

Rural Affairs and Islands Committee
Wednesday 15 May 2024
13th Meeting, 2024 (Session 6)

Note by the Clerk on UK subordinate legislation: consideration of consent notification

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 (SIs):
 - Animal Welfare (Livestock Exports) Enforcement Regulations 2024
 - The Ivory Act (Extension of Meaning of "Ivory") (Transitional Provision and Miscellaneous Amendments) Regulations 2024
2. The process for the Scottish Parliament's consideration of consent notifications is set out in the [SI Protocol](#). Further details of this process are set out in Annex A.

Animal Welfare (Livestock Exports) Enforcement Regulations 2024

3. On [16 April, the Minister for Agriculture and Connectivity wrote to the Committee to give notice of the Scottish Government's proposal to consent](#) to the UK SI. The Scottish Government also provided an SI notification and a summary notification. The UK Government intends to lay the UK SI on 22 May 2024.
4. The Scottish Government has asked the Committee to respond to the consent notification by 15 May 2024.
5. The proposed SI will create an enforcement regime for an anticipated new offence of exporting relevant livestock for slaughter or fattening to anywhere outside the British Islands. This will include provision in connection with preventing, detecting, investigating and punishing contravention of the prohibition on export.
6. The offence will be provided for in the [Animal Welfare \(Livestock Exports\) Bill](#), which is currently towards the end of consideration in the House of Lords (the LCM for this Bill was agreed by the Scottish Parliament in February). It is unusual to be considering a proposal for an SI before the Bill it will be laid under has been passed but this ensures that the Scottish Parliament still has the full 28-day period for scrutiny required under the protocol while enabling the UK Government to lay the SI quickly after the Bill has passed.
7. There is a statutory requirement that the Secretary of State cannot proceed with legislating on the devolved provision set out in the proposed SI unless the Scottish Ministers consent.

The Ivory Act (Extension of Meaning of “Ivory”) (Transitional Provision and Miscellaneous Amendments) Regulations 2024

8. On [24 April, the then 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 Scottish Government also provided an SI notification and a summary notification. The UK Government intends to lay the UK SI on 21 May 2024, to come into force 2 days later.
9. The Scottish Government has asked the Committee to respond to the consent notification by 15 May 2024.
10. The proposed SI will be made under powers in sections 2(5), 13, 37(2) and 39(1) of the Ivory Act 2018. This Act was introduced to ban commercial dealing in elephant ivory in the UK. The ban applies to dealings taking place within the UK and to exports from and imports into the UK for commercial purposes (though with narrowly defined exemptions). The proposed SI will extend the definition of ivory under the 2018 Act to include four species listed under the Convention on International Trade in Endangered Species: hippopotamus, narwhal, killer whale and sperm whale. This will extend the ban to these types of ivory. The notification states that this is “to address the risk of displacement from the ivory trade from elephant ivory to ivory from other species if ivory from other species is not prohibited under the Act”.
11. There is a statutory requirement that the Secretary of State cannot proceed with legislating on the devolved provision set out in the proposed SI unless the Scottish Ministers consent.

Next steps

12. If the Committee wishes to approve the proposals to consent to the SIs, it may, in doing so, set out in its letter to the Scottish Government any observations or concerns that it thinks are relevant.
13. Members will note that the notification for the Animal Welfare (Livestock Exports) Enforcement Regulations 2024 has been sent before the Animal Welfare (Livestock Exports) Bill has been passed in the UK Parliament. The Committee may want to ask the Government to confirm – when the Bill is passed – that the Bill was not amended after the notification was sent to the Parliament in any way which changed the terms of the notification and Scottish Ministers’ decision to consent.
14. If the Committee is not content with either or both of the proposals, it should include in its letter to the Scottish Government one of the following recommendations:
 - That the Scottish Government should not consent to the provision being made in a UK SI and that the Scottish Government should instead take forward an alternative Scottish legislative solution

- 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).

**Clerks to the Committee
May 2024**

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

1. 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'.
2. 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.
3. 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.
4. **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.**
5. 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.
6. If the Committee is not content with the proposal, however, it may recommend that the Scottish Government should not give its consent. 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.
7. 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 UK SI. 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.