



The Scottish Parliament  
Pàrlamaid na h-Alba

## Constitution, Europe, External Affairs and Culture Committee

Finaly Carson MSP  
Convener  
Rural Affairs and Islands Committee

**7 March 2025**

Dear Convener

### Fourth EU Law Tracker Report

At our meeting on 20 February, my Committee considered the [fourth report](#) from Dr Lisa Whitten of the [EU Law Tracker](#), the Executive Summary of which I have attached with this correspondence.

As previously communicated, there is an expectation that subject committees will consider the case studies relevant to their respective remits that are set out in the series of reports as part of their role in scrutinising the Scottish Ministers' policy commitment to align with EU law.

The report outlines a case study that is likely to be of interest to the Rural Affairs and Islands Committee and therefore you may wish to seek an update from the Scottish Government on the following—

- its potential pursuit of alignment with the EU on organics products and labelling of organic products in view of the coming into force of the Organic Production Regulation (EU) 2018/848 in January 2022 and the approximately 82 implementing and delegated EU acts adopted by the EU under the OP Regulation since the end of the UK Transition Period. The Committee may also want to seek SG views on the effect of relevant provisions of the TCA on equivalence of standards regarding organics between the EU and UK and the implications for any SG alignment decision.

In view of new EU laws adopted during the research period covered by this EU Law Tracker, you may also wish to seek an update from the Scottish Government in relation to—

- its view on the new EU act in respect to Regulation (EU) 2024/3115 on multiannual survey programmes, notifications concerning the presence of regulated non-quarantine pests, temporary derogations from import prohibitions and special import requirements for high-risk plants, plant products and other objects, the establishment of procedures for the listing of

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Email [CEEAC.committee@parliament.scot](mailto:CEEAC.committee@parliament.scot). We welcome calls through Relay UK and in BSL through Contact Scotland BSL.

high-risk plants, the content of phytosanitary certificates and the use of plant passports, and as regards certain reporting requirements for demarcated areas and surveys of pests.

Yours sincerely

A handwritten signature in black ink that reads "Clare Adamson". The script is cursive and fluid, with the first name "Clare" and last name "Adamson" clearly distinguishable.

**Clare Adamson MSP**  
**Convener**

## EXECUTIVE SUMMARY

### EU Law Tracker Research Purpose

This is the fourth in a [series of reports](#) commissioned by the Scottish Parliament Constitution, Europe, External Affairs and Culture Committee to support scrutiny by parliamentary committees into the commitment on the part of the Scottish Government (or SG) to align with European Union (EU) law, as appropriate, following and notwithstanding the withdrawal of the United Kingdom (UK) from the EU.

These EU Law Tracker reports – and the detailed EU Law Tracker set out in Annex 1 – are designed to serve as a reference tool for parliamentarians, officials, stakeholders, and the wider public, seeking to better understand the SG alignment commitment as well as its effects on law and policy development in Scotland. In this respect, the information and analysis contained in this issue of the EU Law Tracker compliments the Constitution *et al* Committees' previous inquiry into the UK-EU Trade and Cooperation Agreement which [found](#) that: "While the Scottish Government has a policy commitment to align with EU law where appropriate, the impact this has had on businesses, including the extent to which it has facilitated improved trade with the EU, without such agreements with the EU in place, is unclear". This report is also intended to be read in the context of [responses](#) to evidence recently (December 2024) gathered by the Constitution *et al* Committee into the effects of the Scottish Government's Policy to Align with EU Law on stakeholders as well as the (currently draft) SG Annual Report on the use of the European Union (Continuity) (Scotland) Act 2021 'keeping pace' powers which is the first to fully implement a revised approach [intended](#) to "better record and share information regarding the implementation of alignment decisions".

**Research Period:** This EU Law Tracker documents changes and developments that have taken place between end of August 2024 and the beginning of January 2025.

