



The Scottish Parliament
Pàrlamaid na h-Alba

Constitution, Europe, External Affairs and Culture Committee

Angus Robertson MSP
Cabinet Secretary, Constitution, External Affairs and Culture
Scottish Government

2 October 2024

Dear Cabinet Secretary

Third EU Law Tracker Report

The CEEAC Committee considered the third report from Dr Lisa Whitten on the EU Law Tracker at our meeting on 26th September 2024. The Committee agreed to write to you to highlight the key issues raised in Dr Whitten's report and to ask that these are addressed in the next set of annual reports on the alignment policy.

Tertiary Law

As part of the normal processes of EU law-making, tertiary (implementing or delegated) acts are frequently adopted which make detailed provisions for the implementation of secondary EU acts. Between January 2021 and August 2024 approximately 1222 acts of tertiary EU law have been adopted in relation to EU acts that are in scope of the SG alignment commitment.

Although any one individual change in EU tertiary law is unlikely to have a visible impact, the cumulative effect of multiple changes of this nature over time is likely to result in evident divergence, assuming no corresponding changes are made to Scots law. Additionally, where there are corresponding but separate developments in domestic law – Scotland specific or UK- wide – the effect of technical changes in EU law become more significant. Notably, this assessment supports the Scottish Government position “that all EU legislation (tertiary or otherwise) has potential relevance to the commitment to align and is considered in the same way as regulations and directives for relevance to Scotland”.

When a considerable amount of change has been made to an EU regulation, directive, or decision via tertiary EU law, a ‘consolidated version’ of the parent act is often published wherein all changes and updates are incorporated in the original text.

Since the end of the UK Transition Period until the end of the report period (at the end of 2020), 73 consolidated text versions have been published for relevant EU law instruments (see Annex 1); 23 of these have been published in the research period covered by this EU Law Tracker.

Contact: Constitution, Europe, External Affairs and Culture Committee, The Scottish Parliament, Edinburgh, EH99 1SP. Email ceeac.committee@parliament.scot. We welcome calls through Relay UK and in BSL through Contact Scotland BSL.

Given new consolidated text versions can be a sign that substantive changes have been made to the ‘parent’ EU act, the Committee asks for further details of the possible impacts of changes in tertiary EU law – reflected in consolidated text versions of relevant instruments – on the alignment commitment.

SSIs

Of the 114 potentially relevant SSIs made during the reporting period, 16 can be said to be either indirectly or directly relevant to the keeping pace policy.

The 2nd EU Law Tracker report noted some inconsistencies in the level of information being provided by the SG in policy notes accompanying SSIs regarding their relevance to EU alignment. In the reporting period for the 3rd issue of the EU Law Tracker, Dr Whitten notes that the consistency of SG reporting on EU alignment in policy notes appears to have improved.

Of the 16 directly or indirectly relevant SSIs, approximately 6 implement measures that diverge from EU law or may result in divergence from EU law with categorization being contingent on how divergence (and/or alignment) is being defined and understood.

The Committee welcomes the improved consistency in the levels of information being provided in policy notes accompanying SSIs. The Committee seeks clarification on the extent of divergence from EU law in relation to the following SSIs as highlighted by Dr Whitten –

- **The Sea Fisheries (Remote Electronic Monitoring and Regulation of Scallop Fishing) (Scotland) Regulations;**
- **The Food Additives and Novel Foods (Authorisations and Miscellaneous Amendments) and Food Flavourings (Removal of Authorisations) (Scotland) Regulations;**
- **The Plant Health (Import Inspection Fees) (Scotland) Amendment Regulations;**
- **The Meat Preparations (Import Conditions) (Scotland) Amendment Regulations;**
- **The Packaging Waste (Data Reporting) (Scotland) Amendment Regulations;**
- **The Official Controls (Import of High-Risk Food and Feed of Non-Animal Origin) Amendment (Scotland) Regulations.**

Changes to UK/GB-wide law

In addition to understanding the evolution of relevant EU law and its implications for the alignment commitment, changes in UK-wide (or GBwide) law are also an important part of the overall picture when it comes to Scotland keeping pace with EU policies. Over time as the EU and the UK legal orders and policy priorities develop (following Brexit) on separate trajectories, any decision taken in Scotland to align with EU law or policy (potentially) as opposed to UK law (including either England and Wales or England, Wales, and Northern Ireland) can be expected to have more evident implications for intra-UK relations and the operation of the UK internal market. For this reason, tracking the evolution of primary UK-wide or GB-wide law developments where these overlap with areas of (previous) EU competence is another important aspect of monitoring the implementation of the SG

alignment commitment.

Several primary acts of UK-wide (or GB-wide) law passed during the reporting period, make provisions that are either directly or indirectly relevant to the SG alignment commitment. Of the examples contained in the EU Law Tracker report, all three implement measures that diverge from EU laws either in whole or in part.

The Committee seeks clarification of the extent to which changes to UK/GB-wide law in the following UK Acts have impacted upon the Scottish Government's alignment policy –

- **Animal Welfare (Livestock Exports) Act;**
- **Automated Vehicles Act;**
- **Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Act.**

Degree of Divergence

Dr Whitten notes that assessing the exact degree of divergence vis-à-vis alignment depends on how this is defined and understood.

Where Scots law initiatives have been stated by the SG to uphold the alignment commitment, this tends to be on the level of policy principles and/or direction of travel rather than to be on the level of detailed legal alignment of the kind experienced and practiced in EU Member States and those outside the EU, but which have an agreed legal arrangement for some degree of alignment with EU law.

The Committee asks whether or not the Scottish Government distinguishes between alignment with specific EU legal provisions ('legislative alignment') and alignment with the general or overall policy direction of the EU ('policy alignment')

Yours sincerely,



Clare Adamson MSP
Convener