

Rural Affairs, Islands and Natural Environment Committee

7th Meeting, 2021 (Session 6), Wednesday 6 October 2021

UK statutory instruments - consideration of consent notifications

Introduction

1. This paper supports the Committee's consideration of 'type 1' consent notifications sent by the Scottish Government relating to the following UK statutory instruments (SIs) —
 - [The Phytosanitary Conditions \(Amendment\) \(No. 2\) Regulations 2021](#);
 - [The Animal Health, Plant Health, Seeds and Seed Potatoes \(Miscellaneous Amendments\) Regulations 2021](#);
 - [The Trade and Official Controls \(Transitional Arrangements for Prior Notifications\) \(Amendment\) Regulations 2021](#);
 - [The Official Controls \(Temporary Measures\) \(Coronavirus\) \(Amendment\) \(No.2\) Regulations 2021](#); and
 - [The Official Controls \(Extension of Transitional Periods\) Regulations 2021](#).

Process for parliamentary scrutiny of consent notifications for UK statutory instruments

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

7. 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.
8. **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.**
9. 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.
10. 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).

The Phytosanitary Conditions (Amendment) (No. 2) Regulations 2021 and the Animal Health, Plant Health, Seeds and Seed Potatoes (Miscellaneous Amendments) Regulations 2021

11. A notification was sent to the Committee on 17 September 2021 for both these UK negative instruments. The letter was sent to the Net Zero, Energy and Transport Committee Convener but, following discussions between the clerks and Scottish Government officials, it has been agreed the RAINE Committee would consider the notification.
12. The Phytosanitary Conditions instrument makes changes to classifications of certain pests where it is deemed that they pose an increased or a reduced threat

to Great Britain. It introduces new or strengthened plant health measures against some specific pests which are not known to occur in GB. The purpose of these is to prevent their introduction as it is anticipated that they would cause a threat to crops were that to occur. The instrument also introduces a prohibition on yacon plants from entering Great Britain to prevent the risk of pests being introduced; changes the classification of 6 pests that are no longer considered a risk to Great Britain; changes the status of 4 pests to become GB quarantine pests; and limits the import of bonsai trees from South Korea between 1 November and 31 March each year (this corrected an error from a previous SI where the dates were mistakenly omitted).

13. The Animal Health, Plant Health, Seeds and Seed Potatoes (Miscellaneous Amendments) Regulations corrects a number of errors which resulted from previous SIs in this area. These errors are set out in the notification. The proposed instrument also makes some changes for the first time for the purpose of deficiency correcting. In relation to the “Commission Implementing Regulation EU 2019/2148 on specific rules concerning the release of plants, plant products and other objects from quarantine stations and confinement facilities pursuant to Regulation (EU) 2016/2031 of the European Parliament and of the Council”, the proposed instrument updates cross references to “specified material” and changing classifications of defined EU quarantine pest to fit with changes already made to the retained EU law Plant Health Regulation, changes references to “member states” to “competent authorities”, and removes redundant text.
14. SPICe and Legal Services have confirmed they have nothing to add to the information provided in the notification.

UK statutory instruments over the Scottish Parliament campaign recess

15. In advance of the Scottish parliamentary election, the Scottish Government sought the UK Government’s agreement to delay, wherever possible, making or laying any UK SIs over the ‘campaign recess’ which would make provision in devolved competence. This was because the Scottish Parliament would not have the opportunity to scrutinise the notification, as per the terms of the protocol.
16. For a small number of UK SIs, however, this was not possible. In anticipation of this, the Scottish Government and Scottish Parliament agreed that, in these circumstances, the Scottish Government would give consent and would notify the Scottish Parliament at the start of Session 6.
17. The Scottish Government’s consent was given for three UK SIs which were made over the ‘campaign recess’ and which fall within this Committee’s remit. As a result, the Committee has been sent a notification for each.
18. In this instance, the Scottish Parliament will not have the opportunity to agree to Scottish Ministers’ consent, as it has already been given, but the Committee is invited to note the decision and seek further information from the Scottish Government, if it considers this necessary.

The Trade and Official Controls (Transitional Arrangements for Prior Notifications) (Amendment) Regulations 2021

19. This instrument pushes back the date from which there will be a requirement to give prior notification of the arrival of imports from the EU from 1 April 2021 to 31 July 2021 for of animal origin intended for human consumption and prescribed types of plants, plant products and other objects.
20. It also pushes back the date from which there will be a requirement for health certification for imports of products of animal origin from the EU from 31 March 2021 to 31 December 2021.

The Official Controls (Temporary Measures) (Coronavirus) (Amendment) (No.2) Regulations 2021

21. The instrument extends the power for competent authorities in Great Britain to adopt and continue with specific temporary measures related to official controls and official activities to contain risks of serious disruption to the system of official controls during the Covid-19 (“coronavirus”) pandemic. This power was extended from an end date of 1 July 2021, to 31 December 2021. This includes options to allow control authorities that carry out official controls and official activities to authorise, within strict parameters, natural persons to undertake official controls and official activities under their instruction by any available means of communication; to carry out checks on electronically submitted documents, also away from the border; and to conduct meetings with operators by using remote communication.

The Official Controls (Extension of Transitional Periods) Regulations 2021

22. Scottish Ministers consented to UK Ministers exercising powers enabling them to “reset the timetable for the phased introduction of controls on imports from the EU into Great Britain” in line with the UK Government’s announcement of 11 March 2021 to delay Phase 2 and 3 of the UK Government’s Border Operating Model.
23. As a result, the SI extends the period in which importers from the rest of the world (outside the EU or EEA) may use EU form certificates and documents (rather than ones produced by the Secretary of State or the Scottish Ministers) to 1 October 2021.
24. It extends the end date of the transitional staging period for SPS products entering GB from EU or EEA member states from 31 July 2021 to 28 February 2022.
25. It extends the transition period where pre-notification is not required for imports of products of animal origin to 1 October 2021, and likewise export health certificate requirements for these products will also come into force on the same day. It extends the transition period where pre-notification is not required for imports of low risk plant and plant products to 1 January 2022.

26. It extends the transition period where identity and physical sanitary and phytosanitary checks on products of animal origin, germinal products and animal by-products are not required until 1 January 2022.
27. Finally it provides that from 1 March 2022, risk based checks and Border Control Posts will take place on each consignment of sanitary and phytosanitary imports from the EU or EEA, as with imports from the rest of the world.

For decision

28. The Committee is invited to consider whether the provisions set out in the notifications should be included in UK SIs.

Rural Affairs, Islands and Natural Environment Committee Clerks

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