

# Rural Affairs, Islands and Natural Environment Committee

## 11<sup>th</sup> Meeting, 2022 (Session 6), Wednesday, 30 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 Sea Fisheries (Amendment etc.) 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 Sea Fisheries (Amendment etc.) Regulations 2022

3. The Cabinet Secretary for Rural Affairs and Islands [wrote to the Committee](#) in relation to the notification on 2 March 2022. The Scottish Government has asked for a response by 30 March 2022.
4. The notification states the SI enacts changes to management measures for seabass, as agreed between the UK and EU in annual consultations for fishing opportunities for 2022 (and set out in the written record signed by the UK and EU on 21 December 2021).
5. These seabass management measures prohibit UK fishing vessels, and commercial fisheries from shore, from fishing for European seabass in particular areas (ICES divisions 4b and 4c and in subarea 7) and from retaining, transshipping, relocating or landing European seabass caught in those areas. A derogation is in place each year during January and from 1 April to 31 December.
6. The notification states the Regulations makes the following changes to the derogation in relation to—
  - The commercial demersal trawl and seine flexibility;
  - Hook and line limit; and
  - Fixed gillnet limit.
7. The Regulations also (1) increase the time period for which weight limits for unavoidable by-catches for vessels using trawls and seines are to be assessed from one month to two consecutive months, and (2) decreases overall the discard limits for vessels using hooks and lines and fixed gillnets.

8. The notification summary states that Scottish Ministers' consent has been sought as—

“these amendments fall within devolved legislative competence to the extent that they apply to ICES (International Council for the Exploration of the Sea) divisions 4b and 7a, parts of which fall within Scottish waters. There are currently no seabass fisheries in Scottish waters and there is no intention to begin any. However, as certain of the amendments extend to Scottish waters and, therefore, change the statutory provision applicable to sea fishing activity in those waters (even though the type of activity being regulated is not presently being carried out), those particular provisions within the SI are within devolved competence and Scottish Ministers' consent is required.”

9. The Regulations are due to be laid before the UK Parliament on 26 April 2022 and will come into force on 18 May 2022.
10. SPICe and Legal Services have not identified any policy or legal issues in relation to the notification.

## **For decision**

11. **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).