

Rural Affairs and Islands Committee

30th Meeting, 2023 (Session 6), Wednesday, 22 November

UK subordinate legislation: consideration of consent notifications

Introduction

1. This paper supports the Committee's consideration of two 'type 1' consent notifications sent by the Scottish Government relating to the following proposed UK Statutory Instruments (SI)—
 - The Windsor Framework (Non-Commercial Movement of Pet Animals) Regulations 2024; and
 - The Official Controls (Extension of Transitional Periods) (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 Windsor Framework (Non-Commercial Movement of Pet Animals) Regulations 2024

3. On [1 November 2023](#), the Minister for Energy and the Environment wrote to the Committee to give notice of the Scottish Government's proposal to consent to the UK SI. The UK Government intends to lay the UK SI on 4 December 2023. The Scottish Government has asked the Committee to respond to the consent notification by **30 November 2023**.
4. These Regulations are made in exercise of powers conferred by section 8C(1) and (2) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.
5. The notification states the purpose of the SI is to establish a scheme for the non-commercial movement of pet animals in line with the provisions of [Article 12 of Regulation \(EU\) 2023/1231 of the European Parliament and of the Council of 14 June 2023](#) on specific rules relating to the entry into Northern Ireland from other parts of the United Kingdom of certain consignments of retail goods, plants for planting, seed potatoes, machinery and certain vehicles operated for agricultural or forestry purposes, as well as non-commercial movements of certain pet animals into Northern Ireland.

6. The SI provides a legislative basis for the Windsor Framework non-commercial movement of pet animals scheme. The Windsor Framework was agreed by the UK and EU in February 2023 and it makes changes to the Northern Ireland Protocol. According to the policy note, it puts in place a new, sustainable and durable framework for the movement of pets for non-commercial reasons. Specifically, the Windsor Framework non-commercial movement of pet animals scheme enables UK based pet owners to travel to Northern Ireland with their pets (dogs, cats and ferrets) without the need for pet health treatments or the single-use pet travel certificates.
7. The SI establishes the requirements that must be met for a pet animal to travel under the scheme. It requires pet owners (or those travelling with a pet animal) to apply for a pet travel document and make a declaration that the pet animal will not subsequently be moved into the EU. When applying for the document, pet owners will need to supply specific information required in implementing acts adopted by the EU under Regulation (EU) 2023/1231 to the relevant competent authority.
8. It allows the relevant competent authority to request certain information from commercially owned pet microchip databases to ensure compliance with the scheme. This includes a pet's microchip record and specific information relating to the details contained in the pet travel document. If a request from the competent authority is not met by a pet microchip database operator (such as a refusal to provide information) that will be an offence punishable by a statutory fine. This is to ensure reliable access to information contained in the pet microchip databases to enable the competent authorities to undertake their necessary assurance duties.
9. The SI also permits the competent authority to carry out pet identity and documentary compliance checks in accordance with the requirements of Regulation (EU) 2023/1231. Where non-compliance is identified, the pet must be presented at the Sanitary and Phytosanitary (SPS) Inspection Facility in Northern Ireland for the non-compliance to be remedied. If the competent authority believes that the pet owner or authorised person has failed to present their pet at the SPS Inspection Facility, it may serve a notice on them suspending them from the scheme.
10. The Windsor Framework non-commercial movement of pet animals scheme does not apply to pet animals which do not originate in the UK, for example those owners and pets whose journey originates outside of the UK that are travelling to Northern Ireland via Great Britain. The scheme also does not apply to the movement of dogs, cats and ferrets for commercial reasons, including where there is a change in ownership or sale.
11. Further details of the specific changes proposed in this SI are set out on pages 1 and 3 of the notification.
12. The policy note states that while no formal consultation has been carried out, the UK Government has considered and reflected engagement with interested stakeholders through user research with pet owners, ferry and airline companies

operating travel routes between GB and NI and commercially owned pet microchip database operators, in drafting these Regulations.

13. 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—

“The SI takes account of devolved competence. The Scottish Ministers are the competent authority for the Windsor Framework non-commercial movement of pet animals scheme in relation to Scotland. It would not be possible for Scottish Ministers to make provision for the aspects of the scheme which extend to Northern Ireland, or other parts of the UK. One scheme for the whole of the UK in a UK SI provides clarity and confidence for pet owners, ferry and airline companies operating travel routes between GB and NI, and commercially owned pet microchip database operators. Therefore, the Scottish Ministers consider that consenting to this SI is acceptable.”

