

Rural Affairs, Islands and Natural Environment Committee

15th Meeting, 2022 (Session 6), Wednesday, 11 May

UK subordinate legislation

Introduction

1. This paper supports the Committee's consideration of a consent notification sent by the Scottish Government relating to the Animal Welfare (Miscellaneous Amendments) 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 Animal Welfare (Miscellaneous Amendments) Regulations 2022

3. The Cabinet Secretary for Rural Affairs and Islands [wrote](#) to the Committee in relation to the notification on 20 April 2022. The Regulations are due to be laid before the UK Parliament on 19 May 2022.
4. The notification states the SI—
 - amends retained EU law governing the protection and welfare of animals during transport;
 - amends retained EU law governing official controls of imports to GB of animals, animal products, plants and plant products, including food and other imports relevant to the agri-food chain; and
 - rectifies errors introduced by previous instruments amending retained EU law.
5. The notification sets out the Scottish Government's reasons for the legislative changes being made at UK level as—

“The Scottish Government has agreed in principle that, where possible, legislation related to the welfare and health of farmed animals should be carried out on a GB basis. The amendments made by this instrument ensure that retained EU legislation operates effectively in a domestic context. This provides certainty for agriculturalists across GB.”

For decision

- 6. 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
May 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).