



Law Society  
of Scotland

**SURVEY OF THE POWERS RETURNING FROM THE  
EU THAT INTERSECT WITH THE DEVOLUTION  
SETTLEMENT IN SCOTLAND**



## **CONTENTS**

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<b>INTRODUCTION</b>	<b>3</b>
<b>AGRICULTURE</b>	<b>10</b>
<b>TRANSPORT</b>	<b>24</b>
<b>JUSTICE</b>	<b>28</b>
<b>ENVIRONMENT</b>	<b>60</b>
<b>ENERGY</b>	<b>91</b>
<b>HEALTH</b>	<b>96</b>
<b>EDUCATION</b>	<b>103</b>
<b>MISCELLANEOUS</b>	<b>104</b>
<b>LIST OF ACKNOWLEDGEMENTS</b>	<b>111</b>
<b>ANNEX – FOOD AND FEED LAW ANALYSIS PAPER</b>	<b>113</b>

## **INTRODUCTION**

The UK's exit from the EU is arguably the most significant constitutional development to affect the UK since 1945. Other changes including accession to the European Economic Community in 1972, the development of devolution to Scotland, Northern Ireland and Wales in the 1990s, the adoption of the Human Rights Act in 1998 and the creation of the Supreme Court in 2005 were important constitutional changes most of which affected the lives of many millions of people living across the UK. However the UK's exit from the EU has so many significant aspects including economic, financial, legal, social, and cultural, which will affect many people living in the EU in some ways which are known and understood and in other ways which are currently unpredictable.

### **Development of legislatures in the UK**

The Parliament of the United Kingdom is the product of the Acts of Union of 1706 and 1707. These united the Parliaments of the kingdoms of England (of which Wales was then part) and Scotland into the Parliament of the kingdom of Great Britain. There were then the Acts of Union of 1800 which united the Parliaments of Great Britain and Ireland into the Parliament of the United Kingdom of Great Britain and Ireland. After the creation of the Irish state in 1922, it became the Parliament of the United Kingdom of Great Britain and Northern Ireland. By a series of Acts it has created three devolved legislatures: the Scottish Parliament, the National Assembly for Wales and the Assembly of Northern Ireland. The pattern of devolution (including in Wales from 1 April 2018) is that general legislative competence is devolved subject to the exclusion of specified "reserved matters." Northern Ireland has a further category of "excepted matters" where legislation is competent only with the consent of the Secretary of State.

The United Kingdom is divided into three jurisdictions: England & Wales, Scotland and Northern Ireland. Each part has its own laws, legal jurisdiction and court system. Reflecting the history of the Unions that resulted in today's United Kingdom, for most topics these parts relate to each other in a way similar to and modelled upon the relationship between the institutions of different nation states.

Leaving aside the EU dimension, the law of Scotland consists of the law on reserved matters (for which the UK Parliament retains legislative competence) and the law on everything else (for which the Scottish Parliament has legislative competence). The pattern is broadly similar for Wales and Northern Ireland. As England has no devolved legislatures, equivalent legislation for it can only be made by the Parliament of the United Kingdom.

An Act of the United Kingdom Parliament may be expressed so that it extends to England or Wales or Northern Ireland or Scotland alone, or to any one or more or all four of those constituent nations. As the laws of Ireland were conformed to those of England in 1494 (Poynings Law) and those of Wales in 1535 (The Laws in Wales Act), the shared Common

Law concepts in England & Wales and Northern Ireland mean that the UK Parliament frequently legislates for those two parts separately from Scotland (whose law is historically of Roman/civil/canon law provenance). The expression “UK law” is sometimes used to signify laws that are uniform in all parts of the United Kingdom and, at an international law level, to allocate matters as between nation states. Any other use of that expression is incorrect.

This is the structure into which EU law fits in the constituent nations of the United Kingdom. Of course the EU legal order is a supra national legal order formed by the EU Treaties and the *acquis communautaire*.

The Acts of Union of 1706/7 and 1800 created what is now referred to as the “UK single market”. Since 1 January 1973 this has been a part of the wider European internal market. In so far as the effects of Brexit relate to non-tariff barriers to trade, a question raised by Brexit concerns the management of any future divergence of UK single market regulatory requirements from those of the European single market which is being transposed into UK domestic law as EU retained law under the European Union (Withdrawal) Bill. From a starting point of uniform regulation across the European Economic Area including, pre-Brexit, the United Kingdom, and taking into account the obligations of the UK under any future UK/EU trade agreement, there is a question of how and where decisions would be taken to diverge from EU-compliant requirements. It should be noted that there could be two kinds of divergence from EU compliance. One kind of superseding UK provision in a given sector might merely involve a regulatory relaxation that did not erect a barrier against EU-compliant goods or services. The other might involve a new stricter UK regulatory regime with which EU-compliant goods or services would necessarily be incompatible. This would create a non-tariff barrier against their importation. In either case divergence could reasonably be expected to be preceded by close consultation among all the UK legislatures.

The integrity of the intra-UK single market would of course preclude the erection of internal regulatory barriers within the UK. However, it would not necessarily preclude the retention, in one or more of the UK nations, of EU-compatible regulatory regimes for goods or services originating there - regimes more stringent than those applicable to goods originating elsewhere in the UK or outside the EEA, provided that no attempt was made to apply such a more stringent regime to goods or services originating elsewhere in the UK and compatible with standards approved by the UK Parliament.

### **The European Union (Withdrawal) Bill and devolution**

Clause 11 of the European Union (Withdrawal) Bill proposes a number of changes to the legislative competence of the Scottish Parliament (and the other devolved legislatures) and to the executive competence of Scottish Ministers (and other devolved administrations) in connection with the way in which retained EU law will be applied post exit day.

The Scotland Act 1998 currently requires the Scottish Parliament to legislate in a way that is compatible with EU law. Clause 11 amends the Scotland Act 1998 to define the competence of the Scottish Parliament by reference to retained EU law. The amendments in the bill will replace the current requirement with a provision that means that it is outside the competence of the Scottish Parliament to modify retained EU law in a way which would not have been compatible with EU law immediately before exit. This legislative competence test is subject to any exceptions which may be prescribed by Orders in Council.

These 'exceptions' will introduce conferred powers into the structure of devolution in Scotland. This risks adding additional complexity in ascertaining what exactly the law in Scotland is.

At present, section 29(2)(b) of the Scotland Act 1998 provides that a provision in an Act of the Scottish Parliament (ASP) is "not law" if it is incompatible with EU law. Clause 11 does not simply replace the reference to EU law with a reference to retained EU law so that the Scottish Parliament would be required to legislate in conformity with retained EU law. What it does is to remove the current constraint on the Parliament's competence to legislate in conformity with EU law and to prohibit the Scottish Parliament from modifying or conferring power by delegated legislation to modify retained EU law.

In our view, both repealing the requirement to legislate compatibly with EU law and legislating to prevent the Scottish Parliament from modifying that law are significant changes to the competence of the Parliament. Such changes in our view engage the legislative consent (or Sewel) convention.

The effect of the proposed section 29(4A) is to remove any matter in retained EU law from the Scottish Parliament's legislative competence, even those matters that do not fall within a reserved matter under schedule 5 of the Scotland Act 1998, eg agriculture, fisheries, environmental protection and the other areas where EU law intersects with devolution referred to later in this paper.

There are a number of alternative options in addition to the one in the bill for dealing with the complexities of retained EU law and the competence of the devolved jurisdictions. This is an area of political debate and we offer these options for consideration without endorsing any particular one:

- (a) Adopt the provisions in the bill on a transitional basis only and subject to a specific cut-off date. At the expiry of the transitional period, powers in devolved areas would revert to the devolved legislatures, unless specific alternatives had been put in place. This would allow the UK and Scottish Governments the opportunity to work out what has to be done in light of the UK's future relationship with the EU, but acknowledge that the devolved legislatures will obtain the additional powers within a defined timescale.

- (b) Repeal the EU law constraint leaving EU competences to fall as determined by schedule 5, and any new common frameworks to be established by agreement between the UK Government and the devolved administrations.
- (c) Replace the cross-cutting EU constraint with new alternative cross-cutting constraints, for example to protect the UK single market and/or to comply with international obligations. These might be more or less extensive than the EU law constraint in practice, but would have the benefit of (i) an underpinning principle and (ii) catering for unforeseen cases.
- (d) Repeal the EU law constraint and amend schedule 5 to re-reserve specific competences to the UK level to enable the UK Government to establish common frameworks.

Clause 11 has been the subject of considerable criticism from Parliamentary Committees in the UK Parliament and the Scottish Parliament. We draw attention to:

1. The report of the Public Administration and Constitution Committee of the House of Commons, *Devolution and Exiting the EU and Clause 11 of the European Union (Withdrawal) Bill: Issues for Consideration*<sup>1</sup>
2. The report of the Finance and Constitution Committee of the Scottish Parliament European Union (Withdrawal) bill LCM -interim report<sup>2</sup>
3. The reports of the House of Lords Constitution Committee on the European Union (Withdrawal) bill.<sup>3</sup>

## **EU law and its intersection with devolved matters**

The Cabinet Office published a list of 111 points where EU Law intersects with devolved matters in late 2017. This has been supplemented by the publication of the UK Government's [Frameworks analysis: breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland](#) on 9 March 2018. The Government's analysis focuses on the EU legislation which applies in the devolved areas. In order to add further information to the debate, we offer a survey of the powers in the list, which includes details of the implementing legislation for Scotland and, where appropriate, for the UK (occasionally on a GB basis) and for England and Wales.

There are a number of observations to make on our survey:

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<sup>1</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmpubadm/484/484.pdf>

<sup>2</sup> <https://digitalpublications.parliament.scot/Committees/Report/FCC/2018/1/9/European-Union--Withdrawal--Bill-LCM---Interim-Report#Introduction>

<sup>3</sup> <https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/19/19.pdf>;  
<https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/69/69.pdf>

- The areas highlighted are important, complex and frequently very technical. They comprise highly regulated areas of policy implemented by EU Directives, Regulations and Decisions and transposed by UK Acts and subordinate legislation, Scottish Acts and Scottish subordinate legislation; as well as a number of administrative, non-statutory arrangements.
- Scottish Ministers acting under the European Communities Act 1972 have made subordinate legislation in most of the areas which has been approved by the Scottish Parliament.
- UK Ministers have also made subordinate legislation with the consent of Scottish Ministers in areas which have been subject to a Transfer of Powers Order. These have tended to be in areas of policy where there is a clear interest in a pan-UK legal structure, eg organic products or greenhouse gas emissions.
- As would be expected, when implementing EU law there are a number of occasions where parallel regulations have been passed by each legislature in exactly the same terms.
- There are also occasions where guidance or other administrative arrangements have been issued by the Scottish Government following consultation with the UK Department eg the Animal Health and Welfare Framework.
- There are a number of areas where there is no need for legislation but for greater cooperation, eg in criminal justice matters where the role of the Lord Advocate needs to be taken into account. One or two areas are presumptive, such as the material on the Data Protection Bill or where a Directive will be implemented in the near future.

The provisions of Clause 11 and the list of powers returning from the EU that intersect with devolution have also been the subject of significant discussion between the UK Government and the devolved administrations in the Joint Ministerial Committee (EU negotiations) (JMCEN). The provisions have also been examined by the Public Administration and Constitution Committee of the House of Commons, the Constitution Committee of the House of Lords and the Finance and Constitution Committee of the Scottish Parliament.

When the JMCEN met on 16 October 2017 it issued a communiqué on *Common Frameworks: Definition and Principles*<sup>4</sup> as follows:

1. Common frameworks will be established where they are necessary in order to:

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<sup>4</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/652285/Joint\\_Ministerial\\_Committee\\_communique.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Joint_Ministerial_Committee_communique.pdf)

- enable the functioning of the UK internal market, while acknowledging policy divergence
  - ensure compliance with international obligations
  - ensure the UK can negotiate, enter into and implement new trade agreements and international treaties; enable the management of common resources
  - administer and provide access to justice in cases with a cross-border element and safeguard the security of the UK
2. Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:
- be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent
  - maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules
  - lead to a significant increase in decision-making powers for the devolved administrations
3. Frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK that shares a land frontier with the EU. They will also adhere to the Belfast Agreement.

Our analysis seeks to order the intersection powers into sectoral points to match the ministerial responsibilities of Scottish Ministers. It then analyses each point by setting out the EU law applicable to the policy and any UK law which applies. Finally, it describes the Scottish law which applies in the policy area and which implements the EU Law within the Scottish jurisdiction.

### **The 111 powers and the implementation of EU law**

The list of 111 powers shows the processes by which EU law has been implemented in the UK by the UK and Scottish parliaments since devolution.

- (a) The UK Parliament and Ministers implement EU law in accordance with obligations under the EU treaties and in accordance with the European Communities Act 1972



- (b) The Scottish Parliament and the Scottish Ministers comply with the competence provisions of the Scotland Act 1998 and have implemented EU law according to their statutory obligations
- (c) The 111 intersection powers are mainly implemented by the Scottish Parliament and Scottish Ministers acting within the competencies of the Scotland Act 1998 Section 29 and 57 respectively and in compliance with the European Communities Act 1972. Many of the powers have been implemented by UK Ministers acting on their own or with the agreement of Scottish Ministers and frequently there are non-statutory methods of implementation through administrative means.
- (d) The principles which determine which government implements EU legislation relate to the structure of devolution under the Scotland Act (eg what is not reserved is devolved), the purpose test as applied to the EU legislation (ie does it achieve a reserved objective or a devolved objective?), the effect of the legislation in terms of its impact on a UK wide basis or within the individual jurisdictions of the UK, bearing in mind the devolved arrangements and the practicality of implementing the legislation.

The remainder of this document sets out the detail of the implementation of EU law in Scotland with reference to relevant implementation at UK or GB level, or in England and Wales.

## **AGRICULTURE**

### **1. Agricultural Support**

#### EU Law

Direct Payments Regulation 1307/2013/EU, which establishes direct payments to farmers under Support Schemes within the framework of the Common Agricultural Policy.

[https://ec.europa.eu/agriculture/direct-support\\_en](https://ec.europa.eu/agriculture/direct-support_en)

#### Scottish Law

Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015

Scotland will receive €4.6 billion to implement the Common Agricultural Policy (CAP) in Scotland until 2020. CAP provides funding for Scotland's farmers and landowners, along with a range of other support schemes. €3.7 billion is in direct payments to farmers, with just over €840 million per the Scotland Rural Development Programme (SRDP). The SRDP funds a wide variety of projects across Scotland to help rural communities, protect and enhance the environment, develop rural businesses and support the forestry and farming sectors.

### **2. Agriculture – Fertiliser Regulations**

#### EU Law

Regulation (EC) No 2003/2003 relating to fertilisers consolidates all the EU rules that apply to fertilisers. The Regulation ensures that these technical requirements are implemented throughout the EU. This consolidated version is of documentary value only.

The regulation applies to mineral fertilisers consisting of one or more plant nutrients. Other fertilisers are governed by EU countries' national legislation.

The regulation lists fertiliser types according to their specific characteristics. Once a fertiliser meets this designation it may bear the letters 'EC' which guarantees farmers that the fertilisers contain a minimum nutrient content and are safe to use.

Information, including the manufacturer's details and the fertiliser's characteristics, must appear on packages, labelling and accompanying documents.

#### English Law

The EC Fertilisers (England and Wales) Regulations 2006

## Scottish Law

### [The EC Fertilisers \(Scotland\) Regulations 2006](#)

#### **3. Environmental Quality – Pesticides**

See 4 below

#### **4. Chemicals Regulation (Including Pesticides)**

## EU Law

### [The Sustainable Use of Pesticides Directive 2009/128/EC](#)

The European Commission is responsible for the approval of active substances for use in pesticides in Member States. Approval is given after a rigorous assessment process involving the European Food Safety Authority, Member States and scientific experts.

The Directive includes provisions aimed at reducing risks and impacts on human health and the environment, and to improve controls on distribution and use:

- A [National Action Plan](#)
- compulsory testing of application equipment
- provision of training for and arrangements for the certification of operators, advisors and distributors
- a ban (subject to limited exceptions) on aerial spraying
- provisions to protect water, public spaces and conservation areas
- the minimisation of risks from handling, storage and disposal
- the promotion of low input regimes

## UK Law

The [Food and Environmental Protection Act 1985](#) as amended by [the Pesticides Act 1998](#).

When an active substance is approved by the EU, companies can apply to the regulatory authority in each Member State for permission to place their product on the market. In the UK this is the Chemicals Regulation Division (CRD) of the Health and Safety Executive. The CRD publishes [guidance](#) on the Health and Safety Executive website.

Code of Practice for Using Plant Protection Products in Scotland:

<http://www.gov.scot/resource/doc/161422/0043816.pdf>

The Code of Practice reflects the Scottish Government's policy to reduce the effect of pesticide use on people and on the environment while controlling pests, diseases and weeds.

[The Plant Protection Products \(Sustainable Use\) Regulations 2012](#) are UK regulations which implement Directive 2009/128/EC.

The power of the Secretary of State, as designated Minister, to make Regulations that extend to Scotland remains exercisable by virtue of section 57(1) of the Scotland Act 1998.

## **5. Agriculture – GMO Marketing & Cultivation**

See 6 below

## **6. Genetically Modified Micro-organisms Contained Use**

### EU Law

[Directive 2001/18/EC \(Deliberate Release\)](#)

[Directive \(EU\) 2015/412 \(Deliberate Release-possibility to restrict cultivation of GMOs in Member State's territory\)](#)

[Directive 2009/41/EC \(Contained Use\)](#)

[Regulation 1829/2003 \(Food and Feed\)](#)

[Regulation 1830/2003 \(Traceability and Labelling\)](#)

[Regulation 1946/2003 \(Transboundary Movements\)](#)

Genetically Modified Organisms (GMO) technology is strictly regulated and the EU has had a legal framework since the 1990s.

EU legislation establishes the conditions for the development, use or marketing of a GMO or a food/feed product derived from GMOs. EU legislation on GMOs has two main objectives:

- To protect health and the environment: a GMO or a food product derived from a GMO can only be put on the market in the EU after it has been authorised on the basis of a detailed EU procedure based on a scientific assessment of the risks to health and the environment

- To ensure the free movement of safe and healthy GM products in the EU

GM authorisation in Europe adopts a precautionary, case-by-case approach where the scale of release is related to the level of risk. There are the following levels of authorisation:

- Contained use – This is GM research carried out in a contained environment, under Directive 2009/41/EC
- Research releases - this is the deliberate release to the environment authorised under the Deliberate Release into the Environment of GMOs Directive, 2001/18/EC. These are small scale releases carried out under tight control
- Commercial releases – is the deliberate release to the environment authorised under Part C of the Deliberate Release into the Environment of GMOs Directive, 2001/18/EC, or under the Genetically Modified Food and Feed Regulation, 1829/2003. This type of authorisation covers import and use of a GMO for food or feed and non-food use and it can allow EU-wide commercial scale growing of a GM crop. The Food Standards Agency (FSA) is responsible for food safety issues whilst Defra and the devolved agriculture departments are responsible for assessing risks to the environment. All new crop varieties (GM and non GM) also have to be approved as suitable for agriculture via the National List trials route

The Traceability and Labelling Regulation 1830/2003/EC and Food and Feed Regulation 1830/2003/EC require the labelling of any intentional use of GM ingredients in food and feed. A GMO that has not been approved is not allowed in food and feed for sale in the EU.

