



# UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021

2021 asp 4

## PART 1

### ALIGNMENT WITH EU LAW

#### **1 Power to make provision corresponding to EU law**

- (1) The Scottish Ministers may by regulations—
- (a) make provision—
    - (i) corresponding to an EU regulation, EU tertiary legislation or an EU decision,
    - (ii) for the enforcement of provision made under sub-paragraph (i) or otherwise to make it effective,
    - (iii) to implement an EU directive, or
    - (iv) modifying any provision of [<sup>F1</sup>assimilated] law relating to the enforcement or implementation of an EU regulation, EU tertiary legislation, an EU decision or an EU directive,so far as the EU regulation, EU tertiary legislation, EU decision or EU directive has effect in EU law after IP completion day, or
  - (b) otherwise make provision for the purpose of dealing with matters arising out of, or related to, the operation from time to time of—
    - (i) any rights, powers, liabilities, obligations or restrictions created by regulations made under this subsection, or
    - (ii) any remedies or proceedings provided for by those regulations.
- (2) In making regulations under subsection (1)(a)(i), (ii) or (iii), the Scottish Ministers may, in particular—
- (a) omit anything which has no practical application in relation to Scotland or is otherwise redundant or substantially redundant,
  - (b) omit functions of, or in relation to, EU entities which no longer have functions in that respect under EU law in relation to Scotland,
  - (c) omit provision for, or in connection with, reciprocal arrangements between—

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- (i) the United Kingdom or Scotland or a public authority in the United Kingdom, and
  - (ii) the EU, an EU entity, a member State or a public authority in a member State,
- which no longer exist or are no longer necessary,
- (d) omit provision for, or in connection with, other arrangements which—
    - (i) involve the EU, an EU entity, a member State or a public authority in a member State, or
    - (ii) are otherwise dependent upon the United Kingdom's membership of the EU,

and which no longer exist or are no longer necessary,
  - (e) omit provision for, or in connection with, any reciprocal or other arrangements not falling within paragraph (c) or (d) which no longer exist, or are no longer necessary, as a result of the United Kingdom ceasing to be a party to any of the EU Treaties,
  - (f) confer functions or impose restrictions which—
    - (i) are in an EU directive and in force (including any power to make EU tertiary legislation), and
    - (ii) it is appropriate to retain,
  - (g) omit EU references which are not necessary.
- (3) Regulations under subsection (1)(a)(i), (ii) or (iii) may provide for functions of EU entities or public authorities in member States (including making an instrument of a legislative character or providing funding) to be—
- (a) exercisable instead by a Scottish public authority (whether or not established for the purpose), or by any person whom the authority authorises to carry out functions on its behalf, or
  - (b) omitted or otherwise differently provided for.
- (4) Regulations under subsection (1)(a)(iv) may, in relation to any functions in EU instruments that are already exercisable by a Scottish public authority—
- (a) provide for the authority to—
    - (i) delegate any of the functions to another person, or
    - (ii) arrange for any of the functions to be carried out by another person, or
  - (b) otherwise provide for the functions to be conferred instead on another Scottish public authority.
- (5) Regulations under subsection (1) may make provision for, or in connection with, the charging of fees or other charges in connection with the exercise of a function (“the relevant function”) which a Scottish public authority has by virtue of provision made under that subsection, including—
- (a) specifying fees or charges or making provision as to how they are to be determined,
  - (b) providing for the recovery or disposal of any sums payable under the regulations,
  - (c) conferring power on the Scottish public authority to make, by subordinate legislation, any provision that the Scottish Ministers may make by virtue of this subsection in relation to the relevant function.

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- (6) Regulations under subsection (1) may make any provision that could be made by an Act of the Scottish Parliament.

#### Textual Amendments

- F1** Word in s. 1(1)(a)(iv) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\), reg. 1\(1\), sch. 1 para. 11\(2\)](#)

#### Commencement Information

- I1** [S. 1](#) in force at 29.3.2021 by [S.S.I. 2021/141, reg. 2, sch.](#)

## 2 Purpose of maintaining and advancing standards

- (1) The purpose of section 1(1) is, among other things, to contribute towards maintaining and advancing standards in relation to the following matters—
- environmental protection,
  - animal health and welfare,
  - plant health,
  - equality, non-discrimination and human rights,
  - social protection.
- (2) When using the power under section 1(1), the Scottish Ministers must have due regard to the purpose referred to in subsection (1).
- (3) In subsection (1)(a), “environmental protection” has the meaning given by section 45(1).

