

Context

1. [REDACTED]
2. [REDACTED]

3. [REDACTED]

4. [REDACTED]
5. [REDACTED]

6. [REDACTED]

7. [REDACTED]
8. [REDACTED]

9. [REDACTED]

10. [REDACTED]
11. [REDACTED]

12. [REDACTED]

13. [REDACTED]
14. [REDACTED]

15. [REDACTED]

16. [REDACTED]
17. [REDACTED]

Initial screen

18. Approximately once every two weeks, a [DEXA] official should run a report from OJEU of all legal acts published in that period. This can be done from here, and the results exported into excel:

[Redacted]

19. The results from that report should be uploaded into this spread sheet, which will act as the SG's master tool for recording each EU legal act as published, our assessment of it, and our subsequent implementation (if applicable) in Scots law.

[Redacted]

20. The [DEXA] official should complete the basic reference fields in that spread sheet for each record, including trying to identify the lead policy officials (it may not be necessary to identify lead officials where the EU legal act is clearly an EU internal-only one, such as appointments to committees, etc., or is clearly reserved, but these should still be recorded).

21. Those lead policy officials should then complete the initial screening questions:

- a. Does this relate solely to internal EU matters?
- b. Is the subject matter devolved?
- c. Is alignment compatible with international obligations?

22. [REDACTED]

23. If the matter is out of scope (and this is likely to apply to the significant majority of EU legal acts), no further action need be taken by the policy official. The [C1 lead in DEXA] should, however, review these and sign these off on an at least monthly basis, drawing on advice from SGLD and trade policy officials as appropriate. The SG will not seek to align with these EU legal acts.

24. If the matter is in scope, the lead policy official should proceed to complete an alignment impact assessment.

Light-touch impact assessment

25. In order to try to keep this process as proportionate as possible, the first-half of the impact assessment takes a light-touch screening approach. It seeks to establish by way of brief explanations whether there are expected to be any significant economic, social, UKIM, frameworks or resources implications of the decision to align or not.



Alignment impact
assessment - Clean \

26. If the result of this light-touch assessment is that the policy officials are intending to recommend to their Ministers that SG seeks to align with the

relevant and that there are not expected to be any significant implications of this, then the lead policy official need not complete the full impact assessment. The light-touch assessments should be reviewed by [the lead C1 in DEXA], with views sought as appropriate from EUD, SGLD, trade policy and others, before either signing off on the decision, or inviting the policy area to complete a full impact assessment.

Full impact assessment

27. Where the initial questions identify either that the lead policy area is considering recommending that SG does not align, or that there are potentially significant impacts of a decision to align, a full impact assessment should be completed. This is inevitably more burdensome, but reflects the more significant nature of the decision.
28. This invites the policy area to set out in detail precisely what the issues at play are [REDACTED]. It prompts the policy area to seek the views, where relevant, of Business Directorate, trade policy, EUD, DEXA, CUKR, OCEA and PLU. It seeks views on likely stakeholder reaction as well as the positions of the UK Government and other devolved administrations. The aim is to ensure that all of the information and evidence which Ministers will need to support such a decision is captured in one place, and this will form the basis of a later submission to Ministers on the subject.
29. The [C1 lead in DEXA] will review these assessments, and seeking input as appropriate from colleagues in EUD, CUKR, PLU, SGLD, trade policy and others [DN – even if this does not, or rarely, actually meets as a committee/group – should it be badged as one for governance purposes, i.e. so that everyone is clear the role they play in it?], should provide constructive challenge to the policy area to help ensure that all angles have been considered. The aim of this challenge will be to agree advice to Ministers (this need not mean that DEXA or EUD actively takes a position on a recommendation which is a matter for another policy area, but that the implications of that recommendation are set out and agreed). Where agreement is not possible, or where the subject matter warrants it, it may be necessary to escalate this to SCS for sign off.
30. [REDACTED]

Implementation

31. [REDACTED]
32. Identification of the most appropriate power and legislative vehicle should largely be a matter for the policy area concerned, in conjunction with SGLD and PLU. The Continuity Bill does, however, require Scottish Ministers to report annually on the use of the power to align in the Continuity Bill, and so it will be important for [DEXA], who will compile this report, to be kept informed, and for the master tracker to be updated. Though not required by the Bill, the policy aim should be for that report to cover all action taken to align, whether or not the power in the Bill is relied upon.

33. Depending on the volume of legislation which emerges under this process, we may need to think again about whether there needs to be a more pro-active role for DEXA and PLU in co-ordinating a smaller volume of larger instruments, perhaps covering broader subject areas.

34. [REDACTED]

35. [REDACTED]

Estimates of required resource

36. Within DEXA:

- a. B band (possibly different individuals):
 - i. Half a day every fortnight (10%) running reports from OJEU, populating the master tracker, identifying policy leads and sending it out for updates and maintaining responses (quite probably more like 20% in initial stages whilst getting the system up and running and getting used to it).
 - ii. Reasonable Q1 commitment every year to produce the report on use of the power to align which is required by Parliament (largely based on master tracker, but inevitably involving write arounds and chasing).
 - iii. Potential additional commitment if Parliament demands additional reporting as part of the Bill – this could be in the form of a forward-look snapshot from the master tracker.
 - iv. Ad hoc provision of front-line advice to policy areas, and the development of internal guidance on this process.
- b. C1 (25%?):
 - i. Sign-off / QA of all screening decisions that an EU legal act is outwith scope for this process, and of all light-touch impact assessments which result in a recommendation to align, but without significant impacts identified. Ballpark figure of around 1500 in the first category (average 125/month – though possibly not evenly distributed) likely to fall into this category – the vast majority of which should be so straightforward that it should be easy enough to tell from the title of the instrument that it is not in scope (e.g. appointments to committees, adoption of negotiating position) – and so there is clear scope to delegate some of this, but given parliamentary interest, some formal scheme of delegation of powers may be appropriate. On some, however, further investigation of devolved competence, or interaction with FTAs may be needed. Second category likely to be over 400 in number – again, though, mostly straightforward (most of these will be probably relate to the updating of classification of various food substances).

- ii. Leading the constructive challenge effort in relation to full impact assessments, bringing in expertise from other areas, and escalating to SCS as appropriate. Reaching agreement on advice to Ministers
 - iii. Ad hoc provision of advice to policy areas on more complex cases.
 - iv. Oversight of monitoring and reporting activity
- c. SCS
- i. Ad hoc role in agreeing advice to Ministers on more complex issues which have been escalated.
 - ii. Championing alignment process within SG

37. EUD:

- a. Appropriate expertise called on as required to:
 - i. Monitor / influence the development of Category A legal acts
 - ii. Advise policy areas as appropriate on the development of Category B legal acts
 - iii. Advice on screening decisions and light-touch impact assessments
 - iv. Participate in the consideration of full impact assessments, including where escalated to SCS

38. In policy areas and in SGLD, to the extent that we are referring to areas which are currently governed by EU law, the task of keeping track of developments in that law should not be a new one. There will, however, clearly be additional workloads where we seek to legislate to replicate EU secondary and tertiary legislation which is currently given direct effect – though this will vary significantly between policy areas. The impact assessment process, though intended to be proportionate, will also add extra work.

39. Areas such as CUKR, trade policy and Business Directorate will all be called upon to advise on the implications of specific policies – though over time as common frameworks and possibly any UKIM arrangements become settled, and expertise builds in individual policy areas, this call on the central teams may diminish.

40. To the extent that additional SSIs are needed, there will be an implication for PLU in managing these as part of the government's programme.