

Laid in draft before the Scottish Parliament by the Scottish Ministers in accordance with section 11(1)(a) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

27 October 2022
SG/2022/211

DRAFT REPORT BY THE SCOTTISH MINISTERS IN EXERCISE OF THE POWER IN SECTION 1(1) OF THE UK WITHDRAWAL FROM THE EUROPEAN UNION (CONTINUITY) (SCOTLAND) ACT 2021 FOR THE REPORTING PERIOD 1 SEPTEMBER 2021 – 31 AUGUST 2022 AND THE INTENDED FUTURE USE OF THE POWER UNDER SECTION 1(1) IN THE UPCOMING REPORTING PERIOD 1 SEPTEMBER 2022 – 31 AUGUST 2023

Introduction

1. The Scottish Ministers lay the following report in draft in accordance with section 11(1)(a) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (“the Act”). The draft report covers the following:

a) Part 1 explains:

- the use of the power under section 1(1) of the Act during the reporting period 1 September 2021 – 31 August 2022 (“the current reporting period”),
- how that use of the power under section 1(1) contributes or has contributed towards maintaining and advancing standards in relation to the matters mentioned in section 2(1)(a) to (e) of the Act, and
- any use of the power under section 1(1) that has been considered by the Scottish Ministers during the current reporting period.

b) Part 2 explains:

- how the Scottish Ministers intend to use the power in the upcoming reporting period 1 September 2022 – 31 August 2023 (“the upcoming reporting period”), and
- how their intended use of the power under section 1(1) would contribute towards maintaining and advancing standards in relation to the matters mentioned in section 2(1)(a) to (e) of the Act

2. The draft report is subject to a consultation period of 28 days. During the consultation period, representations may be made to the Scottish Ministers about their intended use of the power in the upcoming reporting period. When laying the final version of this report under section 10(1), the Scottish Ministers will also lay before the Parliament a document setting out:

- a) a summary of any representations about the draft report made during the consultation period, and
- b) how they have had regard to those representations in preparing the report.

Policy Statement

5. The Scottish Government published a policy statement, in accordance of section 6 of the Act, which explains their approach, the factors to be taken into account and the process to be followed when considering use of the regulation making power under section 1 of the Act.

6. This states that Scottish Ministers will seek to align with the EU where appropriate and in a manner that seeks to contribute towards maintaining and advancing standards across a range of policy areas. This will be achieved in a range of different ways, legislative and non-legislative. The power provided by section 1(1) of the Act is one means by which the Scottish Ministers may seek to align with EU law.

Report

Part 1: Current Reporting Period - 1 September 2021 – 31 August 2022

7. How the power under section 1(1) has been used during the reporting period:

The power has not been used during the current reporting period.

8. How that use of the power under section 1(1) contributes or has contributed towards maintaining and advancing standards in relation to the matters mentioned in section 2(1)(a) to (e) of the Act:

Not applicable as the power has not been used during the current reporting period.

9. Any use of the power under section 1(1) that has been considered by the Scottish Ministers during the reporting period:

Consideration was given to using the power under section 1(1) to make regulations to keep pace with certain measures of the EU Energy Performance and Buildings Directive (Directive 2018/844/EU (amending Directive 2010/31/EU)). This Directive sets out a number of measures to support decarbonisation of Europe's building stock, including the installation of relevant infrastructure, and, in certain circumstances Electric Vehicle (EV) charge points, in car parks associated with some new and existing buildings.

The Scottish Government considered use of the power in section 1(1) to make regulations in respect of a measure which was not capable of being implemented through building regulations made under the Buildings (Scotland) Act 2003. That measure concerned the installation of a minimum number of EV charge points in car parks for existing non-residential buildings with greater than 20 parking spaces.

The Scottish Government however assessed a number of factors that did not support implementation of this measure at this time. This included a lack of data regarding the buildings potentially affected, the fact that this measure could increase car use into sustainable travel areas, the level of private investment increasing on

installation of EV charging points and infrastructure, and the disproportionate cost impact on existing building owners. They have therefore committed to monitor the growth of EV charging at these locations carefully over the next few years, and may introduce legislation at a later date.

Part 2: Upcoming Reporting Period – 1 September 2022 – 31 August 2023

10. How the Scottish Ministers intend to use the power under section 1(1) in the upcoming reporting period:

The Scottish Government intends to make provision in late 2022 using the power under section 1(1), in conjunction with other domestic powers, to amend the Public Water Supplies (Scotland) Regulations 2014 (“2014 regulations”). These amendment regulations will implement certain requirements of Directive (EU) 2020/2184 (“Recast Drinking Water Directive”) on the quality of water intended for human consumption, which replaces Directive 98/83/EC.

The 2014 regulations are amended to include the new health based standards for drinking water of the Recast Drinking Water Directive. The introduction of the health based standards of the Directive can be achieved through other domestic powers. The power under section 1(1) is relied upon to extend the application of other provisions in the 2014 regulations to the new health based standards.

The power is used to remove the function whereby Scottish Ministers can request the European Commission to extend a temporary departure from the requirements of the 2014 regulations. This function is removed from the Recast Drinking Water Directive and is no longer operable following EU Exit. It is also used to transfer certain functions in the 2014 regulations from Scottish Ministers to the Drinking Water Quality Regulator for Scotland.

11. How that will contribute towards maintaining and advancing standards in relation to the matters mentioned in section 2(1) of the Act:

The Recast Drinking Water Directive is designed to protect water intended for human consumption from source to tap, put in place measures in relation to access to water and drive up resource efficiency by tackling pollutants at source.

The Scottish Government is committed to aligning with the health based standards of the EU’s Recast Drinking Water Directive, which are endorsed by the World Health Organisation, by January 2023 to improve the excellent standards of Scotland’s drinking water and support effective reporting of these standards on an annual basis.

This focus on health based provisions of the Recast Drinking Water Directive prioritises improvements that can be made now, as there are further requirements in the directive which will either apply at a later date or are subject to further work by the European Commission.

Our approach is to therefore consider further changes to our legislation at a later stage which would result in a consistent outcomes with EU member states.

Next Report

12. The next report will be made following the next reporting period, which ends on 31 August 2023. That report will detail the use and considered use of the power under section 1(1) of the Act during that reporting period and any planned use in the subsequent reporting period.

SCOTTISH MINISTERS