

Rural Affairs, Islands and Natural Environment Committee

27th Meeting, 2022 (Session 6), Wednesday, 26 October

UK subordinate legislation - consideration of consent notification

Introduction

1. This paper supports the Committee's consideration of the following 'type 1' consent notification for UK subordinate legislation—
 - The Phytosanitary Conditions (Amendment) (No. 3) Regulations 2022 (PH/039).
2. Background information relating to the process for parliamentary scrutiny of consent notifications for UK subordinate legislation is set out in **Annexe A**.

The Phytosanitary Conditions (Amendment) (No. 3) Regulations 2022

3. The Minister for Green Skills, Circular Economy and Biodiversity [wrote to the Committee in relation to the notification on 20 September 2022](#). This statutory instrument (SI) is made using powers under retained Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants (the Plant Health Regulation).
4. This SI is to be laid in the UK Parliament on 3 November 2022. The coming into force date is split between 25 November 2022 for “urgent changes relating to reclassification of a GB quarantine pest”, and 3 May 2023 for all other changes.
5. The purpose of the instrument is to amend certain annexes of the Phytosanitary Conditions Regulation (PCR) “to alter the classification of specific plant pests and diseases, amend the import conditions placed on certain plants, plant products and other objects entering Scotland to reflect the biosecurity risk that they pose” and to correct a drafting error. The various changes proposed under the SI are set out on pages 5 to 9 of the notification.
6. The notification states that the SI will “protect biosecurity and support trade” between Great Britain and third countries by modifying the import requirements for at-risk goods and by updating the lists of quarantine and provisional quarantine pests.
7. These import requirements for specific plant and plant products apply to EU member states as well as Liechtenstein and Switzerland. Following the UK's exit

from the EU, these countries have been reclassified as third countries “to ensure that pest measures comply with WTO requirements to treat all third countries in the same manner.” According to the notification, the proposed changes are part of a focusing of pest measures “on pests which pose a risk to Great Britain, rather than to the EU as a whole”, and have been introduced GB wide to avoid “disparity at any GB borders.”

8. The urgent amendment which will come into force on 25 November 2022 relates to the reclassification of one pest, *Thekopsora minima* (Arthur) Sydow & P Sydow (common name: Blueberry rust), from the list of quarantine pests to the list of GB regulated non-quarantine pests. Whereas a “quarantine pest” is a pest which is largely absent from a territory and where controls are in place to prevent it from becoming present, a “regulated non-quarantine pest” is one which is already present in a territory but measures are in place to minimise its spread and its economic or environment impacts.
9. These proposed amendments follow decisions taken by the UK Plant Health Risk Group “in response to the results of the risk assessments made under the Plant Health Regulation”. GB-wide and Scottish stakeholders “were supportive of these changes as many of these were enhancing plant biosecurity”.
10. The Scottish Ministers have not produced an impact assessment on the basis that “no or no significant impact on the private or voluntary sector is foreseen”. The notification states that the proposed amendments are “all technical” in nature and that the SI does not transfer any legislative functions to the UK Parliament. No objections were received from the WTO in relation to the proposed changes.
11. The notification sets out why the Scottish Ministers consent to these legislative changes being made at the UK level—

“consenting to PH/039 is the most effective and transparent way to introduce these amendments. These changes are technical and bespoke to GB plant biosecurity. It provides clarity to Scottish stakeholders and continues close collaboration across the UK under the provisional Plant Health Common Framework.”
12. No legal or policy issues have been identified in relation to this notification.

For decision

13. **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
October 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).