



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

2021 asp 4

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 22nd December 2020 and received Royal Assent on 29th January 2021

An Act of the Scottish Parliament to make provision for Scotland in connection with the withdrawal of the United Kingdom from the European Union, in particular to enable provision to be made that corresponds to provision in EU law after the United Kingdom's withdrawal; to establish guiding principles on the environment and to require public authorities to have due regard to those principles in making policies; to establish a body with the functions of ensuring compliance by public authorities with environmental law and monitoring the effectiveness of environmental law in protecting and improving the environment; to require the preparation and publication of an environmental policy strategy; and for connected purposes.

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 retained EU 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—

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (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—
 - (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

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

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—
- (a) environmental protection,
 - (b) animal health and welfare,
 - (c) plant health,
 - (d) equality, non-discrimination and human rights,
 - (e) 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—
- (a) impose or increase taxation,
 - (b) make retrospective provision,
 - (c) create a relevant criminal offence,
 - (d) provide for the establishment of a Scottish public authority,
 - (e) 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),

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- (f) confer a function on a Scottish public authority that is not broadly consistent with the general objects and purposes of the authority,
 - (g) modify any of the matters listed in section 31(5) of the Scotland Act 1998 (protected subject-matter),
 - (h) modify the Scotland Act 1998,
 - (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.

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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.
- (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