

Rural Affairs, Islands and Natural Environment Committee

4th Meeting, 2022 (Session 6), Wednesday, 2 February

UK subordinate legislation

Introduction

1. This paper supports the Committee's consideration of a consent notification sent by the Scottish Government relating to—
 - **the Phytosanitary Conditions (Amendment) Regulations 2022**; and
 - **the Milk and Milk Products (Pupils in Educational Establishments) Aid Applications (England and Scotland) Regulations 2022**.
2. Background relating to the process for parliamentary scrutiny of consent notifications for UK subordinate legislation is set out in **Annexe A**.

The Phytosanitary Conditions (Amendment) Regulations 2022

3. The Minister for Green Skills, Circular Economy and Biodiversity [wrote to the Committee](#) in relation to the notification on 21 December 2021. The letter states the Committee will have 28 days to consider the notification as the UK Government intends to lay the negative UK SI on 8 February 2022.
4. The notification states the UK SI will—
 - introduce or update conditions for the import of host plants and other relevant regulated goods in Great Britain for certain pests.
 - modify the regulatory status of several pests.
 - add pests to GB quarantine pest list.
5. The notification also states the UK SI will align UK and Scottish policy to continue to protect Scottish and British businesses who trade in plants, plant products, timber and timber products whilst continuing to protect plant biosecurity. It states the UK SI will not distort the trade or disadvantage Scottish importers.
6. The notification states the Scottish Government's reasons for proposing these provisions should be made via UK, rather than Scottish, SI, is because it is the "most effective and transparent way to make changes to address these issues at the GB level in circumstances where the legislation being amended has effect on a GB wide basis and there is agreement across administrations about the changes being made".

7. Parliamentary officials in Legal Services and SPICe have not identified any legal or policy issues in relation to this consent notification to draw to members' attention.
8. Members will note that, although the Minister for Green Skills, Circular Economy and Biodiversity is responsible to the Cabinet Secretary for NZET, the Scottish Government has indicated that plant health falls within the RAI remit.

The Milk and Milk Products (Pupils in Educational Establishments) Aid Applications (England and Scotland) Regulations 2022

9. The Cabinet Secretary [wrote to the Committee](#) in relation to the notification on 29 December 2021. The letter states the Committee will have 28 days to consider the notification as the UK Government intends to lay the UK SI on 16 February 2022.
10. The letter goes on to state that the UK SI will make a minor amendment to retained EU law, to remove an administrative burden regarding the provision of supporting evidence on applications to the school milk scheme.
11. The notification goes on to detail that “current retained EU law requires the RPA [Rural Payments Authority, which administers school milk claims] to ensure that all school milk claims are submitted with supporting evidence, whereas, prior to 2017, evidence was only required to be held for inspection on request or during spot checks”. Due to the cost and administrative burden of this requirement, together with what the notification states is “no evidence of widespread fraud or of the inadequacy of controls when operating on a spot check basis”, the decision has been taken to remove this requirement.
12. The notification states the Scottish Government's reasons for proposing these provisions should be made via UK, rather than Scottish, SI, is that it is—

“appropriate to make this amendment by SI, rather than Scottish SI, as it is a straightforward technical amendment to retained EU law which reflects the GB wide nature of the School Milk Scheme and the GB wide role of RPA to whom the Scottish Ministers' scheme functions have been delegated. Defra and the Scottish Government have worked collaboratively on this SI as policy interests are aligned.”
13. Parliamentary officials in Legal Services and SPICe have not identified any legal or policy issues in relation to this consent notification to draw to members' attention.

For decision

- 14. Members are invited to consider whether they wish to agree with the Scottish Government's decision to consent to the provisions set out in these notifications being included in UK, rather than Scottish, subordinate legislation.**

**Rural Affairs, Islands and Natural Environment Committee clerks
January 2022**

Process for parliamentary scrutiny of consent notifications for UK statutory instruments

1. 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.
2. 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.
3. [The protocol](#) establishes a proportionate scrutiny approach and categorises SIs into type 1 and type 2.
4. 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.
5. For type 2 SI notifications, however, the Scottish Government will notify the Scottish Parliament within five days after giving consent.
6. 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.
7. **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.**
8. 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.
9. 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).