

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

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## **EXPLANATORY NOTES**

### **OVERVIEW AND BACKGROUND**

#### ***Background***

4. On 1 January 1973 the UK joined the European Economic Community, now the European Union. The principal statute which gave domestic effect to EU law and gave the governments of the UK the ability to implement EU law was the European Communities Act 1972 (the “ECA”).
5. On 23 June 2016, a referendum was held in the UK and Gibraltar on the question whether the UK should remain a member state of the EU. Across the UK and Gibraltar 52% of the votes were for leaving the EU, with 48% voting to remain. In Scotland, 62% of the votes were for remaining in the EU, with 38% voting to leave.
6. On 29 March 2017, the Prime Minister notified the European Council of the UK’s intention to withdraw from the EU under the terms of Article 50 of the Treaty on the European Union (“the TEU”) and section 1 of the European Union (Notification of Withdrawal) Act 2017. The EU (Withdrawal) Act 2018 (“EUWA”) was passed on 26 June 2018 and repeals the ECA and establishes a new framework for the application of former EU law within the UK, known as ‘retained EU law’. This new form of domestic law is established under the EUWA by taking a snapshot of EU law as it stands at the moment of EU exit and converting that into domestic law, as well as preserving laws made in the UK to implement EU obligations.
7. The EUWA also provides temporary powers to make secondary legislation to enable corrections to be made to these ‘converted’ and ‘preserved’ laws to ensure they continue to operate appropriately now that the UK is no longer a member state. These powers are sometimes referred to as ‘deficiency’ powers.
8. The European Union (Withdrawal Agreement) Act 2020 (“the 2020 Act”) was passed on 23 January 2020 and gives effect to the Withdrawal Agreement that was agreed by the EU and the UK in October 2019. The Withdrawal Agreement was accordingly ratified and the United Kingdom exited the European Union on 31 January 2020 (“exit day”).
9. The Withdrawal Agreement provided for a transition period to apply from exit day until 31 December 2020. The transition period is also referred to as the implementation period. Whilst there was scope under the Withdrawal Agreement to extend the implementation period, this was ruled out under section 15A of the EUWA. During the implementation period, the vast majority of EU law continued to apply in the UK as though it were still a member state.
10. Therefore, despite the repeal of the ECA on exit day by the EUWA, the 2020 Act makes amendments to the EUWA to save and modify the effect of that repeal and to give effect to the continuation of EU law during the implementation period as per the

*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*

Withdrawal Agreement. Directly applicable EU measures therefore continued to apply directly in the UK during this period and the UK continued to be required to implement EU obligations.

11. The 2020 Act also amends the EUWA to ensure that the snapshot of retained EU law was taken at the end of the implementation period (referred to in the EUWA, as amended by the 2020 Act, as “IP completion day”) as opposed to on exit day.<sup>1</sup> It follows therefore that EU law as it stood in Scotland on IP completion day became part of Scots law as retained EU law under the EUWA.
12. Retained EU law, as modified under deficiency powers so that it operates appropriately, will continue to apply in Scotland until such time as new domestic laws are made to change it. The extent to which ‘post-implementation period EU law’ will apply in the UK going forward as a matter of the UK’s international obligations, depends on the terms of the future relationship agreements reached between the UK Government and EU and the European Atomic Energy Community on 24 December 2020, including the Trade and Cooperation Agreement, the Civil Nuclear Agreement and the Security of Classified Information Agreement. The European Union (Future Relationship) Act 2020<sup>2</sup>, which received Royal Assent on 30 December 2020, implements elements of these agreements. The extent to which ‘post-implementation period EU law’ will apply in the UK will also depend on any further future agreements concluded by the UK and the EU.

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<sup>1</sup> Although, the Direct Payments to Farmers (Legislative Continuity) Act 2020, which the Scottish Parliament consented to on 16 January 2020, converted the EU legislation governing the 2020 Common Agricultural Policy (CAP) direct payment schemes into domestic law at 11 pm on 31 January 2020.

<sup>2</sup> On 30 December the Scottish Parliament voted to withhold consent to this Bill by 92 votes to 30 as it was Parliament’s view that the future relationship agreements negotiated by the UK Government would cause severe damage to Scotland’s environmental, economic and social interests and insufficient time had been allowed for proper scrutiny in the UK and Scottish Parliaments.