

# Rural Affairs and Islands Committee

20<sup>th</sup> Meeting, 2023 (Session 6), Wednesday, 28 June

## UK subordinate legislation regarding Windsor Framework— consideration of consent notifications

### Summary of consent notifications

1. This paper supports the Committee's consideration of the following 'type 1' consent notifications for UK subordinate legislation—
  - The Windsor Framework (Retail Movement Scheme) Regulations 2023 (NID/011);
  - The Windsor Framework (Plant Health) Regulations 2023 (NID/012);
  - The Windsor Framework (Enforcement etc.) Regulations 2023 (NID/013);
  - The Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023 (NID/014); and
  - The Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023 (NID/015).
2. The Cabinet Secretary for Rural Affairs, Land Reform and Islands [wrote to the Committee in relation to the notifications](#) on 22 June 2023. The statutory instruments (SI) are made using powers under the European Union (Withdrawal) Act 2018.
3. The Scottish Government describes the five SIs as a package implementing parts of [the Windsor Framework](#), the agreement reached by the UK Government and European Commission to reduce trade frictions under the Northern Ireland Protocol and improve the flow of trade within the UK internal market.
4. NID/011, NID/012, NID/014, and NID/015 are expected to be subject to the negative procedure and laid before the UK Parliament during July and August 2023. The Scottish Government has asked the Committee to respond to these notifications by 30 June 2023.
5. NID/013 is subject to the draft affirmative procedure and the UK Government has confirmed that it will not be debated in the UK Parliament until the Scottish Parliament has provided consent to the notification. The Committee is entitled to have 28 days to respond to this notification outwith recess.
6. The Cabinet Secretary's letter states the Scottish Parliament has not been provided the 28 days to consider the notifications on account of "the short timeframe between the Windsor Framework being agreed and its implementation, along with late receipt of near final drafts of these SIs".

7. Details of the specific changes proposed in these SIs are set out on pages 3 to 23 of the notifications.
8. The notifications state the Scottish Ministers consent to these amendments being made under UK, rather than Scottish, secondary legislation for the reasons that implementation of the Windsor Framework “is required as a direct result of EU Exit” and so that “the policy intention of supporting the flow of agrifood goods from GB to NI is aligned across the UK”.
9. The notifications reference two instances of future requirements for Scottish Ministers’ consent. The notification for NID/011 states that it would provide the Scottish Ministers with the power to consent to the terms and conditions of the retail movement scheme. The notification for NID/015 states that consent would be required from the Scottish Ministers to allow for delegation of the function of providing financial assistance to other persons.
10. No other legal or policy issues have been identified in relation to these notifications.
11. Background information relating to the process for parliamentary scrutiny of consent notifications for UK subordinate legislation is set out in **Annexe A**.

## For decision

12. Members are invited to consider whether they are content to agree 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.
13. In noting its decision, the Committee may wish to express its regret that the timescales around these notifications has limited the Committee’s, and presumably the Scottish Government’s, ability to fully consider the implications of the UK SI.

**Rural Affairs and Islands Committee clerks**  
**June 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).