



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

2021 asp 4

## PART 1

### ALIGNMENT WITH EU LAW

#### **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),
  - (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,

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*Status: This is the original version (as it was originally enacted).*

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(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.