

Rural Affairs, Islands and Natural Environment Committee

25th Meeting, 2021 (Session 6), Wednesday, 28 September 2022

UK subordinate legislation - consideration of consent notification

Introduction

1. This paper supports the Committee's consideration of a 'type 1' consent notification sent by the Scottish Government relating to the following UK statutory instrument (SI)—
 - The Pests of Plants (Authorisations) (Amendment) Regulations 2022 (PH/037)
2. Background information relating to the process for parliamentary scrutiny of consent notifications for UK subordinate legislation is set out in **Annexe A**.

The Pests of Plants (Authorisations) (Amendment) Regulations 2022

3. The Minister for Green Skills, Circular Economy and Biodiversity [wrote to the Committee in relation to the notification](#) on 26 August 2022. This SI is made using powers under Articles 8(5) and 48(5) of retained Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants (the Plant Health Regulation) and is subject to the negative procedure.
4. The SI will be laid in the UK Parliament on 3 October 2022 and will come into force on 1 November 2022. According to the Scottish Government, it was not possible to provide the Scottish Parliament with the required 28 days to consider the notification as the "policy details were not able to be finalised prior to summer recess". (Members will note that, because the 28-day period does not include recesses over 14 days, the 28 days runs between Monday 5 September and Sunday 2 October and so, even with the full 28-day scrutiny period, the Committee would still consider the notification at this meeting.)
5. The SI will amend retained EU law (the EU Commission Delegated Regulation 2019/829) which sets out the application process for the importation of plants for the purposes of official testing, scientific or educational objectives, trials, varietal selections or breeding.
6. The proposed changes relate to the administrative processes for applying for scientific authorisation and do not transfer any legislative functions. Collectively,

the purpose of the administrative modifications is to improve and simplify the process for applying for material for scientific purposes to enter GB without compromising biosecurity. Details of the changes that Scottish Ministers are being asked to consent to are set out on pages 5 and 6 of the notification.

7. The notification states that, despite the administrative modifications introduced by the SI, the authorisation arrangements under retained EU law will remain substantially in line with the equivalent EU law plant health model and that the modifications will “support the better operation of that model in the GB context”.
8. The notification states the policy was developed through a GB-wide consultation of stakeholders, which included Scottish authorisation holders, and that the “consensus among stakeholders was generally supportive of the proposed changes”.
9. The notification states that detailed guidance will be issued to current licence holders and that online guidance will be published on both the UK Plant Health Portal and the Science & Advice for Scottish Agriculture (SASA) website ahead of the legislation changes coming into force.
10. The notification sets out that the Scottish Government considers it appropriate for the legislative changes to be made at the UK level as this “is the most effective and transparent way to introduce these changes”.
11. No legal or policy issues have been identified in relation to this notification.

For decision

12. **The Committee is invited to consider whether it agrees 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
September 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).