

# Rural Affairs and Islands Committee

32nd Meeting, 2023 (Session 6), Wednesday, 6  
December 2023

## UK subordinate legislation: consideration of consent notification

### Introduction

1. This paper supports the Committee's consideration of a 'type 1' consent notification sent by the Scottish Government relating to the following proposed UK statutory instrument (SI)— The Sea Fisheries (International Commission for the Conservation of Atlantic Tunas) (Amendment) Regulations 2023
2. 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](#). Further details of this process are set out in **Annexe A**.

## The Sea Fisheries (International Commission for the Conservation of Atlantic Tunas) (Amendment) Regulations 2023

3. On [13 November, the Cabinet Secretary for Rural Affairs, Land Reform and Islands wrote to the Committee to notify the Scottish Government's proposal to consent to the UK SI](#). The UK Government intends to lay the UK SI on **12 December 2023**, to come into force on 22 February 2024.
4. The Scottish Government has asked the Committee to respond to the consent notification by **11 December 2023**.
5. The SI will make a number of amendments to retained EU law ("REUL") in order to fulfil UK government and devolved administrations obligations under an international Convention governing the conservation of tuna and tuna like fishes in the north and south Atlantic Ocean, the Mediterranean and the Black Sea: the International Commission for the Conservation of Atlantic Tunas (ICCAT).
6. Before EU Exit, the UK had obligations under the Convention by virtue of its status as a member of the EU. It became a contracting party to the Convention in its own right on completion of the implementation period. Since joining the

Convention the UK has established a fishing quota for Bluefin tuna in accordance with the UK-EU Trade and Co-operation Agreement and the SI amends domestic law derived from REUL to enable implementation of requirements under ICCAT on the UK fishing industry and UK fishing vessels. The SI will implement a new requirement for the electronic sharing of data on tuna catch certificates. It also takes the opportunity to amend REUL which had not been appropriately updated before the end of the EU Exit implementation period, to clarify enforcement provisions and to remove redundant provisions which are not applicable to the UK.

7. The instrument will amend seven EU derived Regulations as follows:
  - Council Regulation (EC) no 1936/2001 to remove obsolete provisions relating to bluefin tuna farming which does not form part of UK fishing activity
  - Council Regulation (EC) No 1984/2003 to amend the descriptions of fish to which the Regulation applies and include offence, penalty and enforcement provisions
  - Regulation (EU) No 640/2010 to make mandatory the use of the electronic Bluefin Tuna Catch documentation scheme and identify those circumstances in which paper documentation may be used. It also amends the descriptions of fish to which the Regulation applies and include offence, penalty and enforcement provisions
  - Commission Delegated regulation (EU) No 205/98 to remove provision which duplicates provision introduced in another Regulation by this instrument
  - Regulation (EU) 2016/1627 to reflect the UK's obligations under the latest Convention recommendations and take account of the UK's allocation of bluefin tuna catch quota. It also removes redundant provision regarding bluefin tuna farming and prohibits the use of tuna traps and farming in UK waters, and makes provision for planning, monitoring and surveillance requirements including offence, penalty and enforcement provisions.
  - Regulation (EU) 2019/1154 to revoke redundant provision relating to fishing for swordfish in the Mediterranean which do apply to the UK
  - Regulation (EU) 2019/1241 to insert minimum conservation reference sizes for bluefin tuna as specified under the Convention
8. The instrument will amend the Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019 to remove redundant provisions.
9. Under section 40 of the Fisheries Act 2020 the Secretary of State could not proceed with legislating on the devolved provision set out in the proposed SI unless the Scottish Ministers consent.

## For decision

10. **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

11. 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'.
12. 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.
13. 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.
14. **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.**
15. 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.
16. If the Committee is not content with the proposal, however, it may recommend that the Scottish Government should not give its consent (more detail on the options available to the Committee in relation to this particular notification is given below). In that event, 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, the Parliament will debate the issue.
17. 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.