### Account of Legislative Changes in this EU Law Tracker

#### EU Law Changes

- Of the roughly 250 EU acts that, pre-Brexit, were fully or partially in SG competence, 39 have been repealed, but not all of these have been directly replaced.
- According to this analysis at least 227 secondary EU acts (such as regulations, directives, decisions) are in scope of the SG alignment commitment.
- As part of the normal processes of EU law-making, tertiary (implementing or delegated) acts are frequently adopted which make detailed provisions for the implementation of secondary EU acts.
- Between January 2021 and January 2025 approximately 1394 acts of tertiary EU law have been adopted in relation to EU acts that are in scope of the SG alignment commitment. By definition these tertiary laws make technical or operational provisions for the implementation of the relevant 'parent' act so changes on this level do not tend to alter policy trajectories. On occasion, however, EU tertiary law changes may make changes that result in divergence of technical standards or operational processes that are relevant for Scotland and the SG alignment commitment.
- In the period covered by this EU Law Tracker Report, the EU adopted at least 12 new EU acts that are or may be in scope of the SG alignment commitment.

#### Scots Law / UK Law Changes

- Of the two acts of primary law passed in Scotland during the reporting period, one can be said to be directly relevant to the SG alignment commitment inasmuch as it makes provisions in an area of policy regulated by the EU.
- Of the 177 statutory instruments passed for Scotland during the research period, at least 15 were identified by this research to be (directly or indirectly) relevant to the SG alignment commitment; of these, at least 6 make changes that do diverge or may result in divergence from EU laws.
- Examples of new or proposed new acts of UK-wide (or GB-wide) primary law as well as statutory instruments passed during the reporting period, featured in this report, implement changes that diverge from EU laws either in whole or in part.

## Key Messages from this EU Law Tracker

- **The potential for divergence between Scots law and EU law increases over time as the two legal orders and regulatory regimes continue to develop separately after Brexit.**
- **This report does not document wholesale change in the degree of alignment between Scotland and the EU, but it does contain more examples than in previous issues of the EU Law Tracker of actual and/or new potential instances of divergence between the two parties as a result of legislative changes in both the EU and UK.**
- **Assessing the exact degree of divergence vis-à-vis alignment depends on how this is defined and understood.**
  - This edition of the EU Law Tracker identifies examples of **legislative divergence** between EU law and Scots law; these result from both EU initiated and UK/Scottish initiated changes.

### EU Initiated:

- The adoption of new EU laws that are or may be in scope of the SG alignment commitment.
- The evolution of secondary EU laws (i.e., regulations, directives, decisions) via tertiary EU law (i.e., implementing and delegated acts) that are in scope of the SG alignment commitment.

### UK/Scottish Initiated:

- The making of statutory instruments and Scottish statutory instruments that make changes in assimilated laws and which diverge from EU rules.
  - The adoption or proposal of new acts of primary UK law that make provisions that diverge from those that apply in the EU.
- This edition of the EU Law Tracker also identifies examples of **policy alignment** between EU law and Scots law; these are generally the result of changes initiated in Scotland, including via:

- The adoption of new acts in the Scottish Parliament that provide for 'broad alignment' with the objectives and/or direction of similar or equivalent EU policies.
  - The making of Scottish statutory instruments that give effect to standards and/or approaches that are 'shared' with the EU.
- **Where Scots law initiatives have been stated by the SG to uphold the alignment commitment, this tends to be on the level of policy principles and/or direction of travel rather than to be on the level of detailed legal alignment of the kind experienced and practiced in EU Member States and by those outside the EU, but which have an agreed legal arrangement for some degree of alignment with EU law. This is not necessarily unexpected given the terms of the wider UK-EU relationship; however it also means that, even in areas where Scotland is 'aligning' with EU policy principles, legal differences and the lack of recognition of any alignment is likely to result in regulatory and trading frictions.**
  - This accords with the SG response to a CEEAC Committee question regarding policy alignments vs legal alignment which stated:
    - *"The Scottish Government aims to maintain policy alignment wherever possible (for example, insofar as Scotland is able under the devolved settlement and the operation of the Internal Market Act), and legislative alignment where it is meaningful and appropriate to do so. For example there will be times where the outcome of adjusting or introducing new legislation can be achieved more simply and directly by an alteration to policy. Inevitably this means there will be cases where the Scottish Government's approach to legislation may differ from the EU."*<sup>1</sup>
- **Examples of SG policy alignment with EU principles are unlikely to result in reduced barriers to trade and cooperation between Scotland and the EU; by contrast examples of legislative alignment may mitigate or reduce barriers to trade and cooperation which would otherwise have arisen between Scotland and the EU.**
- **In response to concerns of the CEEAC Committee regarding transparency of decision-making on the EU alignment policy, the SG committed to increase the volume and detail of the information it was providing to the Scottish Parliament on the matter. This issue of the EU Law Tracker report reiterates the value of the significantly extended levels of reporting on the policy to align on the part of the SG. It also identifies improvements in the consistency and quality of SG reporting on Scottish legislative initiatives in line with the SG [agreement](#) with the Scottish Parliament on information sharing related to the EU alignment policy.**<sup>2</sup>

