

Net Zero, Energy and Transport Committee

1st Meeting, 2022 (session 6), Tuesday, 11 January 2022

UK statutory instruments - consideration of consent notifications

Note by the Clerk

Introduction

1. This paper supports the Committee's consideration of a 'type 1' consent notification sent by the Scottish Government relating to the following proposed UK statutory instrument (SI) —
 - **The Pesticides (Revocation) (EU Exit) Regulations 2022**

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 on scrutiny by the Scottish Parliament of consent by Scottish Ministers to UK secondary legislation in devolved areas arising from EU Exit](#).
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 Pesticides (Revocation) (EU Exit) Regulations 2022

11. On 1 December 2021, the Minister for Green Skills, Circular Economy and Biodiversity wrote to the Committee to inform them of this forthcoming UK instrument. The letter was superseded by a second letter on 7 December, correcting errors from the original letter. The updated letter is available in **Annexe A**. The notification is available in **Annexe B**. The UK Government intend to lay this SI before Parliament on 18 January 2022.
12. The SI makes a number of amendments to repeal redundant direct EU legislation which forms the plant protection product (PPP) and maximum residue level (MRL) regulatory regimes, so that PPPs and MRLs for pesticides in food and feed continue to be effectively managed. The amendments concern EU legislation which came into force towards the end

of the implementation period (and so was not addressed by earlier EU Exit SIs) and which is now given effect in Great Britain through the national statutory registers and so is no longer required.

13. Scottish Ministers consider that consenting to the Regulations is the most effective and transparent way to make these changes as it has been agreed that PPP and MRL regimes will operate consistently across Great Britain where possible and appropriate.

For decision

14. The Committee is invited to consider whether it agrees with the Scottish Government that the provisions set out in the notification should be included in the UK SI.

ANNEXE A

Letter from the Minister for Green Skills, Circular Economy and Biodiversity to the Convener, 7 December 2021

Dear Dean

THE PESTICIDES (REVOCATION) (EU EXIT) REGULATIONS 2022 (“THE REGULATIONS”)

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing to highlight to you the previous letter I sent to you on 1 December 2021, regarding the above regulations. I wish to apologise, but there were errors in this letter and I would ask that you discard the previous letter and consider this one instead. All other documents were correct.

I am writing to you in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and then Parliament, accompanied the letter from the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach a Type 1 notification which sets out the details of the Regulations which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in the Regulations. Please note, we are yet to have sight of the final version of the Regulations and they are not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

The Regulations are being introduced to make a number of amendments to repeal redundant direct EU legislation which forms the plant protection product and maximum residue level regulatory regimes, so that they can continue to operate effectively following the end of the implementation period. The changes made by this instrument will remove redundant provisions (specifically repealing EU implementing regulations which had previously given effect to active substance and MRL decisions, which are now given effect through statutory registers) so that plant protection products, and MRLs for pesticides in food and feed, continue to be effectively managed.

The Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019, the Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019 and the Pesticides (Amendment) (EU Exit) Regulations 2019 have already been considered by the Scottish Government and as noted in the notification

for those SIs they reflect the position of the Scottish Ministers as able to exercise functions under retained EU law in relation to Scotland.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you by 17 January 2022.

Kind regards

LORNA SLATER

ANNEXE B**NOTIFICATION TO THE SCOTTISH PARLIAMENT****Name of the SI**

The Pesticides (Revocation) (EU Exit) Regulations 2022

Is the notification Type 1 or Type 2

Type 1

A brief overview of the SI (including reserved position)

The Pesticides (Revocation) (EU Exit) Regulations 2022 (“the 2022 Regulations”) make a number of amendments to repeal redundant direct EU legislation which forms the plant protection product (PPP) and maximum residue level (MRL) regulatory regimes, so that they can continue to operate effectively following the end of the implementation period. The amendments concern EU legislation which came into force towards the end of the implementation period (and so was not addressed by earlier EU Exit SIs) and which is now given effect in Great Britain through the national statutory registers and so are no longer required.

