



The Scottish Parliament
Pàrlamaid na h-Alba

Constitution, Europe, External Affairs and Culture Committee

Edward Mountain MSP
Convener
Net Zero, Energy and Transport Committee

2 October 2024

Dear Convener

Third EU Law Tracker Report

At our meeting last week, my Committee considered the [third report](#) from Dr Lisa Whitten of the [EU Law Tracker](#), the Executive Summary of which I have attached with this correspondence.

As previously communicated, there is an expectation that subject committees will consider the case studies relevant to their respective remits that are set out in the series of reports as part of their role in scrutinising the Scottish Ministers' policy commitment to align with EU law.

At Section 3, the report outlines four case studies that are likely to be of interest to the Net Zero, Energy and Transport Committee. Your Committee may wish to seek an update from the Scottish Government on the following—

- alignment with the EU Energy Performance of Buildings (EPB) Directive (**pages 38-39**);
- the revocation of the assimilated law version of the Promotion on the use of Energy from Renewable Sources (PUERS) Directive (in the Retained EU Law (Revocation and Reform) (REUL) Act 2023) and on any plans for Scotland to continue to align with EU law in this area (**page 37**);
- alignment with the EU on guidelines for the development of the trans-European transport network (TEN-T) in view of the EU's adoption of a new TEN-T Regulation in June 2024 and the repeal of the assimilated law version of the previous TEN-T Regulation under the REUL Act 2023 (**pages 40-41**); and
- the implications of the EU's Nature Restoration Regulation ((EU) 2024/1991) for the alignment commitment in view of its adoption by the EU in June 2024. (**pages 41-42**).

Yours sincerely

Clare Adamson MSP
Convener

EXECUTIVE SUMMARY

EU Law Tracker Research Purpose

This is the third in a [series of reports](#) commissioned by the Scottish Parliament Constitution, Europe, External Affairs and Culture Committee to support scrutiny by parliamentary committees into the commitment on the part of the Scottish Government (or SG) to align with European Union (EU) law, as appropriate, following and notwithstanding the withdrawal of the United Kingdom (UK) from the EU.

These EU Law Tracker reports – and the detailed EU Law Tracker set out in the Appendix 1 – are designed to serve as a reference tool for parliamentarians, officials, stakeholders, and the wider public, seeking to better understand the SG alignment commitment as well as its effects on law and policy development in Scotland. In this respect, the information and analysis contained in this issue of the EU Law Tracker compliments the Constitution *et al* Committees' recent inquiry into the UK-EU Trade and Cooperation Agreement which [found](#) that: "While the Scottish Government has a policy commitment to align with EU law where appropriate, the impact this has had on businesses, including the extent to which it has facilitated improved trade with the EU, without such agreements with the EU in place, is unclear".

Research Period: This EU Law Tracker documents changes and developments that have taken place between beginning of January 2024 and end of August 2024.

Account of Legislative Changes in this EU Law Tracker

EU Law Changes

- Of the roughly 250 EU acts that, pre-Brexit, were fully or partially in SG competence, 36 have been repealed, but not all of these have been directly replaced.
- According to this analysis approximately 217 secondary EU acts (such as regulations, directives, decisions) are in scope of the SG alignment commitment.
- 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. By definition these tertiary laws make technical or operational provisions for the implementation of the relevant 'parent' act so changes on this level do not tend to alter policy trajectories. On occasion, however, EU tertiary law changes may make changes that result in divergence of technical standards or operational processes that are relevant for Scotland and the SG alignment commitment.
- In the period covered by this EU Law Tracker Report, the EU adopted at least 12 new EU acts that are or may be in scope of the SG alignment commitment.

Scots Law / UK Law Changes

- Neither of the two acts of primary law passed in Scotland during the reporting period were directly relevant to the SG alignment commitment.
- Of the 229 statutory instruments passed for Scotland during the research period, at least 16 were identified by this research to be (directly or indirectly) relevant to the SG alignment commitment; of these, at least 6 make changes that do diverge or may result in divergence from EU laws.
- Examples of new acts of UK-wide (or GB-wide) primary law as well as statutory

instruments passed during the reporting period, featured in this report, implement changes that diverge from EU laws either in whole or in part.

Key Messages from this EU Law Tracker

- **The potential for divergence between Scots law and EU law increases over time as the two legal orders and regulatory regimes continue to develop separately after Brexit.**
- **This report does not document wholesale change in the degree of alignment between Scotland and the EU, but it does contain examples of actual and/or new potential for divergence between the two parties as a result of legislative changes in both the EU and UK.**
- **Assessing the exact degree of divergence vis-à-vis alignment depends on how this is defined and understood.**

- This edition of the EU Law Tracker identifies examples of **legislative divergence** between EU law and Scots law; these result from both EU initiated and UK/Scottish initiated changes.

