

Rural Affairs and Islands Committee

6th Meeting, 2024 (Session 6), Wednesday, 28 February

UK subordinate legislation: consideration of consent notifications

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)—
 - Retained EU Law (Revocation and Reform) Act 2023 (Revocation) Regulations 2024; and
 - Plant Health (Fees) (England) and Official Controls (Frequency of Checks) (Amendment) 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**.

Retained EU Law (Revocation and Reform) Act 2023 (Revocation) Regulations 2024

3. On 30 January, the Minister for Energy and the Environment [wrote to the Committee](#) to notify the Scottish Government's proposal to consent to the UK SI.
4. The proposed instrument is expected to be laid before the UK Parliament on 11 March. The Committee has therefore been asked to respond by **8 March**.
5. The proposed SI will revoke obsolete secondary assimilated law in the policy areas of food, the environment and rural affairs. As such, it crosses committee remits; the Net Zero, Energy and Transport Committee has also been notified about the proposal and intends to consider the notification on Tuesday 27 February. **Annexe B** contains a list of instruments being revoked by the proposed UKSI that apply to Scotland and fall within the remit of the Rural Affairs and Island Committee. These have been assessed as superseded or obsolete (for example, because they apply to specific time periods that have now passed).

Options available to the Committee

6. The proposed SI will be made under section 14(1) of the Retained EU Law (Revocation and Reform) Act 2023.
7. Equivalent powers are available to the Scottish Ministers. There is also power to make the instrument by joint procedure (that is, an SI laid in both the UK Parliament and Scottish Parliament). 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).
8. There is no statutory requirement that the UK Ministers obtain the consent of the Scottish Ministers before making this instrument. Accordingly, from a legal point of view, the UK Government can still go ahead with this instrument, whether or not the Scottish Government consents. The UK Government has, however, stated that it does "not intend normally to use the powers under the [REUL Act] in devolved areas without the agreement of the relevant devolved administration. Where a UK Minister intends to exercise the powers in devolved areas we will seek agreement on an SI-by-SI basis".

Plant Health (Fees) (England) and Official Controls (Frequency of Checks) (Amendment) Regulations 2024

9. On 9 February, the Minister for Green Skills, Circular Economy and Biodiversity [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 4 March and to come into force on 30 April. The Committee has therefore been asked to respond by **1 March**. This does not give the Committee the 28 days for scrutiny that is set out in the protocol.

11. The purpose of this instrument is to implement stage two of the [Border Target Operating Model](#) (“BTOM”) as regards plant health. The instrument—
- Expands the frequency of phytosanitary checks on plants, plant products and other objects to include medium risk goods entering GB from the EU, Liechtenstein and Switzerland within its framework for determining the frequency of physical and ID checks. This does not extend to EU fruit and vegetables which are currently being treated as low-risk goods while risk assessments are conducted. This easement is in place until October 2024.
 - Introduces frequency of checks (ID, physical) and risk-based documentary checks for regulated medium-risk plants with new rules for certain goods entering Great Britain.
 - Disapplies official control checks (ID, physical) for consignments originating in an EU member state, Liechtenstein or Switzerland entering via specified West Coast ports. This in line with the Border Target Operating Model commitment that there will be no checks at West Coast Ports before October 2024 at the earliest.
12. Members will recall that the Committee has considered a number of UK SI notifications, and SSIs, relating to the BTOM and official controls for SPS products.

Options available to the Committee

13. The proposed SI will be made under the powers conferred by:
- Articles 54(3) and 144(6) of, and paragraph 3(2) of Annex 6 to, Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (“the Official Controls Regulation”), and
 - section 14(1) of, and paragraph 7 of Schedule 4 and paragraphs 21 and 38 of Schedule 7 to, the European Union (Withdrawal) Act 2018.
14. The Scottish Ministers have a concurrent power but there is no 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 either 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, or
 - II. 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).

15. The instrument contains both reserved and devolved provision. The consent of the Scottish Ministers is required for the Secretary of State to act within devolved competence at least in relation to some of the provisions in the instrument. Accordingly, some of the provision proposed cannot be made in the UK SI unless the Scottish Ministers give their consent.

