

Laid before the Scottish Parliament in accordance with section 10(1) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021

6 February 2024
SG/2024/23

REPORT BY THE SCOTTISH MINISTERS IN EXERCISE OF THE POWER IN SECTION 1(1) OF THE UK WITHDRAWAL FROM THE EUROPEAN UNION (CONTINUITY) (SCOTLAND) ACT 2021 FOR THE REPORTING PERIOD 1 SEPTEMBER 2022 – 31 AUGUST 2023 AND THE INTENDED FUTURE USE OF THE POWER UNDER SECTION 1(1) IN THE UPCOMING REPORTING PERIOD 1 SEPTEMBER 2023 – 31 AUGUST 2024

Introduction

1. The Scottish Ministers lay the following report in accordance with section 10(1) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (“the Act”). The report covers the following:

a) Part 1 explains:

- the use of the power under section 1(1) of the Act during the reporting period 1 September 2022 – 31 August 2023 (“the current reporting period”),
- how that use of the power under section 1(1) contributes or has contributed towards maintaining and advancing standards in relation to the matters mentioned in section 2(1)(a) to (e) of the Act, and
- any use of the power under section 1(1) that has been considered by the Scottish Ministers during the current reporting period.

b) Part 2 explains:

- how the Scottish Ministers intend to use the power in the upcoming reporting period 1 September 2023 – 31 August 2024 (“the upcoming reporting period”), and;
- how their intended use of the power under section 1(1) would contribute towards maintaining and advancing standards in relation to the matters mentioned in section 2(1)(a) to (e) of the Act.

2. This report was laid in draft in the Scottish Parliament on 30 October 2023 subject to a consultation period of 28 days in accordance with section 11 of the Act. During this consultation period, a single representation was made to the Scottish Ministers regarding the report from the Scottish Parliament Constitution, Europe, External Affairs and Culture Committee noting that it did not have any comments on the draft report. The Scottish Ministers also lay before the Parliament a document summarising this representation and how they have had regard to it in accordance with section 11(5) of the Act.

Policy Statement

3. The Scottish Government published a policy statement on 10 May 2022, in accordance of section 6 of the Act, which explains their approach, the factors to be taken into account and the process to be followed when considering use of the regulation making power under section 1 of the Act.

4. This states that Scottish Ministers will seek to align with the EU where appropriate and in a manner that seeks to contribute towards maintaining and advancing standards across a range of policy areas. This will be achieved in a range of different ways, legislative and non-legislative. The power provided by section 1(1) of the Act is one means by which the Scottish Ministers may seek to align with EU law. It confers on the Scottish Ministers the ability to make subordinate legislation where appropriate in order to keep devolved Scots law aligned with EU law as it develops. Other means include maintaining alignment through primary legislation or non-legislative means such as statement of policy or guidance. Where secondary legislation is the most appropriate, it may be possible to align with the EU using specific domestic powers that cover the subject matter of the EU legislation.

Report

Part 1: Current Reporting Period - 1 September 2022 – 31 August 2023

5. How the power under section 1(1) has been used during the reporting period:

The power has been used once in the reporting period: introducing the Public Water Supplies (Scotland) Amendment Regulations 2022 (found here: [The Public Water Supplies \(Scotland\) Amendment Regulations 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2022/01/13/1352022000130001/eng/full/text.html)) which partially aligns with the EU Drinking Water Directive 2020/2184 (Recast) on the quality of water for human consumption (which can be found here: [EUR-Lex - 32020L2184 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/eli/dir/2020/2184/oj)). This is designed to protect water intended for human consumption (“drinking water”) from source to tap, put in place measures in relation to access to water and drive up resource efficiency by tackling pollutants at source.

Further details can be found in the policy note here: [The Public Water Supplies \(Scotland\) Amendment Regulations 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2022/01/13/1352022000130001/eng/full/text.html)

6. How that use of the power under section 1(1) contributes or has contributed towards maintaining and advancing standards in relation to the matters mentioned in section 2(1)(a) to (e) of the Act:

The use of the Continuity Act allowed us to align with the drinking water standards brought in by the Recast Drinking Water Directive. The drinking water standards are set by the World Health Organisation and help protect against harms to human health such as those harms caused by per-fluoroalkyl substances (PFAS) and endocrine disrupters. Certain elements, such as the catchment measures to address erosion and restrictions on artificial pollutants, also contribute towards environmental protection as defined within the act.

7. Any use of the power under section 1(1) that has been considered by the Scottish Ministers during the reporting period:

Scottish Ministers have not considered any further uses of the Continuity Act as the method by which to align within the reporting period. Information on the Scottish Government's use of other legislation to align can be found at Annex B.

Part 2: Upcoming Reporting Period – 1 September 2023 – 31 August 2024

8. How the Scottish Ministers intend to use the power under section 1(1) in the upcoming reporting period:

In response to recommendations from the Aarhus Convention Compliance Committee following a case on unauthorised development in Northern Ireland, and in view of similarities with the Scottish Planning system, we have committed to consulting on proposals for amending The Town and Country Planning (Scotland) Act 1997 in relation to unauthorised development and the ability to take enforcement action after that time has expired for certain development.

9. How that will contribute towards maintaining and advancing standards in relation to the matters mentioned in section 2(1) of the Act:

This is in response to technical matters raised by the Aarhus Convention Compliance Committee concerning environmental obligations under the Convention.

Next Report

10. The next reporting period ends on 31 August 2024. The subsequent report will detail the use and considered use of the power under section 1(1) of the Act during that reporting period and any planned use in the forthcoming reporting period. Our broader reporting in addition to this statutory report will also illustrate the variety of other means by which the alignment policy is being implemented.

SCOTTISH MINISTERS