

Rural Affairs, Islands and Natural Environment Committee

10th Meeting, 2022 (Session 6), Wednesday, 23 March

UK subordinate legislation

Introduction

1. This paper supports the Committee's consideration of a consent notification sent by the Scottish Government relating to the Import of Animals and Animal Products and Approved Countries (EU Exit) (Amendment) Regulation 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 Import of Animals and Animal Products and Approved Countries (EU Exit) (Amendment) Regulation 2022

3. The Cabinet Secretary for Rural Affairs and Islands [wrote to the Committee](#) in relation to the notification 2 March 2022. The Scottish Government has asked for a response by 25 March 2022; this means the Parliament has been given 24 days to consider the notification, slightly less than the 28 days set out in the SI protocol agreed by the Government and Parliament (paragraph 4 in annexe A for further information).

4. The notification states that the SI amends several pieces of retained EU law which impose import conditions in respect of animals and animal products entering GB, in particular, rules that such imports are generally only permitted from specified countries and about other mandatory matters applicable to such imports which are listed in annexes to retained legislation ("third country lists"). The notification states that previous SIs have addressed deficiencies in retained EU law relating to third country lists but that—

“the conferral of delegated powers on Scottish Ministers and other appropriate authorities does not, however, completely address the deficiencies arising from EU exit in that they are considered to be exercisable insufficiently quickly to respond to changes in risk in third countries that export animals and animal products to Great Britain. In some instances, no delegated powers (legislative or otherwise) to amend import conditions in third country lists in relevant retained EU law were conferred on the Scottish Ministers and other appropriate authorities.”

5. The SI would amend retained EU law so that various import conditions are omitted from the annexes that comprise the third country lists. Powers would be

conferred on the Secretary of State to administratively determine, with the consent of the Scottish Ministers, import conditions of the type that are to be omitted from the third country lists presently prescribed in retained EU law. This will allow the Secretary of State, with the consent of the Scottish Ministers, to respond quickly and effectively to changes in biosecurity risk presented by animals and animal products imported into Great Britain from approved third countries.

For decision

- 6. Members are invited to consider whether they agree with the Scottish Government's decision to consent to the provisions set out in the notification 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).