notification is available in **Annexe C** and the summary notification in **Annexe D**. The UK Government intends to lay the UK SI in mid-December.
4. The Scottish Government has asked the Committee to respond to the consent notification by **24 November**.
5. These Regulations are made under sections 14(1) and 20(1)(b) of the Retained EU Law (Revocation and Reform) Act 2023 ("REUL Act"). They will remove provision for tolls or charges in connection with use of the Trans-European Road Network. Following EU exit, the UK is no longer part of the Trans-European Road Network.

6. Scottish local authorities have the power to introduce road user charging schemes on local roads, under provisions set out in the Transport (Scotland) Act 2001, but these have never been used. Currently, Scottish Ministers do not have a legislative mechanism that would allow them to charge for the use of trunk roads in Scotland - i.e. motorways and other strategic routes owned by Scottish Ministers.

7. SPICe and legal services considered there were no policy or legal issues to highlight in relation to this notification.

8. There is no statutory requirement on the UK Ministers to seek the consent of, or consult, Scottish Ministers before making this SI. The UK Government has, however, stated that it does “not intend normally to use the powers under the [REUL Act] in devolved areas without the agreement of the relevant devolved administration. Where a UK Minister intends to exercise the powers in devolved areas we will seek agreement on an SI-by-SI basis”. In line with this commitment, the UK Government has sought consent in this case. However, if consent is not given, the UK Government could, from a legal point of view, still go ahead with this instrument.

## Next steps

9. If the Committee wishes to approve the proposal to consent to the SI, it may, in doing so, set out any observations or concerns in its letter to the Scottish Government that it thinks are relevant.

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

- I. 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;
- II. That the Scottish Government should not consent to the provision being made in a UK SI laid solely in the UK Parliament and should instead request that the provision be included in a UK SI laid in both Parliaments under the joint procedure; or
- III. 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).

11. If the Committee recommends that the Scottish Government should not consent, it should write to the Scottish Government, setting out which of the options for non-consent (see above), reflects its view.

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Net Zero, Energy and Transport Committee

## Annexe A: Process for parliamentary scrutiny of consent notifications in relation to UK statutory instruments

12. The Protocol provides for the Scottish Parliament to scrutinise the Scottish Government's decisions to consent to certain subordinate legislation made by the UK Government: specifically, UK Government subordinate legislation on matters within devolved competence in areas formerly governed by EU law. It sets out a proportionate scrutiny approach and categorises SI notifications as 'type 1' or 'type 2'.

13. Type 2 applies where all aspects of the proposed instrument are clearly technical (e.g., they merely update references in legislation that are no longer appropriate following EU exit) or do not involve a policy decision. These are notified retrospectively, after the Scottish Government has given its consent.

14. All other proposals are type 1. In this case, the Scottish Parliament's agreement is sought *before* the Scottish Government gives consent to the UK Government making subordinate legislation in this way. Each type 1 notification must be considered by the relevant Committee.

**15. The Committee's role in relation to type 1 notifications is to decide whether it agrees with the Scottish Government's proposal to consent to the UK Government making Regulations within devolved competence, in the manner that the UK Government has indicated to the Scottish Government.**

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

17. If the Committee is not content with the proposal, however, it may recommend that the Scottish Government should not give its consent (more detail on the options available to the Committee in relation to this particular notification is given below). In that event, the Scottish Ministers have 14 days under the Protocol to respond to the Committee's recommendation. They could—

- Agree. If so, the Scottish Ministers would then withhold their consent.
- Not agree. If so, the Parliament will debate the issue.

18. If the Parliament agrees to the Committee's recommendation that the Scottish Ministers should not consent, the Protocol provides that the Scottish Ministers should "normally not consent" to the UKSI. However, the Protocol also provides that if the Scottish Ministers consider that the Committee's proposed alternative cannot be achieved, they may consent to the UK SI. If so, they must explain why they are doing so to the Scottish Parliament.

## Annexe B: Correspondence from the Minister for Transport

Dear Convener,

**The Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) (Revocation and Consequential Amendments) Regulations 2023  
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 & 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 and they are not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

Revocation of the HGV Regulations would not negatively impact Scotland's alignment with the EU on outcomes. If Ministers wish to consider the introduction of a devolved road user charging scheme in future, they could look at the possibility of applying EU requirements on road charges similar to those in the HGV Regulations, if need be.

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

I look forward to hearing from you by 24 November 2023.

Yours sincerely

**FIONA HYSLOP**

## Annexe C: Scottish Government Notification to the Scottish Parliament

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

The Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) (Revocation and Consequential Amendments) Regulations 2023.