## UK Law

### [Environmental Protection Act 1990](#)

### The [Genetically Modified Organisms \(Contained Use\) Regulations 2014](#)

The competent authority responsible for the Regulations consists of the Health and Safety Executive (HSE) and the Secretary of State for the Environment, Food and Rural Affairs (Defra) in England and Wales [www.gov.uk/government/organisations/department-for-environment-food-rural-affairs](http://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs)

In Scotland, the HSE and the Scottish Government are the joint competent authority. The HSE considers the risk to the operator and the Scottish Government considers the risk to the environment from any GMO release.

## Scottish Law

### *Enforcement in Scotland*

In Scotland there are four sets of regulations granting powers to authorised officers for enforcement, and creating penalties for non-compliance. Local authorities are responsible for the enforcement of traceability and labelling requirements and for sampling and testing food and feed for GMOs. The GM Inspectorate and Science and Advice for Scottish Agriculture (SASA) is responsible for ensuring compliance with the regulations governing the deliberate release into the environment of GMOs in Scotland.

[The Genetically Modified Organisms \(Deliberate Release\) \(Scotland\) Regulations 2002](#)

[Genetically Modified Food \(Scotland\) Regulations 2004](#)

[Genetically Modified Organisms \(Traceability and Labelling\) \(Scotland\) Regulations 2004](#)

[Genetically Modified Organisms \(Transboundary Movements\) \(Scotland\) Regulations 2005](#)

## **7. Agriculture – Organic Farming**

### EU Law

The [Council Regulation](#) 834/2007/EC sets out the principles, aims and overarching rules of organic production and defines how organic products are to be labelled.

The regulation has the following aims:

- sustainable cultivation systems
- a variety of high-quality products
- greater emphasis on environmental protection
- more attention to biodiversity
- higher standards of animal protection
- consumer confidence
- protecting consumer interests

Synthetic resources may be permissible if there are no suitable alternatives. Such products, which must be scrutinised by the Commission and EU countries before authorisation, are listed in the annexes to the [implementing regulation](#) 889/2008/EC.

## *Labelling organic foods*

Foods can be labelled "organic" if at least 95% of the agricultural ingredients meet the necessary standards. In non-organic foods, any ingredients which meet organic standards can be listed as organic.

Organic production outlaws GMOs. However, the [regulation on genetically modified food and feed](#) sets a threshold (0.9%) under which a product's GMO content does not have to be indicated. Products with GMO content below this threshold can be labelled organic.

Since 1 July 2010, EU producers of organic food have been required to use the EU organic logo.

### UK Law

#### The [Organic Products Regulations 2009](#)

The power of the Secretary of State, as a designated Minister, to make regulations which extend to Scotland, Wales and Northern Ireland remains exercisable by virtue of section 57(1) of the Scotland Act [1998 \(c. 46\)](#); article 3(4) of the European Communities (Designation) (No. 3) Order 1999 ([S.I. 1999/2788](#)), and article 3(2) of the European Communities (Designation) (No. 3) Order 2000 ([S.I. 2000/2812](#)).

## **8. Agriculture – Zootech**

### EU Law

[https://ec.europa.eu/food/animals/zootechnics/legislation\\_en](https://ec.europa.eu/food/animals/zootechnics/legislation_en)

- Decision 2007/371/EC as regards herd books for animals of the bovine species
- Decision 2006/427/EC laying down performance monitoring methods and methods for assessing cattle's genetic value for pure-bred breeding animals of the bovine species
- Decision 2005/379/EC on pedigree certificates and particulars for pure-bred breeding animals of the bovine species, their semen, ova and embryos
- Decision 2005/375/EC on entering male sheep and goats in an annex to the flock book
- Directive 94/28/EC as amended by Directive 2008/73/EC on third country imports, which also requires Member States to publish up to date lists of approved breed societies and associations on the internet

## English Law

The [Zootechnical Standards \(England\) Regulations 2012](#)

<https://www.gov.uk/government/publications/lists-of-recognised-animal-breeding-organisations>

## Scottish Law

The [Zootechnical Standards Regulations 1992](#)

The [Zootechnical Standards Amendment \(Scotland\) Regulations 2007](#)

### **9. Animal Health and Traceability**

See 10 below

### **10. Animal Welfare**

## EU Law

The [Regulation on Transmissible Animal Diseases, the EU Animal Health Law](#) provides:

- Simpler rules to enable authorities to focus on preventing and eradicating disease
- Clearer responsibilities for farmers, vets and others dealing with animals
- Better surveillance of pathogens, electronic identification and registration of animals
- Earlier detection and control of animal diseases to reduce animal epidemics
- More flexibility to adjust rules to local circumstances

The Animal Health Law strengthens the enforcement of health and safety standards for the agri-food chain and is also a key output of the [Animal Health Strategy 2007-2013](#) "[Prevention is better than cure](#)".

Several delegated and implementing acts will be adopted by the EU until April 2019 to make the new rules applicable.

[Farmed Animals – Council Directive 98/58/EC concerning the protection of animals kept for farming purposes](#)



[Regulation 1/2005 on the Protection of Animals during Transport and related operations](#) sets out minimum standards for the welfare of animals during transport. The Regulation applies to the transport of all live vertebrate animals for the purposes of economic activity, ie a business or trade.

### English Law

The [Animal Welfare Act 2006](#) (AWA) contains the general laws relating to animal welfare. It is an offence to cause unnecessary suffering to any animal. The AWA contains a Duty of Care to animals - anyone responsible for an animal must take reasonable steps to make sure the animal's needs are met.

The welfare of farmed animals is additionally protected by [The Welfare of Farmed Animals \(England\) Regulations 2007](#), which are made under the AWA.

[The Welfare of Animals at Markets Order 1990](#) (WAMO) covers treatment of animals in markets to ensure they are not caused injury or unnecessary suffering. The order sets out arrangements for penning, food and water and the care of young animals. Responsibility for enforcing WAMO rests with local councils.

The [Welfare of Animals \(Transport\) \(England\) Order 2006](#)

The welfare of farmed animals is additionally protected by the Welfare of Farmed Animals (England) Regulations 2007, which are made under the AWA.

[Welfare of Farmed Animals \(England\) Regulations 2007](#)

[Welfare of Farmed Animals \(England\) \(Amendment\) Regulations 2010](#)

These regulations implement EU directives on the welfare of calves, pigs, laying hens, conventionally reared meat chickens and a general welfare framework directive, which sets down minimum standards for the protection of all farmed livestock.

The regulations cover all farmed animals. Schedule 1 contains requirements for inspections, record keeping, freedom of movement, buildings, equipment and the feeding and watering of animals. Guidance has been prepared to accompany the regulations.

### Scottish Law

[The Animal Health and Welfare \(Scotland\) Act 2006](#)

[The Welfare of Farmed Animals \(Scotland\) Regulations 2010](#)

## [The Welfare of Animals \(Transport\) \(Scotland\) Regulations 2006](#)

The functions conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

<http://www.gov.scot/Topics/farmingrural/Agriculture/animal-welfare/policies/Legislation>

<http://www.gov.scot/Resource/0051/00512255.pdf>

The Animal Health and Welfare Framework has been introduced to recognise the importance of central and local government working together. It is a partnership between the Scottish Government, the Convention of Scottish Local Authorities (COSLA), the Society of Chief Officers of Trading Standards in Scotland (SCOTSS), the Society of the Chief Officers of Environmental Health in Scotland (SOCOEHS) and the Animal and Plant Health Agency (APHA). The Framework also helps to address the requirements of Regulation 882/2004/EC on Official Feed and Food Controls, in ensuring verification of compliance with animal health and welfare rules. This regulation aims to improve the consistency and effectiveness of official controls within Member States and across the EC.

## [The Food Hygiene \(Scotland\) Regulations 2006](#)

## [The Meat \(Official Controls Charges\) \(Scotland\) Regulations 2009](#)

## [The Animal By-Products \(Enforcement\) \(Scotland\) Regulations 2013](#)

### **11. Fisheries Management & Support**

#### EU Law

Article 3(1) (d) TFEU provides that the EU has “exclusive competence” in the “conservation of marine biological resources under the Common Fisheries Policy” (CFP). The CFP is a set of rules for managing European fishing fleets and for conserving fish stocks. It gives all European fishing fleets equal access to EU waters and fishing grounds.

EU countries have taken action to ensure the European fishing industry is sustainable and does not threaten the fish population size and productivity over the long term.

The CFP was first introduced in the 1970s and went through successive updates, the most [recent](#) of which took effect on 1 January 2014.

The EU maintains that CFP aims to ensure that fishing and aquaculture are environmentally, economically and socially sustainable and that they provide a source of healthy food for EU citizens. Its goal is to foster a dynamic fishing industry and ensure a fair standard of living for fishing communities.

The current policy stipulates that between 2015 and 2020 catch limits should be set that are sustainable and maintain fish stocks in the long term.

The [reform](#) also changed the way in which the CFP is managed, giving EU countries greater control at national and regional level.

The CFP has 4 main policy areas detailed in these links: Fisheries management, International policy, Market and trade policy and Funding of the policy

The CFP also includes rules on [aquaculture](#) and [stakeholder involvement](#)

[The new Common Fisheries Policy: sustainability in depth](#)

[The international dimension of the EU Common Fisheries Policy](#)

[The European Maritime and Fisheries Fund 2014-2020](#)

[Regulation \(EU\) No 1380/2013 on the Common Fisheries Policy](#)

### Scottish Law

The Scotland Act 1998 schedule 5 paragraph C6 provides that the regulation of sea fishing outside the Scottish Zone is reserved to the UK. Therefore the Scottish Parliament has legislative competence over sea fishing within the Scottish zone, subject to the EU competence.

Aquaculture and Fisheries (Scotland) Acts [2007](#) and [2013](#)

## **12. Food and Feed Law**

### EU Law

See the extensive EU law in this area in the Food and Feed Guide in the section on Scottish Law and in the Annex.

### UK Law (exc. Scotland)

Feed and food safety and standards are devolved in the UK. The Food Standards Agency (FSA) has responsibility for feed and food safety law in England, Wales and Northern Ireland. Following changes in 2010, FSA responsibilities for food law across England, Wales and Northern Ireland are no longer harmonised.

In England, Defra is responsible for food labelling, other than for matters of food safety such as 'Use By' dates and allergens labelling. The Department of Health has central government responsibility for nutrition-related food legislation in England.

In Wales, the FSA retains responsibility for general food labelling. The Welsh Government is responsible for nutrition related to food legislation.

In Northern Ireland, the FSA retains responsibility for general food labelling and nutrition related to food legislation in Northern Ireland.

*Food Standards Agency Food and Feed Law Guide*

[https://www.food.gov.uk/sites/default/files/food\\_feed\\_law\\_guide\\_dec2016.pdf](https://www.food.gov.uk/sites/default/files/food_feed_law_guide_dec2016.pdf)

### Scottish Law

Food Standards Scotland (FSS) was established 1 April 2015 as the national food body for Scotland, with responsibility for central Government functions previously carried out by the FSA in Scotland. The FSS has published a Food and Feed Law Guide which sets out the EU Law and Scottish implementing regulations. The Guide can be found at:

[http://www.foodstandards.gov.scot/downloads/Scottish\\_Food\\_and\\_Feed\\_Law\\_Guide\\_-\\_August\\_2017\\_1.pdf](http://www.foodstandards.gov.scot/downloads/Scottish_Food_and_Feed_Law_Guide_-_August_2017_1.pdf)

The Annex to this paper contains a detailed list of the legislation involved in Scottish Food and Feed Law.

## **13. Food Compositional Standards**

### EU Law

[Regulation 1169/2011/EU](#) on the provision of food information to consumers

### English Law

The [Food for Specific Groups \(Information and Compositional Requirements\) \(England\) \(Amendment\) Regulations 2017](#)

### Scottish Law

[The Food Information \(Scotland\) Regulations 2014](#)

## **14. Food Geographical Indications (Protected Food Names)**

### EU Law

[https://ec.europa.eu/agriculture/quality/schemes\\_en](https://ec.europa.eu/agriculture/quality/schemes_en)

### UK Law

<https://www.gov.uk/guidance/eu-protected-food-names-how-to-register-food-or-drink-products#protection-you-can-apply-for>

### Scottish Policy

<http://www.gov.scot/Resource/Doc/198505/0090788.pdf> - Joint application through DEFRA

## **15. Food Labelling**

### EU Law

[Regulation 1169/2011/EU on the provision of food information to consumers, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011R1169](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011R1169)

### English Law

#### The Food Information Regulations 2014

<http://www.legislation.gov.uk/uksi/2014/1855/contents/made>

### Scottish Law

#### The Food Information (Scotland) Regulations 2014

<https://www.legislation.gov.uk/ssi/2014/312/note/made> UK Policy

### UK Policy

<http://www.foodstandards.gov.scot/publications-and-research/guide-to-creating-a-front-of-pack-nutrition-label-for-pre-packed-products-s> - (joint UK and devolved guidance)

## **16. Forestry - Domestic**

### EU Policy

Forest competences in the EU lie with Member States following clearly defined ownership rights and national and regional laws and regulations. Although the Treaties for the EU

make no provision for a common forest policy, there are EU measures supporting forest-related activities, coordinated with Member States through the [Standing Forestry Committee](#). See the EU Forest Strategy: [https://ec.europa.eu/agriculture/forest/strategy\\_en](https://ec.europa.eu/agriculture/forest/strategy_en)

#### Scottish Law

<http://scotland.forestry.gov.uk/supporting/grants-and-regulations>

Forestry and Land Management (Scotland) Bill:

<http://www.parliament.scot/parliamentarybusiness/Bills/104491.aspx>

### **17. Nutrition Health Claims, Composition and Labelling**

#### EU Law

[Regulation 1924/2006/EC on nutrition and health claims made on foods](#)

[Commission Regulation 432/2012/EU on permitted health claims](#)

[Regulation \(EU\) No. 1169/2011 on the provision of food information to consumers](#)

[Regulation 1047/2012/EU amending Regulation 1924/2006/EC with regard to the list of nutrition claims:](#)

#### Scottish Policy

[http://www.foodstandards.gov.scot/downloads/Nutrition\\_and\\_health\\_claims\\_guidance\\_November\\_2011.pdf](http://www.foodstandards.gov.scot/downloads/Nutrition_and_health_claims_guidance_November_2011.pdf)

### **18. Plant Health, Seeds and Propagating Material**

#### EU Law

- [EU marketing requirements](#), including rules for specific seeds
- Directives related to [Conservation Varieties](#)
- [Lists of implementing measures](#) related to marketing of specific seeds
- [Review of EU legislation](#) on the marketing of seed and plant propagating material

#### English Law

[The Plant Health \(England\) Order 2005](#)

Protecting Plant Health: A Plant Biosecurity Strategy for Great Britain:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/307355/pb14\\_168-plant-health-strategy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307355/pb14_168-plant-health-strategy.pdf)

## Scottish Law

### [The Plant Health \(Scotland\) Order 2005](#)

<http://www.gov.scot/Topics/farmingrural/Agriculture/plant/PlantHealth/PolicyAndLegislation>

## **19. Good Laboratory Practice**

### EU Law

[2004/9/EC](#) – inspection and verification of Good Laboratory Practice GLP (recodified)

[2004/10/EC](#) – harmonisation of laws, regulations and administrative provisions relating to the application of GLP (re-codified)

### UK Law

Any test facility which conducts regulatory studies must comply with GLP regulations when carrying out safety tests on:

- pharmaceuticals
- agrochemicals
- veterinary medicines
- industrial chemicals
- cosmetics
- additives for human food and animal feed
- biocides

The test facility must adhere to the UK GLP compliance monitoring programme, run by the UK GLP Monitoring Authority (UK GLPMA).

[Statutory Instrument 1999 No. 3106: The Good Laboratory Practice Regulations](#)

[Statutory Instrument 2004 No. 994: The Good Laboratory Practice \(Codification Amendments etc.\) Regulations](#)

Measures relating to good laboratory practice are not a reserved matter under the Scotland Act 1998 (c. 46). Therefore, as regards Scotland, see section 57(1) of the 1998 Act which provides that despite the transfer to the Scottish Ministers by virtue of section 53 of that Act of functions in relation to observing and implementing Community law, any function of a Minister of the Crown in relation to any matter (including, therefore, in relation to measures relating to good laboratory practice) shall continue to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

## TRANSPORT

### **20. Aviation Noise Management at Airports**

#### EU Law

[https://ec.europa.eu/transport/modes/air/environment/aircraft\\_noise\\_en](https://ec.europa.eu/transport/modes/air/environment/aircraft_noise_en)

Directive 2002/30/EC, which was replaced by Regulation 598/2014/EC <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014R0598> on the introduction of noise-related operating restrictions at Community airports. This Directive is also known as the Environmental Noise Directive (END). The Directive set out a process that must be followed should any action to counter noise pollution be contemplated.

Regulation 598/2014 on the procedures concerning the introduction of noise-related operating restrictions applies to air carriers noise. These restrictions affect air carriers from non-EU countries. The Regulation is compliant with international principles on noise management agreed by the International Civil Aviation Organisation.

#### UK Law

END was implemented in the UK by the Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003: <http://www.legislation.gov.uk/ukxi/2003/1742/contents/made>

The Secretary of State for Transport is responsible for policy generally on the control of civil aircraft noise under section 78 of the Civil Aviation Act 1982, as amended. These powers are devolved in Scotland to Scottish Ministers. Under section 78(3) the relevant authority may “specify the maximum number of occasions on which aircraft of descriptions so specified may be permitted to take off or land” at airports so designated under section 80 of the same Act. This applies only to 3 designated English airports.

#### English Law

[The Environmental Noise \(England\) Regulations 2006](#)

#### Scottish Law

The [Environmental Noise \(Scotland\) Regulations 2006](#) implement END. The regulations came into force on 5 October 2006 and apply to environmental noise to which humans are exposed. The regulations apply to noise from road, railway and airport sources.

[The Environmental Protection Act 1990](#)



Since April 1st 1996, by virtue of the Environment Act 1995, the Environmental Protection Act 1990 (the 1990 Act) has given Scottish Local Authorities wide-ranging powers to tackle noise nuisance. Section 79 of the 1990 Act imposes a duty on local authorities to take reasonable steps to investigate complaints of nuisance and to inspect their area from time to time to detect statutory noise nuisances. Where a local authority is satisfied that the noise from any premises is prejudicial to health or constitutes a nuisance, it must serve an abatement notice on the person responsible for the noise. This notice can require the abatement of the nuisance or prohibit or restrict its occurrence or recurrence, and may also require the execution of such works and the taking of such steps as are necessary for this purpose. Local Authorities can exercise these controls at any time if satisfied there is a statutory nuisance.

