

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT UK WITHDRAWAL FROM THE EUROPEAN  
UNION (CONTINUITY) (SCOTLAND) ACT 2021  
(CONSEQUENTIAL PROVISIONS AND  
MODIFICATIONS) ORDER 2021

*Tuesday 15 June 2021*

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**The Committee consisted of the following Members:**

*Chair:* †DAME ANGELA EAGLE

- |  |   |
|--|---|
| † Caulfield, Maria ( <i>Lewes</i> ) (Con)                                      | Morris, James ( <i>Lord Commissioner of Her Majesty's Treasury</i> )        |
| † Chamberlain, Wendy ( <i>North East Fife</i> ) (LD)                           | † Murray, Ian ( <i>Edinburgh South</i> ) (Lab)                              |
| † Duguid, David ( <i>Parliamentary Under-Secretary of State for Scotland</i> ) | Osamor, Kate ( <i>Edmonton</i> ) (Lab/Co-op)                                |
| Edwards, Ruth ( <i>Rushcliffe</i> ) (Con)                                      | Rees, Christina ( <i>Neath</i> ) (Lab/Co-op)                                |
| Freer, Mike ( <i>Comptroller of Her Majesty's Household</i> )                  | † Rimmer, Ms Marie ( <i>St Helens South and Whiston</i> ) (Lab)             |
| Harris, Rebecca ( <i>Lord Commissioner of Her Majesty's Treasury</i> )         | Thomson, Richard ( <i>Gordon</i> ) (SNP)                                    |
| † Jones, Mr Marcus ( <i>Vice-Chamberlain of Her Majesty's Household</i> )      | Throup, Maggie ( <i>Lord Commissioner of Her Majesty's Treasury</i> )       |
| McDonnell, John ( <i>Hayes and Harlington</i> ) (Lab)                          | † Tomlinson, Michael ( <i>Lord Commissioner of Her Majesty's Treasury</i> ) |
| † Mann, Scott ( <i>Lord Commissioner of Her Majesty's Treasury</i> )           | Jack Dent, <i>Committee Clerk</i>   |
|  | † <b>attended the Committee</b>   |

## Fourth Delegated Legislation Committee

*Tuesday 15 June 2021*

[DAME ANGELA EAGLE *in the Chair*]

### **Draft UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (Consequential Provisions and Modifications) Order 2021**

9.25 am

**The Parliamentary Under-Secretary of State for Scotland (David Duguid):** I beg to move,

That the Committee has considered the draft UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (Consequential Provisions and Modifications) Order 2021.

It is a pleasure to serve under your chairmanship, Dame Angela, at my first delegated legislation Committee. I hope that everyone is relatively gentle with me.

The draft order was laid before the House on 14 April 2021 and debated in the other place on Tuesday 8 June. I am grateful for the opportunity to discuss the important matter of environmental governance in Scotland.

Scotland's environment, its wild places and its habitats, is world renowned for its beauty and diversity. It is fundamental to the health and quality of life of the people of Scotland and our economy. Today's debate is important to ensure Scotland's high standards of environmental governance are maintained and perhaps exceeded.

The order will implement the establishment of Environmental Standards Scotland, a new environmental governance body for Scotland, which I will subsequently refer to as the ESS. With environmental matters largely devolved to Scotland, the order represents an excellent example of this Government's commitment to strengthening the devolution settlement and delivering for the people of Scotland.

This statutory instrument, known as a Scotland Act Order, is made in consequence of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, which I will subsequently refer to as the continuity Act. Scotland Act Orders are a form of secondary legislation made under the Scotland Act 1998. That Act devolves powers to Scotland, and the orders are used to implement, update or adjust Scotland's devolution settlement.

The order before us today is a section 104 order, which allows for necessary or expedient legislative provision in consequence of an Act of the Scottish Parliament. In this instance, provision is required in consequence of the previously mentioned continuity Act. That Act received Royal Assent on 29 January 2021. As many hon. Members will know, that Act allows Scottish law to continue to keep pace with future EU developments, following the UK's exit from the EU.

