

Rural Affairs, Islands and Natural Environment Committee

29th Meeting, 2022 (Session 6), Wednesday, 9 November

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 Trade in Animals and Related Products (Amendment and Legislative Functions) Regulations 2022 (APH/024)
2. Background information relating to the process for parliamentary scrutiny of consent notifications for UK subordinate legislation is set out in **Annexe A**.

The Trade in Animals and Related Products (Amendment and Legislative Functions) Regulations 2022

3. The Cabinet Secretary for Rural Affairs and Islands [wrote to the Committee in relation to the notification on 26 September 2022](#). This statutory instrument (SI) is made using powers under the European Union (Withdrawal) Act 2018 and is subject to the affirmative procedure. The SI was laid in the UK Parliament on 18 October 2022.
4. The Cabinet Secretary [wrote again to the Committee on 3 October 2022](#) to confirm the Scottish Government had "reached an agreement with UK Government officials that the instrument will not be debated in the UK Parliament until after a period of 28 days has elapsed from the date of the notification, or until such earlier date on which the Scottish Ministers have given their consent to the instrument". The Committee has been asked to respond by 10 November 2022.
5. The notification sets out that the SI amends the Trade in Animals and Related Products (Scotland) Regulations 2012 (SSI 2012/177)—

"The instrument modifies the way in which references to EU Directives within the Trade in Animals and Related Products (Scotland) Regulations 2012 ("TARP Scotland") and the Trade in Animals and Related Products Regulations 2011 ("TARP England") are to be read, and transfers functions that are conferred on EU bodies within relevant articles of those EU Directives to the appropriate authority in Scotland or England. Amendments to TARP Scotland and TARP England will be made in order to reflect these modifications and transfers of

functions. The aspects of the instrument that relate to modifications of TARP Scotland, and prohibiting and regulating movement into and out of Scotland of animals and animal products for the purposes of protecting human and animal health, relate to devolved matters.”

6. Regulations 13 and 16 of TARP Scotland relate to the compliance of consignments of animals and animal products with schedule 1 of TARP Scotland and the issuing of Common Health Entry Documents for such consignments to enter Great Britain. According to the notification, certain requirements contained in schedule 1 of TARP Scotland “do not operate effectively and contain deficiencies” following the UK’s exit from the EU. For example, references to “Member States or intra-community trade” are considered “no longer appropriate”.
7. The SI will modify TARP Scotland with regard to the requirements referred to in regulations 13 and 16 in order to fix deficiencies in the regulations following EU-exit. The SI will also omit and replace schedule 1 of TARP Scotland with a new list which will modify existing provisions in order to fix deficiencies related to EU-exit. The SI confers “the appropriate authority in Scotland” with the functions of EU entities where it is considered appropriate to retain the relevant functions and requirements. Details of the changes that Scottish Ministers are being asked to consent to are set out on pages 2 to 7 of the notification.
8. Regarding the conferral of powers of EU entities to the appropriate authority in Scotland, the notification states—

“The conferral of these legislative functions will allow requirements to be set for the importation of animals and animal products into Great Britain from third countries, including the EU. The appropriate authority for the exercise of functions in relation to Scotland will be the Scottish Ministers, or where consent is given by the Scottish Ministers, the Secretary of State. Legislative functions exercisable by the Scottish Ministers or the Secretary of State under this instrument will be subject to negative procedure.”
9. The notification states the proposed changes will have “no, or no significant, impact on the public sector”. The Scottish Ministers have not undertaken a public consultation on the instrument as they consider the amendments to be “technical in nature, and there has been no policy changes”.
10. The notification states that the Scottish Ministers consider it appropriate for the legislative changes to be made at the UK level as the SI “makes the same changes and confers the same legislative functions in relation to both Scotland and England and will ensure official controls on imports of live animals and animal products continue to be effective”.
11. In response to requests from the Committee, the Cabinet Secretary provided further information on the changes proposed in this SI in letters dated [12 October](#) and [3 November](#).

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
November 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).