## ***21. Harbours***

### EU Law

The Commission has an initiative aimed at improving ports and transport connections at the [329 key seaports](#) which belong to the trans-European transport network.

[Regulation \(EU\) 2017/352](#) establishes a framework for the provision of port services.

The Regulation provides for regulated competition to protect port operators against uncertainties and to create public and private investment. It defines the conditions for the provision of port services such as the minimum requirements that can be imposed for safety or environmental purposes, when the number of operators can be limited, and the procedure for the selection of operators. The Regulation has common rules on the transparency of public funding and of charging for the use of ports, consultation of port users, a complaints mechanism and requirement for the training of port employees.

See also <http://www.harbourmaster.org/ehmc-eupolicy.php>

### UK Law

[The Harbours Acts 1964](#)

[Ports Act 1991](#)

### Scottish Law

<https://www.transport.gov.scot/transport-network/ports-and-harbours>  
[Harbours \(Scotland\) Act 2015](#)

## **22. Rail Franchising Rules**

See below

## **23. Rail Markets and Operator Licensing**

### EU Law

The European Commission has a package of measures for competition in international passenger services in the EU:

- Directive [2007/57/EC](#) on interoperability of the rail system
- Directive [2007/58/EC](#) on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure
- Directive [2012/34/EC](#) was finalised in November 2012, and has been implemented by the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016
- [Directive \(EU\) 2016/2370](#) amending Directive 2012/34/EU as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure
- [Regulation \(EU\) 2016/2337](#) of the European Parliament and of the Council of 14 December 2016 repealing Regulation (EEC) No 1192/69 of the Council on common rules for the normalisation of the accounts of railway undertakings
- [Regulation \(EU\) 2016/2338](#) amending Regulation (EC) No 1310/2007 concerning the opening of the market for domestic passenger services by rail

### UK Law

Office of Rail and Road (ORR) <http://orr.gov.uk/rail>

[The Railways Infrastructure \(Access and Management\) \(Amendment\) Regulations 2009](#)  
Implemented Directive 2007/58/EC.

ORR has published [guidance on the assessment of new international passenger services](#) which sets out how it would apply the 'principal purpose' and 'economic equilibrium' tests as provided for in the Regulations.

<http://orr.gov.uk/about-orr/what-we-do/the-law-and-our-duties/eu-law>

Depending on the identity of the Bidder, the award of a franchise may constitute a relevant merger under the Enterprise Act 2002 ie one over which the Competition and Markets Authority would have jurisdiction , or a concentration with an EU dimension under Regulation 139/2004/EU which would be required to be notified to the European Commission.

## Scottish Law

The Scottish Government has devolved powers for rail under the Railways Act 2005, for the strategic direction and funding priorities for the railway in Scotland. Transport Scotland has a Memorandum of Understanding (MoU) with the UK Department for Transport. The MoU covers the devolved responsibilities for rail in Scotland and ensures that the Scottish Government can continue to influence Network Rail as it relates to Scotland.

The Railways Act 1993 ("the 1993 Act") provides that those bodies and persons listed in section 25(1)(a) to 25(1)(f) (public sector operators) shall not be a franchisee. Those bodies and persons listed cannot therefore bid for, or operate, passenger rail services under a franchise agreement in Great Britain. Subsection 57(3) of the Scotland Act 2016 will lift this prohibition in relation to Scottish franchise agreements. It will allow a public sector operator to be a franchisee in relation to a franchise agreement for the provision of Scotland-only services and such other cross-border services that are designated by the Scottish Ministers to be provided under that same franchise agreement. Subsection (4) of the section provides that the disapplication of section 25(1) of the 1993 Act in relation to Scottish franchise agreements will apply only in relation to an invitation to tender issued by the Scottish Ministers under powers set out in section 26(2) of the 1993 Act on or after subsection (3) comes into force.

## JUSTICE

### ***24. Civil Judicial Cooperation – jurisdiction and recognition and enforcement of judgments in civil and commercial matters (including Brussels I rules and related EU conventions)***

Within the EU, there is an almost complete legal framework for choice of law, jurisdiction and recognition and enforcement of judgments in civil and commercial matters. This framework aims to facilitate the recognition and enforcement of judgments reached by Member States' courts; to achieve free movement of judgments; and rules for jurisdiction and choice of law; and to provide common rules of evidence and service of documents. All of these are important in cross-border matters, and will continue to be relevant after the UK has left the EU.

The UK and EU will need to agree some form of continued participation, or develop alternative frameworks for judicial cooperation across Europe. One option would be for the UK to seek to include the Brussels I rules on recognition and enforcement of judgments in civil and commercial matters in the new relationship with the EU. This could also apply to the Service of Documents: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l16031> and the Taking of Evidence Regulations.

A possible model for this type of new relationship could be the mechanism established for Denmark in the Area of Freedom, Security and Justice to get access to the Brussels I Regulation framework. The Danish Protocol extends the application of the instruments to Denmark, but creates effects only under international law which do not form part of the EU Acquis.

Another option that the UK could consider is to join the Lugano Convention. The Lugano Convention provides for a system of recognition and enforcement of judgments in civil and commercial matters which has many parallels in the Brussels I Regulation. It applies between the EU and EFTA, and is open to the EFTA states and any other states that are invited by the participating states to join it.

Key differences between the Lugano Convention and Brussels I Regulation include:

Priority to exclusive choice of agreements — under the Lugano Convention, if there are parallel proceedings in different member states, no other court can act until the first court seized has determined whether it has jurisdiction. The Brussels I rules allow for a court second seized to continue with the case where the parties have made an exclusive choice of court agreement.

Ease of recognition and enforcement of judgments - The Brussels I rules help to make the recognition and enforcement of judgments almost automatic, as if they were judgments from

the courts of the member state. This increases the speed and certainty of judgments. Under the Lugano Convention, an exequatur is required, meaning there is a need to undertake a recognition process at the courts of the member state seeking recognition and enforcement. However, the exequatur under the Lugano rules is largely symbolic, and this is not a significant difference in practice.

The Hague Conference on Private International Law is a global organisation for cross-border cooperation in civil and commercial matters. The Conference has negotiated several agreements on the recognition and enforcement of judgments.

There is a convention on the recognition and enforcement of civil and commercial judgments from 1971; however, this convention has only been ratified by four states: Albania, Cyprus, the Netherlands and Portugal. More significant is the Choice of Court Agreements Convention 2005, which covers civil and commercial matters. This Convention has been ratified by the EU, Mexico and Singapore. The UK is therefore already a party to this convention as an EU member state and it should make efforts to accede to the convention, as seamlessly as possible, after exit day.

This Convention is important to commercial adjudication, as it provides for a recognition and enforcement of judgments where there is a choice of court agreement, but it does not replace the Brussels I Regulation. Both the Brussels I Regulation and the Lugano Convention apply to all judgments in civil and commercial matters, including for example where there is a consumer, employment or insurance dispute. The Hague Choice of Court Agreements Convention applies only where there is a choice of court agreement between the parties.

The Hague Conference is currently working on a new global Judgments Convention. The Judgments Convention aims to provide recognition and enforcement of judgments in civil and commercial matters. However, unlike the Brussels I Regulation and the Lugano Convention, it does not aim to provide for recognition and enforcement of judgments in consumer and employment contracts. The new agreement is almost ready and meetings are planned in 2018 and a Diplomatic Session is likely in 2019.

The Hague Conference has previously adopted conventions on service of documents and taking of evidence and the UK is already a party to these conventions. Generally the conventions have been agreed by EU Member States: the Service of Documents Convention has been ratified by all EU member states except Austria, and the Taking of Evidence Convention has been ratified by all except Austria, Belgium and Ireland. Furthermore, they are currently being applied where non-EU states have ratified them. Even though these conventions are more cumbersome or slower than the EU Regulations, they do provide a global setting for the service of documents and the taking of evidence in civil and commercial matters.

Whatever solutions are chosen, they will have to take into account the distinct courts and legal system in Scotland. Stakeholders such as the Lord President of the Court of Session, the Lord Advocate, the Scottish Courts and Tribunals Service and the legal profession require to be consulted in connection with any proposals for the Withdrawal Agreement and the ongoing Partnership with the EU. The UK government has published its vision for the future partnership in civil justice matters in its paper: *Providing a cross-border civil judicial cooperation framework: a future partnership paper* <https://www.gov.uk/government/publications/providing-a-cross-border-civil-judicial-cooperation-framework-a-future-partnership-paper>. We have responded to this paper and believe that the UK legal professions should be consulted further in the upcoming negotiations<sup>5</sup>.

***25. Civil Judicial Cooperation – jurisdiction and recognition & enforcement of judgments instruments in family law (including Brussels II a, Maintenance and civil protection orders)***

See below

***26. Civil Judicial Cooperation - service of documents and taking of evidence***

See below

***27. Practical Cooperation in Law Enforcement – European Judicial Network***

EU Law

Article 81(1) TFEU; Protocols 21 and 22 to the Treaty of Lisbon

Policy in the European area of justice is that individuals should not be prevented or discouraged from exercising their rights due to incompatibility or complexity of legal or administrative systems. The law is complex and covers civil and procedural law, which until recently was an exclusive competence of the Member States.

Private international law deals with the cross-border issues relating to relationships between private persons, such as family and property law and the law of contract. Measures relating to family law with cross-border implications have to be adopted by the Council unanimously (Article 81(3)). Cross-border justice is based on the principles of mutual recognition and judicial cooperation between national courts.

The legal structure has the following objectives:

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<sup>5</sup> <https://www.lawscot.org.uk/media/359749/190218-consultation-response-providing-cross-border-civil-judicial-cooperation-framework.pdf>

- legal certainty in cross-border relations governed by civil law
- easy and effective access to civil justice in order to settle cross-border disputes
- cross-border cooperation between national civil courts
- the training of the judiciary and judicial staff

Judicial cooperation in civil matters was officially included within the EU's sphere of activity by the Treaty of Maastricht.

The Hague Programme underlined the implementation of mutual recognition and extended it to areas such as family, property, successions and wills. It was followed by the Stockholm Programme, which was the roadmap for the period from 2010 to 2014.

The Treaty of Lisbon made all measures in the field of judicial cooperation in civil matters subject to the ordinary legislative procedure. However, family law remains subject to a special legislative procedure: the Council acts unanimously after consulting Parliament.

Denmark, Ireland and the United Kingdom have opt-outs from Title V of Part Three of the TFEU (area of freedom, security and justice) under Protocols 21 and 22 to the Treaty of Lisbon. Ireland and the United Kingdom have a flexible opt-out from legislation adopted in this area, which allows them to opt in or out of legislation and legislative initiatives on a case-by-case basis (Protocol 21 of the Treaty of Lisbon).

Determination of the competent court, recognition and enforcement of judgments and of decisions in extrajudicial cases

The main provision is Regulation 44/2001/EC ('Brussels I Regulation') on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. This seeks to harmonise the rules of conflict of jurisdiction within the Member States and to simplify and expedite the recognition and enforcement of decisions in civil and commercial matters. The Brussels I Regulation is supplemented by Regulation 2201/2003/EC ('Brussels II a Regulation') concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. To facilitate international recovery of maintenance obligations, the Council adopted Regulation 4/2009/EC. This regulation provides uniform rules on jurisdiction, applicable law, recognition and enforcement, as well as on cooperation between national authorities.

The Council adopted Regulation 1346/2000/EC on insolvency proceedings, which sets out uniform rules on jurisdiction, recognition and applicable law in this area.

Regulation 805/2004/EC created a European Enforcement Order for uncontested claims.

## Harmonisation of conflict of law rules

The EU has adopted a number of laws to deal with private international law issues:

- a) Regulation 593/2008/EC on the law applicable to contractual obligations (Rome I Regulation)
- b) Regulation 864/2007/EC on the law applicable to non-contractual obligations (Rome II Regulation) has enabled the creation of a uniform set of conflict of law rules for non-contractual obligations in civil and commercial matters
- c) Council Regulation 4/2009/EC on jurisdiction, applicable law, recognition and enforcement of decisions, and cooperation in matters relating to maintenance obligations

### *Facilitating access to justice*

The EU has introduced common procedural rules for simplified and accelerated cross-border litigation on small claims and cross-border recovery of uncontested pecuniary claims. These are found in Regulation 861/2007/EC establishing a European Small Claims Procedure and Regulation 1896/2006/EC creating a European Order for Payment Procedure. These procedures are optional and additional to the procedures provided for by national law.

Directive 2008/52/EC establishes common rules on certain aspects of mediation in civil and commercial matters in order to increase legal certainty and thereby encourage use of this method of dispute resolution.

### *Instruments for cross-border cooperation between national civil courts*

Article 81(2)(a) and (c) TFEU also provides for measures about mutual recognition and enforcement of judgments and the compatibility of national rules with regard to conflict of laws and of jurisdiction. Regulation 1393/2007/EC is intended to simplify and speed up the transmission of judicial and extrajudicial documents and increase the efficiency and speed of judicial procedures. Regulation 1206/2001/EC simplifies cooperation between courts in the various Member States in the taking of evidence in civil or commercial matters.

European Judicial Network in civil and commercial matters was established by Decision 2001/470/EC to improve judicial cooperation between the Member States and promote access to justice in cross-border disputes. The network is composed of contact points designated by the Member States including the central authorities, liaison magistrates and authorities with responsibility for judicial cooperation. Decision



568/2009/EC is aimed at enhancing the role of the European Judicial Network in civil and commercial matters.

The European e-Justice Strategy includes the European e-Justice portal, which provides access by citizens and enterprises to information about justice in Europe; the interconnection of criminal records at European level; better use of videoconferencing during judicial proceedings and innovative translation tools such as automated translation, dynamic online forms and a European database of legal translators and interpreters.

### EU law applying in the UK

The main instruments which have been agreed, and in which the UK participates, are set out below.

#### Civil

The Brussels I Recast Regulation – Brussels I a – 1215/2012/EU covers jurisdiction and recognition and enforcement of judgments and applies between EU Member States.

Rome I Regulation (593/2008) covers applicable law in contracts.

Rome II Regulation (864/2007) covers applicable law in non-contractual obligations.

Insolvency Regulation (1346/2000 and 2015/848) covers jurisdictional rules and applicable law and recognition of insolvency proceedings in cross-border insolvencies.

The Small Claims (861/2007 revised by 2015/2421), Enforcement Order (805/2004) and order for payment (1896/2006) Regulations facilitate means for obtaining decisions on claims that can be enforced throughout the EU.

#### Family instruments

The Brussels II a Regulation (2201/2003) covers jurisdictional rules in matrimonial and parental responsibility matters and the recognition and enforcement of judgments.

The Maintenance Regulation (4/2009) covers rules for determining which court has jurisdiction for, and the recognition and enforcement of, maintenance decisions.

Regulation on Protection Measures in Civil Matters (606/2013) covers recognition and enforcement of protection measures, including for victims of domestic violence.

EU instruments covering both civil and family matters

EU Service Regulation (2007/1393/EC) covers rules for serving documents in other EU countries.

Taking of Evidence Regulation (2001/1206) covers cross-border processing of requests to take evidence.

Legal Aid Directive (2002/8) covers rules for the grant of legal aid in cross-border disputes.

Mediation Directive (2008/52) covers access to alternative dispute resolution and settlement of disputes through the use of mediation in cross-border disputes.

## UK Law

The Civil Jurisdiction and Judgments (Amendment) Regulations

2014: [http://www.legislation.gov.uk/ukxi/2014/2947/pdfs/ukxi\\_20142947\\_en.pdf](http://www.legislation.gov.uk/ukxi/2014/2947/pdfs/ukxi_20142947_en.pdf)

Under section 57(1) of the Scotland Act 1998, despite the transfer to the Scottish Ministers of functions in relation to implementation of obligations under Community law in respect of devolved matters, the function of the Secretary of State in relation to implementing those obligations continues to be exercisable by the Secretary of State as regards Scotland. These Regulations make provision to facilitate the application of Regulation 1215/2012/EU on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (“the recast Judgments Regulation”) in the United Kingdom from 10th January 2015.

The recast Judgments Regulation replaces Regulation [\(EC\) No. 44/2001](#) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (“the original Judgments Regulation”). The recast Judgments Regulation contains revised provisions both on jurisdiction, and on recognition and enforcement of judgments.

These Regulations make amendments to various enactments, in particular the Civil Jurisdiction and Judgments Act 1982, the Civil Jurisdiction and Judgments Order 2001 and the Civil Jurisdiction and Judgments (Authentic Instruments and Court Settlements) Order 2001, which are consequential on the changes made by the recast Judgments Regulation.

The main change in the recast Judgments Regulation is in relation to recognition and enforcement of judgments, for which the Regulation removes the process known as *exequatur*. Provisions which govern or refer to that process are accordingly amended or revoked to reflect the fact that it is no longer applicable for judgments which are enforceable under the recast Judgments Regulation.

European Judicial Network in Civil and Commercial Matters (2001/470/EC) facilitates cross-border cooperation for judges and practitioners and access to justice for those involved in disputes.

The Scottish Government Child Abduction Team processes applications and discharges duties set out in EU legislation, most notably in relation to child abduction using the Brussels II a Regulation and the Maintenance Regulation. The Scottish Government Team deals directly with Ministries of other countries in respect of incoming and outgoing cases involving Scotland. Officials are the Scottish Contact Point on the European Judicial Network on Civil and Commercial Matters. As such, it receives requests for assistance from other EU member state officials who wish to serve documents in Scotland.

The EU has also legislated concerning civil judicial cooperation in cross-border family cases. The law includes the Brussels II (a) Regulation on the jurisdiction of matrimonial proceedings, principally divorce. This regulation also allows for the mutual recognition and enforceability of judgements concerning parental responsibility and supplements the Hague Convention and provides a mechanism for the return of abducted children. The Maintenance Regulation provides rules for assessing jurisdiction in maintenance disputes and for identifying the law which will be applied. It also provides for the recognition and enforcement of maintenance decisions from other Member States' Courts.

When the UK exits the EU this body of law will cease to apply in the UK as Article 81 and the regulations and directives flowing from it will not operate outside the EU. Prior to the TFEU and the EU regulations, arrangements were made for cross border multilateral litigation by way of bilateral treaties. When the UK exits, unless there is provision in the Withdrawal Agreement, this solution will need to be adopted. This will take time, incur cost and delay and will leave citizens with civil or family law issues in a difficult position unless there is provision in the Withdrawal Agreement.

In family cases, there are some practical problems with the implementation of Brussels II (a) but family practitioners generally agree that the regulation makes the law in this area clearer.

## ***28. Late Payment - Commercial Transactions***

### EU law

[European Directive 2011/7/EU on combating late payment in commercial transactions](#). The amended legislation will make pursuing payment a simpler process across the European Union.

