

Rural Affairs, Islands and Natural Environment Committee

30th Meeting, 2022 (Session 6), Wednesday, 16 November

UK subordinate legislation - consideration of consent notification

Introduction

1. This paper supports the Committee's consideration of the following 'type 1' consent notification for UK subordinate legislation—
 - The Organic Production (Amendment) Regulations (No. 2) 2022
2. Background information relating to the process for parliamentary scrutiny of consent notifications for UK subordinate legislation is set out in **Annexe A**.

The Organic Production (Amendment) Regulations (No. 2) 2022

3. The Cabinet Secretary for Rural Affairs and Islands [wrote to the Committee in relation to the notification on 6 October 2022](#). This SI is made using powers under the European Union (Withdrawal) Act 2018 and is subject to the affirmative procedure.
4. This SI is to be laid in the UK Parliament on 6 December 2022. The Committee is asked to respond to the notification by 21 November 2022.
5. The purpose of the instrument is to extend the date until which derogation may be authorised for the introduction of non-organic pullets (young chickens) into organic flocks for egg production to 31 December 2025.
6. The SI also extends the derogations for the use of up to 5% non-organic protein feed for pigs and poultry, and the use of non-organic high acyl gellan gum in organic food production to 31 December 2026. The SI provides that, from 1 January 2026, only organically processed gum may be used in processing organic food.
7. Details of the changes that Scottish Ministers are being asked to consent to are set out on pages 5 and 6 of the notification.
8. The notification states that no impact assessment has been undertaken for the SI as it is expected the amendments will have "a very low level of impact on businesses".

9. Defra consulted on the proposed amendments with the Scottish Government through the Four Nations Working Group and with organic control bodies in Great Britain. The notification states that the Scottish Government and organic control bodies were supportive of the changes.
10. The notification states that the Scottish Ministers consider it appropriate for the legislative changes to be made at the UK level “to ensure that derogations are extended to allow specific non-organic alternatives for pullets, protein feed for pigs and poultry and gellan gum if such organic substances, feed or organically-reared livestock are not available on the market”. According to the notification, there are “economic and practical benefits” to the continuation of the derogations and the corrections of deficiencies in organics legislation and that “the proposed regulations permit a regime on a GB wide basis to address that scenario”.

For decision

11. **The Committee is invited to consider whether it agrees with the Scottish Government’s decision to consent to the provisions set out in the notification being included in UK, rather than Scottish, subordinate legislation.**

**Rural Affairs, Islands and Natural Environment Committee clerks
November 2022**

Process for parliamentary scrutiny of consent notifications for UK statutory instruments

The [process for the Scottish Parliament's consideration of consent notifications is set out in a protocol agreed between the Scottish Government and Scottish Parliament](#).

The protocol provides for the Scottish Parliament to scrutinise the Scottish Government's decisions to consent to certain secondary legislation made by the UK Government. Specifically, this relates to UK Government secondary legislation on matters which are within devolved competence and are in areas formerly governed by EU law.

The protocol establishes a proportionate scrutiny approach and categorises SIs into type 1 and type 2.

For type 1 SI notifications, the Scottish Parliament's agreement is sought before the Scottish Government gives consent to the UK Government making secondary legislation in devolved competence. Except in respect of urgent notifications, the Scottish Parliament will have a minimum of 28 days to consider type 1 notifications.

For type 2 SI notifications, however, the Scottish Government will notify the Scottish Parliament within five days after giving consent.

Type 2 applies where all aspects of the proposed instrument are either clearly technical, do not involve a policy decision or update references in legislation that are no longer appropriate following EU exit. All other proposals fall into the type 1 category. In line with the proportionate scrutiny approach, each type 1 notification will be considered by the Committee. Committees will be notified of all type 2 notifications which fall within their remit; it is not, however, anticipated that these will normally be considered at a committee meeting. The protocol includes a number of review mechanisms and the categorisation of type 2 notifications will be monitored in this way.

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.

If members are content for consent to be given, the Committee will write to the Scottish Government accordingly. The Committee may wish to note any issues in its response or request that it be kept up to date on any relevant developments.

If the Committee is not content with the proposal, however, it may make one of the following three recommendations—

- 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;
- 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 (N.B. joint procedure is not available in every case so the option of making this recommendation will not always be available); or

- 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).