Pesticides are a devolved matter however, where appropriate, policies and procedures are developed and implemented on a joint UK basis for reasons of practicality, efficient use of resources and ease of collaboration. This intention is for this approach to continue. The 2022 Regulations respect the current devolution settlement.

The 2022 Regulations are expected to be laid on 18 January 2022.

The Scottish Parliament has already been notified of, and consented to, a series of previous EU Exit statutory instruments (SIs) relating to the regulation of pesticides. Notifications on the previous pesticides EU Exit SIs can be viewed via the following links:

- www.parliament.scot/S5_Delegated_Powers/20180111SINotificationREC2.pdf
- www.parliament.scot/S5_Delegated_Powers/20190207REC1.pdf
- www.parliament.scot/S5_Rural/Meeting%20Papers/RECC_20190619_Public_Papers.pdf (please see page 37)
- www.parliament.scot/S5_Delegated_Powers/20200930SINotificationREC2.pdf
- https://archive2021.parliament.scot/S5_Delegated_Powers/General%20Documents/PESTICIDES_AMENDMENTS.pdf

Details of the provisions that Scottish Ministers are being asked to consent to

The main corrections required to the regulatory regime for pesticides as a result of EU Exit have already been put in place through a series of earlier EU Exit SIs,

primarily the Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019, the Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019, the Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019 the Pesticides (Amendment) (EU Exit) Regulations 2019 and the Pesticides (Amendment) (EU Exit) Regulations 2020 (SI No 2020/1376). These earlier EU Exit SIs established a regulatory regime for pesticides in GB. The approach taken in these SIs was to establish new statutory registers to give effect to decisions on approval of active substances and on setting of pesticide MRLs. This ensured that all extant EU decisions were retained in GB after the end of the implementation period. The EU implementing regulations which had previously given effect to those decisions were therefore redundant and so were repealed.

The 2022 Regulations are now required in order to follow this established approach in relation to further EU implementing regulations which came into force in the latter part of the implementation period, hence too late to have been addressed in the earlier EU Exit SIs. Their effect has already been retained through the new statutory registers so the implementing regulations themselves are now spent and are no longer required. It is now necessary to remove them so that they do not remain on the statute book.

Summary of the proposals

The changes made by this instrument will remove redundant provisions (specifically repealing EU implementing regulations which had previously given effect to active substance and MRL decisions, which are now given effect through statutory registers) so that plant protection products, and MRLs for pesticides in food and feed, continue to be effectively managed.

The Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019, the Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019 and the Pesticides (Amendment) (EU Exit) Regulations 2019 have already been considered by the Scottish Government and as noted in the notification for those SIs they reflect the position of the Scottish Ministers as able to exercise functions under retained EU law in relation to Scotland.

Does the SI relate to a common framework or other scheme?

Yes, regulations relating to pesticides fall within the scope of the Chemicals and Pesticides Common Framework.

Summary of stakeholder engagement/consultation

The Regulations are being made to avoid deficiencies as a result of EU Exit. As such no formal public consultation has been undertaken.

A note of other impact assessments, (if available)

An impact assessment has not been carried out in relation to these regulations as they are aimed primarily at preserving the effect of the current regulatory regimes.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

The Regulations are necessary to ensure that PPP and MRLs for pesticides in food and feed regimes continue to be effectively managed and that standards are maintained. They will remove redundant provisions to ensure a properly functioning regulatory regimes following the transition period.

Scottish Ministers consider that consenting to the Regulations is the most effective and transparent way to make these changes as it has been agreed that PPP and MRL regimes will operate consistently across GB where possible and appropriate.

Intended laying date (if known) of instruments likely to arise

The instrument is expected to be laid on 18 January 2022.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

The Scottish Parliament has 28 days to scrutinise.

Information about any time dependency associated with the proposal

The Regulations correct deficiencies as a result of EU Exit and must be made within two years of IP completion day.

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

The Scottish Government is working with the UK Government and other devolved administrations to put in place sound governance arrangements to ensure transparency and accountability for decision making. This work will be designed within the context of the principles, agreed by the UK Government, the Scottish Government and the Welsh Government on 16 October 2017, to apply to common frameworks.

Any significant financial implications?

These Regulations are not considered to have any financial implications for stakeholders in Scotland.