### **Is the notification Type 1 or Type 2**

Type 1

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

The Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) (Revocation and Consequential Amendments) Regulations 2023 (“the Regulations”) are included in the UK SI programme which forms part of the UK Government’s implementation of the Retained EU Law (Revocation and Reform) Act 2023 (“REUL Act”).

The Regulations will:

- revoke the Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) Regulations 2009 (“the HGV Regulations”),
- revoke the Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) (Amendment) Regulations 2014,
- make minor amendments to a number of other instruments in consequence of those revocations.

The HGV Regulations implemented a Directive 1999/62/EC relating to tolls and charges for lorries using parts of the Trans-European Road network in the UK. The HGV Regulations do not require the levy of tolls or road charging for HGVs, but when charging is implemented, the Regulations place requirements on the calculation of tolls and user charges, the levying and collection of them, and limits on the maximum charges. The HGV Regulations applied only to roads forming part of the trans-European road network, which mainly comprised of motorways and a small number of strategic local roads. Following EU exit, the UK is no longer part of the trans-European road network.

The Regulations in principle relate to both reserved and devolved matters. So far as they apply to devolved road charging and tolling schemes (including local road user charging schemes, so far as local roads formed part of the trans-European road network) they are devolved, but they also make provision in relation to reserved levies, including the HGV levy.

The Scottish Ministers are of the view that revocation of the HGV Regulations would not negatively impact Scotland’s alignment with the EU on outcomes. If the Scottish Ministers were to consider the introduction of a devolved road user charging scheme in future, this would be the point at which alignment with the EU approach would be pertinent and would need to be considered.

The Regulations are proposed to be made under sections 14(1) and 20(1)(b) of the Retained EU Law (Revocation and Reform) Act 2023.

The Regulations are planned to be laid in mid-December 2023.

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

The Scottish Ministers are being asked to consent to revocation of the HGV Regulations in so far as they apply to devolved road charging and tolling schemes and to associated minor consequential amendments.

It is more practical and efficient for the Regulations to be made on a UK wide basis as the instruments being revoked and amended contain a mix of reserved and devolved provisions.

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

No

**Summary of stakeholder engagement/consultation**

The UK Government has consulted with all devolved administrations and has continued to engage with TS over the SI.

**A note of other impact assessments, (if available)**

The UK Government has not undertaken a full impact assessment on the basis that no significant impact is foreseen on the private, voluntary or public sector.

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

The Regulations will have no immediate practical impact given that there are no devolved tolls or charges currently in place in Scotland. Following EU exit, the UK is no longer part of the trans-European road network. The Regulations in principle relate to both reserved and devolved matters.

Scottish Ministers consider that consenting to the Regulations is the most effective way for the revocations and amendments to be implemented, as well as a proportionate and sensible use of parliamentary time.

In the event tolls or charging scheme were to be introduced in Scotland, at the Scottish Ministers may consider the application of EU requirements on road charges similar to those in the HGV Regulations if required.

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

UK Government intends to lay the SI in mid-December 2023.

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

N/A

**Information about any time dependency associated with the proposal**

N/A

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

No

**Any significant financial implications?**

There are no significant financial implications.

## Annexe D: Scottish Government Summary SI notification

<p><b>Title of Instrument</b></p> <p>The Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) (Revocation and Consequential Amendments) Regulations 2023</p>
<p><b>Proposed laying date at Westminster</b></p> <p>Mid-December 2023</p>
<p><b>Date by which Committee has been asked to respond</b></p> <p>24 November 2023</p>
<p><b>Power(s) under which SI is to be made</b></p> <p>The 2023 Regulations are made under sections 14(1) and 20(1)(b) of the Retained EU Law (Revocation and Reform) Act 2023.</p>
<p><b>Categorisation under SI Protocol</b></p> <p>Type 1</p>
<p><b>Purpose</b></p> <p>The HGV Regulations implemented Directive 1999/62/EC relating to tolls and charges for lorries using parts of the Trans-European Road network in the UK. Following EU exit, the UK is no longer part of the trans-European road network. This instrument therefore revokes the HGV Regulations. It also contains consequential amendments to The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012, to The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 and to The Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) (Amendment) (EU Exit) Regulations 2018.</p> <p>There are no immediate practical impacts of revocation given that there are no devolved tolls or charges currently in place in Scotland. This change has been considered from the perspective of the Scottish Ministers' policy to maintain EU alignment where possible and in our interest. In the event tolls or charging scheme were to be introduced in Scotland, could the Scottish Ministers may consider the application of EU requirements on road charges similar to those in the 2009 HGV Regulations if required.</p>
<p><b>Other information</b></p> <p>N/A</p>
<p><b>SG Policy contact:</b></p> <p>Oi Hang Chu</p>