

UK Withdrawal from the European Union (Continuity) (Scotland) Bill

Fairer Scotland Duty

June 2020

FAIRER SCOTLAND DUTY

ASSESSMENT NOT REQUIRED DECLARATION

Policy title	UK Withdrawal from the European Union (Continuity) (Scotland) Bill
Directorate: Division: team	Constitution and Cabinet Directorate Constitution & UK Relations Division
Policy lead responsible for taking the decision	Alex Mowat

Rationale for decision

The policy basis of the UK Withdrawal from the European Union (Continuity) (Scotland) Bill (the “Continuity Bill”) does not constitute a strategic decision as described in ‘The Fairer Scotland Duty: Interim Guidance for Public Bodies’ and for this reason a full assessment is not considered necessary.

The Continuity Bill provides for:

- the introduction of a power to make provision in Scots law corresponding to EU law after the end of the implementation period;
- the introduction of the guiding principles of the environment into Scots law;
- the formation of Environmental Standards Scotland.

The Bill’s ‘keeping pace’ power is an enabling provision which has no direct or immediate effect on existing policy. This power is intended to ensure that Scottish Ministers can continue to keep Scots law in line with EU law in devolved areas, where appropriate, after the end of the transition period which was entered into following the UK’s exit from the European Union on 31 January 2020. As such, it does not immediately have any impact other than to allow for instruments to be introduced under the Bill, as required, in the future.

But while we cannot predict the nature of any instruments which may in future be made under the Bill, the power to make provision corresponding to EU law is accompanied by a requirement for Scottish Ministers to publish explanatory statements, including a statement as to whether the instrument or draft modified any provision of equalities legislation and, if it does, explaining the effect of such modification.

Moreover, there is a requirement for a further statement confirming that the Scottish Ministers, so far as required to by equalities legislation, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010. In addition, the keeping pace power cannot be used to amend the Equality Act 2006 or 2010. The need for equalities considerations to form a crucial part of policy development is embedded in the power, meaning that each instrument made under the keeping pace power will have equalities compliance as a major consideration.

The Bill also includes provisions to ensure that we maintain the role of the environmental principles of EU law as well as effective and proportionate environmental governance in Scots law once the United Kingdom exits the transition period. Specifically, the Bill provides for the formation of a new agency, Environmental Standards Scotland. The creation of this body seeks to replicate the role of the commission at a domestic level and will uphold government and public bodies to account regarding compliance with environmental law and the effectiveness of delivery of environmental standards. Any impacts of future environmental law will be assessed when the law is made.

For the above reasons, it was decided that it would at this point be disproportionate and impractical to carry out a full Fairer Scotland Assessment on the Bill.

I confirm that the decision to not carry out a Fairer Scotland assessment has been authorised by:

Name and job title of Deputy Director (or equivalent)	Date authorisation given
Donald Cameron, Head of Constitution and UK Relations Division	02 June 2020



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