14. SPICe has not raised any policy concerns or questions regarding this SI notification.

The official controls (extension of transitional periods) (miscellaneous amendments) regulations 2023

15. On [6 November 2023](#), the Minister for Green Skills, Circular Economy and Biodiversity wrote to the Committee to give notice of the Scottish Government’s proposal to consent to the UK SI. The UK Government intends to lay the UK SI on 6 December 2023. The Scottish Government has asked the Committee to respond to the consent notification by **5 December 2023**.
16. Powers under which the SI is to be made include—
- Section 23(6) of the European Union (Withdrawal) Act 2018;
 - Articles 144(6) of, and paragraphs 2 and 3 of Annex 6 to, Regulation (EU) 2017/625 of the European Parliament and of the Council 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 (“the Official Controls Regulation”);
 - Paragraph 11A of Schedule 2 to the Trade in Animals and Related Products Regulations 2011 (this power relates to England only).
17. The notification states that the purpose of the SI is to extend the end date of the Transitional Staging Period to 29 April 2024 and introduce increased sanitary and phytosanitary controls on animal products, plants and plant products entering Great Britain from the EU and certain other third countries from 31 January 2024.
18. These changes are required to meet the timetable detailed in the [Border Target Operating Model](#) (BTOM) as published on 29 August 2023. Further background information on the BTOM is available in the notification summary (Annex B).

19. The instrument makes the following provisions which will extend to Scotland:

- It extends the transitional staging period end date from 31 January 2024 to 29 April 2024.
- It introduces the requirement for medium-risk plants and plant products entering Great Britain from the EU, Liechtenstein and Switzerland to be accompanied by a phytosanitary certificate upon entry.
- It introduces an exemption for medium-risk plants carried in passenger baggage and entering Great Britain from the EU, Liechtenstein and Switzerland from the requirement to be accompanied by a phytosanitary certificate upon entry, provided they are not to be used for professional or commercial purposes.
- It introduces the requirement for medium risk animal products entering Great Britain from EEA states, the Faroe Islands, Greenland or Switzerland to be accompanied by a health certificate.
- It removes the exemption from pre-notification of arrival for certain plants, plant products and animal products entering GB from the Republic of Ireland.

20. In advance of the Committee's consideration of the notification, Clerks contacted the Scottish Government to ask what assessment has been carried out in relation to the proposed exemption for medium-risk plants carried in passenger baggage. The Scottish Government's letter of [15 November 2023](#) explains that – "The BTOM provides the necessary assurance and ensures goods which pose a medium risk to GB biosecurity are subject to proportionate import controls. This instrument ends the exemption for phytosanitary certificates for commercial goods classified as medium risk, but continues the policy that allows for a passenger baggage allowance. No further assessment was made as there is no suggestion of a change in risk from passenger baggage from the above mentioned countries."

21. The notification provides advance notice that, in line with the BTOM timetable, consequential changes will be required to the [Plant Health \(Import Inspection Fees\) \(Scotland\) Regulations 2014](#). The Minister has advised that the aim is to lay these for scrutiny in February 2024 to meet phase 2 of the BTOM delivery.

22. The notification states that a consultation was undertaken by Defra on behalf of all GB administrations, which included all registered Scottish importers on the changes to health certificate requirements being introduced from 31 January 2024 transitional staging period being extended from 31 January 2024 to 29 April 2024 and the changes to pre-notification for goods arriving directly to Great Britain from Republic of Ireland. The Scottish Government's letter of [15 November 2023](#) states that while DEFRA received a number of queries on the proposed measures no substantive comments were put forward by stakeholders for consideration.

23. The notification states that the Scottish Ministers propose to consent to the changes being made in UK, rather than Scottish, subordinate legislation because, in light of the UKG's publication on the BTOM, "it would be appropriate to introduce these provisions 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 BTOM, to ensure a coherent, effective and efficient system of controls can be introduced, across GB thereby enhancing biosecurity. It also provides clarity to the importers of both animal and plant products avoiding any disparity at the borders within GB.”

For decision

- 24. 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.**

**Rural Affairs and Islands Committee Clerks
November 2023**

Process for parliamentary scrutiny of consent notifications in relation to UK statutory instruments

1. The process for the Scottish Parliament's consideration of consent notifications is set out in a [Protocol on scrutiny by the Scottish Parliament of consent by Scottish Ministers to UK secondary legislation in devolved areas arising from EU Exit](#).
2. 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'.
3. 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.
4. 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.
5. **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.**
6. 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.
7. If the Committee is not content with the proposal, however, it make one of the following recommendations—
 - I. 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 – this option would be available for both proposed UK SIs;
 - II. 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 – this option would be available for the proposed Windsor

Framework (Non-Commercial Movement of Pet Animals) Regulations 2024; or

- III. 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) – this option would be available for both proposed UK SIs.
8. In the event that the Committee does not recommend consent, 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, Parliament will debate the issue.
 9. 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 UKSI. 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.