### English Law

Late Payment of Commercial Debts (Interest) Act 1998:  
<https://www.legislation.gov.uk/ukpga/1998/20>.

The Late Payment of Commercial Debts Regulations 2013:  
<https://www.legislation.gov.uk/uksi/2013/395/contents/made>

### Scottish Law

The Late Payment of Commercial Debts (Scotland) Regulations 2002:  
<http://www.legislation.gov.uk/ssi/2002/335/made>

The Late Payment of Commercial Debts (Scotland) Regulations 2015:  
<http://www.legislation.gov.uk/ssi/2015/226/made>

European Communities Act [1972 c.68](#); section 2(2) was amended by the Scotland Act [1998 \(c.46\)](#) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act [2006 \(c.51\)](#) (“the 2006 Act”)); section 2(2) was also amended by section 27(1) of the 2006 Act and by the European Union (Amendment) Act [2008 \(c.7\)](#), Schedule 1, Part 1; the functions conferred on the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

## **29. Legal Aid in Cross Border Cases**

### EU Law

Directive 2003/8/EC: <http://eur-lex.europa.eu/legal-content/en/NIM/?uri=CELEX:32003L0008> establishes minimum common rules relating to legal aid in cross-border civil disputes. Among other things, the Directive allows member states to apply financial and merits tests to cross-border applications.

### Scottish Law

To reflect the flexible approach to means assessment and submission of applications in cases affected by the Directive:

- The provisions of section 15 of the Legal Aid (Scotland) Act 1986: <https://www.legislation.gov.uk/ukpga/1986/47/contents> concerning financial eligibility have been made subject to article 5 of the Directive
- The Legal Aid (Scotland) Act 1986 Amendment Regulations 2004: <http://www.legislation.gov.uk/ssi/2004/493/note/made>
- The Civil Legal Aid (Scotland) Amendment (No. 2) Regulations 2004: <http://www.legislation.gov.uk/ssi/2004/491/note/made>

- Applications for civil legal aid may be submitted using a common standard form in use throughout the EU
- SLAB do not have to intimate their decision on an application to the applicant's solicitor
- Applications for review of refusal of civil legal aid do not need to be intimated to the opponent

### **30. Cross Border Mediation**

#### EU Law

Directive 2008/52/EC: <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32008L0052> on certain aspects of mediation in civil and commercial matters

#### UK and English Law

The Cross-Border Mediation (EU Directive) Regulations 2011:

<http://www.legislation.gov.uk/uksi/2011/1133/made>

1972 c.68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c.7) section 3(3), Schedule, Part 1. The Secretary of State is designated in relation to mediation by S.I. 2010/2690, article 2(1)(a).

#### Scottish Law

The Cross-Border Mediation (Scotland) Regulations 2011:

<http://www.legislation.gov.uk/ssi/2011/234/made>

### **31. Criminal Offences Minimum Standards Measures – Combating Child Sexual Exploitation Directive**

See below

### **32. Minimum Standards Legislation – child sexual exploitation**

#### EU Law

Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0093>

Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32011L0036>

## UK Law

Sexual Offences Act 2003: <https://www.legislation.gov.uk/ukpga/2003/42/contents> (certain provisions apply to Scotland)

### *Anti-Social Behaviour, Crime and Policing Act 2014*

[Section 113](#) amends the Sexual Offences Act 2003 to create Sexual Harm Prevention Orders (SHPOs) and Sexual Risk Orders (SROs). An SHPO or SRO is intended to protect the public or an individual against sexual harm.

[Section 116](#) provides for police to require hotels and similar establishments, in which they reasonably believe child sexual exploitation is taking place, to provide information about guests.

## Scottish Law

### *Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005*

Prosecutions for child sexual exploitation can be brought under the Protection of Children and [Prevention of Sexual Offences \(Scotland\) Act 2005](#), sections 1 and 9-12 including:

#### [S.1 Meeting a child following grooming](#)

#### [S.9 Paying for the sexual services of a child \(under 18\)](#)

#### [S.10 Causing or inciting provision by a child of sexual services or child pornography](#)

### *Sexual Offences (Scotland) Act 2009*

Cases that come under the definition of child sexual exploitation may be prosecuted under the [Sexual Offences \(Scotland\) Act](#).

### *Civic Government (Scotland) Act 1982*

The Civic Government (Scotland Act) 1982 includes protection against the showing or distribution of indecent photographs of children ([s.52 Indecent Photographs etc. of Children](#)).

### *Criminal Justice (Scotland) Act 2003*

Section 22 of the [Criminal Justice \(Scotland\) Act 2003](#) provides legislation to prosecute for acts of trafficking children for the purpose of sexual exploitation.

The Protection of Vulnerable Groups (Scotland) Act 2007(Miscellaneous Provisions) Amendment Order 2014: <http://www.legislation.gov.uk/ssi/2014/33/note/made>

### *Human Trafficking and Exploitation (Scotland) Act 2015*

The Human Trafficking and Exploitation (Scotland) Act 2015 implemented a new single offence against the trafficking of both adults and children for all forms of exploitation, including sexual exploitation:

### *Abusive Behaviour and Sexual Harm (Scotland) Act 2016*

[This legislation](#) makes provision about sexual harm including provision about directions to be given to juries in sexual offence cases and provision about orders to prevent future sexual harm including sexual harm prevention orders and sexual risk orders.

### **33. Data sharing – EU fingerprint database (EuroDac)**

#### EU Law

The [EURODAC Regulation](#) establishes an EU asylum fingerprint database. When someone applies for asylum in the EU their fingerprints are transmitted to the EURODAC central system. This implements Regulation (EU) No. 604/2013.

As part of the first reform package of May 2016, the Commission presented a [proposal to reinforce EURODAC](#) to reflect the changes in the Regulation 604/13 and to make sure that it continues to provide fingerprint comparison evidence. In addition, the Commission also considered the use of other biometric identifiers to be used for EURODAC, such as facial recognition and the collection of digital photos to counter the challenges faced by some Member States in taking fingerprints.

#### UK Policy

The UK Government decided in December 2016 to opt in to the EU proposal for the EURODAC III Regulation.

The Regulation will govern the operation of the EURODAC fingerprint database, which holds the fingerprints of asylum seekers and certain illegal entrants to the EU, in order to

help Member States determine who is responsible under the Dublin Regulation for dealing with an asylum claim and to tackle illegal migration.

The EURODAC database will be expanded to increase the categories of fingerprints recorded, to record facial images and biographical data, to increase the length of time data can be stored to five years and to provide better data sharing procedures between Member States. These changes will strengthen the UK's ability to control illegal migration, prevent multiple asylum applications across Member States and protect the UK's security through data sharing with law enforcement agencies.

### **34. Data sharing – European Criminal Records Information System (ECRIS)**

#### EU Law

ECRIS was created in April 2012 to facilitate the exchange of criminal records in the EU. It establishes electronic connections between Member States and establishes rules to ensure that information on convictions in the criminal records system of the Member States can be exchanged through electronic standardised formats, in a uniform and speedy way, and within short legal deadlines.

The ECRIS legal framework consists of:

[Framework Decision on exchange of information on criminal records](#)  
[Decision on the establishment of ECRIS.](#)

#### UK Policy

The UK government has decided to opt into ECRIS-TCN. See written statement by Amber Rudd MP, Home Secretary (HCWS219 - 2 November 2017).

### **35. Data sharing – False and Authentic Documents Online (FADO)**

#### EU Law

The Joint Action 98/700/JHA under Article K.3 of the TEU set up an EU internet-based image archiving system known as FADO (False and Authentic Documents Online). This allows the rapid sharing between EU countries of images of genuine, false and forged documents, in order to aid in combating illegal immigration and the use of fraudulent documents.

FADO is a restricted system for the exchange of information between document experts on false as well as genuine travel and identity documents, established pursuant to the Council Joint Action 98/700/JHA.



## UK Policy

This is implemented in the UK by administrative means.

### **36. Data sharing – passenger name records**

## EU Law

Passenger Name Record (PNR) data is personal information provided by passengers and collected and held by air carriers. It includes the name of the passenger, travel dates, itineraries, seats, baggage, contact details and means of payment. The directive regulates the transfer of PNR data to member states' law enforcement authorities. The Council adopted the directive on 21 April 2016: . <http://eur-lex.europa.eu/eli/dir/2016/681/oj> Member states have until May 2018 to comply with this directive.

The EU has already signed agreements allowing EU carriers to transfer PNR data to the United States, Australia and Canada and in June 2015.

Organised crime and terrorist activities often involve international travel. As a response to the abolition of internal border controls under the Schengen Convention, the EU provides for the exchange of personal data between law enforcement authorities.

The directive provides that PNR data may only be used for the prevention, detection, investigation and prosecution of terrorist offences and serious crime. In the context of these activities, PNR data can be used in several ways:

- for a pre-arrival or pre-departure risk assessment of passengers criteria, or in order to identify specific persons
- as input in the development of these risk criteria
- for specific investigations or prosecutions

To protect the fundamental rights to protection of personal data, to privacy and to non - discrimination, the directive includes a series of limitations for the transfer, processing and retention of PNR data.

## UK Law

The UK has the majority of the necessary domestic legislation in place. This includes:

- Section 27 of the Immigration Act 1971
- Paragraph 27B of Schedule 2 to the Immigration Act 1971
- Section 32 of the Immigration, Nationality and Asylum Act 2006

- Statutory Instrument 2008 No.5 of the Immigration and Police (Passenger, Crew and Service Information) Order 2008
- Statutory Instrument 2015 No.859 of the Immigration and Police (Passenger, Crew and Service Information) (Amendment) Order 2015
- The Immigration (Form and Manner) Direction 2015
- The Passenger, Crew and Service Information (Civil Penalties) Regulations 2015

The Data Protection bill is subject to parliamentary approval.

### **37. Data sharing – Prüm framework**

#### EU Law

In 2012, the Commission adopted a Communication on the European Information Exchange Model (EIXM). EIXM took stock of the EU information exchanges landscape and recommended concrete steps on how to increase the efficiency and improve the application of existing cooperation instruments.

The main legal instruments covered by EIXM are the Prüm Council Decision (2008/615/JHA) and the so-called Swedish Initiative (2006/960/JHA).

#### *Prüm Decision*

The origin of the Prüm Decision is a multilateral treaty signed in the German town of Prüm in 2005 by Germany, Spain, France, Luxembourg, the Netherlands, Austria and Belgium. Given the considerable interest from the other EU States, the Commission supported the German initiative to transform this Treaty into an instrument binding all EU Member States. Consequently, the Council adopted the [Prüm Decision](#) and its [implementing provisions](#)

The Prüm Decision contains rules for operational police cooperation, eg joint patrols, and introduced procedures for data exchange in specific areas. The core of the Prüm framework lays down provisions under which EU Member States grant each other access to their automated DNA analysis files, fingerprint identification systems and vehicle registration data. DNA and fingerprint exchanges take place based on a "hit/no-hit" approach, which means that DNA profiles or fingerprints found at a crime scene in one EU Member State can be compared automatically with profiles held in the databases of other EU States. Car registration data (including licence plates and chassis numbers) are exchanged through national platforms that are linked to the online application "EUCARIS".

The provisions of the Prüm Decision should have been implemented by Member States in August 2011. Member States received financial and technical support from the EU to implement these provisions. However, by the spring of 2015 a number of Member States had not yet fulfilled their legal obligations under the Prüm Decision. Following the 5 year

transitional period of the Lisbon Treaty in December 2014, the Commission now has the power to ensure that Member States fulfill their legal obligations in the area of police cooperation.

### **38. Data sharing – Schengen Information System (SIS II)**

#### EU Law

The SIS II is defined in the following laws:

#### [Council Decision 2007/533/JHA](#) (Law enforcement cooperation)

The SIS supports police and judicial cooperation by allowing competent authorities to create and consult alerts on missing persons and on persons or objects related to criminal offences.

#### [Regulation \(EC\) No 1986/2006](#) (Cooperation on vehicle registration)

Vehicle registration services may consult the SIS in order to check the legal status of the vehicles presented to them for registration. They only have access to SIS alerts on vehicles, registration certificates and number plates.

#### [Council Regulation 1272/2012/EU](#) on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II): <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32012R1272>

The UK's continued participation in the Schengen Information System (SIS) is an integral part of the EAW system. New functionalities of SIS II include enhanced alerts on persons and objects (eg firearms, bank notes), and the linking of alerts on persons.

### **39. EU agencies – EU-LISA**

#### EU Law

Regulation 1077/2011/EU established EU-LISA as the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32011R1077> to oversee the operational management of three EU information systems dealing with asylum, border management and law enforcement. The 2017 Proposal for a regulation on the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, whilst amending Regulation 1987/2006/EC and Decision 2007/533/JHA and repealing Regulation 1077/2011/ EC <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52017PC0352> would give eu-LISA responsibility for managing new EU information systems. It would also make some technical changes to

implement an external evaluation, and empower the Agency to take the actions needed to make EU information systems for security, border and migration management fully interoperable by 2020.

### UK Policy

The Government has decided to participate in the proposed Regulation for reasons set out in a Written Ministerial Statement (HCWS219) issued by the Home Secretary on 2 November 2017.

*“The Government believe it is in the national interest to continue participating in eu-LISA, as this will maximise our influence over how it operates the IT systems that we take part in and for which it is responsible. We have therefore decided to opt in to the draft eu-LISA Regulation to the extent that it is not Schengen-building and not to opt out to the extent that it builds on the policing and judicial co-operation aspects of Schengen.”*

EU-LISA is a regulatory agency having legal personality. In each of the Member States, the Agency enjoys the most extensive legal capacity accorded to legal persons under national law.

### **40. EU agencies – Eurojust**

#### EU Law

Eurojust is an EU agency tasked with supporting and strengthening cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States. This can involve facilitating requests for mutual legal assistance, facilitating the execution of European Arrest Warrants, bringing together national authorities in co-ordination meetings to agree an approach to specific cases, and providing legal, technical and financial support to Joint Investigation Teams.

Eurojust’s headquarters are in The Hague, in The Netherlands, where 28 seconded National Members (one from each Member State) form the College of Eurojust, which is responsible for the organisation and operation of the agency. The College elects a President, currently the National Member for Belgium. Eurojust operates through National Desks, which are small teams of representatives from each Member State, headed by the National Member. National Desks function as single points of contact between the 28 Member States to facilitate multilateral cooperation.

[Consolidated version of the Eurojust Council Decision](#)

### UK Policy

Eurojust was established to support coordination and cooperation between national authorities in relation to serious crime with a multi-MS dimension. Its role includes meetings between judicial and police authorities and establishing coordination centres to facilitate joint law enforcement actions, eg synchronised searches or arrests.

The implementation of the 2009 Eurojust Decision by Member States has improved cross-border cooperation between prosecutorial and judicial authorities.

The Head of International Cooperation for COPFS is an assistant national member of the UK desk.

#### **41. EU agencies – Europol**

##### EU Law

Regulation (EU) 2016/794 on the European Union Agency for Law Enforcement Cooperation (Europol).

##### UK Policy

The Government announced its intention to opt into the new Europol Regulation. The European Commission confirmed the participation of the UK in the new Europol Regulation by Commission Decision ((EU) 2017/388) 6 March 2017. Opting into the new regulation means that the UK will remain a full member of Europol until exit day.

#### **42. Procedural rights (criminal cases) – minimum standards measures**

##### Right to Interpretation

##### EU Law

Procedural rights are provided by the Directive 2010/64/EU on the right to interpretation and translation in the framework of criminal proceedings: <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32010L0064>

The Directive provides common minimum rules on the right to interpretation and translation in criminal proceedings and for the execution of an European Arrest Warrant. The Directive ensures that suspects or accused persons who do not speak or understand the language of the proceedings are given a translation. It also ensures that suspects or accused persons are given a translation of all documents, within a reasonable period of time to be able to exercise their right of defence and to safeguard the fairness of the proceedings.

## Scottish law

Right to Interpretation and Translation in Criminal Proceedings (Scotland) Regulations 2014: <http://www.legislation.gov.uk/ssi/2014/95/contents/made>

## Right to Information

## EU Law

[Directive on the right to information in criminal proceedings](#) 2012/13/EU aims at providing minimum standards throughout the EU to ensure suspects or accused persons are informed about the following procedural rights:

- of access to a lawyer
- to free legal advice
- of information about the accusation
- to interpretation and translation
- to remain silent

Such information should be provided in simple language, taking into account any particular needs of vulnerable suspects or accused persons. Arrested persons must be informed of their procedural rights through a Letter of Rights in comprehensible language, whether they ask for it or not. The Letter of Rights should also contain information on:

- the right to access case materials
- the right to have consular authorities and one person informed (such as a family member or employer)
- the right of access to urgent medical assistance
- the right to know the maximum hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority
- the possibility of challenging the lawfulness of the arrest

## Scottish law

[The Right to Information \(Suspects and Accused Persons\) \(Scotland\) Regulations 2014.](#)

### **43. Minimum standards legislation – cybercrime**

#### EU Policy

Report on the fight against cybercrime

[http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140775/LDM\\_BRI\(2014\)140775\\_REV1\\_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140775/LDM_BRI(2014)140775_REV1_EN.pdf)

<http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&mode=XML&reference=A8-2017-0272&language=EN>

#### UK Strategy

Cybercrime Strategy [Cm 7842](#)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228826/7842.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228826/7842.pdf)

### **44. Minimum standards legislation – football disorder**

#### EU Law

Council Resolution of 3 June 2010 (2010/C 165/01) concerning an updated handbook with recommendations for international police cooperation and measures to prevent and control violence and disturbances in connection with football matches with an international dimension, in which at least one Member State is involved:

[http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010G0624\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010G0624(01))

#### Scottish law

Police, Public Order and Criminal Justice (Scotland) Act 2006: <http://www.legislation.gov.uk/asp/2006/10/contents>

<http://www.legislation.gov.uk/asp/2006/10/notes/division/3/2/>

### **45. Minimum standards legislation – human trafficking**

#### EU Law

[Directive 2011/36/EU](#)

## UK Law and policy

The European Commission has adopted the decision to apply to the United Kingdom the Directive 2011/36/EU preventing and combating trafficking in human beings and protecting its victims.

The UK initially exercised opt-out from the Directive on the basis that the UK already complies with much of the provisions contained in the draft EU Directive. However, it later applied to opt in to the Directive and its request was accepted by the European Commission. The date of entry into force of the Directive for the UK was on 18 October 2011.

## English Law

### [The Trafficking People for Exploitation Regulations 2013](#)

## Scottish Law

### [Criminal Justice \(Scotland\) Act 2003](#)

### [Human Trafficking and Exploitation \(Scotland\) Act 2015](#)

***46. Mutual recognition of criminal court judgments measures & cross border a cooperation – European Protection Order, Prisoner Transfer Framework Decision, European Supervision Decision, Compensation to Crime Victims Directive***

## EU Law

The European Supervision Order (ESO) Framework Decision 2009/829/JHA applies between Member States of the European Union, and is the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

The ESO, a pre-Lisbon instrument should also provide further support to the operation of the EAW system by permitting periods of pre-trial detention to be served in another Member State

The Directive on the European Protection Order was adopted in December 2011/99/EU means that "crime victims who are granted protection from their aggressors in one EU Member State will be able to get similar protection if they move to another."

