

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

## **Equality Impact Assessment**

**June 2020**



**Scottish Government**  
Riaghaltas na h-Alba  
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## Equality Impact Assessment: UK Withdrawal from the European Union (Continuity) (Scotland) Bill

<b>Title of Policy</b>	<b>UK Withdrawal from the European Union (Continuity) (Scotland) Bill</b>
<b>Summary of aims and desired outcomes of Policy</b>	The UK Withdrawal from the European Union (Continuity) (Scotland) Bill provides for the introduction of a power to enable Scottish Ministers to keep Scots law in line with EU law, where appropriate, in devolved areas following the end of the implementation period. The Bill also contains provisions to ensure that the role of the environmental principles of EU law are maintained, as well as the continuation of effective environmental governance in Scots law.
<b>Directorate: Division: team</b>	Constitution and Cabinet Directorate

### Executive Summary

It is the Scottish Government's view that the extent to which devolved law aligns itself with the law of the EU should be a decision for the Scottish Parliament to take, not the UK Government. The Scottish Government is committed to no regression in standards or protections following EU exit, and the replacement of regulatory powers lost in consequence of EU exit will be essential to ensuring that this is achieved.

The purpose of introducing the Bill is to allow Scottish Ministers to make provision in Scots law corresponding to EU law in devolved areas, where appropriate, following the end of the implementation period and 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.

To achieve this, the Bill provides for:

- the introduction of a power to make provision in Scots law corresponding to EU law as appropriate 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.

## Background

The Scottish Government is committed to there being no regression in standards or protections for the environment and to keep pace with EU law in other areas of devolved competence, where appropriate, once the UK exits the transition period under section 126 of the Withdrawal Agreement agreed between the EU and the UK in October 2019. It is therefore essential to ensure that provision is made for the replacement of regulatory powers which will be lost in consequence of EU exit.

The Scottish Government considers that there will be fields where its policy will be to voluntarily maintain regulatory alignment with EU rules. Therefore, the purpose of introducing the Bill is to allow Scots law to 'keep pace' with EU law in devolved areas, where appropriate, using secondary legislation, and ensure that we maintain the role of the environmental principles of EU law as well as effective and proportionate environmental governance in Scots law.

The Bill covers a range of issues, which are as follows:

- Provision for a power to make provision in Scots law corresponding to EU law as appropriate after the end of the implementation period;
- Provision for the duration and extension of that power and its scrutiny;
- Provision for explanatory statements on a range of topics to accompany any regulations made under that power;
- The insertion into domestic law of the guiding principles of EU law;
- The duty of Scottish Ministers and other bodies to have regard to the principles
- The requirement for Scottish Ministers to publish guidance on the principles and their related duties;
- The formation of Environmental Standards Scotland, including the appointment of members and staff and the organisation's structure; and
- The powers and functions of Environmental Standards Scotland.

The Bill follows on from the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill ("the 2018 Bill"), which passed stage 3 in the Scottish Parliament but did not receive Royal Assent following its referral to the Supreme Court under section 33(1) of the Scotland Act 1998. Although only section 17 was found to be outside the legislative competence of the Scottish Parliament at the time the 2018 Bill was passed, the remainder of the Bill was held to be within the Scottish Parliament's competence when the Bill was passed. Since the 2018 Act amended the competence of the Scottish Parliament after the reference of the 2018 Bill to the Supreme Court, other aspects of the 2018 Bill were found to be *ultra vires* in the period between the completion of the 2018 Bill's stage 3 vote and the court's judgment.

This Bill forms part of the Scottish Government's response to that decision. The Court affirmed the Scottish Parliament's power, subject to the limits on its competence, to prepare the statute book for the UK's withdrawal from the EU.

The 2018 Bill included a power in section 13 (similar to the 'keeping pace' power in this Bill) to enable Scottish Ministers to make provision that would correspond to provision in EU law following EU exit. That power was not held to be outwith competence by the Supreme Court.

Therefore, while no formal consultation regarding the keeping pace power has been undertaken for this Bill, officials have used the results of previous engagement and consultation.

### **The Scope of the EQIA**

As the keeping pace power is broad and enabling in nature, the policy is expected to have a minimal immediate impact on the protected groups, and the scope of the EQIA was determined within this context. Instruments made under the power will have a range of impacts on equalities that cannot be foreseen at this juncture. As discussed below, however, the power itself contains substantial provisions which will ensure that equalities considerations are at the heart of the policy making process for those instruments made under the keeping pace power.

### **Bill Provisions: Keeping Pace Power**

The keeping pace power contained in this Bill is based on the power contained in section 13 of the 2018 Bill. The 2018 Bill included provisions requiring all instruments made under the power in section 13 to be accompanied by an explanatory statement, which included a statement as to the effect on equalities legislation. Similarly, this Bill includes a requirement for Scottish Ministers to publish explanatory statements, including a statement as to whether the instrument or draft modifies any provision of equalities legislation and, if it does, explaining the effect of such amendment, repeal or revocation.