For decision

16. **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
February 2024**

Annexe A - Process for parliamentary scrutiny of consent notifications in relation to UK statutory instruments

17. 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'.
18. 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.
19. 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.
20. **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.**
21. 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.
22. 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 provided above). 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.
23. 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.

Annexe B – Instruments within the RAI Committee Remit being revoked by the REUL SI proposal

The Veterinary Surgeons' Qualifications (Recognition) (Switzerland and Croatia) Regulations 2013

COMMISSION DECISION of 5 February 1991 making financial provision for a project relating to the inactivation of the agents of scrapie and bovine spongiform encephalopathy (91/89/EEC)

COMMISSION DECISION of 24 June 1996 approving the plan for the control and eradication of bovine spongiform encephalopathy in the United Kingdom (96/385/EC)

COMMISSION DECISION of 16 December 1997 amending Decision 96/385/EC approving the plan for the control and eradication of bovine spongiform encephalopathy in the United Kingdom (97/870/EC)

COMMISSION REGULATION (EC) No 2680/1999 of 17 December 1999 approving a system of identification for bulls intended for cultural and sporting events

Commission Decision of 30 October 2000 authorising Member States to provide for derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (*Fragaria L.*), intended for planting, other than seeds, originating in the Republic of Chile (notified under document number C(2000) 3141)

Commission Decision of 12 December 2000 authorising the Member States temporarily to provide for derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of *Vitis L.*, other than fruits, originating in Switzerland (notified under document number C(2000) 3743)

Commission Decision of 18 January 2001 authorising Member States temporarily to provide for derogations of Council Directive 2000/29/EC in respect of potatoes, other than potatoes intended for planting, originating in Cuba (notified under document number C(2001) 121)

Commission Decision of 9 March 2001 authorising the Member States to provide for derogations from certain provisions of Council Directive 2000/29/EC in respect of potatoes, other than potatoes intended for planting, originating in New Zealand (notified under document number C(2001) 685)

Commission Decision of 29 May 2001 authorising Member States to provide for derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (*Fragaria L.*), intended for planting, other than seeds, originating in Argentina (notified under document number C(2001) 1485)

Commission Decision of 7 December 2001 approving the schemes submitted by the United Kingdom and Ireland for the withdrawal of all fish in farms infected with infectious salmon anaemia (ISA) virus and repealing Decision 2001/494/EC

Commission Decision of 29 April 2002 authorising derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (*Fragaria L.*), intended for planting, other than seeds, originating in the Republic of Chile (notified under document number C(2002) 1553)

Commission Regulation (EC) No 997/2002 of 11 June 2002 establishing detailed rules for the implementation of the provisions relating to the allocation of a Community financial contribution for Member States in order to strengthen inspection infrastructures for plant health checks on plants and plant products coming from third countries

Commission Decision of 26 June 2002 authorising derogations from certain provisions of Council Directive 2000/29/EC in respect of naturally or artificially dwarfed plants of *Chamaecyparis* Spach, *Juniperus* L. and *Pinus* L., originating in the Republic of Korea (notified under document number C(2002) 2251) (2002/499/EC)

Commission Decision of 28 January 2003 authorising Member States to provide for temporary derogations from Council Directive 2000/29/EC in respect of potatoes, other than potatoes intended for planting, originating in certain provinces of Cuba (notified under document number C(2003) 338) (2003/63/EC)

Commission Decision of 9 April 2003 authorising Member States to provide for temporary derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in the Republic of South Africa (notified under document number C(2003) 1185) (2003/250/EC)

Council Regulation (EC) No 882/2003 of 19 May 2003 establishing a tuna tracking and verification system

COMMISSION DECISION of 10 October 2003 granting a temporary derogation from Directive 82/894/EEC as regards the frequency of notification of primary outbreaks of bovine spongiform encephalopathy (2003/724/EC)

Commission Decision of 28 January 2004 authorising Member States temporarily to provide for derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of *Vitis* L., other than fruits, originating in Switzerland (notified under document number C(2004) 122)