## Scottish Law

### [The Mutual Recognition of Supervision Measures in the European Union \(Scotland\) Regulations 2014](#)



## [The European Protection Order \(Scotland\) Regulations 2015](#)

### **47. Practical cooperation in law enforcement – European Investigation Order**

#### EU Law

Directive 2014/41/EU the European Investigation Order (EIO) in criminal matters.

The EIO is designed to improve the assistance Member States can provide to each other in obtaining evidence in support of criminal proceedings. Based on the mutual recognition principle, this instrument will improve efficiency for the introduction of a standardised form to make requests to other Member States and through the provision for legal remedies.

#### UK Law

The Criminal Justice (European Investigation Order) Regulations 2017/730:

<http://www.legislation.gov.uk/ukxi/2017/730/made/data.pdf>

Under section 57(1) of the Scotland Act 1998, despite the transfer to Scottish Ministers of functions in relation to implementing obligations under European Union law in relation to certain matters by virtue of section 53 of that Act, these functions continue to be exercisable by the Secretary of State as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972

### **48. Practical cooperation in law enforcement – Joint Action on Organised Crime**

#### EU Policy

Pursuing and prosecuting criminals is the responsibility of EU Member States. The EU's objective is to assist Member States to fight organised crime more effectively (see [joint action 97/827/JHA](#)). The EU's activities cover [crime prevention](#) , [law enforcement](#) and takes effect through [legislative measures harmonising rules concerning offences in relation to a criminal organisation](#), the gathering of reliable [crime statistics](#) and the [funding of European projects](#) or specialist networks.

The EU approach to law enforcement is a combination of methods to prevent organised crime from infiltrating the public sector, the economy or public administration. The Commission has facilitated a network of informal contact points for exchanging best practices. Europol has offered its infrastructure to exchange administrative information between EU States at a more operational level.

### **49. Practical cooperation in law enforcement – Joint Investigation Teams**

#### EU Law

[Council Framework Decision 2002/465/JHA](#) of 13 June 2002 on Joint Investigation Teams

Joint investigation teams (JITs) is another example of cooperation under the auspices of Eurojust, Europol and the European Judicial Network (EJN).

### ***50. Practical cooperation in law enforcement – Mutual Legal Assistance***

#### EU Law

The Convention on Mutual Assistance in Criminal Matters (2000) between the Member States of the European Union and its Protocol facilitates Mutual Legal Assistance (MLA) within the EU.

#### UK Law

MLA is a method of cooperation between states for obtaining assistance in the investigation or prosecution of criminal offences. Requests are made by a formal international Letter of Request. Requests seeking assistance solely from Scotland should be sent directly to the Crown Office in Edinburgh, unless the treaty states that requests should be sent to the Home Office.

### ***51. Practical cooperation in law enforcement – Asset Recovery Offices***

#### EU Law

Confiscation is a strategic priority in the EU's fight against organised crime. It is reflected in the EU Internal Security Strategy in Action, which confirmed the need to revise the existing EU legal framework on confiscation and asset recovery to hit criminals where it hurts them most.

Five EU legal instruments have aimed at improving confiscation and asset recovery Framework Decisions [2001/500/JHA](#), [2003/577/JHA](#), [2005/212/JHA](#), [2006/783/JHA](#) and [2007/845/JHA](#) which required Member States to establish National Recovery Offices.

#### National Asset Recovery Offices

National Asset Recovery Offices (AROs) help in depriving criminals of their criminal profits. They identify assets that have been illegally acquired on their territories and facilitate the exchanges of relevant information at the European level.

#### Scottish Law

The Proceeds of Crime Act <http://www.legislation.gov.uk/ukdsi/2018/9780111160855>

In Scotland, the Proceeds of Crime Act 2002 (the 2002 Act) builds upon the criminal confiscation scheme which was set out in the Proceeds of Crime (Scotland) Act 1995 and consolidates and strengthens money laundering offences.

The 2002 Act includes provisions which:

- (1) enhance previous powers of criminal confiscation following conviction by aligning the previous schemes for drug trafficking and for other crimes onto an all crimes basis, and by strengthening the investigation and enforcement powers
- (2) introduce new powers of civil recovery allowing the state to claim the proceeds of criminal activity in cases where it is not possible to prosecute or secure a conviction

The Crown Office and Procurator Fiscal Service (COPFS) has two units, the Criminal Confiscation Unit and the Civil Recovery Unit. The Scottish Ministers institute civil recovery proceedings and the Civil Recovery Unit is responsible for the implementation of civil recovery.

### *Criminal Confiscation*

Part 3 of the 2002 Act provides the law on criminal confiscation. Crimes in Scotland are prosecuted by the COPFS. A confiscation order by the Court requires a person convicted of a criminal offence to pay a sum of money representing the benefit from crime.

### *Civil Recovery*

Part 5 of the 2002 Act sets out UK provisions providing for civil recovery. In relation to Scotland, Scottish Ministers are the enforcement authority and bring civil proceedings in the Court of Session to recover property that is or represents property obtained through unlawful conduct.

Civil recovery proceedings may be brought whether or not there is a prosecution for an alleged crime in connection with the property.

If the court finds that any property is recoverable, it grants a recovery order. Unless provided otherwise in the 2002 Act, Court of Session proceedings are governed by existing rules applying to petitions. Any appeal against the decision of the court to grant a recovery order would be to the Inner House of the Court of Session.

## ***52. Practical cooperation in law enforcement – Mutual Recognition of Asset Freezing Orders***

See 53 below

## 53. Practical cooperation in law enforcement – Mutual Recognition of Confiscation Orders

### EU Law

Mutual recognition is provided in Article 82(1) TFEU, which specifies, among other things, that judicial cooperation in criminal matters in the EU shall be based on the principle of mutual recognition of judgements and judicial decisions. Mutual recognition of freezing and confiscation orders concerns cooperation between Member States regarding recovery of criminal assets in cross-border cases. The EU Law in the area of freezing and confiscation includes two types of measures, namely:

#### 1) mutual recognition instruments:

- Council Framework Decision 2003/577/JHA: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003F0577> on the execution in the EU of orders freezing property or evidence
- Council Framework Decision 2006/783/JHA: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006F0783> on the application of the principle of mutual recognition to confiscation orders

#### 2) harmonisation instruments with minimum rules on the definition of criminal offences and sanctions for serious crimes with a cross-border dimension:

- Council Framework Decision 2001/500/JHA: <http://eur-lex.europa.eu/legal-content/GA/TXT/?uri=celex:32001F0500> on money laundering; the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (a new proposal for a directive on countering money laundering by criminal law was submitted on 21 December 2016)
- Council Framework Decision 2005/212/JHA: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32005F0212> on confiscation of crime-related proceeds and property
- Directive 2014/42/EU: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0042> on the freezing and confiscation of proceeds of crime in the EU, replacing certain provisions of the above-mentioned Council framework decisions

## UK Law

The existing UK legislation, in the form of the Proceeds of Crime Act 2002, the Proceeds of Crime (Scotland) Act 1995 and related Regulations, already permits UK and Scottish authorities to freeze and confiscate assets at the request of Member States.

### **54. Practical cooperation in law enforcement – Schengen Article 40**

## EU Law

The Schengen Convention Article 40 sets out processes for cross border surveillance between Schengen States. It provides that law enforcement officers of a Schengen State who are keeping a person under surveillance may be helped with that surveillance if that person crosses into another Schengen State. The requested State must generally comply with the request, but may attach conditions allowed for in the Convention.

## British Police practice

The Schengen Handbook explains that all such requests must in the first instance be sent by the foreign officers to the UK SIRENE Bureau located at the National Criminal Intelligence Service to arrange for execution.

British Police forces have a practice of conducting the surveillance authorised under Part II of the Regulation of Investigatory Powers Act 2000:

<https://www.legislation.gov.uk/ukpga/2000/23/contents> (RIPA) or the Regulation of Investigatory Powers (Scotland) Act 2000:

<https://www.legislation.gov.uk/asp/2000/11/contents> (RIPSA) when the person under surveillance enters the United Kingdom. Foreign police officers act in an observer or advisory capacity.

### **55. Practical cooperation in law enforcement – Swedish Initiative**

The Council framework decision 2006/960/JHA: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32006F0960> is a legal framework for the exchange of existing information and criminal intelligence between Member States' law enforcement agencies. This instrument, was proposed by Sweden and sets out rules for the cross-border exchange of criminal information and intelligence, ensuring procedures for cross-border data exchange are not stricter than those applying to exchanges at national level. It regulates the conditions for exchanging information and intelligence among Member States, including time limits and admissible justifications for refusing to share data.

### **56. Practical cooperation in law enforcement – Implementation of European Arrest Warrant**

## EU Law

The EAW system under the Council Framework Decision 2002/584/JHA: <http://eur-lex.europa.eu/legal-content/en/NIM/?uri=celex:32002F0584> is a far more efficient system than the previous extradition arrangements in place between Member States.

## UK Law

Extradition Act 2003 <http://www.legislation.gov.uk/ukpga/2003/41/contents> implements the European Arrest Warrant in the UK

In 2012, the UK Government decided to opt into the EAW framework.

The EAW has replaced extradition procedures within the EU's territorial jurisdiction. Judicial procedures have been designed to surrender people for the purpose of conducting a criminal prosecution or executing a custodial sentence.

## Scottish Policy

Scotland has been making use of the EAW. The Crown Office and Procurator Fiscal Service in Scotland recently published figures relating to the use of the EWA showing that between 2011 and May 2016 there had been 48 extraditions to Scotland pursuant to EAWs, and 49 EAWs issued by Scotland during the same period.

## **57. Sentencing – Taking Convictions into Account**

### EU Law

The EU aims to facilitate the social rehabilitation of convicted persons by ensuring that they serve their sentence in their home country. To this end, a system was established for transferring convicted prisoners back to their EU country of nationality, habitual residence or another EU country with which they have close ties.

The Prisoner Transfer Agreement was introduced through the Council [Framework Decision 2008/909/JHA](http://eur-lex.europa.eu/legal-content/en/NIM/?uri=celex:32008F0909) .

### UK Law

Repatriation of Prisoners Act 1984: <https://www.legislation.gov.uk/ukpga/1984/47/contents>

Legal Aid, Sentencing and Punishment of Offenders Act 2012:  
<http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted>

## Scottish Law

Legal Aid, Sentencing and Punishment of Offenders Act 2012:

<https://www.legislation.gov.uk/ukpga/2012/10/contents>

A Legislative Consent Motion in Scottish Parliament allowed the implementation of Articles 16 and 18 of the Framework Decision 2008/909/JHA. The Framework Decision allows for offenders to be transferred to serve the remainder of their sentence in another Member State. Implementation of Article 16 and 18 (which cover Transit and Speciality) in relation to the transfer of prisoners would fall within the legislative competence of the Scottish Parliament.

### **58. Provision of Legal Services**

## EU Law

The regime to regulate the cross-border supply of legal services and the rules designed to facilitate the establishment of a lawyer in another member state have been in force for a number of years. There are three key pieces of legislation that affect the legal profession:

- Lawyers' Services Directive 77/249 :<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31977L0249>
- Lawyers' Establishment Directive 98/5: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31998L0005>
- Recognition of Professional Qualifications Directive 2005/36: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0036>

In addition, Directive 2006/123/EC on services in the Internal Market, which regulates the provision of services in the European Union, also touches on the legal profession: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0123>

## UK Law

The Provision of Services Regulations 2009

<http://www.legislation.gov.uk/uksi/2009/2999/contents/made>

## English Law

The European Communities (Lawyer's Practice) Regulations 2000

<https://www.legislation.gov.uk/uksi/2000/1119/contents/made>

## Scottish Law

The European Communities (Lawyer's Practice) (Scotland) Regulations 2000  
<https://www.legislation.gov.uk/ssi/2000/121/contents/made>

### ***59. Rules on applicable law in civil and commercial cross border claims***

#### EU Law

The law applicable to contractual and non-contractual obligations is determined with the help of the Rome I Regulation (No 593/2008): <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008R0593> and the Rome II Regulation (No 864/2007): <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32007R0864> Jurisdiction is governed by the Brussels I Regulation (No 1215/2012): <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32012R1215> All three Regulations apply in the EU (exclusive of Denmark), and there is broad agreement that they establish a clear and predictable legal framework for the settlement of international disputes, especially because choice of law and choice of forum clauses are enforced under the same conditions across the EU.

#### UK Law

The Civil Jurisdiction and Judgments (Amendment) Regulations 2014

<http://www.legislation.gov.uk/uksi/2014/2947/contents/made>

Under section 57(1) of the Scotland Act 1998 (c.46), despite the transfer to the Scottish Ministers of functions in relation to implementation of obligations under Community law in respect of devolved matters, the function of the Secretary of State in relation to implementing those obligations continues to be exercisable by the Secretary of State as regards Scotland.

#### English Law

The Law Applicable to Contractual Obligations (England and Wales and Northern Ireland) Regulations 2009: <http://www.legislation.gov.uk/uksi/2009/3064/made>

The Law Applicable to Non-Contractual Obligations (England and Wales and Northern Ireland) Regulations 2008: <https://www.legislation.gov.uk/uksi/2008/2986/contents/made>

#### Scottish Law

The Law Applicable to Contractual Obligations (Scotland) Regulations 2009:  
<http://www.legislation.gov.uk/en/ssi/2009/410/made/data.xht?wrap=true>

The Law Applicable to Non-Contractual Obligations (Scotland) Regulations 2008: <https://www.legislation.gov.uk/ssi/2008/404/contents/made>



## **60. Victims' rights measures (criminal cases)**

### EU Law

EU strategy on criminal justice: [https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/criminal-justice\\_en](https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/criminal-justice_en)

The laws and policies on victims' rights differ from one Member State to another. To ensure minimum level of victims' rights in all Member States, the EU has adopted several legal instruments setting up common rules aimed at protecting and assisting victims of crime: dealing with victims' rights in general, protection measures and financial compensation and substantive law instruments regarding trafficking in human beings and child sexual exploitation.

Directive [2012/29/EU](#) established minimum standards on the rights, support and protection of victims of crime and ensures that victims of crime are recognised, treated with respect and receive proper protection, support and access to justice. The deadline to implement the Directive into national laws was 16 November 2015. DG Justice issued a guidance document to assist Member States in this process.

### England and Wales Law

The Ministry of Justice introduced a [Code of Practice for Victims of Crime](#) in 2013 which was amended in 2015. It sets out how victims of crime should be treated by the criminal justice system.

### Scottish Law

[The Victims' Rights \(Scotland\) Regulations 2015](#).

## **61. Uniform fast-track procedures for certain civil and commercial claims (uncontested debts, small claims)**

### EU Law

[EC Regulation No 861/2007](#): establishing a European Small Claims Procedure

[EC Regulation No 2017/1259](#) (from 14 July 2017)

<http://www.europarl.europa.eu/eplibrary/Orders-for-payment-in-the-EU.pdf>

### Scottish Law

[Act of Sederunt \(Sheriff Court European Small Claims Procedure Rules\) 2008](#)

[Act of Sederunt \(Sheriff Court Rules Amendment\) \(European Small Claims Procedure and European Order for Payment Procedure\) 2017](#)

[https://e-justice.europa.eu/content\\_court\\_fees\\_concerning\\_small\\_claims\\_procedure-306-sc-en.do?member=1](https://e-justice.europa.eu/content_court_fees_concerning_small_claims_procedure-306-sc-en.do?member=1)

## **62. Recognition of Insolvency Proceedings in EU Member States**

### EU Law

The EU common framework for insolvency proceedings is contained in the Regulation on Insolvency Proceedings 2015/848 <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32015R0848>

It establishes common rules on:

- the competent court for insolvency proceedings
- the applicable law
- the recognition of the court's decisions when a debtor (a company, a trader or an individual) becomes insolvent

The main objective is to avoid the transfer of assets or judicial proceedings from one EU country to another, which can improve the legal position of companies. This applies to insolvency proceedings from 26 June 2017

Some of the key changes include:

- The regulation to cover hybrid and pre-insolvency proceedings
- Codification of determination of centre of main interests for the main insolvency proceedings will be presumed to be at the registered office, but the presumption is rebuttable if the central administration is located in another member state that the company's actual centre of management and supervision and of the management of its interests is located in that state
- Secondary proceedings where a company has an establishment will no longer be limited to liquidation proceedings
- The courts of the member state where main insolvency proceedings take place will have jurisdiction to hear actions derived directly from the insolvency proceedings that are closely linked, such as avoidance actions

- The Regulation provides for Registers of insolvency proceedings and for national electronically searchable databases in each member state, and for these to be linked via the European e-justice portal
- Group Companies - the recast Regulation introduces a framework for group insolvency proceedings with the aim of improving the efficiency of those proceedings concerning different members of a group of companies to encourage cooperation across the group and rescue of the group as a whole

The amended Regulation has direct effect in each member state (exclusive of Denmark) without the need for separate enactment.

The majority of the new provisions apply from 26 June 2017. The original European Regulation on Insolvency (EC) 1346/2000: <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32000R1346> will continue to apply to proceedings opened before this date. The establishment of national insolvency registers will come into force on 26 June 2018, with the requirement for an EU interconnected register by 26 June 2019.

### UK Law

The Insolvency Amendment (EU 2015/848) Regulations 2017 No. 702:

<https://www.legislation.gov.uk/ukxi/2017/702/contents/made>

1972 c. 68. The Secretary of State was designated by S.I. 2001/3495. Section 57(1) of the Scotland Act 1998 (1998 c. 46) provides that despite the transfer to the Scottish Ministers of functions in relation to observing and implementing obligations under EU law, any function of a Minister of the Crown shall continue to be exercisable by the Minister as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

### Scottish Law

The Insolvency (Regulation (EU) 2015/848) (Miscellaneous Amendments) (Scotland) Regulations 2017 : <http://www.legislation.gov.uk/ssi/2017/210/contents/made>:1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), schedule 1, part 1. The functions conferred upon the Minister of the Crown under section 2(2), so far as they are exercisable within devolved competence, were transferred to Scottish Ministers by virtue of section 53 of the 1998 Act.

Insolvency Service Advice: [https://www.insolvencydirect.bis.gov.uk/technicalmanual/Ch37-48/chapter41/part4/part\\_4.htm](https://www.insolvencydirect.bis.gov.uk/technicalmanual/Ch37-48/chapter41/part4/part_4.htm)

## ENVIRONMENT

### **63. Carbon Capture and storage**

#### EU Law

The EU emissions trading system or carbon market (EU ETS) is designed to combat climate change and reduce greenhouse gas emissions.

The EU ETS works on the 'cap and trade' principle. A [cap](#) is set on the total amount of greenhouse gases that can be emitted by installations in the system. The cap is reduced over time so that total emissions fall. Within the cap, companies [receive](#) or [buy](#) emission allowances which they can trade with one another as needed. They can also buy limited amounts of [international credits](#) from emission-saving projects globally.

