

Scottish Parliament Information Centre
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28th August 2025

NAME OF REPORT (inc. No.): 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 2023 – 31 August 2024 And The Intended Future Use Of The Power Under Section 1(1) In The Upcoming Reporting Period 1 September 2024 – 31 August 2025 SG/2025/140

I enclose one copy of the above report for laying before the Scottish Parliament on 28th August 2025.

The report is being laid before the Scottish Parliament by a member of the Scottish Government under section 10(1) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 and is not subject to any Parliamentary procedure.

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STATUTORY REPORT ON THE USE OF CONTINUITY ACT POWER

Laid before the Scottish Parliament in accordance with section 10(1) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

28 August 2025

SG/2025/140

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 2023 – 31 AUGUST 2024 AND THE INTENDED FUTURE USE OF THE POWER UNDER SECTION 1(1) IN THE UPCOMING REPORTING PERIOD 1 SEPTEMBER 2024 – 31 AUGUST 2025

Introduction

1. The Scottish Ministers lay the following report in accordance with section 10(1) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (“the Act”). The 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 2023 – 31 August 2024 (“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 2024 – 31 August 2025 (“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. This report confirms the contents of that which was laid in draft in the Scottish Parliament on 31 October 2024 and subject to a consultation period of 28 days in accordance with section 11 of the Act. During this consultation period, no representations were made to the Scottish Ministers regarding the draft report, and the Scottish Ministers also lay before the Parliament a document confirming that they have received no comments as required under section 11(5) of the Act.

Policy Statement

5. The Scottish Government published a policy statement on 10 May 2022, in accordance 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. It confers on the Scottish Ministers the ability to make subordinate legislation where appropriate in order to keep devolved Scots law aligned with EU law as it develops. Other means include maintaining alignment through primary legislation or non-legislative means such as statement of policy or guidance. Where secondary legislation is the most appropriate, it may be possible to align with the EU using specific domestic powers that cover the subject matter of the EU legislation.

Report

Part 1: Current Reporting Period - 1 September 2023 – 31 August 2024

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:

Scottish Ministers have not considered any further uses of the Continuity Act as the method by which to align within the reporting period. Information on the Scottish Government's use of other legislation to align can be found at Annex B.

Part 2: Upcoming Reporting Period – 1 September 2024 – 31 August 2025

10. The Town and Country Planning (Environmental Impact Assessment) (Scotland) amendment Regulations 2024.

The above instrument is to be made using the powers under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

The purpose of these Regulations is to amend the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (2017 EIA Regulations) to ensure unauthorised Environmental Impact Assessment (EIA) development cannot benefit from enforcement time limits.

The statutory requirements for EIA originate from EU Directive 2001/42/EC. After the UK withdrawal from the EU we could no longer use the European Communities Act 1972, to make desired changes to our EIA legislation. The UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 offers the opportunity to make desired changes, where there is no other option available. The Town and Country Planning (Environmental Impact Assessment) (Scotland) amendment Regulations 2024 wasn't laid in parliament during the alignment reporting period of 31/10/2023 to 31/08/2024, due to unexpected delays in the consultation preparation process, which had a knock on effect for preparation of the SSL.

The Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024

The above instrument is being made using the powers conferred by sections 40 and 275 of the Town and Country Planning (Scotland) Act 1997(a) and section 1(1) of UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021(b).

The purpose of these Regulations is to ensure a planning authority, when creating a Masterplan Consent Area scheme, makes its decision in full knowledge of the likely significant effects on the environment. An Environmental Impact Assessment (EIA) helps to identify the likely environmental effects, as well as the scope for avoiding, mitigating or reducing any adverse effects, before a decision is made.

The statutory requirements for EIA originate from EU Directive 2001/42/EC. After our withdrawal from the EU we could no longer use the European Communities Act 1972, to create new EIA legislations as had previously done as planning powers alone would not suffice. Therefore, when the concept of Masterplan Consent Area Scheme was formed, and it was understood that development proposals could be EIA development, it was necessary to use the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, as well as planning powers, to make these regulations.

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

This is in response to technical matters raised by the Aarhus Convention Compliance Committee concerning environmental obligations under the Convention.

Next Report

12. The next reporting period ends on 31 August 2025. The subsequent 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 forthcoming reporting period. Our broader reporting in addition to this statutory report will also illustrate the variety of other means by which the alignment policy is being implemented.

SCOTTISH MINISTERS