

Rural Affairs and Islands Committee

6th Meeting, 2023 (Session 6), Wednesday, 1 March

UK subordinate legislation – consideration of consent notifications

Introduction

1. This paper supports the Committee’s consideration of the following ‘type 1’ consent notifications for UK subordinate legislation—
 - The Sea Fisheries (Amendment) Regulations 2023; and
 - The Welfare of Animals (Transport) (Miscellaneous Amendments) Regulations 2023.
2. Background information relating to the process for parliamentary scrutiny of consent notifications for UK subordinate legislation is set out in **Annexe A**.

The Sea Fisheries (Amendment) Regulations 2023

3. The Cabinet Secretary for Rural Affairs and Islands [wrote to the Committee in relation to the notification](#) on 23 January 2023. The statutory instrument (SI) is made using powers under the European Union (Withdrawal) Act 2018.
4. The SI is to be laid before the UK Parliament on 8 March 2023 and will come into force on 29 March 2023. The Committee has been asked to respond to the notification by 3 March 2023.
5. The notification states the purpose of the SI is to adjust the level of European seabass that may be caught within British fishing limits, both as bycatch and as a targeted species by commercial fishing vessels. The SI also adjusts the dates of the fishing seasons for recreational fisheries for European seabass so that they align with the fishing seasons for commercial fishing activity.
6. The notification also states the SI will make changes to the list of prohibited species contained in [Article 16 of Council Regulation \(EU\) 2020/123](#), removing picked dogfish under or equal to 100cm in length and adding shortfin mako shark. Fish species on the prohibited species list may not be targeted, retained on board, transhipped or landed and must be released unharmed if accidentally caught.
7. This SI is the outworking of the UK-EU Bilateral agreement in relation to fisheries, agreed for 2023. Details of the specific provisions of the agreement

which would be implemented by the SI are set out on pages 1 and 2 of the notification.

8. According to the notification, the SI “does not confer powers to legislate on either UK or Scottish Ministers”.
9. The Scottish Ministers have not produced an impact assessment for this SI on the basis that “no, or no significant, impact on the public, private or voluntary sector is foreseen”. No public consultation has been undertaken as the amendments are considered to be “largely technical in nature”.
10. The notification sets out why the Scottish Ministers consider it appropriate for these legislative changes to be made through UK, rather than Scottish, subordinate legislation—

“This SI is the result of the UK-EU Bilateral agreement for fisheries for 2023. Legislating in a UK SI brings the revised provisions into force on the same day across the UK [and] avoids the risk of delay or inconsistent implementation of the international agreement reached with the EU. The Scottish Ministers therefore consider that is appropriate for the instrument to be made by the UK Government. The approach set out in the proposed UK SI is realistic, achievable and minimises immediate disruption”.

11. No legal or policy issues have been identified in relation to this notification.

The Welfare of Animals (Transport) (Miscellaneous Amendments) Regulations 2023

12. The Cabinet Secretary for Rural Affairs and Islands [wrote to the Committee in relation to the notification](#) on 25 January 2023. The SI is made using powers under the European Union (Withdrawal) Act 2018 and is to be laid before the UK Parliament on 8 March 2023.
13. The notification states that the purpose of the SI is to amend retained EU law in relation to the protection and welfare of animals during transport within the agri-food supply chain—

“This instrument brings the official controls relating to animal welfare in transport under the same regime as other official controls relevant to animal health and welfare in the context of monitoring the agri-food supply chain. It also clarifies the obligations of animal transporters and keepers, places greater responsibility on journey organisers in relation to the preparation and completion of journey logs and clarifies the process for the approval of journey logs”.

14. In relation to the preparation and completion of journey logs, the notification states the SI would amend Annex II of [Council Regulation \(EU\) 1/2005](#). This amendment applies to the completion of journey logs for the movement of animals in journeys taking over eight hours between third countries and Great Britain or in the transit of livestock or unregistered horses through Great Britain.

The amendment would specify that the person who has overall responsibility for planning the journey, termed “the organiser”, would be responsible for completing the required journey log. Details of the specific changes made by the SI in relation to the completion of journey logs are set out on pages 1 and 2 of the notification.

15. With regard to the official controls for animal welfare during transport, the notification states that the SI would specify that Article 2 of [Regulation \(EU\) 2017/625](#) (the Official Controls Regulation) will commence on 6 April 2023. Article 21 of this regulation makes provision for the appropriate authority to conduct checks to ensure the protection of the welfare of animals during transport.
16. In addition, the SI would make consequential amendments to the [Welfare of Animals \(Transport\) \(Scotland\) Regulations 2006](#) to reflect the changes outlined above.
17. A consultation on the proposed changes was issued jointly by the UK, Scottish and Welsh governments. A majority of the industry, animal welfare and enforcement stakeholders who responded were supportive of the proposed changes.
18. According to the notification, the SI is expected to have “no, or no significant, impact” on the private, public and voluntary sectors. Defra conducted a De Minimis Assessment on the proposed amendments which concluded that they would “result in minimal cost to businesses”.
19. The notification sets out why the Scottish Ministers consent to these legislative changes being made through UK, rather than Scottish, subordinate legislation—

“The changes made by this instrument offer a useful clarification of the rules relating to long journeys, and the carrying out of official controls for the protection of animals in transport which are currently carried out on a GB-wide basis. The Scottish Ministers do not consider the changes will have any adverse impact on Scottish agriculture”.
20. No legal or policy issues have been identified in relation to this notification.

For decision

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

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).