Each year a company must surrender enough allowances to cover all its emissions. If a company reduces its emissions, it can keep the allowances to cover its future needs or sell them to another company that is short of allowances.

[Consolidated version of Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC](#)

EU Policy and law: [https://ec.europa.eu/clima/policies/lowcarbon/ccs/directive\\_en](https://ec.europa.eu/clima/policies/lowcarbon/ccs/directive_en)  
Directive on the Geological Storage of Carbon Dioxide (2009/31/EC):  
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0031>

#### UK Law

The [Greenhouse Gas Emissions Trading System Regulations 2012](#) require operators that carry out an activity covered by the EU ETS to hold on emissions permit which is a licence to operate and emit greenhouse gases under EU ETS see: [Annex I to the EU ETS Directive](#).

The EU ETS Regulators enforce compliance with the EU ETS Regulations, such as granting and maintaining permits and emissions plans (for aviation), monitoring and reporting (including monitoring plans), assessing verified emission reports (and tonne-kilometre reports), assessing applications to the NER, determining reductions in allocations as a result of changes in capacity or cessation of activities, exchanging information with UKAS on verifier activities.

Regulators include: the Environment Agency,  
<https://www.gov.uk/government/organisations/environment-agency> , [Scottish Environment](#)

[Protection Agency \(SEPA\)](#), [Northern Ireland Environment Agency \(NIEA\)](#), [Natural Resources Wales](#), and the Department for Business, Energy & Industrial Strategy (BEIS) <https://www.gov.uk/government/organisations/department-for-business-energy-and-industrial-strategy> for offshore installations.

### UK Regulatory Regime

The Energy Act 2008: <https://www.legislation.gov.uk/ukpga/2008/32/contents> provides a licensing regime that governs offshore storage of carbon dioxide. The regime applies to storage in the offshore area comprising both UK territorial sea and beyond.

The Secretary of State for BEIS is the licensing authority for offshore storage except within the territorial sea adjacent to Scotland, where it is Scottish Ministers.

### Scottish Policy and Law

<http://www.gov.scot/Topics/Business-Industry/Energy/Energy-sources/traditional-fuels/new-technologies/SGactionCCS>

SEPA supervised the transposition of Directive (2009/31/EC):

The Energy Act 2008 (Storage of Carbon Dioxide) (Scotland) Regulations 2011: <http://www.legislation.gov.uk/sdsi/2011/9780111011911/introduction>

The Storage of Carbon Dioxide (Licensing etc) (Scotland) Regulations 2011: <http://www.legislation.gov.uk/ssi/2011/24/contents/made>

The Environmental Liability (Scotland) Amendment Regulations 2011: <http://www.legislation.gov.uk/ssi/2011/116/contents/made>

These regulations flow from the Energy Act 2008, which designates the Scottish Ministers as the competent authority under the Directive for CO<sub>2</sub> storage in Scotland.

## **64. Environmental Impact Assessment (EIA) Directive**

### EU Law

The EIA Directive (85/337/EEC) applied to a wide range of defined public and private projects, which are defined in Annexes I and II:

Projects in Annex I are considered as having significant effects on the environment and require an EIA (eg long-distance railway lines, motorways and express roads, airports with a basic runway length  $\geq$  2100 m, installations for the disposal of hazardous waste,

installations for the disposal of non-hazardous waste > 100 tonnes/day, waste water treatment plants > 150.000 p.e.).

For Projects in Annex II, the national authorities have to decide whether an EIA is needed. This is done by the "screening procedure," which determines the effects of projects on the basis of thresholds/criteria or a case by case examination. National authorities must take into account the criteria laid down in Annex III. The projects listed in Annex II are in general those not included in Annex I (railways, roads waste disposal installations, waste water treatment plants), but also other types such as urban development projects, flood-relief works, changes of Annex I and II existing projects.

The EIA Directive of [1985](#) has been amended, [1997](#), [2003](#) [2009](#) [2011](#) and [2014](#):

- Directive 97/11/EC brought the Directive in line with the [UN ECE Espoo Convention](#) on EIA in a Transboundary Context. The Directive widened the scope of the EIA Directive by increasing the types of projects covered, and the number of Annex 1 projects. It also provided for new screening arrangements, and established minimum information requirements
- Directive 2003/35/EC aligned the provisions on public participation with the Aarhus Convention on public participation in decision-making and access to justice in environmental matters
- Directive 2009/31/EC: <http://eur-lex.europa.eu/legal-content/FRN/TXT/?uri=celex:32009L0031> amended Annexes I and II of the EIA Directive, by adding projects related to the transport, capture and storage of carbon dioxide (CO<sub>2</sub>)
- Directive 2011/92/EU <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32011L0092> ("the EIA Directive"), following a review Directive 2011/92/EU was amended by Directive 2014/52/EU <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0052>

### English Law

The Town and Country Planning (Environmental Impact Assessment) Regulations 2017: <http://www.legislation.gov.uk/ukxi/2017/571/contents/made> which apply to Scotland for defence purposes only.

### Scottish Law

The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017: <http://www.legislation.gov.uk/ssi/2017/102/contents/made> transpose the Environmental Impact Assessment Directive into the Scottish planning system.

More information about the environmental legislation listed is available on the website of the Scottish Environment Protection Agency: [www.sepa.com](http://www.sepa.com)

## **65. Environmental Law Concerning Energy Planning Consents**

### EU Law

The Strategic Environmental Assessment (SEA) Directive 2001/42/EC: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001L0042> .

Directive 2014/52/EU:<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0052> on the assessment of the effects of certain public and private projects on the environment.

### Scottish Law

The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 :<http://www.legislation.gov.uk/ssi/2017/102/contents/made>

### *Marine Energy*

Applications for marine energy (eg wave, tidal and offshore wind) are made to [Marine Scotland](#). Marine Scotland also provides guidance on monitoring watercourses in relation to onshore energy developments.

### *Electricity*

Applications are considered by Scottish Ministers where they are:

- for electricity generating stations in excess of 50 megawatts
- for overhead power lines and infrastructure and large gas and oil pipelines.

<http://www.gov.scot/Topics/marine/Licensing/marine/guidance>

<http://www.gov.scot/Topics/marine/Licensing/marine/apply>

Applications to construct and operate power stations of a certain capacity are made to Scottish Ministers under [section 36 of the Electricity Act 1989](#). Applications for powerlines and necessary wayleaves are made under [section 37 of the Electricity Act 1989](#).

The following regulations apply to sections 36 and 37:

[The Electricity Works \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017](#)

[The Electricity \(Applications for Consent\) Regulations 1990](#)

[The Electricity \(Applications for Consent\) Amendment \(Scotland\) Regulations 2013](#)

[The Electricity Generating Stations \(Applications for Variation of Consent\) \(Scotland\) Regulations 2013](#)

A consent under section 36 and section 37 of the Electricity Act 1989 usually carries with it deemed planning permission from the Scottish Ministers under [section 57 of the Town and Country Planning \(Scotland\) Act 1997](#)

### *Gas Pipelines*

The following regulations apply to applications for pipelines:

The Pipe-lines Act 1962: <https://www.legislation.gov.uk/ukpga/Eliz2/10-11/58/contents>

The Gas Act 1986: <https://www.legislation.gov.uk/ukpga/1986/44/contents>

[The Public Gas Transporter Pipe-Line Works \(Environmental Impact Assessment\) Regulations 1999](#)  
[Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) \(No. 2\) Order 2000](#)

[The Offshore Petroleum Production and Pipe-lines \(Environmental Impact Assessment and other Miscellaneous Provisions\) \(Amendment\) Regulations 2017](#)

## **66. Environmental Law Concerning Offshore Oil and Gas Installations within Territorial Waters**

### EU Law

The Strategic Environmental Assessment (SEA) Directive 2001/42/EC: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001L0042>

### UK Law

The Environmental Assessment of Plans and Programmes Regulations 2004:  
<http://www.legislation.gov.uk/uksi/2004/1633/contents/made>

The Directive was not incorporated into UK law until the Environmental Assessment of Plans and Programmes Regulations 2004.



[Offshore Energy Strategic Environmental Assessment \(SEA\): An overview of the SEA process](#)

[The Offshore Petroleum Production and Pipe-lines \(Assessment of Environmental Effects\) \(Amendment\) Regulations 2007](#)

The Offshore Petroleum Activities (Conservation of Habitats) (Amendment) Regulations 2007 <http://www.legislation.gov.uk/uksi/2007/77/contents/made>

[The Energy Act 2008 \(Consequential Modifications\) \(Offshore Environmental Protection\) Order 2010](#)

[The Offshore Petroleum Production and Pipe-lines \(Environmental Impact Assessment and other Miscellaneous Provisions\) \(Amendment\) Regulations 2017](#)

The [Energy Act 2008 \(Consequential Modifications\) \(Offshore Environmental Protection\) Order 2010 \(PDF, 78.06KB\)](#) extends the provisions of the regulations to offshore gas unloading and storage operations and offshore carbon dioxide storage operations.

#### Scottish Law

Environmental Assessment (Scotland) Act 2005:

<https://www.legislation.gov.uk/asp/2005/15/contents>

[The Environmental Impact Assessment \(Scotland\) Regulations 2010](#), and

[The Conservation \(Natural Habitats, & c.\) Regulations 1994](#)

#### EU Law

Directive 2010/75/EU (the IED) on industrial emissions (integrated pollution prevention and control): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010L0075>

#### UK Law

[The Offshore Combustion Installations \(Pollution Prevention and Control\) Regulations 2013](#)

transpose the IED in respect to specific atmospheric pollutants from combustion installations (with a thermal capacity rating  $\geq$  50 MW) on offshore platforms undertaking activities involving oil and gas production and gas and carbon dioxide unloading and storage.

The Energy Act 2008: <https://www.legislation.gov.uk/ukpga/2008/32/contents> Part 4A  
Consent to Locate:

BEIS has responsibility for administration of Section 34 of the Coastal Protection Act 1949 (CPA). The Consent to Locate (CtL) provisions of Section 34 of the CPA were incorporated

into The Marine and Coastal Access Act 2009 (MCAA). The MCAA provided a regulatory framework for a new marine licensing regime that included consideration of works detrimental to navigation. The MCAA licensing regime applies to a number of offshore oil and gas operations, including the disturbance of the seabed and the deposit and removal of substances or articles during the course of decommissioning operations.

Section 77 of the MCAA excludes the vast majority of offshore oil and gas operations and carbon dioxide storage operations controlled under the Petroleum Act 1998 (PA) or the Energy Act 2008 (EA). BEIS has responsibility for CtL provisions for these excluded operations,

The Offshore Installations (Emergency Pollution Control) Regulations 2002:  
<http://www.legislation.gov.uk/uksi/2002/1861/contents/made>

The Offshore Chemical Regulations 2002:  
<http://www.legislation.gov.uk/uksi/2002/1355/contents/made>

The Greenhouse Gas Emissions Trading Scheme Regulations 2005:  
<https://www.legislation.gov.uk/uksi/2005/925/contents/made>

The Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005:  
<http://www.legislation.gov.uk/uksi/2005/2055/contents/made>

The REACH Enforcement Regulations 2008:  
<http://www.legislation.gov.uk/uksi/2008/2852/contents/made>

The Fluorinated Greenhouse Gases Regulations 2015  
<http://www.legislation.gov.uk/uksi/2015/310/contents/made>

[The Energy Act 2008 \(Consequential Modifications\) \(Offshore Environmental Protection\) Order 2010](#)

### Scottish Law

In Scotland, the requirements of the Directive are implemented by the Environmental Assessment (Scotland) Act 2005: <https://www.legislation.gov.uk/asp/2005/15/contents> .The Act requires environmental assessment to be undertaken on all public plans, programmes and strategies which are likely to have significant environmental effects.

## **67. Environmental Quality – Air Quality**

### EU Law

The following Directives concern air quality:

Ambient Air Quality Directive 2008/50/EC <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008L0050> sets legally binding limits for concentrations in outdoor air of major air pollutants that impact public health such as particulate matter (PM10 and PM2.5) and nitrogen dioxide (NO2)

Directive 2004/107/EC <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0107> relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air

Directive 2015/1480 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L1480> Amending Directives 2004/107/EC and 2008/50/EC

Ceilings were set in EU law under the National Emission Ceilings Directive (2001/81/EC), which will be replaced by the Directive on the reduction of national emissions (2016/2284/EU):[http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2016.344.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2016.344.01.0001.01.ENG)

## UK Law

The National Emission Ceilings Regulations 2002:<http://www.legislation.gov.uk/ukxi/2002/3118/2003-01-10> apply across the UK.

Responsibility for meeting air quality limit values is devolved to Scotland, Wales and Northern Ireland.

The Secretary of State for Environment, Food and Rural Affairs is responsible for meeting the limit values in England. The Department for Environment, Food and Rural Affairs (Defra) co-ordinates assessment and air quality plans for the UK as a whole.

The UK Government and the devolved administrations are required under the Environment Act 1995 to produce a national air quality strategy. The strategy sets out the UK's air quality objectives and recognises that depending on the type of air quality problem, action at national, regional and local level may be needed.

Part IV of the Environment Act 1995:

<https://www.legislation.gov.uk/ukpga/1995/25/section/80> requires local authorities in the UK to review air quality in their area and designate air quality management areas if improvements are necessary.

## English Law

Directive 2008/50/ EC replaced nearly all the previous EU air quality legislation and was enacted in England through the Air Quality Standards Regulations 2010 <http://www.legislation.gov.uk/ukxi/2010/1001/contents/made> , which also incorporates the 4th Air Quality Directive (2004/107/EC) that sets targets for levels in outdoor air of certain toxic heavy metals and polycyclic aromatic hydrocarbons.

The Air Quality Standards (Amendment) Regulations 2016: <http://www.legislation.gov.uk/ukxi/2016/1184/contents/made> Those Regulations transposes Directive 2008/50/EC: <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32008L0050> on ambient air quality and Directive 2004/107/EC <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0107> relating to arsenic and other materials in ambient air.

## Scottish Law

[The Air Quality Standards \(Scotland\) Regulations 2010](#)

[The Air Quality \(Scotland\) Amendment Regulations 2016](#)

## **68. Environmental Quality – Chemicals**

### EU Law and Policy

EU REACH (registration, evaluation, authorisation and restriction of chemicals) Regulation 1907/2006/EC: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02006R1907-20140410>

REACH provides a single regulatory framework for the control of chemicals, replacing the previous patchwork of controls. It ensures that information on the properties of chemicals is transmitted down the supply chain, so they can be safely handled.

The Water Framework Directive 2000/60/EC: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0060> established provision for a list of Priority Substances (Annex X of the Directive). Decision 2455/2001/EC: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001D2455> established the First list, and Directive 2008/105/EC, the Environmental Quality Standards Directive – EQSD: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008L0105>, set the quality standards as required by Article 16(8) of the Water Framework Directive. Annex II to the EQSD replaced Annex X of the Water Framework Directive.

Member States are required to take actions to meet the quality standards in the EQSD by 2015 as part of chemical status (Water Framework Directive Article 4 and Annex V point 1.4.3).

Details and documentation are available [here](#).

Community policy concerning dangerous or hazardous substances in European waters was introduced in 1976 by [Council Directive on pollution caused by discharges of certain dangerous substances \(Directive 76/464/EEC](#), codified as [2006/11/EC](#)). Several substances have been regulated in [specific directives](#) defining community-wide emission limit values and quality objectives in the surface and coastal waters. Directive 76/464/EEC was integrated into the Water Framework Directive: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0060>  
Commission Directive 2009/90/EC:<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009L0090> on technical specifications for chemical analysis and monitoring of water came into effect on 21 August 2009. This Directive established common chemical analysis standards and monitoring of water, sediment and biota.

Strategic approach to pharmaceuticals in the environment:

The Commission is consulting a strategic approach to pharmaceuticals in the environment. This follows the provision in Article 8c of Directive 2008/105/EC as amended by Directive 2013/39/EU, which requires that the approach be followed by proposals for measures as appropriate.

## UK Law

The REACH Enforcement Regulations

2008: <http://www.legislation.gov.uk/ukxi/2008/2852/contents/made> Under the European Communities Act 1972 the power of the Minister to make regulations in relation to matters in or as regards Scotland is preserved by section 57(1) of the Scotland Act 1998.

DEFRA have the policy lead on which REACH complements the Control of Substances Hazardous to Health Regulations 2002 (COSHH).

The Health and Safety Executive publishes <http://www.hse.gov.uk/reach/>.

SEPA: <https://www.sepa.org.uk> is one of the enforcement authorities for chemical restrictions and bans under REACH.

## **69. Environmental quality – Flood Risk Management**

### EU law

Directive 2007/60/EC: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32007L0060> on the assessment and management of flood risks requires Member States to assess the risk from flooding, to map the flood extent and risk to people and property and to take measures to reduce the risk. The Directive also provides rights for the public to have a say in the planning process.

The Directive is carried out in conjunction with the Water Framework Directive, through coordination of flood risk and river basin management plans.

Member States must also coordinate flood risk management practices in shared river basins, including with third countries, and shall not increase the flood risk in neighbouring countries.

### UK law

Flood and Water Management Act 2010:

[http://www.legislation.gov.uk/ukpga/2010/29/pdfs/ukpga\\_20100029\\_en.pdf](http://www.legislation.gov.uk/ukpga/2010/29/pdfs/ukpga_20100029_en.pdf)

Flood risk management plans (FRMPs): 2015 to 2021:

<https://www.gov.uk/government/collections/flood-risk-management-plans-frmps-2015-to-2021>

### Scottish Law

The Flood Risk Management (Scotland) Act 2009 was enacted on June 16 June 2009:

<https://www.legislation.gov.uk/asp/2009/6/contents>

The Act introduces an up to date approach to flood risk management and creates a more joined up process to manage flood risk at a national and local level.

## **70. Environmental Quality – International Timber Trade (EUTR and FLEGT)**

### EU Law

The EU Regulation (EU) No 995/2010: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R0995> sets out the obligations of operators who sell timber and timber products – and counters the trade in illegal timber and timber products.

The Regulation covers a wide range of [timber products](#) listed in its Annex, using EU Customs Code Nomenclature.

The updated version of the Guidance Document for the EU Timber Regulation was adopted on 12 February 2016: [http://ec.europa.eu/environment/forests/pdf/eutr\\_guidance.zip](http://ec.europa.eu/environment/forests/pdf/eutr_guidance.zip)

## UK Law

Timber supply chains are regulated to ensure legal, sustainable harvesting practices and support global forest governance.

The Timber and Timber Products (Placing on the Market) Regulations 2013: <http://www.legislation.gov.uk/uksi/2013/233/contents/made> and the Forest Law Enforcement, Governance and Trade Regulations 2012 <http://www.legislation.gov.uk/uksi/2012/178/made> implement the EU Law.