#### Commencement Information

- I2** [S. 2](#) in force at 29.3.2021 by [S.S.I. 2021/141, reg. 2, sch.](#)

## 3 Limitations on the section 1(1) power

- (1) Regulations under section 1(1) may not—
- impose or increase taxation,
  - make retrospective provision,
  - create a relevant criminal offence,
  - provide for the establishment of a Scottish public authority,
  - remove any protection relating to the independence of judicial decision-making, or decision-making of a judicial nature, by a person occupying a judicial office, or otherwise make provision inconsistent with the duty in section 1 of the Judiciary and Courts (Scotland) Act 2008 (guarantee of the continued independence of the judiciary),
  - confer a function on a Scottish public authority that is not broadly consistent with the general objects and purposes of the authority,
  - modify any of the matters listed in section 31(5) of the Scotland Act 1998 (protected subject-matter),
  - modify the Scotland Act 1998,

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- (i) modify the Equality Act 2006, or
  - (j) modify the Equality Act 2010.
- (2) Paragraphs (e) and (j) of subsection (1) do not prevent the removal of a protection or the making of a modification if alternative provision is made in the regulations that is equivalent to the protection being removed or the provision being modified.
- (3) In subsection (1)—
- “judicial office” means—
    - (a) the office of judge of any court,
    - (b) the office of member of any tribunal,
    - (c) any other office, or appointment, having functions of a judicial nature,
  - “relevant criminal offence” means an offence for which an individual who has reached the age of 21 is capable of being sentenced to imprisonment for a term of more than 2 years (ignoring any enactment prohibiting or restricting the imprisonment of individuals who have no previous convictions),
  - “retrospective provision”, in relation to provision made by regulations, means provision taking effect from a date earlier than the date on which the regulations are made.

**Commencement Information**

**I3** [S. 3](#) in force at 29.3.2021 by [S.S.I. 2021/141](#), [reg. 2](#), [sch.](#)

**4 Duration of the section 1(1) power**

- (1) No regulations may be made under section 1(1) after the end of the period of 6 years beginning with the day on which section 1(1) comes into force.
- (2) The Scottish Ministers may by regulations extend the period mentioned in subsection (1).
- (3) That power may be exercised more than once.
- (4) But the period mentioned in subsection (1) may not be extended by regulations under subsection (2) beyond the end of the period of 10 years beginning with the day on which section 1(1) comes into force.
- (5) Subsection (1) does not affect the continuation in force of any regulations made under section 1(1) during the period mentioned in subsection (1) (including any period of extension provided by regulations under subsection (2)).
- (6) Regulations under subsection (2) are subject to the affirmative procedure.

**Commencement Information**

**I4** [S. 4](#) in force at 29.3.2021 by [S.S.I. 2021/141](#), [reg. 2](#), [sch.](#)

**5 Scrutiny of regulations under section 1(1)**

- (1) Regulations under section 1(1) which contain provision falling within subsection (2) are subject to the affirmative procedure.

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- (2) That provision is provision which—
- (a) abolishes a function of an EU entity or a public authority in a member State without providing for an equivalent function to be exercisable by any person,
  - (b) provides for a function mentioned in section 1(3) or (4) to be exercisable by a Scottish public authority, or by a different Scottish public authority (as the case may be), or by any person whom the Scottish public authority authorises to carry out functions on its behalf,
  - (c) falls within section 1(5), regarding the charging of fees or other charges in connection with the exercise of a function by a Scottish public authority, except for provision which relates only to altering the amount of a fee or charge to reflect changes in the value of money,
  - (d) creates, or widens the scope of, a criminal offence,
  - (e) creates or amends a power to legislate.
- (3) Any other regulations under section 1(1) are (if they have not been subject to the affirmative procedure) subject to the negative procedure.

