

Rural Affairs and Islands Committee
Wednesday 1 May 2024
11th Meeting, 2024 (Session 6)

Note by the Clerk on UK subordinate legislation: consideration of consent notification

Introduction

1. This paper supports the Committee's consideration of a 'type 1' consent notification sent by the Scottish Government relating to the following proposed UK statutory instrument (SI): The Phytosanitary Conditions (Amendment) Regulations 2024.
2. The process for the Scottish Parliament's consideration of consent notifications is set out in the [SI Protocol](#). Further details of this process are set out in Annex A.

The Phytosanitary Conditions (Amendment) Regulations 2024

3. On [25 March, 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 Scottish Government has also provided an SI notification and a summary notification. The UK Government intends to lay the UK SI on 9 May 2024.
4. The Scottish Government has asked the Committee to respond to the consent notification by 8 May 2024.
5. The proposed SI aims to ensure specific pests which have been assessed to be a risk to GB biosecurity are subject to appropriate controls. It amends Annexes of the Phytosanitary Conditions Regulation to alter the classification of specific plant pests and diseases (and subsequent imports requirements due to their reclassification); amends further import conditions placed on certain plants, plant products and other objects entering Scotland to reflect the biosecurity risk that they pose, and incorporates import conditions to allow Norwegian cut Christmas trees by incorporating specific import requirements.
6. There is a statutory requirement that the Secretary of State cannot proceed with legislating on the devolved provision set out in the proposed SI unless the Scottish Ministers consent.

Next steps

7. If the Committee wishes to approve the proposal to consent to the SI, it may, in doing so, set out in its letter to the Scottish Government any observations or concerns that it thinks are relevant.

8. If the Committee is not content with the proposal, it should include in its letter to the Scottish Government one of the following recommendations:
- That the Scottish Government should not consent to the provision being made in a UK SI and that the Scottish Government should instead take forward an alternative Scottish legislative solution
 - 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).

**Clerks to the Committee
April 2024**

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

1. 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'.
2. 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.
3. 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.
4. **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.**
5. 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.
6. If the Committee is not content with the proposal, however, it may recommend that the Scottish Government should not give its consent. 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.
7. 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 UK SI. 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.