

Rural Affairs and Islands Committee
Wednesday 19 June 2024
18th Meeting, 2024 (Session 6)

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 (SIs):
 - Official Controls (Amendment) Regulations 2024, and
 - Sea Fisheries (Amendment) (No 2) Regulations 2024
2. Members will note that both notifications were sent before the UK Parliament was prorogued. The Scottish Government has, however, asked the Scottish Parliament to consider the notifications before summer recess. This is on the basis that the SIs could be laid by the incoming UK Government in July and, if the Scottish Parliament does not consider it ahead of the summer recess, it may lose the opportunity to express a view.
3. 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 Annexe A.

Official Controls (Amendment) Regulations 2024

4. The [Cabinet Secretary for Rural Affairs, Land Reform and Islands, Mairi Gougeon MSP, wrote to the Committee on 20 May 2024 to notify it of the Scottish Government's decision to consent to the proposed Official Controls \(Amendment\) Regulations 2024](#).
5. The notification states that the instrument is part of the implementation of the border target operating model (BTOM) and would amend the official controls regulation and other direct assimilated law relating to the import conditions for animals and animal products entering Great Britain.
6. Specifically, the proposed SI would use powers conferred by the Retained EU Law (Revocation and Reform) Act 2023⁴ to update or revoke and replace provisions in the OCR and other relevant legislation to:
 - Provide the legislative powers for further aspects of the BTOM to be delivered
 - Make other changes to the rules on official controls to deliver aspects of the BTOM, and
 - Ensure that certain import conditions on animals and animal products can be updated administratively in response to risk.

7. The notification sets out the Scottish Ministers' reasons for consenting to the provisions being made in UK, rather than Scottish, secondary legislation:

"The SI takes account of devolved competence. Bearing in mind that this legislation is an integral part of ongoing implementation of the BTOM, Scottish Ministers consider that it would be appropriate for these provisions to be enacted on a GB-wide basis, as it allows the Scottish Government to continue to work with other UK Administrations to finalise and implement the objectives of the BTOM."

8. [On 10 June 2023, the Cabinet Secretary provided further information on the proposed Official Controls \(Amendment\) Regulations 2024.](#)
9. No policy or legal issues have been identified with this proposed instrument.

Sea Fisheries (Amendment) (No 2) Regulations 2024

10. The [Cabinet Secretary for Rural Affairs, Land Reform and Islands, Mairi Gougeon MSP, wrote to the Committee on 22 May 2024 to notify it of the Scottish Government's decision to consent to the proposed Sea Fisheries \(Amendment\) \(No 2\) Regulations 2024.](#)
11. The notification states that these regulations would introduce a number of the management measures set out in the fisheries management plans (FMPs), published on 14 December 2023. The proposed SI would, however, only relate to devolved competence in respect of the seabass (or 'bass') FMP, as it is the only measure covering stock within Scottish waters.
12. Specifically, the regulations would remove the UK-EU annually negotiated catch limits for commercially caught bass from secondary legislation so that they can be transferred into fishing licence conditions. The notification states that licence conditions are "generally quick to introduce and would allow the commercial bass catch limits to be updated promptly following international negotiations, so they are in line with evolving evidence".
13. The notification sets out the Scottish Ministers' reasons for consenting to the provisions being made in UK, rather than Scottish, secondary legislation as being "the historically low interest in seabass fishery in Scotland (one licenced vessel with necessary permit), and consequently its minimal impact on Scottish fishers, this change may only reduce the officials' time and resources required for future work on setting seabass measures".
14. On [10 June 2023, the Cabinet Secretary provided further information on the proposed Sea Fisheries \(Amendment\) \(No 2\) Regulations 2024.](#)
15. No significant policy or legal issues have been identified with this proposed instrument.

Next steps

16. The Committee is invited to give its consent to the Scottish Ministers' proposed agreement that these provisions be made in UK, rather than Scottish, secondary legislation.

Clerks to the Committee
June 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.