The Act also establishes a new system of environmental governance for Scotland, including establishing the aforementioned governance body, the ESS. That governance body, independent of the Scottish Government and

accountable to the Scottish Parliament, is tasked with enforcing compliance with environmental law by Scottish Ministers and devolved public authorities in Scotland. For the purposes of the Act, the "environment" is defined as

"all, or any, of the air, water and land"

and

"includes wild animals and plant life"

and their habitats.

The purpose of today's debate is not to consider the content of the continuity Act, as that has been done by the Scottish Parliament, but to examine the amendments to reserved legislation that the order seeks to update.

The order will make the ESS part of the Scottish devolved Administration. That will provide for its designation as a non-ministerial office. Furthermore, the order amends the House of Commons Disqualification Act 1975 by adding the ESS to the list of bodies whose members are disqualified from being Members of the House of Commons. That is required to ensure the independent basis of the body's work, as without it, members of the ESS could, in theory, stand for election to this place.

The order also ensures that the Lord Advocate cannot sue or be sued in place of the ESS by disapplying the Crown Suits (Scotland) Act 1857 so that it does not apply to the ESS. The order is deemed necessary because without it, and the minor amendments it makes to UK legislation, the ESS could not be confirmed as a body of the Scottish Administration by the Scottish Government. The territorial extent and application of the order is, however, the United Kingdom. Although environmental governance is a matter devolved to Scotland, UK-wide extent and application is required as the order amends reserved legislation.

Up until now, the ESS has been operating on a shadow basis since 1 January 2021. However, the provisions of the continuity Act, which establishes the ESS as a statutory body and provides it with statutory powers and functions, cannot function until the order has been passed. It is necessary for the ESS to have its full range of statutory powers to ensure that there is no gap in environmental governance now that the UK has left the EU.

The ESS will also provide scrutiny of the effectiveness of environmental law, its implementation and its application. It has been established to replace the role previously fulfilled by the European Commission. The ESS will have powers to investigate compliance with, and the effectiveness of, environmental law and environmental standards, either in response to representations or on its own initiative. It will be expected to try to resolve problems by agreement with public authorities, without having recourse to its formal powers where possible.

The legislative amendments under consideration today are required to reserved legislation to give full effect to the ESS and allow it to carry out its functions. It will assume statutory powers and functions once fully vested.

In summary, the instrument provides strong environmental governance for Scotland, facilitating the full implementation of the ESS by adding the body to the Scottish Administration and amending the House of Commons Disqualification Act 1975 to ensure that ESS members cannot become Members of the House of Commons. It will also disapply the Crown Suits

(Scotland) Act 1857 in relation to the ESS, ensuring that the Lord Advocate cannot be sued in place of the ESS.

The instrument has the support of both the UK and the Scottish Governments. The need for an order and its contents have been agreed by officials and Ministers in London and Edinburgh. I must say that it is positive to see Scotland's two Governments working together to strengthen the devolution settlement. For those reasons, I commend the order to the Committee.

9.32 am

**Ian Murray** (Edinburgh South) (Lab): Thank you, Dame Angela—that is something that I have wanted to say publicly for some time. It is great to see you in the Chair. I thank the Minister for his presentation of the order.

The order is about devolving more powers to Scotland post Brexit, so I am very surprised that there are no Scottish National party Members here to celebrate that. It is a great disappointment to me; I thought that they would be here in their throngs congratulating the Minister on what the former Secretary of State, the right hon. Member for Dumfriesshire, Clydesdale and Tweeddale (David Mundell) used to describe as a bonanza of powers going to the Scottish Government.

The Opposition supported the order when it was considered both in the House and in the Scottish Parliament, but I have a number of questions. One of the key things for the ESS is to ensure that the laws that the EU used to impose on the country for the benefit of environmental protection are the minimum standard in the future and not the ceiling under which standards can be reduced. The Minister is right that Scotland has a rich environmental heritage that must be protected and enhanced, and the ESS must ensure that. Of course, we also have COP26 coming up in Glasgow, which will probably be the last opportunity for the planet to be saved when major leaders come together to reach not just agreement and targets, but action points. Would it not be great if the lexicon of environmental and climate change vocabulary included not just Kyoto, Copenhagen and Paris but Glasgow, which became the byword for climate change? We must ensure that.

