

# UK Withdrawal from the European Union (Continuity) (Scotland) Bill [As Amended at Stage 2]

## Supplementary Delegated Powers Memorandum

### Introduction

1. This supplementary memorandum has been prepared by the Scottish Government in accordance with Rule 9.7.10 of the Parliament's Standing Orders, to assist the Delegated Powers and Law Reform Committee in its consideration of the UK Withdrawal from the European Union (Continuity) (Scotland) Bill. It describes provisions in the Bill conferring powers to make subordinate legislation which were either introduced or amended at Stage 2. The memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament. It should be read in conjunction with the original Delegated Powers Memorandum published to accompany the Bill as introduced.

### Revised Delegated Powers

#### Sections 3(1) And (2) – Duration of the Section 1(1) Power

**Power Conferred On: The Scottish Ministers**  
**Power Exercisable By: Regulations Made by Scottish  
Statutory Instrument**  
**Parliamentary Procedure: Affirmative**

3. Section 3 provides that the power under section 1(1) is temporary. It provides for the timeframe of the power's expiration, after which it will no longer be available to the Scottish Ministers.

## **Amendment Relating to the Overall Duration, and Possible Extension, of The Section 1(1) Power**

### **Provision**

4. During Stage 1 scrutiny, the Delegated Powers and Law Reform Committee (DPLRC) recommended that an amendment to section 3 should be made to state that it should be for future Scottish Parliaments to agree, through regulations, subject to the affirmative procedure at the start of each parliamentary session, whether the power at section 1(1) should continue to be available. Subject to a maximum duration of 10 years from the Bill receiving Royal Assent.

5. At Stage 2, section 3(1) was amended to provide for the power under section 1(1) to keep devolved law in line with post-implementation period EU law to expire six years after the power comes into force. Section 3(2) was amended to adjust the Scottish Ministers' power to extend this period by regulations. This amendment provided that the power at section 3(2) may be exercised more than once, but the period cannot extend beyond 10 years from the date on which section 1(1) comes into force.

### **Reason for Taking Power**

6. The Scottish Government envisages the power in section 1(1) to be required only on a transitional basis, to avoid the emergence of regulatory lacunae on UK withdrawal, and in anticipation of discrete subject-matter-specific powers being legislated for. It is also considered to be appropriate for use in those sectors where it is intended that Scotland's laws in devolved areas should maintain regulatory alignment with EU law after UK withdrawal.

7. In considering the DPLRC's recommendation, the Scottish Government agreed that the section 1(1) power should be available for a maximum 10 year duration and so a Stage 2 amendment reduced the initial duration period for the power under section 1(1) from 10 years to six years from commencement. This is to ensure that the power is available during the entirety of the 2021 Parliament, regardless of a potential delay of the 2021 election. An expected March 2027 expiry date will afford the incoming 2026 Parliament the opportunity, in its first year, to decide whether the power to align remains necessary whilst also ensuring that the power is available to

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the 2021 Parliament and will therefore provide the measure of stability which was sought by introducing the power.

8. The Stage 2 amendments also provide the 2026 Parliament some degree of flexibility as it is provided with the ability to extend unlimited times up to a maximum 10 year duration. This means it is not faced with a choice, in its first year, of having to renew for the entire time available or not renewing the power at all.

9. These changes reflect the uncertain circumstances in which the power is being brought forward.

## Choice of Procedure

10. The Scottish Government considers that affirmative procedure is appropriate for deciding whether a power should expire or continue to be exercisable. Any further use of the section 1(1) power, if the ability to use it is extended under this section, would continue to be subject to the affirmative or negative procedure.

## Section 10(4) – Power to Specify Matters to, or Circumstances In, Which the Duties in Sections 10(1) and (2) Are Not to Apply

**Power Conferred On: The Scottish Ministers**  
**Power Exercisable By: Regulations Made by Scottish Statutory Instrument**  
**Parliamentary Procedure: Negative**

11. Section 10(4) provided for the power to make regulations specifying further matters or circumstances (in addition to those specified in section 10(3)) in or in relation to which the duties on Ministers, in subsections (1) and (2) of section 10, in respect of the guiding principles on the environment do not to apply.

## Removal of Section 10(4)

12. During its Stage 1 consideration of the Bill, the DPLRC highlighted that while it may be the intention to use the section 10(4) power to legislate for technical matters, the power was not restricted in a way which would limit its use to such matters only.

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13. At Stage 2, an amendment was agreed which deleted section 10(4) in order to remove the power from Ministers to make regulations to make further provision about matters and circumstances to which the duties in subsections (1) and (2) of section 10 do not apply. The amendment also removed section 10(5) which provided the procedure for regulations made under section 10(4).

14. This amendment has the effect that the Scottish Ministers do not have a power to make regulations to make further provision about matters or circumstances to which the duties in sections 10(1) and 10(2) do not apply.

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