

Rural Affairs and Islands Committee

20th Meeting, 2023 (Session 6), Wednesday, 28 June

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 Validating Alternative Methods for Salmonella Typing (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 Validating Alternative Methods for Salmonella Typing (Amendment) Regulations 2023

3. The Cabinet Secretary for Rural Affairs, Land Reform and Islands [wrote to the Committee in relation to the notification](#) on 25 May 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 13 July 2023. The Committee has been asked to respond to the notification by 30 June 2023.
5. The notification states the SI would amend several pieces of retained EU legislation by inserting a reference to an international standard adopted by the International Organization for Standardization (ISO) for validating alternative detection methods for salmonella typing in poultry and poultry products. These amendments would allow for the use of whole genome sequencing (WGS) in the detection of salmonella in the products of various species of poultry.
6. Under the relevant retained EU legislation, National Control Programmes are in place for the detection and reduction of salmonella in commercially significant flocks of a number of poultry species. The regulations require serotyping to confirm the presence of regulated serovars of salmonella in poultry in order to reduce the prevalence of salmonella and its risk to public health.
7. Details about the specific regulations that would be amended by this SI are set out on page 1 of the notification.

8. The Scottish Ministers have not produced an impact assessment for this SI on the basis that Defra has assessed that “there is no, or no significant, impact on the private, voluntary or public sectors”. The SI may have a financial implication, however, as the notification states that, “WGS is more expensive than conventional serotyping (£115 compared to £70 per isolate)”.
9. The notification states that Defra has collaborated with the Scottish and Welsh devolved governments in developing this SI and policy. Defra has communicated with stakeholders across GB to advise of the changes made by the SI.
10. The Scottish Ministers consider it appropriate to consent to these legislative changes being made through UK, rather than Scottish, subordinate legislation on the basis that—

“the changes proposed in the instrument are necessary and appropriate to enable WGS to be used for serotyping Salmonella NCP isolates. The policy objectives of Scottish and UK Ministers are aligned and the legislation to be amended already applies at a GB level. Proceeding by way of a GB SI means there will only be one piece of legislation required, which is arguably clearer than each administration producing separate instruments in order to achieve the same aim”.
11. It is unclear from the notification whether the proposed amendments would represent a divergence from current EU policy. The clerks have sought clarification on this point from Scottish Government officials and will update members when a response has been received. No other legal or policy issues have been identified in relation to this notification.

Rural Affairs and Islands Committee clerks
June 2023

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).