

## POLICY NOTE

### THE UK WITHDRAWAL FROM THE EUROPEAN UNION (CONTINUITY) (SCOTLAND) ACT 2021 (COMMENCEMENT NO. 1) REGULATIONS 2021

#### SSI 2021/141 (C. 11)

The above instrument was made in exercise of the powers conferred by sections 51(2) and 51(3)(b) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. It is laid under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

#### **Purpose of the instrument.**

These Regulations bring Part 1 and sections 13, 18 and 47 of Part 2 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (“the Act”) into force during March 2021, for all purposes.

These Regulations bring section 15 of Part 2 of the Act into force during March 2021, for the limited purpose of enabling consultation to be undertaken on the guiding principles on the environment during summer 2021.

#### **Policy Objectives**

The UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 received Royal Assent in January 2021. This instrument is required to bring into force Part 1 in full, sections 13, 18, and 47 of Part 2 in full, and section 15 (for limited purposes) of Part 2 of the Act on 29 March 2021.

Part 1 of the Act allows for the Scottish Ministers to align devolved law with EU law, where appropriate. This allows for the continued alignment of Scots and EU law, where appropriate, and places several reporting and other requirements on Scottish Ministers in relation to the use of this power. In addition to enabling the Scottish Ministers to make provision corresponding to EU law, as it develops after the implementation period, the power also enables Scottish Ministers to make provision in relation to existing EU laws, which have been implemented or have effect domestically already. Part 2 of the Act provides for the introduction of the guiding principles on the environment into Scots law and the formation of Environmental Standards Scotland, and its functions and powers.

Section 13 establishes in domestic law guiding principles on the environment. Section 18 sets out the procedure for the publication of guidance on those guiding principles, including requirements on the Scottish Ministers to consult on the guidance and lay it before the Scottish Parliament prior to publication.

Section 15 provides that where public authorities are responsible authorities in terms of the Environmental Assessment (Scotland) Act 2005 (“the 2005 Act”), they must have due regard

to the guiding principles on the environment when doing anything in respect of which the duty under section 1 of the 2005 Act (to carry out an environmental assessment) applies.

Section 13 and 18 are being brought into force to allow consultation on guidance on the guiding principles on the environment to take place during summer 2021. Section 15 is brought into force only to enable the Scottish Ministers to consult with each responsible authority which is subject to the duty under section 15, in accordance with section 18(3)(b). Accordingly, responsible authorities need not have due regard to the guiding principles when doing anything in respect of which the duty under section 1 of the 2005 Act applies until section 15 is brought fully into force at a later date. It is anticipated that the remaining provisions of Part 2 of the Act will be brought into force during Autumn 2021. This includes the placing of duties on Scottish Ministers, Ministers of the Crown and public authorities in relation to the guiding principles.

Section 47 requires the Scottish Ministers to prepare and publish an environmental policy strategy. Section 47 is being brought into force to enable the Scottish Ministers to progress with the preparation of this strategy. Once elements of the strategy are adopted, Ministers will be required to have “due regard” to the strategy when making policies (including proposals for legislation).

## **Consultation**

No formal consultation has been carried out in relation to these regulations. In relation to Part 1, a keeping pace power was contained in the 2018 Continuity Bill, which was scrutinised and passed by the Parliament under an expedited legislative procedure. Following cross-party discussions in early 2019, where the continued need for a keeping pace type power as a result of EU exit was deliberated, the Scottish Government committed to bringing forward new legislation to ensure Scots law can continue to align with EU law, where appropriate. This approach has therefore been known to be the Scottish Government’s policy for some time.

### **Part 2 -**

Consultation has not been undertaken with stakeholders regarding the commencement of these provisions. In the spring of 2019, the Scottish Government published a consultation paper on its policies on environmental principles and governance that were subsequently developed, with further informal stakeholder consultation, into the provisions that are contained in the Act. The commencement of Chapter 3 (section 47) and partial commencement of provisions in Chapter 1 (sections 13, 15 and 18) will not place duties on external stakeholders and, therefore, no further consultation is required.

Environmental Standards Scotland, which will receive its statutory powers following the commencement of Part 2, Chapter 2 of the Act, have been informed of the proposed timescales for commencement of the relevant provisions and are content with the proposed approach.

## **Impact Assessments**

As the instrument commences legislation, no impact assessments are required. Impact assessments related to the enabling Act were published alongside the legislation.

## **Financial Effects**

The Cabinet Secretary for the Constitution, Europe, and External Affairs confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business. A BRIA related to the enabling Act was published alongside the legislation.

Scottish Government  
Constitution and Cabinet Directorate  
Constitution and UK Relations Division  
March 2021