#### Commencement Information

**I5** S. 5 in force at 29.3.2021 by S.S.I. 2021/141, reg. 2, sch.

## 6 Policy statement on the section 1(1) power

- (1) The Scottish Ministers must publish, in such manner as they consider appropriate, a statement of their policy on—
- (a) the approach to be taken,
  - (b) the factors to be taken into account, and
  - (c) the process to be followed,
- when considering whether to use the power under section 1(1).
- (2) The Scottish Ministers may from time to time revise the policy statement and publish the revised policy statement.
- (3) Where the Scottish Ministers make a statement referred to in subsection (9) of section 9, by virtue of paragraph (c) of that subsection, they must as soon as reasonably practicable after making the statement—
- (a) review the policy statement, and
  - (b) either—
    - (i) revise the policy statement and publish the revised policy statement, or
    - (ii) lay before the Scottish Parliament a document explaining why, in the Scottish Ministers' opinion, it is not necessary to revise the policy statement.
- (4) In this Part, references to a policy statement under this section include references to the policy statement as revised from time to time.
- (5) It is not necessary for a policy statement to have been published under this section before the power under section 1(1) may be used.

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**Commencement Information**

**I6** S. 6 in force at 29.3.2021 by S.S.I. 2021/141, reg. 2, sch.

**7 Procedure for publication of policy statement**

- (1) Before publishing a policy statement under section 6, the Scottish Ministers must lay a copy of the statement before the Scottish Parliament for approval.
- (2) The Scottish Ministers must not publish the policy statement before the end of the 28-day period mentioned in subsection (5).
- (3) Before laying a copy of the policy statement before the Scottish Parliament under subsection (1), the Scottish Ministers must—
  - (a) lay a draft of the statement before the Parliament, and
  - (b) in preparing the copy of the policy statement that is to be laid before the Parliament under subsection (1), have regard to any representations about the draft statement that are made to them before the end of the period of 28 days beginning with the day on which the draft statement is laid before the Parliament under paragraph (a).
- (4) When laying a copy of the policy statement before the Scottish Parliament under subsection (1), the Scottish Ministers must at the same time lay before the Parliament a document describing how they have had regard to any representations made about the draft statement in accordance with subsection (3)(b) in preparing the copy of the statement.
- (5) If, within 28 days of a copy of the policy statement having been laid before the Scottish Parliament under subsection (1), the Parliament resolves that the statement should not be approved, the Scottish Ministers must not publish the statement but instead—
  - (a) review and revise the policy statement, having regard to any views expressed by the Parliament in relation to the statement, and
  - (b) lay a copy of the policy statement as revised before the Parliament.
- (6) Subsection (5) applies in relation to any policy statement as revised under that subsection as it applies in relation to the first copy of the policy statement laid before the Scottish Parliament under subsection (1).
- (7) In calculating the period of 28 days mentioned in subsections (3)(b) and (5), no account is to be taken of any period during which the Parliament is dissolved or in recess for more than 4 days.
- (8) The Scottish Ministers must lay a draft of the first policy statement under subsection (3)(a) as soon as reasonably practicable after section 1(1) comes into force.

**Commencement Information**

**I7** S. 7 in force at 29.3.2021 by S.S.I. 2021/141, reg. 2, sch.

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## 8 Explanatory statements for regulations under section 1(1)

- (1) This section applies where a Scottish statutory instrument containing regulations under section 1(1), or a draft of such an instrument, is to be laid before the Scottish Parliament.
- (2) When the instrument or draft is laid, the Scottish Ministers must make each of the statements listed in section 9.
- (3) If the instrument or draft is laid when the Scottish Parliament is in recess, the Scottish Ministers must make a statement explaining why the instrument or draft was laid at that time.
- (4) If the Scottish Ministers fail to make a statement required by subsection (2) or (3) when the instrument or draft is laid, they must make a statement explaining why they have failed to do so.
- (5) A statement under subsection (2), (3) or (4) must be made in writing and be published in such manner as the Scottish Ministers consider appropriate.
- (6) This section does not apply in relation to any laying before the Scottish Parliament of an instrument or draft instrument where an equivalent instrument or draft (ignoring any differences relating to procedure) has previously been laid before the Parliament.

