

# Rural Affairs and Islands Committee

25th Meeting, 2023 (Session 6), Wednesday, 4 October

## UK subordinate legislation: consideration of consent notifications

### Introduction

1. This paper supports the Committee's consideration of three 'type 1' consent notifications sent by the Scottish Government relating to the following proposed UK statutory instruments (SI)—
  - the Plant Protection Products (Miscellaneous Amendments) Regulations 2023;
  - the Official Controls (Establishment Lists) Regulations 2023; and
  - the Phytosanitary Conditions (Amendment) (No. 2) 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 Plant Protection Products (Miscellaneous Amendments) Regulations 2023

3. On 4 September 2023, [the Minister for Green Skills, Circular Economy and Biodiversity wrote to the Committee](#) to give notice of the Scottish Government's proposal to consent to the UK SI. A [revised notification of the instrument](#) was provided by the Minister on 26 September 2023. The UK Government intends to lay the UK SI on **16 October 2023**.
4. The Scottish Government has asked the Committee to respond to the consent notification by **6 October 2023**.
5. These Regulations are made under section 14 of the Retained EU Law (Revocation and Reform) Act 2023. They will revoke and replace Article 52 of EU Regulation 1107/2009 in relation to parallel trade permits and the relevant words in the Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019 in relation to treated seeds.
6. The notification states that the main purpose of this SI is to extend EU exit transition arrangements, currently due to expire on 31 December 2023, in relation to the importation of seeds treated with plant protection products. Under

the proposals, treated seeds would continue to be allowed to be imported, marketed and used in GB provided the plant protection product used to treat them was authorised by at least one EU or EEA member state up to 1 July 2027. According to the notification, the extension of these transition arrangements is necessary “due to a lack of alternative methods to control pests targeted by these seed treatments” and to allow time for a long-term solution to this issue to be developed.

7. The SI would also extend the provision to allow permits to be issued for plant protection products for an additional two years if a valid Parallel Trade Permit was in place for that product on 31 December 2022. According to the notification, this extension is necessary as the ending of the current parallel trade permit scheme and the grace periods put in place by the Health and Safety Executive for the use of these products “may create problems for PPP users who rely on these products for profitable operation of their agricultural activities”.
8. Further details of the specific changes proposed in this SI are set out on pages 2 and 3 of the notification.
9. A roundtable was held by Defra with industry stakeholders to consider the issues and potential solutions in relation to this SI. The notification states that an assessment of the impact of this SI on the private, voluntary and public sectors will be published alongside the regulations.
10. The notification sets out why the Scottish Ministers consider it appropriate for these legislative changes to be made through UK, rather than Scottish, subordinate legislation—

“Scottish Ministers consider that consenting to the 2023 Regulations is the most effective and transparent way to make these amendments as they will operate consistently across GB in line with the common framework. Officials have worked with Defra to ensure the drafting delivers for Scottish interests and respects devolved competence in Scotland, and so Scottish Ministers propose to agree to a GB-wide approach. The Scottish Government is satisfied this is the most appropriate legislative approach to making the necessary legislative changes”.

11. A SPICe briefing has been provided in relation to this notification.

## The Official Controls (Establishment Lists) Regulations 2023

12. On 7 September 2023, [the Minister for Energy and the Environment wrote to the Committee](#) to give notice of the Scottish Government’s proposal to consent to the UK SI. The UK Government intends to lay the UK SI on **18 October 2023**.
13. The Scottish Government has asked the Committee to respond to the consent notification by **12 October 2023**.

14. These Regulations are made under Article 126(1) of Regulation (EU) 2017/625.
15. The notification states that the purpose of the SI is to revoke retained Regulation (EU) 2018/700 to remove restrictions on the re-approval of delisted Brazilian food establishments. In 2018, these establishments had been removed from the list of establishments approved to export to EU member states on account of non-compliance in relation to salmonella and fraud.
16. This proposal to remove restrictions on these establishments stems from the outcome of an in-country audit, conducted in 2022 by Defra on behalf of the GB administrations, which found that the Brazilian authorities “had taken sufficient action” to address the sanitary and phytosanitary shortcomings that had led to the implementation of restrictions in 2018.
17. The notification provides a summary of the UK Government’s consultation on the SI with the International Meat Trade Association (IMTA). The notification states the IMTA “indicated broad support of the proposed action”.
18. According to the notification, a full impact assessment was not produced for this SI as “no, or no significant, impact on the private, voluntary or public sectors is foreseen”.
19. The notification states that the Scottish Ministers propose to consent to the changes being made in UK, rather than Scottish, subordinate legislation because “the assessment of risk to animal or public health have been deemed satisfactory”, and that they consider “that the proposed amendments are necessary or appropriate in light of the audit conducted”.
20. With regard to whether the position taken by the Scottish Ministers may change depending upon any future audit conducted by the EU of Brazilian food establishments, Scottish Government officials advised that the outcome of the EU’s assessment would be considered alongside other scientific evidence.
21. No legal or policy issues have been identified in relation to this notification.

