

Rural Affairs and Islands Committee
Wednesday 2 October 2024
24th 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 Official Controls (Extension Of Transitional Periods) And Plant Health (Frequency Of Checks) (Miscellaneous Amendments) 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 Annexe A.

The Official Controls (Extension of Transitional Periods) and Plant Health (Frequency Of Checks) (Miscellaneous Amendments) Regulations 2024

3. On 2 September 2024, [the Minister for Agriculture and Connectivity 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 7 October 2024. The Scottish Government has asked the Committee to respond to the consent notification by 4 October 2024.
4. The proposed SI is made under the powers in Article 144(6) of and paragraphs 2 and 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 (assimilated law).
5. The notification states the instrument is part of the implementation of the border target operating model (BTOM). It would extend transitional arrangements for import checks on certain animal and plant health products from the EU, Switzerland and Liechtenstein entering GB via West Coast Ports until 1 July 2025.
6. The Scottish Government has also laid the [Plant Health \(Import Inspection Fees\) \(Scotland\) Amendment \(No. 2\) Regulations 2024 \[draft\]](#) to disapply inspections fees for import checks to reflect the delays to implementation set out in this instrument. The Committee considered this instrument at its meeting on 25 September and agreed to recommend to the Scottish Parliament that the draft Regulations be approved.

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

“This SI takes account of devolved competence. Scottish Ministers are of the opinion it would be appropriate to introduce these provisions 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 Borders Targeting Operating Model to ensure there remains a coherent, effective and efficient system of controls in place without compromising biosecurity and minimising disruption to trade.”

8. No policy or legal issues have been identified with this proposed instrument.

Next steps

9. 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.
10. 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 [*Include if appropriate.*] Note: In this instance, the Scottish Ministers do not have the power to make equivalent provision in a Scottish statutory instrument, so the only alternative Scottish legislative solution may be a Bill.
 - 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
September 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.