

Rural Affairs, Islands and Natural Environment Committee

32nd Meeting, 2022 (Session 6), Wednesday, 30 November

UK subordinate legislation - consideration of consent notification

Introduction

1. This paper supports the Committee's consideration of the following 'type 1' consent notification for UK subordinate legislation—
 - The Plant Health (Amendment) (EU Exit) Regulations 2022 – “PH/045”
2. Background information relating to the process for parliamentary scrutiny of consent notifications for UK subordinate legislation is set out in **Annexe A**.

The Plant Health (Amendment) (EU Exit) Regulations 2022

3. The Minister for Green Skills, Circular Economy and Biodiversity [wrote to the Committee in relation to the notification on 14 November 2022](#). This SI is made using powers under the European Union (Withdrawal) Act 2018 and is subject to the affirmative procedure.
4. This SI is to be laid in the UK Parliament on 15 December 2022 and come into force on 31 December 2022. The Committee is asked to respond to the notification by 13 December 2022.
5. The purpose of the SI is to reinstate and modify Article 18(5) of the 'Plant Health Regulation' (now [the Plant Health \(Official Controls and Miscellaneous Provisions\) \(Scotland\) Regulations 2019](#) as part of retained EU law) to ensure that demarcated areas may be established across borders of GB territories to prevent or reduce the spread of a plant pest or disease. The instrument requires that—

“after the finding of a pest/disease, where a demarcated area ought to extend into a neighbouring GB territory, the competent authority where the pest is located must inform the neighbouring territory competent authority to enable that authority to take all necessary steps under Article 18(1)-(4)”.

6. The notification states that Article 18(5) was removed previously in error because it was “considered redundant at that time”. The rectification of Article 18(5) had been intended to be included in [the Animals and Animal Health, Feed and Food, Plants and Plant Health \(Amendment\) Regulations 2022](#). [The proposed change was withdrawn](#), however, on the basis that in its proposed form it did not resolve the deficiency in relation to the creation of demarcation areas across borders.
7. The notification states that no impact assessment has been undertaken as it is expected the amendments will have “no or no significant impact on the private or voluntary sector”.
8. The notification states the Scottish Ministers consent to the legislative changes being made at the UK level on the basis that “making the proposed changes by way of PH/045 rather than SSI avoids the creation of parallel text in the Plant Health Regulation, as these amendments are required for all GB”. The notification states further that the SI is “the most effective and transparent way to introduce these amendments” and that it “provides clarity and confidence and continues close collaboration across the UK”.
9. No legal or policy issues have been identified in relation to this notification.

For decision

10. **The Committee is invited to consider whether it agrees 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
November 2022**

Process for parliamentary scrutiny of consent notifications for UK statutory instruments

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.](#)

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.

The protocol establishes a proportionate scrutiny approach and categorises SIs into type 1 and type 2.

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.

For type 2 SI notifications, however, the Scottish Government will notify the Scottish Parliament within five days after giving consent.

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.

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.

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.

If the Committee is not content with the proposal, however, it may make one of the following three recommendations—

- 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;

- 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
- 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).