EU Initiated:

- The adoption of new EU laws that are or may be in scope of the SG alignment commitment.
- The evolution of secondary EU laws (i.e., regulations, directives, decisions) via tertiary EU law (i.e., implementing and delegated acts) that are in scope of the SG alignment commitment.

UK/Scottish Initiated:

- The making of statutory instruments and Scottish statutory instruments that make changes in assimilated laws and which diverge from EU rules.
- The adoption of new acts of primary UK law that make provisions that diverge from those that apply in the EU.

- This edition of the EU Law Tracker also identifies examples of **policy alignment** between EU law and Scots law; these are generally the result of changes initiated in Scotland, including via:

- The adoption of new acts in the Scottish Parliament that provide for 'broad alignment' with the objectives and/or direction of similar or equivalent EU policies.
- The making of Scottish statutory instruments that give effect to standards and/or approaches that are 'shared' with the EU.

- **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.**

- **In response to concerns of the CEEAC Committee regarding transparency of decision-making on the EU alignment policy, the SG committed to increase the volume and detail of the information it was providing to the Scottish Parliament on the matter. This issue of the EU Law Tracker report reiterates the value of the significantly**

extended levels of reporting on the policy to align on the part of the SG and also identifies improvements in the consistency and quality of SG reporting, in particular in regard to Policy Notes accompanying SSIs.

• Notwithstanding the changed political landscapes in both the EU and the UK following recent elections, it is still the case that, across a range of policy areas there is potential for divergence by default if Scotland does not (continue to) actively pursue the same policy objectives as the EU in areas within its devolved competence and therefore potentially in scope of the alignment commitment.

• Initiatives being pursued at a UK-wide or GB-wide level are likely to, at least on occasion, sit in tension with the Scottish Government's commitment to alignment and may, in future, force a choice between aligning with other regions of the UK and aligning with the EU legal acquis albeit without formal recognition by the EU of any such alignment in the case of the latter.

• If achieved, any new UK-wide agreement with the EU on sanitary and phytosanitary (SPS) and veterinary issues or any other area can be expected to make fulfilment of the SG alignment policy easier because (contingent on specifics) any such agreement would very likely involve some degree of alignment between relevant areas of UK law and EU law.

Recommendations for the Constitution *et al* and Subject Committees

- The Constitution *et al* Committee may wish to seek clarity from the Scottish Government on whether or not it distinguishes between alignment with specific EU legal provisions ('legislative alignment') and alignment with the general or overall policy direction of the EU ('policy alignment').

- Where case studies included in this EU Law Tracker report highlight specific examples of actual or potential divergence, Subject Committees may wish to seek an update from the Scottish Government. Such initiatives may include:

- SP Rural Affairs and Islands Committee requesting an update on the SG position and practice as regards alignment with the EU Animal Health Law (Regulation (EU) 2016/429) and its interaction with the Border Target Operating Model **(see pages 39-40 of the [Tracker](#))**
- SP Net Zero, Energy and Transport Committee requesting updates on:
 - The SG position on alignment with the EU Energy Performance of Buildings (EPB) Directive in view of the EU's adoption of a revised EPB Directive in April 2024. **(see pages 38-39)**
 - The SG assessment of the implications of the revocation of the assimilated law version of the Promotion on the use of Energy from Renewable Sources (PUERS) Directive (in the Retained EU Law (Revocation and Reform) (REUL) Act 2023) and on any plans for Scotland to continue to align with EU law in this area. **(see page 37)**
 - The SG position regarding alignment with the EU on guidelines for the development of the trans-European transport network (TEN-T) in view of the EU's adoption of a new TEN-T Regulation in June 2024 and the repeal of the assimilated law version of the previous TEN-T Regulation under the REUL Act 2023. **(see pages 40-41)**
 - The SG assessment of the implications of the EU's Nature Restoration Regulation ((EU) 2024/1991) for the alignment commitment in view of its adoption by the EU in June 2024. **(see pages 41-42)**
- SP Health, Social Care and Sport Committee seeking an update on SG plans to align with the EU's new Blood, Tissues and Cells Regulation ((EU) 2024/1938) in

view of the previously state SG position that Scotland would align with the new act and its adoption by the EU in June 2024. . **(see pages 42-43)**

SP Criminal Justice Committee seeking SG views on the EU's adoption of a new Anti-Trafficking Directive ((EU) 2024/712) in June 2024 and any implications for the alignment commitment. . **(see page 43)**