

Rural Affairs and Islands Committee

12th Meeting, 2023 (Session 6), Wednesday, 26 April

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 Plant Health and Phytosanitary Conditions (Oak Processionary Moth and Plant Pests) (Amendment) 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 Plant Health and Phytosanitary Conditions (Oak Processionary Moth and Plant Pests) (Amendment) Regulations 2023

3. The Minister for Green Skills, Circular Economy and Biodiversity [wrote to the Committee in relation to the notification](#) on 17 March 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 2 May 2023 and will come into force on 24 May 2023. The Committee has been asked to respond to the notification by 26 April 2023.
5. The notification states the purpose of the SI is to amend several aspects of retained EU Plant Health Legislation—
 - to amend Commission Delegated Regulation (EU) 2019/829, supplementing Regulation (EU) 2016/2031 (the “Plant Health Regulation”), which provides for temporary derogations on protective measures against pests of plants for official testing, scientific or educational purposes, trials varietal selections, or breeding. The amendment would correct a drafting error and provide greater clarity in relation to the information to be supplied as part of an application under the Regulation; and

- to amend Commission Implementing Regulation (EU) 2019/2072 (the “Phytosanitary Conditions Regulation”) which establishes uniform conditions for the implementation of the Plant Health Regulation regarding protective measures against pests of plants. The SI would revise the movement and import requirements of seed potatoes by correcting an error in the retained regulation. The amendment would insert “the correct table of tolerances for Regulated Non-Quarantine Pests (RNQPs) relating to seed potatoes”.
6. The notification states that the SI will also make provisions for the control of oak processionary moth (OPM), a GB quarantine pest.¹ The SI would provide that the movement of high-risk oak host plants would only be allowed to move within a demarcated area by professional operators and subject to conditions. These changes would not apply to Scotland as OPM is not present in Scotland.
 7. Details about the specific changes proposed in the SI are set out on pages 4 to 6 of the notification.
 8. According to the notification, the SI “does not transfer any legislative functions”.
 9. The Scottish Ministers have not produced an impact assessment for this SI on the basis that “no or no significant impact on the private or voluntary sector is foreseen”. The notification also states that no consultation on the SI has been undertaken because “these amendments are correcting previous errors, and there has been no policy changes”.
 10. In relation to why the Scottish Ministers consent to these legislative changes being made through UK subordinate legislation, the notification states that this approach “is consistent with previous plant health provisions and amendments to the Plant Health Regulation”. The notification further states—

“Scottish Ministers consider that consenting to PH/043 is the most effective and transparent way to introduce these amendments. It provides clarity and confidence and continues close collaboration across the UK under the provisional Plant Health Common Framework”.
 11. No legal or policy issues have been identified in relation to this notification.

Rural Affairs and Islands Committee clerks
April 2023

¹ A quarantine pest is “a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled”.

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).