

UK WITHDRAWAL FROM THE EUROPEAN UNION (CONTINUITY) (SCOTLAND) ACT 2021

EXPLANATORY NOTES

OVERVIEW AND BACKGROUND

Part 2 – Environment

Chapter 1 – Environmental principles

Section 13 - The guiding principles on the environment

78. Section 13 of the Act establishes in domestic law guiding principles on the environment which are equivalent to the requirement that environmental protection requirements are integrated into policy and the EU environmental principles established under EU law. The guiding principles listed in subsection (1) are the principle that protecting the environment should be integrated into the making of policies, the precautionary principle as it relates to the environment, the principle that preventative action should be taken, the principle that environmental damage should be rectified at source, and the principle that polluter should pay.
79. EU law contains a requirement that environmental protection requirements must be integrated into the definition and implementation of policies and activities, in particular with a view to promoting sustainable development. The guiding principle of integration in subsection (1)(a) is derived from this requirement. The other guiding principles reflect the four EU environmental principles that underpin the development of EU environmental policy, and are commonly defined as:
 80. Precautionary principle. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation.
 81. Prevention principle. Preventative action should be taken to avoid environmental damage.
 82. Rectification at Source principle. Environmental damage should, as a priority, be rectified at source. Polluter Pays principle. The polluter should bear the cost of pollution control and remediation.
 83. Subsections (2) and (3) set out how the guiding principles are derived from the equivalent principles, and integration requirement, provided for in Article 11 of Title II and Article 191(2) of Title XX of the Treaty on the Functioning of the European Union. When the Scottish Ministers prepare guidance under section 17, they are to have regard to the interpretation of those equivalent principles by the CJEU from time to time.
 84. Subsections (4) to (7) allow the Scottish Ministers to amend, add, further define or remove environmental principles by regulations. The guiding principles as set out in the Act may be amended, removed or further defined where that is necessary to ensure they continue to correspond to the equivalent EU principles, as they form part of EU

These notes relate to the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (asp 4) which received Royal Assent on 29 January 2021

law. Any new principle that is introduced in addition to the principles derived from the equivalent principles provided for in Article 11 of Title II and Article 191(2) of Title XX of the Treaty on the Functioning of the European Union may be amended or altered by regulations without limitation. Regulations will be subject to affirmative parliamentary procedure and before laying must have gone through appropriate consultation with persons or bodies as stated within the Act.