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<sup>1</sup> 'The Scottish Government's Policy of EU Alignment – Annual Reports 2024' (2024, October 31) *parliament.scot* Available: <https://www.parliament.scot/-/media/files/committees/constitution-europe-external-affairs-and-culture-committee/eu-alignment-annual-reports--31-october-2024.pdf> (Accessed 25 January 2025)

<sup>2</sup> 'Statement of Policy by the Scottish Ministers in Exercise of the Power in Section 1 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021' (2022, May 10) *parliament.scot* Available: <https://www.parliament.scot/-/media/files/committees/constitution-europe-external-affairs-and-culture-committee/correspondence/2022/eu-alignment.pdf> (Accessed 12 February 2025)

- **The latest (currently draft) SG Annual Report on the Continuity Act (covering Sept 2023 to Aug 2024) is the first to fully implement the revised more detailed approach to reporting on SG use of the Continuity Act powers, and on the policy to align with EU law more broadly. This SG Report represents the most comprehensive and official account of alignment/divergence with EU law produced by any UK based government or department to date. In this respect the SG revised approach to reporting continues to support transparency, aid legal clarity and assist legislative scrutiny.**
- **This issue of the EU Law Tracker nonetheless also highlights some areas for potential further improvement in SG reporting practices. For example:**
  - Lists provided in Annex C regarding ‘EU Proposals Relevant to Devolved Competence or Having a Devolved Impact’ could usefully be updated to include relevant EU document references (for policy documents, communications etc.) and/or relevant references to entries in the Official Journal (for new EU acts or finalised proposals) – this would help parliamentarians and interested stakeholders to cross-read the content of SG Annual Reports with relevant ongoing developments in the EU.
  - Information provided by the SG appears to prioritise new EU proposals and initiatives over updates and revisions of established EU acts. While understandable, this approach also creates the possibility of changes to established EU acts which are or may be relevant to the SG alignment commitment being missed.
  - The difference between policy alignment and legislative alignment could be made more clear in the information provided by the SG in Policy Notes accompanying SSIs.
- **Notwithstanding the changed political landscapes in both the EU and the UK following recent elections, it is still the case that, across a range of policy areas there is potential for divergence by default if Scotland does not (continue to) actively pursue the same policy objectives as the EU in areas within its devolved competence and therefore potentially in scope of the alignment commitment.**

Initiatives being pursued at a UK-wide or GB-wide level are likely to, at least on occasion, sit in tension with the Scottish Government’s commitment to alignment and force a choice between aligning with other regions of the UK and aligning with the EU legal acquis albeit without formal recognition by the EU of any such alignment in the case of the latter.

- **If achieved, any new UK-wide agreement with the EU on sanitary and phytosanitary (SPS) and veterinary issues or any other area can be expected to make fulfilment of the SG alignment policy easier because (contingent on specifics) any such agreement will likely involve some degree of alignment between relevant areas of UK law and EU law.**
- **The domestic implementation of a new UK-wide agreement with the EU may result in centralisation of policy areas within its scope. Opportunities for the Scottish Parliament to scrutinise the implementation of any such agreement, or the development of related legislation, may be diminished unless existing scrutiny processes are reviewed and/or new scrutiny processes developed.**