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.

### **Bill Provisions: Environmental Principles**

Through the establishment the four core environmental principles in domestic legislation, we will ensure that we maintain high environmental standards and demonstrate our commitment to value and protect our natural environment. These provisions provide a continuity in that they will provide the same level of protection as currently applied by the EU. Policy makers have regard to the principles at the level of development of legislation and of policies and plans with significant environmental effects. The consideration of impacts on equality groups will be considered as a part of the development of the relevant legislation, policies and plans.

As this is a continuation of the effect of the principles at EU level, there is no impact on equality groups to be assessed with respect to the introduction of the duty to have regard to the guiding principles on the environment.

### **Bill Provisions: Environmental Standards Scotland**

Environmental Standards Scotland will be covered by the Equality Act 2010 (Specific Duties) (Scotland) Regulation 2012. This is unlikely to have significant impacts on the discharge of its duties, as it will mainly act with respect to public authorities. It will, however, ensure that it has the same equality obligations as other public bodies with respect to its staff and to its dealing with the public.

The environmental governance arrangements will maintain the rigour of standards as set by the EU. This will be a replacement for the same role carried out by the EU institutions, in a form appropriate for domestic arrangements. There will therefore be no impact on equality groups from the introduction of environmental governance arrangements, and any impacts of environmental law on equality groups will be assessed when the specific legislation is made.

### **Environmental Provisions: Consultation**

Evidence on the equality impact of the environmental element of the Bill was collected during a public consultation<sup>1</sup>.

The consultation paper invited responses to a series of questions covering the role of environmental principles in developing future policy and legislation and maintaining effective, appropriate and proportionate environmental governance in Scotland, following EU exit. The consultation received a strong response from 40 individuals and 59 organisations. The profile of respondent organisations featured environmental charities, membership organisations, private business, academic institutions, local authorities, and third sector organisations.

The responses have been published on the Scottish Government website, along with the results of an independent analysis of those responses.<sup>2</sup>

The consultation received over 100 substantive responses from a range of individuals groups and organisations and over 12,000 responses following a Scottish Environment LINK campaign. There was a general agreement with the proposals set out for environmental principles, and a broad consensus that something should be done to fill a governance gap in the event of EU exit. Within the responses there was a richness of detail and comment, as well as significant ambition for additional measures, particularly from the membership organisations. There was general support for the introduction of a duty to consider the environmental principles and for

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<sup>1</sup> The Consultation on Environmental Principles and Governance in Scotland 16 February 2019 to the 11 May 2019. <https://consult.gov.scot/environment-forestry/environmental-principles-and-governance/>

<sup>2</sup> Environmental Principles and Governance after Brexit: responses to consultation. Published on the 4<sup>th</sup> October 2019 <https://www.gov.scot/publications/analysis-responses-consultation-environmental-principles-governance/pages/2/>

a policy statement to guide the interpretation and application of the duty. There were a range of opinions, accompanied by substantial discussion about which bodies the duty should apply to how it should be expressed and which principles should be included within the duty. Most respondents believed that there will be significant governance gaps on leaving the EU with respect to scrutiny and assessment of the effectiveness of environmental policy. Concern was also expressed about the loss of an EU complaints function and that the loss of EU enforcement powers would have a negative impact on the environment. There was general agreement that a new function is required to receive complaints and a range of roles and models were suggested. Overall there was strong support for a body to oversee complaints, provide scrutiny on environmental policy and delivery, and provide oversight for environmental monitoring and reporting.

An analysis of the environmental consultation responses was taken into account in developing the relevant proposals in the present Bill. The policy is not considered to have a negative impact on any of the protected equality groups. The purpose of environmental governance is to ensure the complete and effective implementation of environmental law. Any potential impacts of future environmental law will be considered when that legislation is developed.

## **Recommendations and Conclusions**

The main policy driver behind the Bill is the Scottish Government's recognition of the beneficial impact which EU law has had in promoting standards and protections – including those specifically relating to equalities issues, such as relate to the needs of those who share certain protected characteristics<sup>i</sup>, including disability, sex, race and religion or belief. The Scottish Government therefore remains committed to maintaining high standards of equalities protections across government following the UK exit from the European Union.

While no formal consultation was carried out with regard to the keeping pace power, a similar power was contained in the 2018 Bill which was scrutinised and consented to by Parliament. The environmental provisions were strongly impacted by the analysis of responses to the public consultation.

When the Bill is enacted, the policy will be implemented by Scottish Ministers, Scottish Government officials, Environmental Standards Scotland officials and those who work for a public body subject to the Bill's provisions.

## **Declaration and Publication**

I have read the Equality Impact Assessment and I am satisfied that it represents a fair and reasonable view of the expected equalities impact of the Bill.

Signed: Donald Cameron

Date: 02 June 2020

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<sup>i</sup> Under the Equality Act 2010



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