

Rural Affairs, Islands and Natural Environment Committee

8th Meeting, 2022 (Session 6), Wednesday, 9 March

UK subordinate legislation

Introduction

1. This paper supports the Committee's consideration of a consent notification sent by the Scottish Government relating to the Ivory Prohibitions (Civil Sanctions) 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 Ivory Prohibitions (Civil Sanctions) Regulations 2022

3. The Minister for Environment and Land Reform [wrote to the Committee](#) in relation to the notification on 7 February 2022. The letter states the Committee has 28 days to consider the notification and the Scottish Government has asked for a response by 16 March 2022.
4. The notification states the purpose of the UK SI is to partially implement the Ivory Act 2018; the provisions prescribe the civil sanctions arrangements alongside appeal functions under the Act.
5. The Ivory Act 2018 includes provision within devolved competence and the Scottish Parliament agreed a [legislative consent memorandum](#) for the (then) Ivory Bill on 6 November 2018. The Act provides that regulations that apply in Scotland may be made only with the consent of the Scottish Ministers and, under the terms of the SI protocol, the Scottish Parliament's agreement is sought to provisions being included in UK, rather than Scottish, subordinate legislation.

For decision

6. **Members are invited to consider whether they wish to agree 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.**

Rural Affairs, Islands and Natural Environment Committee clerks
March 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).