### Commencement Information

**I8** [S. 8](#) in force at 29.3.2021 by [S.S.I. 2021/141](#), [reg. 2](#), [sch.](#)

## 9 Explanatory statements: good reasons, human rights etc.

- (1) The statements referred to in section 8(2) are as follows.
- (2) A statement explaining—
  - (a) the instrument or draft,
  - (b) why, in the Scottish Ministers' opinion, there are good reasons for making the provision contained in the instrument or draft,
  - (c) the law before IP completion day which is relevant to the provision, and
  - (d) the effect (if any) of the provision on [F<sup>2</sup>assimilated] law.
- (3) A statement explaining the effect (if any) of the instrument or draft on—
  - (a) the Convention rights within the meaning of section 1 of the Human Rights Act 1998, and
  - (b) other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom.
- (4) A statement—
  - (a) as to whether the instrument or draft amends, repeals or revokes any provision of equality legislation, and
  - (b) if it does, explaining the effect of each such amendment, repeal or revocation.
- (5) A statement to the effect that, in relation to the instrument or draft, the Scottish Ministers have, so far as required to do so by equality legislation, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.

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- (6) A statement explaining the effect (if any) of the instrument or draft on—
- (a) rights and duties relating to employment and health and safety,
  - (b) matters relating to consumer protection,
- so far as it is within devolved competence (within the meaning of section 54 of the Scotland Act 1998) for the instrument or draft to have any such effect.
- (7) A statement—
- (a) as to whether, in relation to the instrument or draft, the Scottish Ministers have consulted—
    - (i) such persons appearing to them to be representative of the interests of local authorities,
    - (ii) any other person, and
  - (b) if they have, setting out details of the consultation that they carried out.
- (8) Except where the regulations are subject to the negative procedure, a statement setting out the likely financial implications of the provision contained in the draft.
- (9) If the instrument or draft—
- (a) is laid before a policy statement is published under section 6(1),
  - (b) is laid during the period beginning with the day on which a copy of a revised policy statement is laid before the Scottish Parliament under section 7(1) and ending with the day on which the revised policy statement is published under section 6(2) or (3)(b)(i), or
  - (c) contains provision that involves using the power under section 1(1) in a way that is not in accordance with the policy statement published under section 6,
- a statement explaining why, in the Scottish Ministers' opinion, there are good reasons for laying the instrument or draft at that time or, as the case may be, for using the power in that way.
- (10) In this section, “equality legislation” means the Equality Act 2006, the Equality Act 2010 or any subordinate legislation made under either of those Acts.

#### Textual Amendments

- F2** Word in s. 9(2)(d) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), reg. 1(1), **sch. 1 para. 11(3)**

#### Commencement Information

- I9** S. 9 in force at 29.3.2021 by [S.S.I. 2021/141](#), reg. 2, **sch.**

## 10 Reports relating to the use of the section 1(1) power

- (1) The Scottish Ministers must, for each reporting period, prepare and lay before the Scottish Parliament a report explaining—
- (a) how the power under section 1(1) has been used during the reporting period,
  - (b) how that use of the power under section 1(1) contributes or has contributed towards maintaining and advancing standards in relation to the matters mentioned in section 2(1)(a) to (e),



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- (c) how they intend to use the power under section 1(1) in the period (of such length as they may determine) following the reporting period,
  - (d) how their intended use of the power under section 1(1) would contribute towards maintaining and advancing standards in relation to the matters mentioned in section 2(1)(a) to (e), and
  - (e) any use of the power under section 1(1) that has been considered by the Scottish Ministers during the reporting period.
- (2) The reporting periods are—
- (a) the period beginning with the day on which section 1(1) comes into force and ending with 31 August 2021,
  - (b) each subsequent period of one year (during the total period in which regulations may be made under section 1(1) in accordance with section 4), and
  - (c) the period (the “final reporting period”) beginning with the day after the end of the last period of one year determined under paragraph (b) and ending with the day on which the power to make regulations under section 1(1) expires in accordance with section 4.
- (3) Paragraphs (c) and (d) of subsection (1) do not apply to the report for the final reporting period.

