

# Rural Affairs and Islands Committee

34th Meeting, 2023 (Session 6), Wednesday,  
20 December

## UK subordinate legislation: consideration of consent notification

### Introduction

1. This paper supports the Committee's consideration of two 'type 1' consent notifications sent by the Scottish Government relating to the following proposed UK statutory instruments (SI)—
  - Amendment to The Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020
  - The Movement of Goods (Northern Ireland to Great Britain) (Animals, Feed and Food, Plant Health etc.) Regulations 2024
2. 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](#). Further details of this process are set out in **Annexe A**.

## Amendment to The Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020

3. On 30 November, the Cabinet Secretary for Rural Affairs, Land Reform and Islands wrote to the Committee to notify the [Scottish Government's proposal to consent to the UK SI](#). The Scottish Government anticipated that the UK SI may be laid as early as **4 December 2023**, with a coming into force date of 31 January 2023. However, no SI has yet been laid at the time of writing this paper. The Cabinet Secretary's letter advised that officials had requested that the SI not be debated until the Parliament has had a chance to consider.
4. The Scottish Government has not specified a date by which the Committee must respond to the consent notification due to the uncertainty around when the SI will be laid before the UK Parliament. However, the Cabinet Secretary's letter stated: "I will confirm the date by which I will require a response when I advise you that the final SI has been laid, however as the UK Government needs the SI to be in force by the end of January, I unfortunately anticipate a very limited time for the Parliament to consider the matter".
5. The proposed SI amends the definition of 'Qualifying Northern Ireland Goods' ("QNIGs") which is a term used in several pieces of legislation concerning the

movement of goods from Northern Ireland to Great Britain. The principal regulations, the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020, defines QNIGs as goods which are present in NI and not subject to any customs supervision, restriction or control by these regulations.

6. The purpose of amendments made by this proposed SI is to (i) narrow the definition of a QNIG for food and feed purposes, (ii) reserve QNIG status for food and feed goods dispatched from an NI registered or approved food and feed business and (iii) remove QNIG status from any good moved into Northern Ireland from outside the United Kingdom with the sole purpose of the good having QNIG status on movement into Great Britain. This means that food and feed products will need to be owned or processed in Northern Ireland by a Northern Ireland registered or approved food or feed business in order to be considered a Qualifying Northern Ireland Good for Sanitary and Phytosanitary purposes (which would make it exempt from Sanitary and Phytosanitary import requirements). This tightened definition is intended to protect the integrity of checks at the border and protect biosecurity by reducing the ability of goods to become QNIGs if they are moved into the NI from outside the UK only for the purpose of attempting to gain QNIG status.

## Options available to the Committee

7. The proposed SI will be made under the power in section 8C(6) of the European Union (Withdrawal) Act 2018 (“EUWA”) which is a specific power to define “qualifying Northern Ireland goods”. This power is only available to the UK Ministers, with no corresponding power for Scottish Ministers. Accordingly, it is unlikely that Scottish Ministers could competently make the same provision that is proposed in this SI. Therefore, the options available to the Committee in this case are to agree with the Scottish Government’s decision to consent to the SI being made by UK Ministers, or to object to the provision being made by any means (as there is no alternative means currently available to the Scottish Ministers to make the same provision).
8. There is no statutory requirement for the UK Ministers to seek the consent of, or consult, the Scottish Ministers before using the power in section 8C(6) of EUWA. Whilst the lack of statutory consent requirement means the UK Government can go ahead with this instrument even if the Scottish Government withholds consent, the UK Government has stated in the explanatory notes for EUWA that it “will not normally use its delegated powers in areas of devolved competence without the agreement of the devolved administrations”. The UK Government are seeking agreement regarding this SI on this basis.

## The Movement of Goods (Northern Ireland to Great Britain) (Animals, Feed and Food, Plant Health etc.) Regulations 2024

9. On 30 November, the Cabinet Secretary for Rural Affairs, Land Reform and Islands wrote to the Committee to notify the [Scottish Government's proposal to consent to the UK SI](#).
10. The proposed instrument is expected to be laid before the UK Parliament on **8 January 2024** and to come into force on 31 January 2024. The Committee has therefore been asked to respond by **22 December 2023**.
11. The purpose of this SI is to provide that goods moved from a third country through Northern Ireland and into Great Britain are subject to full customs and SPS (sanitary and phytosanitary) checks, controls and processes unless they are “qualifying Northern Ireland goods” (“QNIGs”). The notification sets out that: “A number of pieces of legislation...currently only make provision for SPS, and certain other, checks and controls to be carried out on goods entering Great Britain from a third country, meaning a country or territory other than Northern Ireland, the Channel Islands or the Isle of Man. This instrument will provide that where goods are moved from a third country through Northern Ireland and into Great Britain, the goods are to be regarded for the purposes of SPS and certain other checks, controls and processes as entering Great Britain from a third country, unless they are QNIGs.” The SI also makes temporary transitional provision.
12. This SI works alongside the SI which is the subject of the other notification currently before the Committee, which amends the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020. The notification also explains that the amendment to the definition of QNIG will result in an increased volume of non-QNIGs entering GB from NI and therefore it is intended that this SI will fill any gaps in SPS and certain other checks that might otherwise arise.

### Options available to the Committee

13. The proposed SI will be made under the powers in section 8C(1) of, and paragraph 21(a) of Schedule 7 of the European Union (Withdrawal) Act 2018 (“EUWA”). The Scottish Ministers have a concurrent power and there is a power to make the instrument by joint procedure. Accordingly, if the Committee is not content with the Scottish Government's proposal to consent to the instrument, it could make any of these 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; 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).

14. As with the other notification before the Committee, there is no statutory requirement on the UK Ministers to seek the consent of, or consult, Scottish Ministers before using the power under section 8C(1) of EUWA. Therefore, UK Ministers can use this power to make these regulations in relation to Scotland even if the Scottish Ministers withheld consent. The UK Government has, however, stated in the explanatory notes for EUWA that it “will not normally use its delegated powers in areas of devolved competence without the agreement of the devolved administrations”. The UK Government are seeking agreement regarding this SI on this basis.

## For decision

**15. The Committee is invited to consider whether it agrees with the Scottish Government’s decision to consent to the provisions set out in these notifications.**

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

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

16. 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'.
17. 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.
18. 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.
19. **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.**
20. 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.
21. If the Committee is not content with the proposal, however, it may recommend that the Scottish Government should not give its consent (more detail on the options available to the Committee in relation to this particular notification is given below). In that event, 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, the Parliament will debate the issue.
22. 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.