

Rural Affairs, Islands and Natural Environment Committee

9th Meeting, 2022 (Session 6), Wednesday, 16 March

UK subordinate legislation

Introduction

1. This paper supports the Committee's consideration of consent notifications sent by the Scottish Government relating to the Organics (Derogations) (Amendment) Regulations 2022.
2. Background information relating to the process for parliamentary scrutiny of consent notifications for UK subordinate legislation is set out in **Annexe A**.

The Organics (Derogations) (Amendment) Regulations 2022

3. The Cabinet Secretary for Rural Affairs and Islands [wrote to the Committee](#) in relation to the notification on 7 February 2022. The letter states the Committee will have 28 days to consider the notification and the Scottish Government has asked for a response by 16 March 2022.
4. The Cabinet Secretary's letter states that—

“the purpose of this instrument is to make technical amendments to retained EU legislation to extend derogations to allow specific non-organic alternatives for pullets and Gellan gum if such organic substances or organically-reared livestock are not available on the market. The current derogations have expired and this instrument is to remedy that situation.”

5. The notification states the Scottish Government's reasons for proposing these provisions should be made via UK, rather than Scottish, SI, is that—

“As noted in previous advice on proposed regulations to fix deficiencies in the organics legislation, the development of policy on organics has been aligned to date between Defra and the devolved administrations. There are economic and practical benefits to that continuing and the proposed regulations permit a regime on a GB wide basis to address that scenario.”

6. The Committee sought further information on a number of points in advance of its consideration; the Cabinet Secretary's response is available [here](#).

For decision

7. **Members are invited to consider whether they wish to agree with the Scottish Government's decision to consent to the provisions set out in**

these notifications being included in UK, rather than Scottish, subordinate legislation.

Rural Affairs, Islands and Natural Environment Committee clerks
March 2022

Process for parliamentary scrutiny of consent notifications for UK statutory instruments

1. 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.
2. 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.
3. [The protocol](#) establishes a proportionate scrutiny approach and categorises SIs into type 1 and type 2.
4. 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.
5. For type 2 SI notifications, however, the Scottish Government will notify the Scottish Parliament within five days after giving consent.
6. 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.
7. **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.**
8. 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.
9. 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).