

# Rural Affairs, Islands and Natural Environment Committee

3<sup>rd</sup> Meeting, 2023 (Session 6), Wednesday, 1 February

## 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 Approved Country Lists (Animals and Animal Products) (Amendment) Regulations 2023.
2. Background information relating to the process for parliamentary scrutiny of consent notifications for UK subordinate legislation is set out in **Annexe A**.

### The Approved Country Lists (Animals and Animal Products) (Amendment) Regulations 2023

3. The Cabinet Secretary for Rural Affairs and Islands [wrote to the Committee in relation to the notification](#) on 13 January 2023. The statutory instrument (SI) is made using powers under the European Union (Withdrawal) Act 2018.
4. The SI is subject to the negative procedure and is to be laid in the United Kingdom Parliament on 28 February 2023. The Committee has been asked to respond to the notification by 21 February 2023.
5. The notification states the purpose of the SI is to rectify errors in the lists of certain animals and animal products that are approved for export from Switzerland and Iceland into Great Britain. These errors, made by an earlier SI (2022/735), resulted in certain export approvals for Switzerland and Iceland being removed following the end of the transition period (the notification adds that, since these countries are subject to special transitional import arrangements during the transitional staging period, the removal of these approvals “has had no practical effect on trade”). The notification explains that correcting these errors would allow trade in certain animals and animal products from Switzerland and Iceland to Great Britain to continue without disruption.
6. The SI also removes an approval for the transit of bovine animals through the European Union from Russia to the Russian territory of Kaliningrad via Lithuania.

The notification states that this approval should have been removed when initially carried over into retained EU law on the basis that “this redundant approval has no relevance to trade between Great Britain and Russia”.

7. Details of the specific changes to retained EU law the Scottish Ministers are being asked to consent to are set out on pages 1 and 2 of the notification.
8. The Scottish Ministers have not produced an impact assessment for this SI on the basis that “Defra’s assessment is that there is no, or no significant, impact on the private, voluntary or public sectors”. The Scottish Government agreed with Defra’s view that a public consultation on the SI was not necessary as “this instrument does not constitute a change in policy and will maintain the status quo”.
9. The notification sets out why the Scottish Ministers consent to these legislative changes being made through UK, rather than Scottish, subordinate legislation—  
  
“The Scottish Ministers have approved the assessment of risk to animal or public health and are satisfied that the proposed amendments are necessary or appropriate in light of the assessment. The Scottish Ministers are satisfied that the amendments to be made by this instrument are necessary in order to allow the export of certain animals and animal products from Switzerland and Iceland to Great Britain to continue, and that the removal of the redundant transit approval for Russia relating to bovine animals is appropriate and will have no impact on trade between Great Britain and Russia.”
10. No legal or policy issues have been identified in relation to this notification.

## For decision

11. **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  
January 2023**

## 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).