

Rural Affairs, Islands and Natural Environment Committee

12th Meeting, 2022 (Session 6), Wednesday, 20 April

UK subordinate legislation

Introduction

1. This paper supports the Committee's consideration of consent notifications sent by the Scottish Government relating to the—
 - Common Agricultural Policy (Cross-Compliance Exemptions and Transitional Regulation) (Amendment) (EU Exit) Regulations 2022; and
 - Phytosanitary Conditions (Amendment) (No. 2) Regulations 2022.
2. Background information relating to the process for parliamentary scrutiny of consent notifications for UK subordinate legislation is set out in **Annexe A**.

The Common Agricultural Policy (Cross-Compliance Exemptions and Transitional Regulation) (Amendment) (EU Exit) Regulations 2022

3. The Cabinet Secretary for Rural Affairs and Islands [wrote](#) to the Committee in relation to the notification on 7 March 2022. The Scottish Government has asked for a response by 20 April 2022 and the Regulations are due to be laid before the UK Parliament on 27 April 2022.
4. The notification states the SI corrects deficiencies in retained EU law in order for it to operate effectively for olive oil and apiculture (beekeeping) in the UK, including Scotland, arising from the withdrawal of the UK from the EU.
5. The notification sets out the Scottish Government's reasons for the legislative changes being made at UK level as—

“The Scottish Ministers consider that consenting to the SI is the most efficient and effective way to correct the deficiencies and ensure the provisions operate effectively at a UK level and in Scotland. Officials have worked with the UK Government to ensure the drafting delivers for and respects devolved competence in Scotland.”
6. SPICe and Legal Services have not identified any policy or legal issues in relation to the notification.

The Phytosanitary Conditions (Amendment) (No. 2) Regulations 2022

7. The Minister for Green Skills, Circular Economy and Biodiversity [wrote](#) to the Committee in relation to the notification on 13 April. The Scottish Government has asked for the notification to be treated on an urgent basis and for a response before 27 April.
8. The draft Order would amend the Phytosanitary Conditions Regulation (Commission Implementing Regulation (EU) 2019/2072). The Phytosanitary Conditions Regulation established uniform conditions for the implementation of Regulation (EU) 2016/2031 which relate to protective measures against pests of plants. Specifically, the draft Order would enhance import requirements to prevent the introduction of the plant pest known as pine processionary moth (PPM) into Great Britain.
9. The notification sets out the Scottish Government's reasons for the legislative changes being made at UK level—

“The measures being introduced will be GB wide. This avoids any disparity at any borders within GB. These reflect the required measures as regards the desired level of protection for these plants from countries where PPM is present.”

For decision

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

**Rural Affairs, Islands and Natural Environment Committee clerks
April 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).