## Recommendations for the Constitution *et al* and Subject Committees

- Where case studies included in this EU Law Tracker report highlight specific examples of actual or potential divergence, Subject Committees may wish to seek an update from the Scottish Government. Such initiatives may include:
  - o The Rural Affairs and Islands Committee may wish to seek further information from the SG on its potential pursuit of alignment with the EU on organics products and labelling of organic products in view of the coming into force of the Organic Production Regulation (EU) 2018/848 in January 2022 and the approximately 82 implementing and delegated EU acts adopted by the EU under the OP Regulation since the end of the UK Transition Period. The Committee may also want to seek SG views on the effect of relevant provisions of the TCA on equivalence of standards regarding organics between the EU and UK and the implications for any SG alignment decision.
  - o The Net Zero, Energy and Transport Committee may wish to seek more information or request updates from the SG on its consideration of alignment with Regulation (EU) 2024/216 which amends Regulation (EU) 2019/1009 in respect to the digital labelling of EU fertilising products which has been identified as 'for future consideration' in the most recent draft SG Annual Report.
  - o The Net Zero, Energy and Transport Committee may wish to seek further information from the SG regarding its consideration of alignment with Regulation (EU) 2024/1781 establishing a framework for the setting of ecodesign and sustainable products; the most recent draft SG Annual Report identified the ecodesign and sustainable products regulation (ESPR) as one of those EU acts 'for future consideration' regarding alignment.
  - o The Net Zero, Energy and Transport Committee may wish to seek an update from the SG regarding its consideration of alignment in respect to Regulation (EU) 2024/3110 on construction products which it identified as 'under consideration'.
  - o The Net Zero, Energy and Transport Committee may wish to seek an update from the SG regarding progress on securing alignment with Regulation (EU) 2024/1991 on Nature Restoration which has been identified as one of those EU acts with which Scotland will align.
  - o The Net Zero, Energy and Transport Committee may wish to seek an update from the SG regarding its consideration of aligning with the new Directive (EU) 2024/1785 on industrial emissions and landfill waste which the SG has identified as being 'under consideration' for alignment.
- In view of new EU laws adopted during the research period covered by this EU Law Tracker, Subject Committees may wish to seek an update from the Scottish Government in relation to specific new acts. Such initiatives may include:
  - o The Economy and Fair Work Committee may wish to seek an update from the SG regarding its consideration of alignment in respect to Decision (EU) 2024/2829 to amend Directive 2007/2/EC regarding certain reporting requirements for infrastructures for spatial information.
  - o The Net Zero, Energy and Transport Committee may wish to seek an update from the SG regarding its consideration of alignment in respect to Regulation (EU) 2024/3024 as regards introducing new environmental economic account modules.
  - o The Net Zero, Energy and Transport Committee may wish to seek an update from the SG regarding its consideration of alignment in respect to Directive (EU) 2024/3019 concerning urban wastewater treatment (recast).
  - o The Equalities, Human Rights and Civil Justice Committee may wish to seek an update from the SG regarding its plans to consider alignment in future in respect to Directive (EU) 2024/2841 establishing the European Disability Card and the European Parking Card for persons with disabilities.

- The Net Zero, Energy and Transport Committee may wish to seek an update from the SG regarding its plans to consider alignment in future in respect to Directive (EU) 2024/3100 on compliance with flag State requirements.
- The Net Zero, Energy and Transport Committee may wish to seek an update from the SG regarding its plans to consider alignment in future in respect to Directive (EU) 2024/3099 on port state control.
- The Net Zero, Energy and Transport Committee may wish to seek an update from the SG regarding its plans to consider alignment in future in respect to Directive (EU) 2024/3237 on facilitation of cross-border exchanges of information on road-safety-related traffic offences.
- The Economy and Fair Work Committee may wish to seek the SG view on the new EU act in respect to Directive (EU) 2024/2847 on horizontal cybersecurity requirements for products with digital elements (the 'Cyber Resilience Act').
- The Net Zero, Energy and Transport Committee may wish to seek the SG view on the new EU act in respect to Directive (EU) 2024/3101 on ship-source pollution and on the introduction of administrative penalties for infringements.
- The Rural Affairs and Islands Committee may wish to seek the SG view on the new EU act in respect to Regulation (EU) 2024/3115 on multiannual survey programmes, notifications concerning the presence of regulated non-quarantine pests, temporary derogations from import prohibitions and special import requirements for high-risk plants, plant products and other objects, the establishment of procedures for the listing of high-risk plants, the content of phytosanitary certificates and the use of plant passports, and as regards certain reporting requirements for demarcated areas and surveys of pests.
- The Net Zero, Energy and Transport Committee may wish to seek the SG view on the new EU act in respect to Regulation (EU) 2024/2881 on ambient air quality and cleaner air for Europe (recast).