

Rural Affairs, Islands and Natural Environment Committee

22nd Meeting, 2022 (Session 6), Wednesday, 29 June 2022

Subordinate legislation

Introduction

1. This paper supports the Committee's consideration of the following consent notifications for UK subordinate legislation—
 - Aquatic Animal Health (Amendment) Regulations 2022; and
 - Animals, Food and Feed, Plant Health, Plant Propagating Material and Seeds (Miscellaneous Amendments 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 Aquatic Animal Health (Amendment) Regulations 2022

3. The Cabinet Secretary for Rural Affairs and Islands [wrote to the Committee in relation to the notification](#) on 31 May 2022. This SI is made using powers under Sections 38(1) and 51(1) of the Fisheries Act 2020, is subject to the negative procedure and will be laid in the UK Parliament on Tuesday 19 July 2022.
4. Currently, the control of imports into, and placement within, the GB market of species of aquaculture animals is managed through legislation. Specifically, retained EU and domestic regulations include lists of diseases which need to be controlled, as well as a list of zones and compartments within third countries from where certain species of aquaculture animals can be permitted entry into GB.
5. As the lists are currently provided for in legislation, they can only be amended by legislation. The notification states that, as scientific knowledge improves, either at a domestic level by government associated scientists or as a result of international collaboration with the EU or at World Organisation for Animal Health (OIE) forums, there is a need to be more reactive and to update these lists quickly to ensure biosecurity of trade. Each of the lists will require to be changed at different times and how often they will each require to be changed is difficult to predict since it will be influenced by shifts in biological understanding.
6. This UK SI amends both retained EU and domestic legislation in order for certain future changes to be made administratively rather than through legislation. This will enable such changes to be made more swiftly and efficiently in response to changing scientific assessments as to risks to biosecurity.

7. The notification sets out the Scottish Government's reasons for the legislative changes being made at UK level as—

“A single UK SI ensures a consistent approach both in terms of policy and timescales and maintains consistent standards and biosecurity and consequently the integrity of the GB health status as recognised by the OIE and EU. If the Scottish Ministers were to seek concurrent powers and amend this list independently of the rest of GB, it would jeopardise the GB health status and significantly impact on trade to and within Scotland. The SI provides a simplified legal landscape ultimately benefitting importers and the Scottish aquaculture industry by avoiding the confusion which can arise by having to navigate multiple pieces of legislation.”

The Animals, Food and Feed, Plant Health, Plant Propagating Material and Seeds (Miscellaneous Amendments Etc.) Regulations 2022

8. The Cabinet Secretary for Rural Affairs and Islands [wrote](#) to the Committee in relation to the notification on 7 June 2022.
9. The SI is made under the European Union (Withdrawal) Act 2018. This SI is subject to negative procedure and will be laid in draft in the UK Parliament on 1 July 2022.
10. According to the notification, the provisions of the instrument extending to Scotland would make operability amendments to legislation concerning food and feed, animal health and welfare, the import of animals or animal products and the import of plants and plant products. These amendments seek to ensure that this legislation continues to function effectively. The majority of the amendments are to change EU references, such as to the Union and Member States, in the original European legislation to references to Great Britain and competent or appropriate authorities within Great Britain, as well as removing Articles which are otiose. None of the provisions would confer powers to legislate on UK or Scottish Ministers.
11. The notification sets out the Scottish Government's reasons for the legislative changes being made at UK level as to “ensure that the existing regimes for safeguarding UK biosecurity will continue to operate effectively”.
12. Details of the provisions that Scottish Ministers are being asked to consent to are included on pages 1 and 2 of the notification.

For decision

13. **The Committee is invited to consider whether it agrees with the Scottish Government's decision to consent to the provisions set out in the notifications being included in UK, rather than Scottish, subordinate legislation.**

**Rural Affairs, Islands and Natural Environment Committee clerks
June 2022**

Process for parliamentary scrutiny of consent notifications for UK statutory instruments

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.

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.

[The protocol](#) establishes a proportionate scrutiny approach and categorises SIs into type 1 and type 2.

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.

For type 2 SI notifications, however, the Scottish Government will notify the Scottish Parliament within five days after giving consent.

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.

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.

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.

If the Committee is not content with the proposal, however, it may make one of the following three recommendations—

- 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;

- 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
- 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).