

Rural Affairs, Islands and Natural Environment Committee

15th Meeting, 2021 (Session 6), Wednesday, 15 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 Official Controls \(Extension of Transitional Periods\) \(Amendment\) \(No.2\) Regulations 2021](#); and
 - [The Approved Country Lists \(Animals and Animal Products\) \(Amendment\) \(No. 2\) 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 Official Controls (Extension of Transitional Periods) (Amendment) (No.2) Regulations 2021

11. This notification was sent to the Committee on 6 December, seeking a response before the SI was due to be laid around 8 December. (Clerks have subsequently sought confirmation of the laying date but Scottish Government officials have been unable to provide this). The SI needs to be made and come into effect in readiness for 31 December.
12. The SI replaces the dates for the ending of the transitional staging period with a single date – 30 June 2022 – so that the Official Controls Regulation will apply fully to all SPS goods starting from 1 July 2022.

13. By way of background, UK SIs made and brought into force in late 2020 gave effect to the UK Government's decision to introduce checks on EU sanitary/phytosanitary (SPS) imports in phases, following the end of the Transition Period on 31 December 2020. These dates have been subsequently amended, a number of times, by both UK and Scottish SIs. The notification states that further legislation is planned in early 2022 to set out specific requirements applying from 1 July 2022.
14. The Committee wrote to the Scottish Government seeking more information on these amendments and the Cabinet Secretary responded on 8 November stating that the UK Government "without substantial discussion and engagement" planned to move all remaining import checks back to 1 July 2022. The Cabinet Secretary went on to state that "I reluctantly agree that in order to minimise disruption to traders the best course of action for Scotland is to implement the same timeline". Thus, "a draft of a UK SI which will extend the end date of the transitional staging period across GB in line with the UK Government's most recent announcement is currently being reviewed and, subject to further consideration, it is anticipated that it will be notified to the Scottish Parliament shortly".
15. The Committee agreed at its meeting on 24 November that it would discuss this wider issue with the Cabinet Secretary on 12 January.
16. The instrument makes a further consequential amendment to reflect these changes in related provisions.
17. The Convener has written to the Scottish Government seeking further information on a number of points set out in the notification. A response has been sought in advance of 15 December and will be circulated to members on receipt.
18. Members will note that, despite the four administrations being aware that replacement regulations would need to be made as the current provisions expire on 31 December, the Committee was only notified of the SI on 6 December. This means that the Scottish Parliament has not been given the minimum 28-day scrutiny period, as set out in the protocol agreed between the Scottish Government and Scottish Parliament. Members will note the Scottish Government had seen an initial draft of the SI when the Cabinet Secretary wrote on 8 November.

The Approved Country Lists (Animals and Animal Products) (Amendment) (No. 2) Regulations 2021

19. This notification was sent to the Committee on 7 December, seeking a response before the SI is due to be laid on 16 December.
20. The notification amends restrictions on the import of certain categories of poultry and poultry products from Australia and poultry meat, meat of farmed ratites (flightless birds like ostriches, emus and cassowaries) and wild game-bird meat in parts of Ukraine following the successful control of avian influenza outbreaks in those countries.

21. The Convener has written to the Scottish Government seeking further information on a number of points set out in the notification. A response has been sought in advance of 15 December and will be circulated to members on receipt.
22. Members will note that the Committee was only notified of the SI on 7 December. This means that the Scottish Parliament has not been given the minimum 28-day scrutiny period, as set out in the protocol agreed between the Scottish Government and Scottish Parliament. Members will note the Cabinet Secretary states in her notification letter that an initial draft of the SI has only been shared with the Scottish Government recently.
23. The UK and Scottish governments argue this instrument “must come into force as soon as possible as delays in implementation risk impacting on trade relations with Ukraine and Australia and it is of considerable interest to UK businesses to re-open imports of poultry and poultry products as soon as possible, particularly from Ukraine”.

For decision

24. **The Committee is invited to consider whether the devolved 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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