

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

EXPLANATORY NOTES

OVERVIEW AND BACKGROUND

Part 1 – Alignment With Eu Law

Section 5 – Scrutiny of regulations under section 1(1)

43. Subsections (1) and (2) set out the circumstances in which regulations made under section 1(1) powers are subject to the affirmative procedure of the Scottish Parliament (affirmative procedure means the regulations cannot be made unless a draft of them has been laid before and approved by the Scottish Parliament). These are when an instrument under section 1(1):
- abolishes a function of an EU entity or public authority in a member State without providing for an equivalent function to be exercisable by any person, or provides for any function of an EU entity or public authority in a member State to be exercisable instead by a Scottish public authority or (as the case may be) to be conferred instead on another Scottish public authority or person,
 - imposes, or otherwise relates to, a fee or charge in respect of a function exercisable by a Scottish public authority (except where the alteration of the fee reflects changes in the value of money),
 - creates, or widens the scope of, a criminal offence, or
 - creates or amends a power to legislate.
44. Subsection (3) sets out that any instruments made under these powers that do not fall into the categories in subsection (2) are subject to the negative procedure. Negative procedure means the regulations can be made but are subject to subsequent annulment by the Parliament. However, subsection (3) also permits discretion for affirmative procedure to be applied as opposed to negative procedure, meaning that an instrument which would normally be subject to negative procedure could benefit from additional scrutiny by the Parliament where appropriate.