## The Phytosanitary Conditions (Amendment) (No. 2) Regulations 2023

22. On 7 September 2023, [the Minister for Green Skills, Circular Economy and Biodiversity wrote to the Committee](#) to give notice of the Scottish Government’s proposal to consent to the UK SI. The UK Government intends to lay the UK SI on **26 October 2023**.
23. The Scottish Government has asked the Committee to respond to the consent notification by **25 October 2023**.
24. These Regulations are made using powers under the European Union (Withdrawal) Act 2018, Regulation (EU) 2017/625 and retained Regulation (EU) 2016/2031.

25. According to the notification, the purpose of this SI is “to protect biosecurity and support trade” between GB and third countries. The SI creates exemptions from the requirement for prior notification with regard to certain plants and plant products, particularly low and medium-risk fruit and vegetables, entering GB from EU member states, Liechtenstein and Switzerland. These exemptions would take effect from 1 November 2023. Details of the specific plants and plant products to be exempted from prior notification are listed on pages 12 to 14 of the notification.
26. The notification explains that the SI would also make the following “urgent or trade-facilitating changes”, set out on page 6 of the notification, that would come into force on 24 November 2023—
- amend the Plant Health Regulation to alter the classification of certain plant pest diseases, and amend subsequent import requirements in consequence of their reclassification;
  - amend the import conditions of certain plants and plant products entering Scotland “to reflect the biosecurity risk that they pose”; and
  - incorporate into legislation the derogations for the import of ash wood from Canada and the USA and bonsai plants from Japan, and to ensure that all pests listed in these derogations are classified as GB quarantine pests or GB provisional quarantine pests in order to maintain trade.
27. In addition, the notification details on pages 6 and 7 further proposed changes considered non-urgent and which would come into effect on 2 May 2024—
- listing certain pests, on the basis of a preliminary assessment, as provisional quarantine pests;
  - expanding import requirements to cover plants for planting of potato; and
  - integrating into legislation the current trade easement for *Tomato brown rugose fruit virus* testing requirements for seeds, as well as other retained EU derogations which are due to expire.
28. The notification states that a consultation with both GB-wide and Scotland-specific stakeholders was undertaken by Defra on behalf of the UK Plant Health Services, comprising the four UK administrations. According to the notification, these stakeholders “were supportive of these changes as these were enhancing plant biosecurity”.
29. The notification sets out that the Scottish Ministers consent to these legislative changes being made through UK subordinate legislation on the basis that it would be “consistent with previous plant health provisions and amendments to the Plant Health Regulation”, that this “is the most effective and transparent way to introduce these amendments”, and that it “continues close collaboration across the UK under the provisional Plant Health Common Framework”.
30. A SPICe briefing has been provided in relation to this notification.

## For decision

31. **The Committee is invited to consider whether it agrees 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.**

**Rural Affairs and Islands Committee clerks  
September 2023**

## Process for parliamentary scrutiny of consent notifications in relation to UK statutory instruments

1. The process for the Scottish Parliament's consideration of consent notifications is set out in a [Protocol on scrutiny by the Scottish Parliament of consent by Scottish Ministers to UK secondary legislation in devolved areas arising from EU Exit](#).
2. The Protocol provides for the Scottish Parliament to scrutinise the Scottish Government's decisions to consent to certain subordinate legislation made by the UK Government: specifically, UK Government subordinate legislation on matters within devolved competence in areas formerly governed by EU law. It sets out a proportionate scrutiny approach and categorises SI notifications as 'type 1' or 'type 2'.
3. Type 2 applies where all aspects of the proposed instrument are clearly technical (e.g., they merely update references in legislation that are no longer appropriate following EU exit) or do not involve a policy decision. These are notified retrospectively, after the Scottish Government has given its consent.
4. All other proposals are type 1. In this case, the Scottish Parliament's agreement is sought *before* the Scottish Government gives consent to the UK Government making subordinate legislation in this way. Each type 1 notification must be considered by the relevant Committee.
5. **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, in the manner that the UK Government has indicated to the Scottish Government.**
6. If Members are content for consent to be given, the Committee will write to the Scottish Government accordingly. The Committee may also wish to note any issues in its response or request that it be kept up to date on any relevant developments.
7. If the Committee is not content with the proposal, however, it make one of the following recommendations—
  - I. 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;
  - II. 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

- III. 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).
8. In the event that the Committee does not recommend consent, the Scottish Ministers have 14 days under the Protocol to respond to the Committee's recommendation. They could—
- Agree. If so, the Scottish Ministers would then withhold their consent.
  - Not agree. If so, Parliament will debate the issue.
9. If the Parliament agrees to the Committee's recommendation that the Scottish Ministers should not consent, the Protocol provides that the Scottish Ministers should "normally not consent" to the UKSI. However, the Protocol also provides that if the Scottish Ministers consider that the Committee's proposed alternative cannot be achieved, they may consent to the UK SI. If so, they must explain why they are doing so to the Scottish Parliament.