The regulations cover imported and domestic timber and a broad range of timber products, including composites such as furniture, pulp and paper.

The regulations do not apply to recycled products or printed papers such as books, magazines and newspapers.

The [Timber and Timber Products \(Placing on the Market\) Regulations 2013](#) are made by the Secretary of State, who is designated for the purposes of [section 2\(2\)](#) of the [European Communities Act 1972](#) in relation to the environment makes these Regulations in exercise of the powers conferred by [section 2\(2\)](#) of, and [paragraph 1A of Schedule 2](#) to, that Act.

[Forest Law Enforcement, Governance and Trade Regulations 2012](#) are made by the Secretary of State, who is designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the control of the import and export of goods, makes these Regulations in exercise of the powers conferred by section 2(2) of and paragraph 1A of Schedule 2 to that Act.

These regulations came into force on 3 March 2013. In order to try and prohibit the trade in illegal timber, these regulations oblige organisations or individuals who place timber and timber products on the market to assure that the timber they are trading originates from legal sources. It is a crime to place illegal timber on the EU timber market.

## **71. Environmental quality - Marine Environment**

### EU Law

Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0056>

Commission Decision (EU) 2017/848 <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1495097018132&uri=CELEX:32017D0848> laying down criteria and methodological standards on good environmental status of marine waters and specifications and standardised methods for monitoring and assessment, and repealing Decision 2010/477/EU

Commission Directive (EU) 2017/845 of 17 May 2017 amending Directive 2008/56/EC of the European Parliament and of the Council as regards the indicative lists of elements to be taken into account for the preparation of marine strategies <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32017L0845>

## UK Law

The Conservation of Offshore Marine Habitats and Species Regulations 2017: <https://www.legislation.gov.uk/ukxi/2017/1013/introduction/made>

In so far as these Regulations deal with matters that are within the devolved competence of Scottish Ministers, the power of the Secretary of State to make regulations in relation to those matters in or as regards Scotland is preserved by section 57(1) of the Scotland Act 1998.

The Marine and Coastal Access Act 2009 (MCAA): <https://www.legislation.gov.uk/ukpga/2009/23/contents>

MCAA introduced a marine licensing system. The licensable activities include the deposit and removal of materials, the disturbance of the seabed, and the use of explosives. BEIS is the licensing authority for reserved offshore energy related activities.

Most offshore energy activities are for oil and gas exploration and production, gas unloading and storage, and carbon dioxide storage operations which are controlled under the Petroleum Act 1998 or the Energy Act 2008, and are specifically excluded from the marine licensing provisions under MCAA. Therefore, operations under the Petroleum Act 1998 or the Energy Act 2008 which are exempt under the Marine Licensing (Exempted Activities) Order 2011 do not require a MCAA licence. The activities that are not excluded and require a MCAA licence are mainly related to decommissioning operations.



## *Marine Planning*

The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001:

<http://www.legislation.gov.uk/uksi/2001/1754/contents/made>

The 2001 regulations require consent for geological surveys related to oil and gas activities undertaken on the UK Continental Shelf. The amendments extend these provisions to UK waters (sea adjacent to UK from the low water mark up to the seaward limits of territorial waters) and require prior consent for the testing of equipment to be used in geological surveys.

There are Guidelines for minimising risk to marine mammals and for compliance with the Habitats Regulations Assessments.

[The Offshore Marine Conservation \(Natural Habitats, &c.\) Regulations 2007](#) came into force on 21 August 2007, introducing provisions for implementing Council Directive 79/409/EEC on the conservation of wild birds and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora in relation to offshore marine areas.

[The Offshore Marine Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2010](#) came into force on 1 April 2010, extending certain provisions of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007. The extended provisions makes it an offence to deliberately disturb wild animals of a European Protected Species (EPS) in such a way as to be likely (a) to impair their ability (i) to survive, breed, or rear or nurture their young; or (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate or b) to affect significantly the local distribution or abundance of that species.

The MCAA also introduced a new system of marine management, comprising the UK Marine Policy Statement and the production of marine plans. Marine planning is currently being developed via regional marine plans in England, Wales, Scotland and Northern Ireland. Scotland's National Marine Plan can be found here:

<http://www.gov.scot/publications/2015/03/6517>

## UK Law

[Marine and Coastal Access Act 2009](#)

[The Marine Licensing \(Exempted Activities\) Order 2011](#)

[The Marine Licensing \(Exempted Activities\) \(Amendment\) Order 2013](#)

[The Marine Works \(Environmental Impact Assessment\) Regulations 2007](#)

## [The Marine Works \(Environmental Impact Assessment\) \(Amendment\) Regulation 2011](#)

### Scottish Law

The Marine (Scotland) 2010

[http://www.legislation.gov.uk/asp/2010/5/pdfs/asp\\_20100005\\_en.pdf](http://www.legislation.gov.uk/asp/2010/5/pdfs/asp_20100005_en.pdf)

The Act introduces a duty to protect and enhance the marine environment and includes measures to help boost economic investment and growth in areas such as marine renewables.

The main measures include:

- Marine planning: a new statutory marine planning system to sustainably manage the demands on the sea.
- Marine licensing: minimising the number of licences development in the marine environment to cut bureaucracy and encourage economic investment
- Marine conservation: powers to protect and manage areas of importance for marine wildlife, habitats and historic monuments

Seal conservation: improved protection for seals and a licence system to ensure appropriate management when necessary enforcement of a range of enhanced powers of marine conservation and licensing

### [The Food and Environment Protection Act 1985](#)

The Food and Environmental Protection Act (FEPA), Part II Deposits in the Sea, covered the discharge or placement of substances or articles in the sea or on the seabed where the deposits could not be covered by other legislation. Following the licensing provisions of the Marine and Coastal Access Act 2009, on 6 April 2011, it was dis-applied in English and Welsh waters and offshore waters adjacent to Scotland.

FEPA Part II still applies in Scottish territorial waters, between the 3 NM Scottish controlled waters limit and the 12 NM Scottish territorial sea limit, where DECC will remain the licensing authority.

For activities within Scottish controlled waters, the Scottish Government is the licensing authority and the Marine (Scotland) Act 2010 is the relevant legislation.

## **72. Environmental Quality – Natural Environment and Biodiversity**

### EU Law and Policy

The EU Biodiversity Strategy is designed to halt the loss of biodiversity and [ecosystem services](#) in the EU and help stop global biodiversity loss by 2020.

The Birds Directive aims to protect all of the 500 wild bird species naturally occurring in the European Union.

Wild bird (frequently migratory) species can only be protected by cross border cooperation. Member States unanimously adopted the Directive 79/409/EEC in April 1979. It is the oldest piece of EU legislation on the environment. Amended in 2009, it became the [Directive 2009/147/EC](#).

Habitat loss and degradation are the most serious threats to the conservation of wild birds. The Directive emphasises the protection of habitats for endangered and migratory species. It establishes a network of Special Protection Areas (SPAs). Since 1994, all SPAs are included in the [Natura 2000](#) ecological network, set up under the [Habitats Directive 92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora.

The Habitats Directive ensures the conservation of a range of rare or threatened animal and plant species. Some 200 rare and characteristic habitat types are also conserved in their own right.

The Directive aims to promote biodiversity, taking account of economic, social, cultural and regional requirements. It forms the cornerstone of Europe's nature conservation policy with the [Birds Directive](#) and as noted established [Natura 2000](#).

The Birds and Habitats Directives have had to evolve to reflect successive enlargements of the European Union. A [consolidated version of the directive](#) includes the latest versions of the annexes. It reflects the commitments taken by the EU in 2010, within the International Convention on Biological Diversity.


In 2011, the EU adopted a strategy setting out 6 targets and 20 actions to halt the loss of biodiversity and ecosystem services in the EU by 2020 (read the [Strategy](#)). The [mid-term review](#) of the strategy assesses whether the EU is on track to achieve this objective. It shows progress in many areas, but highlights the need for much greater effort.


### UK Law


Wildlife and Countryside Act 1981: <https://www.legislation.gov.uk/ukpga/1981/69/contents>

## Scottish Law and Policy

- [Conservation \(Natural Habitats, &c.\) Regulations 1994](#) with the Nature Conservation (Scotland) Act 2004 implements the EU Birds and Habitats Directives in the inshore area.
- [Nature Conservation \(Scotland\) Act 2004](#) contains legal provisions to implement national-level policies on nature conservation including equivalent protection for some other species of national importance and a biodiversity duty on all public bodies inside territorial waters, which is implemented in Scottish territorial waters by the Scottish Biodiversity Strategy.
- [Offshore Marine Conservation Regulations \(2007\)](#) implements the EU Birds and Habitats Directives in the UK offshore area

[The 2020 Challenge for Scotland's Biodiversity](#)  - a strategy to protect and restore Scotland's biodiversity was launched on 19th June 2013.

The 2020 Challenge for Scotland's Biodiversity is a supplement to the original Scottish Biodiversity Strategy, [Scotland's Biodiversity: It's in Your Hands](#) , published by the Scottish Government in May 2004. Together they comprise the current Scottish Biodiversity Strategy.

The [three-year reporting cycles](#)  for the strategy will ensure that progress is recorded and necessary action taken. The Scottish Biodiversity List (2004) will be categorised to help clarify which species and habitats require priority action.

A structure of working groups leads delivery of each main strand in the 2020 Challenge. Details of all these groups are being updated.

The Strategy was refreshed in light of international agreements signed in Nagoya, Japan in 2010 and the publication of the European Union's Biodiversity Strategy in May 2011.

The 2020 Challenge is clear that an ecosystem conservation approach is required with a focus of effort on the drivers of biodiversity loss such as climate change, invasive non-native species, habitat fragmentation and diffuse pollution.

### **73. Environmental Quality – Ozone Depleting Substances and F-gases**

#### EU Law

[unofficial consolidated EU Emissions Trading Directive 2003/87/EC Directive 2009/29/EC \(Phase III\)](#)

This Directive amends Directive 2003/87/EC to improve and extend the EU's emission allowance trading scheme.

The revised EU ETS Directive forms part of the EU 2020 Climate & Energy Package agreed in December 2008.

#### [Aviation Directive 2008/101/EC](#)

This Directive amends the EU Emissions Trading Directive 2003/87/EC to include aviation from 2012.

#### [Linking Directive \(2004/101/EC\)](#)

This Directive amends the EU Emissions Trading Directive 2003/87/EC to enable Member States to allow operators to use credits obtained through Kyoto Mechanisms (CERs - Certified Emissions Reductions and ERUs - Emission Reduction Units).

#### [EU Emissions Trading Directive 2003/87/EC](#)

#### [Monitoring, reporting and verification of greenhouse gas emissions in the EU ETS](#)

#### UK Law

The [Greenhouse Gas Emissions Trading Scheme Regulations 2012](#)

Under section 57 of the Scotland Act [1998 \(c. 46\)](#), despite the transfer to the Scottish Ministers of functions in relation to observing and implementing obligations under Community law in respect of devolved matters, any function of the Secretary of State in relation to any matter continues to be exercisable as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972. And similarly, under paragraph 5 of Schedule 3 to the Government of Wales Act [2006 \(c. 32\)](#), despite the transfer to the Welsh Ministers of functions under section 2 of the 1999 Act so far as exercisable in relation to Wales (except in relation to offshore oil and gas exploration and exploitation), those functions continue to be exercisable by the Secretary of State in relation to Wales for such purposes

### **74. Environmental Quality – Spatial Data Infrastructure Standards**

#### EU Law

European [Directive 2007/2/EC](#) is known as INSPIRE and establishes an infrastructure for spatial information in the European Union.

INSPIRE aims to facilitate environmental policy across the EU by:

- improving the joining up of and access to existing spatial data across the European Union at a local, regional, national and international level
- facilitating improvements in the sharing of spatial data between public authorities
- and improving public access to spatial data

Under INSPIRE, Member States must make available information in a consistent format and also create network services for accessing the information. INSPIRE has [34 environmental themes](#) set out in its Annexes. Technical [Implementing Rules](#) have also been made by the EU to support the implementation of INSPIRE.

### English Law

Regulations covering [England, Northern Ireland and Wales](#); (SI 2009 No 3157) came into effect on 31 December 2009. [The INSPIRE \(Amendment\) Regulations 2012](#) update the INSPIRE Regulations 2009 to take account of technical implementing rules made by the EU.

An informal consolidated text of the England, Northern Ireland and Wales INSPIRE Regulations can be read [here](#).

### Scottish Law

The INSPIRE (Scotland) Regulations 2009:  
<http://www.legislation.gov.uk/ssi/2009/440/contents/made>

[The INSPIRE \(Scotland\) Amendment Regulations 2012](#) came into effect on November 2012.

## ***75. Environmental Quality – Waste Packaging and Product Regulations***

See 76 below

## ***76. Environmental Quality – Waste Producer Responsibility Regulations***

### EU Law

[Directive 94/62/EC on Packaging and Packaging Waste](#) (consolidated version)

Amending laws:

[Directive 2004/12/EC](#) amending Directive 94/62/EC on packaging and packaging waste.

[Directive 2005/20/EC](#) amending Directive 94/62/EC on packaging and packaging waste (extension of deadlines for the attainment of the recycling and recovery targets for the Member States acceding the EU in 2004)

[Commission Directive 2013/2/EU](#) amending Annex I to Directive 94/62/EC on packaging and packaging waste.

[Directive \(EU\) 2015/720](#) amending Directive 94/62/EC as regards the consumption of lightweight plastic carrier bags.

The Waste Framework [Directive 2008/98/EC](#) sets the basic concepts and definitions related to waste management, including definitions of waste, recycling, recovery. It explains when waste ceases to be waste and becomes a secondary raw material (end-of-waste criteria), and how to distinguish between waste and by-products.

The Directive lays down some basic waste management principles: that waste be managed without a. endangering human health and harming the environment, b. risk to water, air, soil, plants or animals, c. causing a nuisance through noise or odours, and d. adversely affecting the countryside.

The Directive introduced the "polluter pays" principle and "extended producer responsibility". It incorporated provisions on hazardous waste and waste oil and requires that Member States adopt waste management plans and [waste prevention programmes](#).

## UK Law

### [Producer Responsibility Obligations \(Packaging Waste\) Regulations 2007](#)

These Regulations are made by the Secretary of State for Environment, Food and Rural Affairs as respects England, Scotland and Wales in exercise of the powers conferred upon him by section 2(2) of the European Communities Act 1972 and sections 93 – 95 of the Environment Act 1995. Under section 57 of the Scotland Act 1998, despite the transfer to Scottish Ministers of functions in relation to implementing obligations under Community law in respect of devolved matters, the function of the Secretary of State in relation to implementing those obligations continues to be exercisable by him as regards Scotland.

Environmental Protection Act 1990 <http://www.legislation.gov.uk/ukpga/1990/43/contents>  
Part II, Waste on Land

Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015:  
<http://www.legislation.gov.uk/uksi/2015/426/contents/made>

## Scottish Law

Waste Management Licensing (Scotland) Regulations 2011:

<https://www.legislation.gov.uk/ssi/2011/228/contents/made>

Safeguarding Scotland's Resources: Blueprint For A More Resource Efficient and Circular Economy: <http://www.gov.scot/Publications/2013/10/6262/0>

### **77. Environmental quality – Water Quality**

See 78 below

### **78. Environmental quality – Water Resources**

## EU Law

EU legislation on water quality includes:

[Directive on Integrated Pollution Prevention and Control \(IED\)](#)

[Nitrates Directive](#)

[Urban Waste Water Treatment Directive](#)

[Dangerous Substances Directive](#)

[Bathing Waters Directive](#)

[Water Framework Directive](#)

The [Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy](#) Successive amendments to Directive 2000/60/EC have been incorporated in to the original document. This [consolidated version](#) is of documentary value only.

The Nitrates Directive 91/676/EEC: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A31991L0676>

aims to protect fresh, coastal and marine waters against pollution caused by nitrates. It requires member states to identify waters, either actually or potentially affected by nitrate pollution. These include:

- surface waters, particularly those for the abstraction of drinking water, where nitrate concentrations exceed 50 mg/l nitrate
- groundwaters actually or potentially containing more than 50 mg/l nitrate
- freshwater lakes, other freshwater bodies, estuaries, coastal waters and marine waters which are, or may in the future be, eutrophic.



## UK Law

The provisions of the Nitrates Directive for the identification of vulnerable zones were transcribed into UK legislation primarily under the provisions of the Water Resources Act 1991 <https://www.legislation.gov.uk/ukpga/1991/57/contents> and subsequent Regulations. The Protection of Water Against Agricultural Nitrate Pollution Regulations 1996 and one, at Balmalcolm in Fife, under similar regulations in Scotland. Three Nitrates Vulnerable Zones have been designated in Northern Ireland.

The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 [http://www.legislation.gov.uk/uksi/2003/3242/pdfs/uksi\\_20033242\\_en.pdf](http://www.legislation.gov.uk/uksi/2003/3242/pdfs/uksi_20033242_en.pdf)

The Water Environment (Water Framework Directive) (England and Wales) (Amendment) Regulations 2016: <http://www.legislation.gov.uk/uksi/2016/138/made>

## Scottish Law

The Designation of Nitrate Vulnerable Zones (Scotland) Regulations 2015: [http://www.legislation.gov.uk/ssi/2015/376/pdfs/ssi\\_20150376\\_en.pdf](http://www.legislation.gov.uk/ssi/2015/376/pdfs/ssi_20150376_en.pdf)

The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008: <http://www.legislation.gov.uk/ssi/2008/298/contents/made>

Water (Scotland) Act 1980 : <https://www.legislation.gov.uk/ukpga/1980/45/contents>

Water Environment and Water Services (Scotland) Act 2003:  
<https://www.legislation.gov.uk/asp/2003/3/contents>

The regulatory regime for the delivery of measures to protect and improve the Scottish water environment is the [Water Environment \(Controlled Activities\) \(Scotland\) Regulations 2011](#).

Ministers have also issued policy statements on the [regulations](#); the use of related emergency [provisions](#); and how [third party interests](#) will be properly taken into account.

The Scottish Ministers direct SEPA from time to time regarding specific issues. Current directions include:

[The Water Environment \(Controlled Activities\) \(Unconventional Oil or Gas Development\) \(Scotland\) Directions 2015](#)

[Water Environment \(Controlled Activities\) \(Underground Coal Gasification\) \(Scotland\) Direction 2015](#)

## EU Law

Urban Waste Water Treatment Directive: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31991L0271>

The Urban Waste Water Treatment (England and Wales) Regulations 1994: <http://www.legislation.gov.uk/uksi/1994/2841/made> apply in England and Wales. DETR and the Welsh Office issued a guidance note (DETR 1997) providing agreed interpretation of the Regulations between the Environment Agency and the Water Service plcs (the largest group of dischargers).

The main aim of the Directive is to ensure that all significant discharges of sewage are treated before they are discharged, either to inland surface waters, groundwaters, estuaries or coastal waters.

