

Rural Affairs, Islands and Natural Environment Committee

12th Meeting, 2021 (Session 6), Wednesday, 24 November 2021

UK subordinate legislation - consideration of consent notification

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 Ivory Prohibitions \(Exemptions\) \(Process and Procedure\) 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 Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2021

11. A notification was sent by the Cabinet Secretary for Rural Affairs and Islands to the Committee on 20 September 2021 for this UK affirmative instrument. At the time of the notification, the date of laying in the UK Parliament was undecided but it is now expected to be 1 December 2021.
12. The Ivory Act 2018 was introduced to provide additional protection for elephants by banning the commercial sale of ivory within the UK. However, there are a small number of cases where ivory sales must be exempt, specifically relating to those being acquired by museums, for reasons including science and education, and for a small number of instruments and artefacts which are historic in nature. For these items to be exempt they must meet one of the narrowly defined exemptions to the ban—
 - pre-1918 items of outstanding artistic etc value and importance,
 - pre- 1918 portrait miniatures,
 - pre- 1947 items with low ivory content,
 - pre- 1975 musical instruments, and
 - acquisitions by qualifying museums.

13. This Instrument prescribes institutions which will assess items for which applications for exemption certificates have been made (the listed institutions in Scotland are the Glasgow Museum and the National Museum Scotland). It also details—
- the process for applications for exemption certificates,
 - the information to be included in the applications
 - further dealing in items which have an exemption certificate, including the fees payable.
 - the process and procedure in relation to appeals against a refusal to issue or revocation of an exemption certificate.
 - the additional information which must accompany an application to register items under the standard exemptions and prescribes the fees payable.
12. The Scottish Government SI notification states “the legislation is required to enable the effective operation, across the UK, of the exemption provisions in the Act”.

For decision

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

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