**Commencement Information**

**I10** S. 10 in force at 29.3.2021 by S.S.I. 2021/141, reg. 2, sch.

## **11 Consultation on reports under section 10(1)**

- (1) Before laying a report before the Scottish Parliament under section 10(1), the Scottish Ministers must—
- (a) lay a draft of the report before the Parliament, and
  - (b) in preparing the report, have regard to any representations about the draft report that are made to them before the expiry of the consultation period.
- (2) References in this section to a draft of the report are references only to a draft of the provision to be contained in the report under section 10(1)(c).
- (3) The draft report must be laid before the Parliament under subsection (1)(a) as soon as practicable, and no later than 2 months, after the end of the reporting period to which it relates.
- (4) Where the Scottish Ministers lay a draft report before the Scottish Parliament under subsection (1)(a), they must not lay the report before the Parliament under section 10(1) before the expiry of the consultation period.
- (5) When laying the report before the Scottish Parliament under section 10(1), the Scottish Ministers must at the same time lay before the Parliament a document setting out—
- (a) a summary of any representations about the draft report made during the consultation period, and
  - (b) how they have had regard to those representations in preparing the report.
- (6) Where the representations about the draft report made during the consultation period include representations that any particular intended use or uses of the power under

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section 1(1) as explained in the draft report should instead be provided for by means of an Act of the Scottish Parliament, the document laid under subsection (5) must cover those representations separately.

- (7) In this section, “consultation period” means the period of 28 days beginning with the day on which the draft report is laid before the Scottish Parliament under subsection (1) (a).
- (8) In calculating the period of 28 days mentioned in subsection (7), no account is to be taken of any period during which the Parliament is dissolved or in recess for more than 4 days.

#### **Commencement Information**

**III** S. 11 in force at 29.3.2021 by [S.S.I. 2021/141](#), reg. 2, [sch.](#)

## **12 Interpretation of Part 1**

(1) In this Part—

“EU decision” means—

- (a) a decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union, or
- (b) a decision under former Article 34(2)(c) of the Treaty on European Union,

“EU directive” means a directive within the meaning of Article 288 of the Treaty on the Functioning of the European Union,

“EU entity” means an EU institution or any office, body or agency of the EU,

“EU reference” means—

- (a) any reference to the EU, an EU entity or a member State,
- (b) any reference to an EU directive or any other EU law, or
- (c) any other reference which relates to the EU,

“EU regulation” means a regulation within the meaning of Article 288 of the Treaty on the Functioning of the European Union,

“EU tertiary legislation” means—

- (a) any provision made under—
  - (i) an EU regulation,
  - (ii) a decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union, or
  - (iii) an EU directive,

by virtue of Article 290 or 291(2) of the Treaty on the Functioning of the European Union or former Article 202 of the Treaty establishing the European Community, or

- (b) any measure adopted in accordance with former Article 34(2)(c) of the Treaty on European Union to implement decisions under former Article 34(2)(c),

but does not include any such provision or measure which is an EU directive, “member State” (except in the definition of “EU reference”) does not include the United Kingdom,

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“public authority”—

- (a) means a public authority within the meaning of section 6 of the Human Rights Act 1998, but
  - (b) does not include the Scottish Parliament or a person exercising functions in connection with proceedings in the Scottish Parliament,
- “Scottish public authority” means a public authority whose functions are exercisable only in or as regards Scotland.
- (2) References in section 1(1) to an EU regulation, EU tertiary legislation, an EU decision or an EU directive include references to any provision or part of the EU regulation, EU tertiary legislation, the EU decision or the EU directive.
  - (3) References in subsection (1) to former Article 34(2)(c) of the Treaty on European Union are references to that Article as it had effect at any time before the coming into force of the Treaty of Lisbon Amending the Treaty on European Union and the Treaty establishing the European Community signed at Lisbon on 13 December 2007.
  - (4) Any other reference in subsection (1) to an Article of the Treaty on European Union or the Treaty on the Functioning of the European Union includes a reference to that Article as applied by Article 106a of the Euratom Treaty.

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**Commencement Information**

**I12** S. 12 in force at 29.3.2021 by [S.S.I. 2021/141](#), reg. 2, [sch.](#)

**Changes to legislation:**

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