

Rural Affairs, Islands and Natural Environment Committee

13th Meeting, 2021 (Session 6), Wednesday, 1 December 2021

UK subordinate legislation - consideration of consent notifications

Introduction

1. This paper supports the Committee's consideration of two 'type 1' consent notifications sent by the Scottish Government relating to the following UK statutory instruments (SIs)—
 - [The Sea Fisheries \(Amendment etc.\) \(No.2\) Regulations 2021](#); and
 - [The Wine \(Amendment\) 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 Sea Fisheries (Amendment etc.) (No.2) Regulations 2021

11. A notification was sent by the Cabinet Secretary for Rural Affairs and Islands to the Committee on 5 November 2021 for this UK affirmative instrument and the date of laying in the UK Parliament is 9 December 2021. The Scottish Government states it is yet to have sight of the final SI as it is not available in the public domain at this stage, therefore, and in accordance with the protocol, they will advise when the final SI is laid and whether the final SI is in keeping with the terms of this notification.
12. The SI notification states this instrument extends certain existing discard exemptions under the landing obligations in Scottish waters from the end of 31 December 2021 to the end of 31 December 2024, as these exemptions would otherwise expire at the end of 31 December 2021. The instrument will also amend certain current exemptions, introduce new exemptions, and some current exemptions will be discontinued from the end of 31 December 2021.

13. The instrument will extend the Multiannual Programme for the collection and management of data in the fisheries sector from 1 January 2022 until the end of 31 December 2024. This extension to the UK Work Plan will ensure coordination of activities across the UK Fisheries Administrations to enable the UK to meet international commitments for fisheries data management and collection, as well as domestic monitoring needs. The extension will also ensure that correct legislation is in place, whilst not preventing any changes to the legislative framework in future, should this be deemed necessary.
14. The instrument also allows for an increase in the level of European seabass that may be caught as bycatch in the Scottish and Northern Irish zones within the British fishery limits and prevents seabass management measures expiring, as measures will instead run indefinitely until amended or revoked. This instrument aims to reduce the amount of seabass which is wastefully discarded by making adjustments to the legislation to remove the requirement for trawls and seines to have a track record in order to land seabass bycatch.
15. The instrument will revoke the now expired Article 12a of the retained TAC and Quota Regulation, relating to the closed season for sandeel fishing in parts of UK waters to ensure that any new management measures are not restricted by any existing legislation in the retained TQR.
16. The Scottish Government SI notification states that the discard exemptions are largely technical in nature and that the Scottish Government intends to consult later this year on some adjustments to the landing obligation to help improve its effectiveness. The notification also states that these exemptions are required to help fishers comply with the landing obligation in advance of any such adjustments being made. It notes that, while Scottish Ministers have devolved responsibility for discards policy, there is agreement across all UK administrations on the exemptions required.

The Wine (Amendment) Regulations 2021

17. A notification was sent by the Cabinet Secretary for Rural Affairs and Islands to the Committee on 5 November 2021 for this UK affirmative instrument and the date of laying in the UK Parliament was 23 November 2021.
18. The notification states that the Wine (Amendment) Regulations 2021 implements wine-related provisions from the trade and cooperation agreement (TCA) and that these regulations will set out the basis for trade in wine between Great Britain and the European Union.
19. The notification also states instrument will ensure that the UK meets its legal obligation to implement the provisions in Annex 15 to the TCA. The regulations will amend rules concerning lot marking and import and export certification arrangements for wine products and put in place transitional marketing arrangements.

20. The notification states that the trade in wine is a complex mix of devolved and reserved content and that wine regulations are not widely used in Scotland. For this reason, the Scottish Government argues that the wine-related provisions from the TCA should be implemented on a GB basis, as this is consistent with the approach taken in previous policy areas where Scotland's interests are minimal.

For decision

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

**Rural Affairs, Islands and Natural Environment Committee clerks
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