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Clare Adamson MSP
Convener
Constitution, Europe, External Affairs and Culture
Committee

Stuart McMillan MSP
Convener
Delegated Powers and Law Reform Committee

By email only

18 March 2026

Dear Clare and Stuart

As you both know, the Statutory Instrument Protocol 2 (SIP2), which was agreed between the Scottish Government and Scottish Parliament in 2020 and has operated since January 2021, provides a shared understanding of the process and timescales for consideration of relevant UKSIs containing provision within the competence of the EU immediately prior to Implementation Period completion day. SIP2, and its predecessor (which operated from September 2018 to January 2021), were designed for a specific set of circumstances, to enable parliamentary scrutiny of UKSIs in connection with Brexit in devolved areas.

With the changing legislative landscape since Brexit, the focus of your Committees and wider Parliament, have expanded to include the existence, and use, of powers within UK Bills that enable SIs that could contain devolved provision, but which do not fall within the scope of SIP2.

Our respective officials have been considering what options there might be to address these concerns and put in place a new protocol. They have developed a proposal for a protocol with a significantly expanded scope to cover all relevant UK SIs which make provision in devolved areas, and ensures that scrutiny of these SIs can be managed efficiently and effectively.

With the agreement of your Committees, I propose that the new UK SI Protocol be operationalised for the beginning of the new Parliament.

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This will ensure that there is a process in place to provide for scrutiny of all UKSIs made in devolved areas, including any relevant SIs arising from the UK Government's proposed EU Partnership Bill.

I look forward to hearing from you.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Graeme Deay', with a stylized flourish at the end.

GRAEME DEY

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PROPOSED PROTOCOL FOR SCOTTISH GOVERNMENT NOTIFICATION TO THE SCOTTISH PARLIAMENT OF UK GOVERNMENT SIs WHICH MAKE PROVISION IN DEVOLVED AREAS

UK SI PROTOCOL

Context

1. This UK SI protocol provides for the Scottish Parliament to be notified by the Scottish Government of secondary legislation made by the UK Government which includes matters which are within devolved competence.
2. This Protocol complements existing work practices between the Scottish Government and Scottish Parliament. This includes the Scottish Government's commitment to, where possible, consult the Scottish Parliament in advance on certain policy developments likely to lead to the making of a UK SI within devolved competence. The aim of such consultation is to facilitate Parliamentary consideration during the policy development stages, in advance of legislation being finalised.
3. This Protocol replaces existing protocols between the Scottish Government and Scottish Parliament in relation to the scrutiny of UK SIs. However, instruments which have already been notified under the 2019 Protocol will continue to be dealt with in accordance with that Protocol until that process has been completed for each such instrument.

Scope

4. Where the UK Government notifies the Scottish Government that:
 - it is seeking the Scottish Ministers' consent to a proposal to make an SI containing provision which the Scottish Government considers to be within devolved competence;
 - it is consulting the Scottish Ministers on a proposal to make an SI containing provision which the Scottish Government considers to be within devolved competence; or
 - it proposes to make an SI containing provision which the Scottish Government considers to be within devolved competence and it is not seeking consent or consulting the Scottish Ministers, but it is giving notice to the Scottish Government of the proposal,
 when that SI is subsequently laid in the UK Parliament (or made, in the case of draft affirmative instruments), the Scottish Government is to notify the Scottish Parliament.
5. Where the Scottish Government becomes aware of a UK SI which they consider makes provision within the Scottish Ministers' devolved competence and which the UKG did not notify the Scottish Government about, the Scottish Government is to notify the Scottish Parliament.
6. Where proposals for secondary legislation are subject to joint procedure (i.e. laid in both the UK Parliament and the Scottish Parliament), this process does not apply.
7. Where a UK SI contains provision applying to Scotland and relating to reserved matters, but also contains provision which makes incidental or consequential changes to non-reserved matters for a reserved rather than a devolved purpose, this process does not apply.
8. For SIs falling within paragraph 4, notification is to take place normally within 28 days of the SI being laid (or made, in the case of draft affirmative instruments). For SIs falling within paragraph 5, Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot



notification is to take place normally within 28 days of when SG concludes that a relevant SI has been laid (or made, in the case of draft affirmative instruments or other instruments which have already been made).

9. The fact that a notification has not been given in respect of an SI should not be taken as an indication of the Scottish Government's position as to whether or not that SI contains provision within devolved competence.

10. For the purposes of this protocol, a provision is within devolved competence if it would be within the legislative competence of the Scottish Parliament if contained in an Act of the Scottish Parliament, or it is provision which could be made in subordinate legislation by the Scottish Ministers, the First Minister or the Lord Advocate acting alone.

Information requirements

11. A notification is to include:

- The name of the instrument or instruments where SIs form a package;
- A brief summary of the provision it makes within devolved competence;
- One of the following, as appropriate:
 - Where the UKG sought consent for the proposed SI, an explanation of whether the Scottish Ministers consented, and why, both in terms of policy impact and the choice of delivery through UK SI;
 - Where the SG provided a consultation response in respect of the proposed SI, an explanation of the response and of any changes made to the proposal following consultation; or
 - Where the SG has not provided either consent for the proposal or a consultation response, an indication of whether the Scottish Ministers support the changes made by the UK SI, both in terms of policy impact and the choice of delivery through UK SI;
- Where the Scottish Ministers hold a delegated power which is equivalent to the enabling power under which the SI is made, an explanation of why it was considered appropriate to proceed by UK SI rather than SSI; and
- Where relevant:
 - a description of the relationship of the devolved provision to any actual or proposed common frameworks or other legislation or regulatory scheme;
 - an explanation of whether and to what extent market access principles under the UK Internal Market Act 2020 have influenced the decision to proceed by UK SI;
 - any significant financial implications of the provision;
 - details of any consultation or stakeholder engagement (if available)
 - a note of impact assessments (if available); and
 - information about whether the SI forms part of, or is intended to form part of, a package of instruments.

Scottish Parliament Scrutiny of Notifications

12. The approach to scrutiny of SI notifications is a matter for consideration by the Scottish Parliament's committees at the start of Session 7. This paragraph will be revised to reflect the scrutiny approach, following an informal review under paragraph 13.

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Review and Revisions

13. This process will be reviewed informally initially on a six-monthly basis after it comes into force, in accordance with arrangements to be agreed between the Scottish Government and the Scottish Parliament, unless either party requests an earlier review. Either the Scottish Government or the Scottish Parliament may propose revisions to the process and both will need to agree any revisions being made.

Scottish Parliament and Scottish Government officials
March 2026

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