

Local Government, Housing and Planning Committee

10th Meeting, 2021 (Session 6),

Tuesday 9 November

UK statutory instruments - consideration of consent notifications

Introduction

1. This paper supports the Committee's consideration of 'type 1' consent notification sent by the Scottish Government relating to the following UK statutory instruments (SIs) —
 - The Waste and Agriculture (Legislative Functions) Regulations 2021

Process for parliamentary scrutiny of consent notifications for UK statutory instruments

2. 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.
3. 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.
4. The protocol establishes a proportionate scrutiny approach and categorises SIs into type 1 and type 2.
5. 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.
6. For type 2 SI notifications, however, the Scottish Government will notify the Scottish Parliament within five days *after* giving consent.
7. 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.

8. In exceptional circumstances, the protocol recognises that the UK Government may seek Scottish Ministers' consent to make an SI as a matter of urgency. In these cases, it is likely the Scottish Parliament will be given less than 28 days to consider the notification. In these circumstances, the Scottish Government will explain both the need for the provision(s) and the reason(s) for urgency, as well as the timescale for a response. The type 1 scrutiny procedure applies.
9. **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.**
10. 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.
11. If the Committee is not content with the proposal, however, it may make one of the following three recommendations—
 - (1) 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;
 - (2) 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
 - (3) 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).

For decision

12. The Committee is invited to consider whether the provisions set out in the notifications should be included in UK SIs.

Clerks

Local Government Housing and Planning Committee
4 November 2021