One of the big questions for the Minister relates to governance. We know what happens in the Scottish context—no one would shy away from saying this publicly—in that the ESS is appointed by Scottish Ministers and funded by the Scottish Government, so how can we ensure that it has proper independence to follow through on the big actions and responsibilities required of it?

When the order was debated in the Scottish Parliament, the Labour Opposition tabled an amendment to give the ESS some teeth so that it could sanction those responsible when environmental protections and standards fail or regulations are thwarted by activities. The SNP and Conservatives came together to vote that amendment down for some reason, so what can the Minister possibly furnish us with as reassurance that the ESS will have some teeth to ensure that it can do its job properly?

The Minister reeled off the statutory instruments enacted under the Scotland Act 1998 Act and the list of laws and regulations that are made as a result, but in a post Brexit environment, we need to get both Governments

not just to work together but to reach a more settled devolution arrangement across the country. In that way, both Governments can then work together for the benefit of the Scottish people and bodies such as the ESS can do the good job that it needs to do to protect Scotland's environment and natural heritage.

9.35 am

**David Duguid:** I will attempt to answer the hon. Gentleman's questions as best as I can.

On COP26, I totally agree that it would be great to have the Glasgow agreement listed along with Copenhagen, Paris and Kyoto. That is very much the intention. It provides a unique opportunity to support relationship building and collaboration between not just the UK Government and the rest of world, but within the UK and its devolved Administrations. It will be very important to collaborate across the UK on the COP objectives and to improve scrutiny of climate change by learning from international best practice. Scotland already has one of the world's most ambitious frameworks for emissions reduction and the ESS mission statement is to

“ensure that Scotland's environmental laws and standards are complied with, and their effectiveness improved—to achieve Scotland's ambitions for the environment and climate change.”

As I said earlier, the ESS's remit relates specifically to the domestic area of Scotland, but in common with every organisation in the UK, it will have something to say about COP26 and the management of climate change in the future.

On governance, the hon. Gentleman asked how we can make sure the independent ESS remains just that, and how it will be held to account. The ESS is a non-ministerial public body, accountable to the Scottish Parliament. After the end of each financial year, it will publish a report on its annual activities and a copy of that will be sent to Scottish Ministers and laid before the Scottish Parliament. As a new body, the ESS must produce a strategy to set out how it will exercise its powers and functions. An interim strategy is under development for release to coincide with the ESS becoming fully vested later this year, and that strategy will be subject to consultation and laid before the Scottish Parliament for approval before its publication. It is expected that the ESS will work hand in hand with the new UK Parliament assigned body, the Office for Environmental Protection. It is expected that they will work in conjunction to ensure that there is not too much divergence within the UK.

The hon. Gentleman asked how the ESS will apply policies that have been developed in Europe to Scotland. Under the terms of the order, the ESS will keep under review developments in international environmental protection legislation, not just according to EU law but best practice around the world. Again, it will work hand in hand with the OEP to deliver that.

I thank hon. Members for their valuable contribution to the debate, and thank you, Dame Angela. By making the ESS part of the Scottish devolved Administration, as a non-ministerial office, the order facilitates the full implementation of Scotland's new environmental governance body. Amending the House of Commons Disqualification Act 1975 will also ensure that the body remains independent and can function effectively to monitor and secure compliance by public authorities in Scotland of environmental law. Although we can pass legislation in this place to ensure that members of the

*[David Duguid]*

ESS cannot become Members of the House, the relevant legislation in Scotland has similar powers to ensure that no member of the ESS can become a Member of the Scottish Parliament. That adds to the body's independence.

I commend the order to the Committee.

*Question put and agreed to.*

9.39 am

*Committee rose.*



