

Net Zero, Energy and Transport Committee

18th Meeting, 2022 (Session 6), Tuesday, 24 May 2022

UK statutory instruments - consideration of consent notifications

Introduction

1. This paper supports the Committee's consideration of 'type 1' consent notification sent by the Scottish Government relating to the proposed **United Kingdom Internal Market Act 2020 (Exclusions from Market Access Principles) Regulations 2022** ("the UK Regulations").

Process for parliamentary scrutiny of consent notifications for UK statutory instruments

2. A [protocol](#) has been agreed between the Scottish Government and Scottish Parliament to address situations where the Scottish Government has decided to consent to certain types of secondary legislation made by the UK Government. The protocol sets out how the Scottish Parliament may scrutinise these decisions.
3. The type of secondary UK legislation covered by the protocol is in areas formerly governed by EU law, and usually relates to matters which are within devolved competence. However, the present notification relates to an instrument which is not within devolved competence, but for which there is a statutory requirement that the Scottish Government's consent must be sought.
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. **The Committee's role in relation to this notification is to decide whether it agrees with the Scottish Government's proposal to consent to the UK Government making these Regulations. If members are content, the Committee will write to the Scottish Government accordingly. In its letter, the Committee has the option of noting or asking for clarification on relevant issues, or asking to be kept up to date on any relevant developments.**
6. **If the Committee is not content with the proposal, however, it may recommend that the Scottish Government should not consent to the provision being made.**

Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021

7. The [Environmental Protection \(Single-use Plastic Products\) \(Scotland\) Regulations 2021](#) creates an offence of manufacturing or supply the specified single-use plastic products. The aim is to reduce the harmful environmental impact of these products. The instrument makes it an offence, in the course of a business, to—
 - manufacture or supply expanded polystyrene beverage cups, beverage containers and food containers; and plastic cutlery, plates and beverage stirrers.
 - supply plastic straws and plastic balloon sticks, subject to exemptions.
8. The maximum penalty is a fine at level 5 on the standard scale, currently £5000. The instrument also gives power to local authorities to enforce the ban.
9. The NZET Committee was the lead Committee in considering this instrument. During its scrutiny, it took evidence from—
 - [Lorna Slater, the Minister for Green Skills, Circular Economy and Biodiversity, Scottish Government](#) – 30 November 2021
 - [Zero Waste Scotland and the Scottish Food and Drink Federation](#) – 7 December 2021
10. It received written submissions from—
 - [Scottish Retail Consortium](#)
 - [Inclusion Scotland](#)
11. The Committee [received a written update](#) from the Minister on 9 December, following on from her evidence session. The Committee also [wrote](#) to the Scottish Government on points raised in the written submission from Inclusion Scotland, and [received a response](#) on 17 December.
12. The Committee formally disposed of the instrument, which had been laid under the negative procedure, on 14 December 2021 when it agreed to make no recommendations in relation to the instrument.

United Kingdom Internal Market Act 2020

13. The [United Kingdom Internal Market Act 2020 would mean that the 2021 Regulations are not effective in relation to incoming goods](#). The Delegated Powers and Law Reform Committee highlighted this [during its consideration of the instrument](#). The Minister was asked about the impact of the UK Internal Market Act 2020 on the measures proposed in the instrument during the 30 November evidence session. [She said](#)—

“If no exemption is allowed to the impact of the 2020 act, it will still be possible for any products that are produced in or imported by another part of the UK to be sold in Scotland, and hundreds of millions of pieces of plastic will still end up

on our beaches. Without an exemption, the act will undermine our ban on these environmentally damaging plastic products.”¹

14. In evidence² last year, the Scottish Government indicated that discussions with the UK Government were ongoing on this issue.

15. The regulations cannot operate effectively without an exemption to the UK Internal Market Act (UKIMA) or until similar measures are introduced throughout the UK.

United Kingdom Internal Market Act 2020 (Exclusions from Market Access Principles) Regulations 2022

16. The Minister for Green Skills, Circular Economy and Biodiversity [wrote to the NZET Committee on 6 May 2022](#), formally notifying the proposed UK Regulations. The notification states the UK Regulations will—

“...create an exclusion from the market access principles under Part 1 of that Act [the 2020 Act] for legislation prohibiting or restricting the supply of the following items made of single-use plastic-

- straws
- stirrers
- cotton buds
- plates,
- bowls and trays, unless they are considered to be packaging
- cutlery, including chopsticks,
- balloon sticks, and
- single-use expanded and extruded polystyrene food and drinks containers, including cups.”

17. The notification explains that this means—

“..if the Scottish Government, or any of the other UK nations, made legislation in future prohibiting the supply of those items, then the market access principles would not impact on that legislation. However, the SI itself does not put restrictions on the items.”

18. The process for creating the exclusion has been agreed through the Resources and Waste Common Framework, which is yet to be published.

19. The letter requests a response by **3 June 2022**. The Scottish Government is to respond to the UK Government by **6 June 2022**. The UK Regulations will be laid on **8 June 2022**.

For decision

20. The Committee is invited to consider whether it is content for the Scottish Government to consent to the proposed UK Regulations.

¹ Net Zero, Energy and Transport Committee, *Official Report*, 30 November 2021, Col 24

² Net Zero, Energy and Transport Committee, *Official Report*, 30 November 2021, Col 24

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