COMMISSION DECISION of 29 January 2004 on measures to assess the residual BSE risk in products derived from bovine animals/on a Community financial contribution for measures to assess the residual BSE risk in products derived from bovine animals (2004/110/EC)

COMMISSION DECISION of 14 October 2004 on the list of programmes for the eradication and the monitoring of certain TSEs qualifying for a financial contribution from the Community in 2005 (2004/696/EC)

Commission Decision of 29 November 2004 authorising a temporary derogation from certain provisions of Council Directive 2000/29/EC in respect of the importation of soil originating in Australia (notified under document number C(2004) 4449) (2004/827/EC)

Commission Decision of 29 June 2005 providing for a derogation from certain provisions of Council Directive 2000/29/EC in respect of plants of *Vitis* L., other than fruits, originating in Croatia (notified under document number C(2005) 1920) (2005/477/EC)

Commission Decision of 11 December 2006 providing for a derogation from certain provisions of Council Directive 2000/29/EC in respect of plants of *Vitis L.*, other than fruits, originating in Croatia or the former Yugoslav Republic of Macedonia (notified under document number C(2006) 6365) (2006/916/EC)

Commission Regulation (EC) No 737/2008 of 28 July 2008 designating the Community reference laboratories for crustacean diseases, rabies and bovine tuberculosis, laying down additional responsibilities and tasks for the Community reference laboratories for rabies and bovine tuberculosis and amending Annex VII to Regulation (EC) No 882/2004 of the European Parliament and of the Council

Council Decision of 8 November 2010 on the approval, on behalf of the European Union, of the Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (2010/717/EU)

Commission Implementing Decision of 24 April 2012 recognising Serbia as being free from *Clavibacter michiganensis* ssp. *Sepedonicus* (Spieckerman and Kotthoff) Davis et al. (notified under document C(2012) 2524) (2012/219/EU)

Commission Decision 26 November 2013 on notifying a third country of the possibility of being identified as a non-cooperating third country in fighting illegal, unreported and unregulated fishing

Council Implementing Decision (EU) 2015/200 of 26 January 2015 amending Implementing Decision 2014/170/EU establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing as regards Sri Lanka

Commission Implementing Decision (EU) 2015/1084 of 18 February 2015 approving on behalf of the European Union certain amendments to Annexes II, V, VII and VIII to the Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products (notified under document C(2015) 797)

Commission Implementing Decision (EU) 2016/1102 of 5 July 2016 approving the national programmes to improve the production and marketing of apiculture products submitted by the Member States under Regulation (EU) No 1308/2013 of the European Parliament and of the Council (notified under document C(2016) 4133)

Council Regulation (EU) 2016/1252 of 28 July 2016 amending Regulations (EU) 2016/72 and (EU) 2015/2072 as regards certain fishing opportunities

COMMISSION DELEGATED REGULATION (EU) 2017/1181 of 2 March 2017 amending Delegated Regulation (EU) 2017/117 establishing fisheries conservation measures for the protection of the marine environment in the Baltic Sea and repealing Delegated Regulation (EU) 2015/1778

Council Regulation (EU) 2017/1398 of 25 July 2017 amending Regulation (EU) 2017/127 as regards certain fishing opportunities

Commission Regulation (EU) 2018/455 of 16 March 2018 laying down additional responsibilities and tasks for the European Union reference laboratory for fish and crustacean diseases and amending Annex VII to Regulation (EC) No 882/2004 of the European Parliament and of the Council

COUNCIL REGULATION (EU) 2019/529 of 28 March 2019 amending Regulation (EU) 2019/124 as regards certain fishing opportunities.

Commission Implementing Decision (EU) 2020/758 of 4 June 2020 on measures to be taken by the United Kingdom concerning *Xylella fastidiosa* and *Ceratocystis platani*

Commission Implementing Regulation (EU) 2020/918 of 1 July 2020 establishing a derogation from Implementing Regulation (EU) 2019/2072 as regards the requirements for the introduction into the Union of ash wood originating or processed in Canada

Commission Implementing Regulation (EU) 2020/1002 of 9 July 2020 establishing a derogation from Implementing Regulation (EU) 2019/2072 as regards the requirements for introduction into the Union of ash wood originating or processed in the United States