



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

2021 asp 4

PART 2

ENVIRONMENT

CHAPTER 1

ENVIRONMENTAL PRINCIPLES

13 The guiding principles on the environment

- (1) In this Chapter, references to the guiding principles on the environment are references to the following principles—
 - (a) the principle that protecting the environment should be integrated into the making of policies,
 - (b) the precautionary principle as it relates to the environment,
 - (c) the principle that preventative action should be taken to avert environmental damage,
 - (d) the principle that environmental damage should as a priority be rectified at source,
 - (e) the principle that the polluter should pay.
- (2) Those principles are derived from the equivalent principles provided for in Article 11 of Title II and Article 191(2) of Title XX of the Treaty on the Functioning of the European Union.
- (3) Accordingly, in preparing guidance under section 17 relating to the interpretation and application of the principles, the Scottish Ministers must have regard to the interpretation of those equivalent principles by the European Court from time to time.
- (4) The Scottish Ministers may by regulations—
 - (a) modify this section so as to—
 - (i) add or remove guiding principles on the environment,

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- (ii) amend any of the guiding principles for the time being specified in this section,
 - (b) further define any of the guiding principles for the time being specified in this section.
- (5) Regulations under subsection (4) may remove, amend or further define a guiding principle on the environment that is derived from the equivalent principles mentioned in subsection (2) only so far as necessary—
 - (a) to reflect the removal of or an amendment to the equivalent principle in accordance with EU law, or
 - (b) otherwise to ensure that the guiding principle reflects the equivalent principle as it has effect in EU law from time to time.
- (6) Regulations under subsection (4) are subject to the affirmative procedure.
- (7) Before laying a draft of regulations under subsection (4) before the Scottish Parliament for approval, the Scottish Ministers must consult—
 - (a) a Minister of the Crown,
 - (b) each responsible authority that is subject to the duty in section 15,
 - (c) such persons appearing to them to be representative of the interests of local government, industry, agriculture, fisheries or small businesses as they consider appropriate, and
 - (d) such other persons as they consider appropriate.
- (8) In this Chapter—
 - “making policies” includes developing, adopting or revising policies,
 - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975.

14 Ministers’ duties to have due regard to the guiding principles

- (1) The Scottish Ministers must, in making policies (including proposals for legislation), have due regard to the guiding principles on the environment.
- (2) Ministers of the Crown must, in making policies (including proposals for legislation) so far as extending to Scotland, have due regard to the guiding principles on the environment.
- (3) The duties in subsections (1) and (2) do not apply in relation to any policy or proposal so far as relating to—
 - (a) national defence or civil emergency,
 - (b) finance or budgets.
- (4) In this section, “legislation” includes—
 - (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament,
 - (c) subordinate legislation.

15 Other authorities’ duty to have due regard to the guiding principles

- (1) A responsible authority must, in doing anything in respect of which the duty under section 1 of the Environmental Assessment (Scotland) Act 2005 (“the 2005 Act”)

applies (requirement for environmental assessment), have due regard to the guiding principles on the environment.

- (2) In subsection (1), “responsible authority” is to be construed in accordance with section 2 of the 2005 Act but does not include the Scottish Ministers or a Minister of the Crown.

16 Purpose of the duties under sections 14 and 15

- (1) Those to whom the duties in sections 14 and 15 apply are to comply with the duties with a view to—
- (a) protecting and improving the environment, and
 - (b) contributing to sustainable development.
- (2) In subsection (1), “the environment”—
- (a) means all, or any, of the air, water and land (including the earth’s crust), and “air” includes the air within buildings and the air within other natural or man-made structures above or below ground, and
 - (b) includes wild animal and plant life and the habitats of wild animal and plant life.
- (3) In subsection (2)(b), “animal and plant life” includes any living organisms.

17 Guidance

- (1) The Scottish Ministers must publish guidance on—
- (a) the guiding principles on the environment, and
 - (b) the duties in sections 14 and 15 as read with section 16.
- (2) The guidance may, in particular, include provision about—
- (a) the interpretation of the principles,
 - (b) how the principles relate to each other,
 - (c) how the duties relate to other duties relating to the environment including the duties in the Environmental Assessment (Scotland) Act 2005,
 - (d) complying with the duties,
 - (e) how those who are subject to the duties should demonstrate that they have complied and are complying with the duties.
- (3) A person who is subject to one or other of the duties must, in doing anything in respect of which the duty applies, have regard to the guidance published under this section.
- (4) The Scottish Ministers must from time to time review guidance published under this section and may revise the guidance and publish the revised guidance.
- (5) References in subsections (2) to (4) and in section 18 to guidance under this section include references to revised guidance.

18 Procedure for publication of guidance

- (1) Before publishing guidance under section 17, the Scottish Ministers must lay the guidance before the Scottish Parliament.

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- (2) The Scottish Ministers must not publish the guidance before the end of the 40-day period mentioned in subsection (5).
- (3) Before laying guidance before the Scottish Parliament under subsection (1), the Scottish Ministers must consult the following persons about the guidance—
 - (a) a Minister of the Crown,
 - (b) each responsible authority who is subject to the duty under section 15, and
 - (c) such other persons as they consider appropriate.
- (4) When laying guidance before the Scottish Parliament under subsection (1), the Scottish Ministers must at the same time lay before the Parliament a statement setting out—
 - (a) details of the consultation about the guidance that was carried out under subsection (3),
 - (b) a summary of any views expressed in response to the consultation, and
 - (c) either—
 - (i) details of how those views (if any) have been taken into account in preparing the guidance that is laid before the Parliament, or
 - (ii) a statement that no views were expressed in response to the consultation or that no account has been taken of views expressed.
- (5) If, within 40 days of guidance having been laid before the Scottish Parliament under subsection (1), the Parliament resolves that the guidance should not be published, the Scottish Ministers must not publish the guidance.
- (6) In calculating the period of 40 days, no account is to be taken of any period during which the Parliament is dissolved or in recess for more than 4 days.