

# UK WITHDRAWAL FROM THE EUROPEAN UNION (CONTINUITY) (SCOTLAND) ACT 2021

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## EXPLANATORY NOTES

### OVERVIEW AND BACKGROUND

#### Part 1 – Alignment With Eu Law

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

27. Section 1 gives the Scottish Ministers the discretionary power to continue to keep devolved law in line with EU law following ‘IP completion day’.
28. The reference to ‘IP completion day’ refers to the end of the implementation period. Whilst not defined in the Act, the reference will have the same meaning as in the EUWA. This is by virtue of schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 (as amended) (‘ILRA’). Paragraph 37(c) of schedule 5 of the 2020 Act amends schedule 1 of ILRA to define ‘IP completion day’ by reference to section 39(1) to (5) of that Act.
29. Subsection (1)(a) gives Ministers the power, by regulations, to make provision that would correspond to provision in EU law as it has effect in EU law after the end of the implementation period. Sub-paragraphs (i) to (iv) set out the different types of EU law that provision may be made in relation to, namely EU regulations, EU tertiary legislation, EU decisions and EU directives. These terms are defined in section 12 and refer to the versions applicable in the rest of the EU (as opposed to those which form part of domestic law as retained EU law) and as they have effect in EU law after IP completion day. See paragraphs 71-76 for information on the definitions contained in section 12.
30. There are two aspects to the power in subsection (1)(a). In addition to enabling the Scottish Ministers to make provision corresponding to EU law as it develops after the implementation period (sub-paragraphs (i), (ii) and (iii)), the power also enables Scottish Ministers to make provision in relation to existing EU laws, which have been implemented or have effect domestically already (sub-paragraph (iv)).
31. Subsection (1)(b) mirrors the power in section 2(2)(b) of the ECA. This is the power which can be used to deal with matters ‘arising out of or related to’ EU obligations and permits implementing provision which goes beyond the minimum necessary to implement an EU obligation.
32. Subsection (2) clarifies the extent of Ministers’ ability to adapt provision made under subsection (1)(a)(i), (ii) and (iii) so that it operates effectively in Scots law despite the UK no longer being a member state of the EU. The subsection provides a list of the adaptations that may have to be made by Ministers.
33. Subsection (3) sets out some of the things that can be done using the power under subsection (1)(a)(i), (ii) and (iii), such as providing for EU functions to be carried out by public authorities in Scotland.

*These notes relate to the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (asp 4) which received Royal Assent on 29 January 2021*

34. Subsection (4) sets out some of the things that can be done using the power under subsection (1)(a)(iv) to amend existing EU law implementation. In such cases where an EU function is already being carried out by a public authority in Scotland, the power will enable that function to be further sub-delegated or conferred on a different public authority.
35. Subsection (5) provides that, where a Scottish public authority has been given a function by virtue of regulations made under subsection (1), the Scottish Ministers may by regulations enable it to charge fees or other charges in connection with carrying out that function. It contains an illustrative list of some of the things that this power may do. In particular it may set the amounts of fees or charges or say how they are to be determined, for example by a formula. It may also provide for how the money is collected and spent. Subsection (5)(c) provides that regulations made under this power can sub-delegate this power to another public authority that has the function.
36. Where regulations do provide for such sub-delegation, the use of this power will be subject to the affirmative procedure by virtue of section 5(2)(e). The exercise of the sub-delegated power will be subject to whatever arrangements for scrutiny are set out in the relevant provisions. Where this power is used to impose a new fee or increase a fee or charge then it is subject to the affirmative procedure by virtue of section 5(2)(c), except where regulations simply alter a fee or charge to reflect changes in the value of money. In those circumstances the regulations will be subject to the negative procedure.
37. Subsection (6) establishes that the power may be used to make any kind of provision that could be made by an Act of the Scottish Parliament. This means, for example, that the power may be used to modify retained EU law in so far as that is otherwise within the scope of the power by virtue of subsection (1) (and subject to any restrictions which may be imposed by section 30A of the Scotland Act (introduced by section 12(2) of the EUWA)).