

Rural Affairs, Islands and Natural Environment Committee

10th Meeting, 2021 (Session 6), Wednesday 10 November 2021

UK statutory instruments - consideration of consent notifications

Introduction

1. This paper supports the Committee's consideration of a 'type 1' consent notification sent by the Scottish Government relating to the following UK statutory instrument (SI) —
 - [The Waste and Agriculture \(Legislative Functions\) Regs 2021](#)
2. As this SI notification cuts across a number of policy areas and addresses legislative deficiencies across three ministerial portfolios, this Committee will only focus on the agricultural legislative functions. The other functions are:
 - Environmental Waste Regulations, Net Zero, Energy and Transport Committee; and
 - Planning (Extractive waste), Local Government and Communities Committee.

Process for parliamentary scrutiny of consent notifications for UK statutory instruments

3. 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.
4. 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.
5. [The protocol](#) establishes a proportionate scrutiny approach and categorises SIs into type 1 and type 2.
6. 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.

7. For type 2 SI notifications, however, the Scottish Government will notify the Scottish Parliament within five days after giving consent.
8. 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.
9. **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.**
10. 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.
11. 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 Waste and Agriculture (Legislative Functions) Regs 2021

11. A notification was sent by the Cabinet Secretary for Rural Affairs and Islands to the Committee on 5 October 2021 for this UK affirmative instrument. The UK Government intend to lay this SI before Parliament on 18 November 2021.
12. The agricultural provisions in the notification are to amend Regulation (EU) No 1306/2013 (“the Horizontal Regulation”) to insert a definition of “appropriate authority” which includes the Scottish Ministers, and revoke a provision in a previous deficiency-fixing SI (The Agriculture (Payments) (Amendment, etc.) (EU

Exit) Regulations 2020) that was intended to insert that definition, but which failed to take effect due to a drafting error in a previous UK SI.

For decision

13. The Committee is invited to consider whether the agricultural provisions set out in the notification should be included in the UK SI.

**Rural Affairs, Islands and Natural Environment Committee Clerks
November 2021**