

Rural Affairs and Islands Committee
Wednesday 26 June 2024
19th Meeting, 2024 (Session 6)

UK subordinate legislation: consideration of consent notification

Introduction

1. This paper supports the Committee's consideration of one 'type 1' consent notification sent by the Scottish Government relating to the following proposed UK statutory instrument (SI):
 - Windsor Framework (Retail Movement Scheme: Plant and Animal Health) Regulations 2024
2. Members will note that this notification has been sent whilst the UK Parliament is prorogued. The Scottish Government has, however, asked the Scottish Parliament to consider the notification before summer recess. This is on the basis that the SIs could be laid by the incoming UK Government in July and, if the Scottish Parliament does not consider it ahead of the summer recess, it may lose the opportunity to express a view.
3. 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 Annexe A.

Windsor Framework (Retail Movement Scheme: Plant and Animal Health) Regulations 2024

4. The [Minister for Agriculture and Connectivity, Jim Fairlie, wrote to the Committee on 12 June 2024 to notify it of the Scottish Government's decision to consent to the proposed Windsor Framework \(Retail Movement Scheme: Plant and Animal Health\) Regulations 2024.](#)
5. The notification states that the instrument would continue the implementation of the Windsor Framework. The Committee has already considered, and agreed to, a number of notifications relating to the implementation of the Windsor Framework.
6. Specifically, the proposed SI would amend the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 (S.I. 2022/739) and other pieces of assimilated law in the area of sanitary and phytosanitary controls to bring more plant and animal commodities within the scope of the NI retail movement scheme (NIRMS). Checks on these goods arriving from countries outside the EU are required to align with the EU's approach to sanitary and phytosanitary controls.
7. The notification sets out the Scottish Ministers' reasons for consenting to the provisions being made in UK, rather than Scottish, secondary legislation:

- “The policy intention is aligned across the GB (which consist of England, Scotland, and Wales), and by consenting to the use of devolved provision within NID/021 is consistent with previous plant health provisions and amendments to the Plant Health Regulation.
- Scottish Ministers consider that consenting to NID/021 is the most effective and transparent way to introduce these amendments. It provides clarity and confidence and continues close collaboration across the UK.”

8. No policy or legal issues have been identified with this proposed instrument.

Next steps

9. The Committee is invited to give its consent to the Scottish Ministers’ proposed agreement that these provisions be made in UK, rather than Scottish, secondary legislation.

Clerks to the Committee
June 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.