

Rural Affairs, Islands and Natural Environment Committee

18th Meeting, 2022 (Session 6), Wednesday, 1 June

UK subordinate legislation

Introduction

1. This paper supports the Committee's consideration of a consent notification sent by the Scottish Government relating to **the Official Controls (Extension of Transitional Periods) (Amendment) Regulations 2022**.
2. The instrument has been categorised as type 1 under the SI protocol. Background relating to the process for parliamentary scrutiny of consent notifications for UK subordinate legislation is set out in **Annexe A**.

Consent notification

3. The Cabinet Secretary [wrote to the Committee in relation to the notification](#) on 18 May 2022.
4. According to the notification, the instrument replaces the current end date of 30 June 2022 for the end of the transitional staging period (TSP) with 31 Decemer 2022. Thus, this delays the implementation of controls set out in the Official Controls (Extension of Transitional Periods) Regulations 2021 on SPS (sanitary and phytosanitary) imports into Great Britain from relevant third countries (in particular, EU member States). At the end of the TSP, the 2021 Regulation will apply fully to all SPS goods, including those imported into GB from relevant third countries.
5. In addition to changing the end date of the TSP, the instrument makes consequential changes to the Meat Preparations (Amendment and Transitory Modification) (England) (EU Exit) Regulations 2020 which apply in England only and do not extend to Scotland.
6. The notification states that the purpose of the Official Controls (Extension of Transitional Periods) (Amendment) Regulations 2022 is to protect biosecurity and support trade by ensuring that, within Great Britain and between Great Britain and relevant third countries, effective official border controls continue to operate following the end of the TSP.
7. The notification confirms that "none of the amendments made by the instrument confer powers to make legislation on UK or Scottish Ministers".
8. The notification states the SI will be laid on 8 June 2022 and come into force on 29 June 2022. The Cabinet Secretary's letter goes on to explain that "an initial draft of

the Instrument has only been shared in recent days and it is, therefore, regrettable that on this occasion it has not been possible to comply with the requirement that members should have a full 28 days to scrutinise before the instrument is laid”.

9. According to the notification, Scottish Ministers consider it is appropriate to consent to the instrument to give effect to these changes, on the grounds that diverging from the UK Government’s proposals would result in different import requirements for different nations, which will likely lead to stakeholder confusion and disruption to trade. The notification goes on to explain that, if Scotland rolls out the import checks that were scheduled for July, trade that would have usually come directly to Scotland will likely be diverted to the other three nations, as exporters would aim to avoid certification requirements as well as BCP checks and fees.
10. The notification also states that the biosecurity benefit of continuing with the rollout of the import checks that were scheduled for July is likely to be low, as most imports into Scotland take place through a port in the other three nations (mostly ports in the south of England). Furthermore, there would be practical difficulties if Scotland were to continue with the rollout of the import checks that were scheduled for July as the IT systems for the management of borders are still under developed by the UK Government and will not be ready by July. Without these systems, Scotland would not be able to perform effective checks.

For decision

11. **Members are invited to consider whether they wish to 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
May 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).