## Scottish Law

The Urban Waste Water Treatment (Scotland) Regulations 1994: <http://www.legislation.gov.uk/uksi/1994/2842/contents/made>

The Urban Waste Water Treatment (Scotland) Amendment Regulations 2003: <http://www.legislation.gov.uk/ssi/2003/273/contents/made>

## ***79. Environmental quality – Biodiversity – access and benefit sharing of genetic resources***

Global biodiversity is protected by the international [Convention on Biological Diversity](#) (the CBD) to which the EU and its Member States are parties. The CBD recognizes that countries have sovereign rights over genetic resources on their territory and encourages them to facilitate access to these resources "for environmentally sound uses". The convention also stipulates that any benefits arising from the use of genetic resources should be shared with the country providing these resources. This is the concept of "access and benefit sharing", or ABS.

The protocol on "Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization", known as the [Nagoya Protocol](#), was adopted in 2010 and signed by 92 countries. It establishes a legally-binding framework regulating how researchers and companies can access the genetic resources of a country. It also explains how the benefits from using these genetic resources and associated traditional knowledge will be shared.

## EU Law

### [Access and Benefit-Sharing – the EU legislation](#)

#### *EU ABS Regulation*

[Regulation \(EU\) No 511/2014](#) of the European Parliament and of the Council on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union was adopted on 16 April 2014. Implementing the mandatory elements of the [Nagoya Protocol in the European Union](#), it entered into force on 9 June 2014 and applies from 12 October 2014, the date the [Nagoya Protocol itself entered into force for the Union](#).

### [EU Law and international obligations](#)

#### [Nagoya Protocol \(Compliance\) Regulations 2015](#)

#### [Regulation \(EU\) No. 511/2014: compliance measure for users](#)

#### [Regulation \(EU\) 2015/1866: register of collections, monitoring user compliance and best practices](#)

The EU regulation [Regulation \(\(EU\) No 511/2014\)](#) . It entered into force on 9 June 2014 and all of its provisions apply since 12 October 2015.

The ABS rules apply when genetic resources, and the traditional knowledge associated with them, are used in research and development for example in medical research or environmental innovation.

## UK Law

The Nagoya Protocol provides for the implementation of the Convention on Biological Diversity (CBD) objective of the fair and equitable sharing of benefits arising out of the utilisation of genetic resources.

The Protocol is given effect by:

- The Nagoya Protocol (Compliance) Regulations 2015: <http://www.legislation.gov.uk/ukxi/2015/821/contents/made>
- Regulation (EU) No. 511/2014: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014R0511> on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation in the Union

- Regulation (EU) 2015/1866: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R1866> laying down the detailed rules for the implementation of Regulation (EU) 511/2014 as regards the register of collections, monitoring user compliance and best practices

The legislation is implemented and enforced in the UK by The Office for Product Safety & Standards: <https://www.gov.uk/government/organisations/office-for-product-safety-and-standards>.

## **80. Hazardous Substances Planning**

### EU Law

The Seveso Directive: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32012L0018> on the control of major accident hazards involving dangerous substances (known as "hazardous substances" in legislation within the UK)

### English Law

The National Planning Policy Framework is particularly relevant to planning for hazardous substances:

The [Seveso III Directive 2012/18/EU](#) sets expectations on land-use planning. In particular, Article 13 requires planning controls to apply to all establishments within the scope of the directive and developments in the vicinity of these establishments. Article 15 sets expectations on public participation in decision making. In England these requirements are implemented through a system of consents for hazardous substances under the [Planning \(Hazardous Substances\) Act 1990](#) and through arrangements for dealing with planning applications and plan-making.

The main regulations are:

- the [Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#) (see regulation 18 and Schedule 4);
- the [Town and Country Planning \(Local Planning\) \(England\) Regulations 2012](#) (see regulation 10(1)(a) and (b)).

### Scottish Policy and Law

The Seveso Directive seeks to limit the risks of major accident hazards involving such substances occurring and the consequences of such accidents for human health and the

environment. The non-planning elements of the Seveso III Directive are implemented (from 1 June 2015) by the [Control of Major Accident Hazards Regulations 2015](#), which are the responsibility of the UK Government.

The Scottish legislation is the [Planning \(Hazardous Substances\) \(Scotland\) Act 1997](#) and the [Town and Country Planning \(Hazardous Substances\) \(Scotland\) Regulations 2015](#).

This Scottish legislation has requirements for hazardous substances consent for the presence of specified substances or categories of substance at or above controlled quantities. It also includes relevant appeal procedures and enforcement procedures.

The 2015 Regulations also amend other planning legislation regarding requirements in relation to the preparation of development plans and supplementary guidance and on the processing of applications for planning permission for sites with hazardous substances and for development in the vicinity of such sites. In order to meet the requirements of the Seveso III Directive, the 2015 Regulations also have new provisions on: the preparation of national planning policy; public involvement in the preparation of relevant plans and programmes; and public participation procedures in relation to decisions on planning permission in cases within scope of the Seveso III Directive and to decisions on hazardous substances consent taken outside the normal application process.

### ***81. Implementation of EU Emissions Trading System***

See Carbon Capture and Storage

### ***82. Land use***

Land-use planning and management are essential to reconcile land use with environmental concerns. This involves various policy levels and sectors and demands an integrated approach.

Land-use planning and management decisions are usually taken at local or regional level, eg as part of urban planning or agricultural and forestry practices. However, the [European Commission](#) ensures that Member States take environmental concerns into account in their land-use development plans and practice integrated land management.

The [7th Environmental Action programme](#) presents the issue of land use and land resource management as an element of natural capital that is crucial to maintaining ecosystems and the services they provide. It also presents it as an aspect of resource efficiency, tackling unsustainable resource trends.

European Union policies on [climate change adaptation](#) are directly relevant to current and future land-use practices and the economic sectors that depend on them. Land use is also

an important consideration for many other policy areas such as territorial cohesion, transport, and the climate and energy framework.

### Scottish Policy

See report by the Land Use Policy Group which includes Scottish Natural Heritage [Potential implications of leaving EU for UK agriculture and the rural environment: https://www.nature.scot/sites/default/files/2017-10/A2389687-IEEP-Brexit-scenarios-report-28-August-2017.pdf](https://www.nature.scot/sites/default/files/2017-10/A2389687-IEEP-Brexit-scenarios-report-28-August-2017.pdf)

### **83. Ionising radiation**

Directive 2013/59/Euratom, the Euratom Basic Safety Standards Directive(BSSD): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013L0059> on ionising radiation laid down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation.

The Directive aims to establish uniform safety standards to protect workers and the public from ionising radiation. The Directive applies to all practices which involve a risk from ionising radiation emanating from an artificial or natural radiation source in cases where natural radionuclides are processed for of their radioactive, fissile or fertile properties.

The Directive applies to the manufacture, production, processing, handling, disposal, use, storage, holding, transport of radioactive material and certain radiation emitting installations as well as the exposure of workers to radiation.

### UK Law

#### [The Ionising Radiation Regulations 2017](#)

The Department for Business, Energy and Industrial Strategy (BEIS) is responsible for coordinating the transposition of BSSD across the UK. There are five areas: emergency preparedness and response, medical exposure, public exposure, occupational exposure, and air and space crew.

The emergency preparedness and response and public exposure requirements of BSSD are led by BEIS. Occupational exposure requirements are led by the Health and Safety Executive (HSE). BEIS and HSE have worked closely with other departments to have an aligned approach to the regulatory framework in the UK for the civil and non-nuclear sector.

Medical exposure is led by the Department for Health and Air and Space crew by the Department for Transport. See also:

[The Ionising Radiation \(Medical Exposure\) Regulations 2000](#)

[The Ionising Radiation \(Medical Exposure\) \(Amendment\) Regulations 2011](#)

#### **84. Radioactive Source Notifications – Trans-frontier shipments**

##### EU Law

Directive [2013/59/EURATOM](#) lays down safety standards for protection against the dangers arising from exposure to ionising radiation.

Regulation 1493/93/Euratom: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31993R1493> on shipments of radioactive substances between Member States.

Directive 2006/117/Euratom: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32006L0117> on the supervision and control of shipments of radioactive waste and spent fuel.

Commission Recommendation 2008/956/Euratom: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008H0956> on criteria for the export of radioactive waste and spent fuel to third countries

##### GB Law

The Office for Nuclear Regulation (ONR) was established as a statutory Public Corporation by the [Energy Act 2013](#). It provides the framework of responsibilities and the powers of the organisation.

Other legislation that underpins the legal framework for the nuclear industry includes:

- The [Health and Safety at Work Act 1974](#) which makes employers responsible for ensuring the safety of their workers and the public.
- The [Nuclear Installations Act 1965](#) which requires a nuclear plant user to have a site licence from the ONR.
- The [Ionising Radiation Regulations 2017](#) which provide protection from ionising radiation of workers in all industries
- The [Nuclear Industries Security Regulations 2003](#) which provide ONR Civil Nuclear Security (CNS) with the authority to conduct its regulatory activities, approve security arrangements and enforce compliance.

- The [Trans-frontier Shipment of Radioactive Waste and Spent Nuclear Fuel Regulations 2008](#)

### Scottish Law

<https://www.sepa.org.uk/media/219776/guidance-on-the-shipment-of-wastes-which-contain-norm.pdf>

## **85. Radioactive waste treatment and disposal**

### EU Law

EU Radioactive waste management legal basis is the EURATOM treaty and the Directive provides for management of spent fuel and radioactive waste: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0070> and the Directive 2011/70/EURATOM: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0070>

The Directive provides for management of spent fuel and radioactive waste. It builds internationally accepted principles, in particular that present and future generations shall be protected without imposing undue burdens on future generations. Consequently, the end-point for radioactive waste management is disposal, providing robust safety features.

### UK Law

The disposal of higher activity radioactive waste (HAW) is devolved and policies differ across the UK. The UK Government and the the Welsh Government take the view that HAW in England and Wales should be managed by geological disposal, coupled with safe and secure interim storage until a geological disposal facility (GDF) is available. See the Joint Regulatory Guidance of the Office for Nuclear Regulation: <http://www.onr.org.uk/wastemanage.htm>

The Scottish Government does not support geological disposal. The 2001 Scottish Haw Policy: <http://www.gov.scot/Publications/2011/01/20114928/0> states that the long-term management of HAW should be in near-surface facilities, as near to the site where the waste is produced as possible.

Radioactive Waste Management <https://www.gov.uk/government/organisations/radioactive-waste-management> a subsidiary of the Nuclear Decommissioning Authority (NDA), has been established to deliver a GDF and provide waste management solutions.

The RWM disposability assessment aims at HAW packages being disposed of in the GDF. However, the regulators ONR, SEPA and Scottish Government, have previously concluded,



that HAW packages in anticipation of geological disposal are also suitable for long-term management in near-surface, near-site facilities, as required by Scottish Government Policy. This position is reflected in the Joint Regulatory Guidance. ONR and SEPA have carried out a joint project to review whether the RWM process was still appropriate for the management of Scottish HAW in line with Scottish Government policy.

## **86. Strategic Environmental Assessment (SEA) Directive**

### EU Law

The Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (SEA Protocol, Kiev 2003) was adopted by the Ministerial "Environment for Europe" Conference. The Protocol on Strategic Environmental Assessment augments the Espoo Convention by ensuring that Parties integrate environmental assessment into their plans and promote sustainable development. The EU ratified the Protocol on Strategic Environmental Assessment in November 2008. The SEA Directive 2001/42/EC: <http://ec.europa.eu/environment/eia/sea-support.htm> transposes the Protocol into EU Law.

[Directive 2001/42/EC](#) on the assessment of the effects of certain plans and programmes on the environment (SEAD) requires the environmental assessment of plans and programmes. SEA applies to many public plans and programmes (eg on land use, transport, energy, waste, agriculture, etc.). Under SEA these must be prepared and adopted by an authority (at national, regional or local level) and be required by legislative, regulatory or administrative provisions.

A SEA is mandatory for plans/programmes, which are:

- prepared for agriculture, forestry, fisheries, energy, industry, transport, waste/ water management, telecommunications, tourism, town & country planning or land use and which set the framework for future development consent of projects listed in the EIA Directive; or
- have been determined to require an assessment under the [Habitats](#) Directive

For the programmes not included above, the Member States have to carry out a screening procedure to determine whether the programmes are likely to have significant environmental effects. If there are significant effects, a SEA is needed.

### UK Law

The SEAD is implemented through the [Environmental Assessment of Plans and Programmes Regulations 2004](#), which apply to a plan or programme related solely to England (or part of England), or to England (or part of England) and any other part of the

United Kingdom. Where SEAD applies there are [some specific requirements that must be complied with](#) and which, in the case of local plans, should be included as part of the sustainability appraisal process.

### Scottish Law

The requirements of SEAD are implemented by the [Environmental Assessment \(Scotland\) Act 2005](#). The Act requires that environmental assessment is undertaken on all plans, programmes and strategies of a public nature which are likely to have significant environmental effects.

Under this Act, SEPA has a dual statutory duty as a Consultation Body and a Responsible Authority.

SEPA, Scottish Natural Heritage and Historic Environment Scotland are designated statutory SEA Consultation Authorities which means that at key stages they provide advice to those undertaking SEA. This process is administered by the [Scottish Government SEA Gateway](#). SEPA advise on the SEA topics of [air](#), [soil](#), [water](#), [climatic factors](#), [material assets](#) and [human health](#).

The Scottish Government [SEA Guidance](#) provides guidance on SEA in Scotland. The [Local Development Plan Site Assessment and SEA checklist](#) provides information about the development planning process.

SEPA Is a Responsible Authority and must undertake SEA of its own plans and programmes.

## ENERGY

### **87. Efficiency in Energy Use**

#### EU Law

The 2012 [Energy Efficiency Directive](#) (EED) 2012/27/EU set out legal provisions for the EU to attain its 20% energy efficiency target by 2020.

On 30 November 2016 the Commission proposed an [update to the Energy Efficiency Directive](#), including a new 30% energy efficiency target for 2030, and measures to update EED to make sure the new target is met.

The European Commission published guidance notes.

[Implementing the Energy Efficiency Directive – Commission Guidance \[COM\(2013\) 762\]](#)

#### UK Law

See Concerted Action website <http://www.ca-eed.eu/content/download/8015/142156/version/5/file/National+Implementation+Report+2016+-+United+Kingdom.pdf>

#### Scottish Law

The Pollution Prevention and Control (Designation of Energy Efficiency Directive) (Scotland) Order 2013: <http://www.legislation.gov.uk/ssi/2013/321/made/data.pdf>

### **88. Energy Performance of Buildings Directive**

#### EU Law

The 2010 [Energy Performance of Buildings Directive](#) (EPBD) 2010/31/EU and EED are the main EU laws on reducing the energy performance of buildings.

On 30 November 2016 the Commission proposed an [update to the Energy Performance of Buildings Directive](#) to promote smart technology in buildings and streamline existing rules. The Commission also published a new buildings database – the EU Building Stock Observatory – to track the energy performance of buildings across Europe.

#### England and Wales Law

EPBD was implemented by the [Energy Performance of Buildings \(England and Wales\)](#)

[Regulations 2012](#) . This consolidated and revoked all previous regulations and was amended by the Energy Performance of Buildings (England and Wales) (Amendment) Regulations 2017: <http://www.legislation.gov.uk/uksi/2017/368/made>

### Scottish Law

This EPBD was transposed in Scotland by the following legislation.

[The Building \(Energy Performance of Buildings\) \(Scotland\) Amendment Regulations 2016](#)

[The Energy Performance of Buildings \(Scotland\) Amendment \(No 386\) Regulations 2015](#)

[The Energy Performance of Buildings \(Scotland\) Amendment Regulations 2013](#)

[The Energy Performance of Buildings \(Scotland\) Amendment \(No. 3\) Regulations 2012](#)

[The Energy Performance of Buildings \(Scotland\) Amendment Regulations 2012 \(SSI 2012/190\)](#)

[The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(SSI 2012/208\)](#)

[The Energy Performance of Buildings \(Scotland\) Regulations 2008](#)

[The Energy Performance of Buildings \(Scotland\) Amendment Regulations 2008](#)

The Energy Performance of Buildings (Scotland) Amendment Regulations 2017  
<http://www.legislation.gov.uk/ssi/2017/225/made>

## **89. Heat Metering and Billing Information**

### EU Law

EU law on heat metering and billing is contained in the Energy Efficiency Directive: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0027> (EED). The European Commission has produced a [guidance document](#) to help explain the heat networks legislation.

### UK Law

[The Heat Network \(Metering and Billing\) Regulations 2014](#) implement the requirements in the EED with respect to the supply of distributed heat, cooling and hot water. These Regulations are made by the Secretary of State, being a Minister designated for the

purposes of [section 2\(2\)](#) of the [European Communities Act 1972](#)<sup>1</sup> in relation to energy and energy sources<sup>2</sup> in exercise of the powers conferred by [section 2\(2\)](#) of that Act.

The requirements of the EED with respect to the supply of distributed heat, cooling and hot water is part of UK law under [the Heat Network \(Metering and Billing\) Regulations 2014](#) as amended by [the Heat Network \(Metering and Billing\) \(Amendment\) Regulations 2015](#)

### Scottish Law

If the majority of final customers are in Scotland, the supplier will also have to declare the Unique Property Reference Number (UPRN) of every final customer on the network. Scottish UPRNs can be found on [www.onescotlandgazetteer.org.uk](http://www.onescotlandgazetteer.org.uk)).

## **90. High Efficiency Cogeneration**

### EU Law

[European Union Directive 2012/27/EU on energy efficiency](#)

### UK Law

The Combined Heat and Power Quality Assurance Regulations 2016:

<https://www.legislation.gov.uk/uksi/2016/1108/introduction/made>

These Regulations are made by the Secretary of State, being a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972 in relation to energy and energy sources, in exercise of the powers conferred by section 2(2).

### Scottish Law

The Pollution Prevention and Control (Scotland) Amendment Regulations 2014: <https://www.legislation.gov.uk/ssi/2014/267/contents/made>

## **91. Onshore Hydrocarbons Licensing**

### EU Law

EU Member States control the fossil fuel reserves found in their territories. They are also responsible for [licensing the exploitation of these resources](#). In order to ensure that licensing is fair and transparent, national governments are obliged to follow the common set of rules in the EU's [Prospection, Exploration, and Production of Hydrocarbon Directive 94/22/EC](#).

Unconventional hydrocarbons are found in reservoirs with geology and locations different from those where oil and gas are usually produced. They include:

- natural gas from shale formations (shale gas)
- natural gas from coal seams (coalbed methane)
- crude oil from shale formations or other formations with low permeability (tight or shale oil)

Extracting these fossil fuels such as shale gas requires the drilling of additional wells and techniques such as hydraulic fracturing – breaking rock by using large quantities of water under high pressure mixed with sand and other additives in order to release the gas.

The Commission has issued a Recommendation for EU countries when creating or adapting legislation related to hydraulic fracturing.

#### [DG Environment: Environmental Aspects on Unconventional Fossil Fuels](#)

#### UK Law

The [Petroleum Act 1998](#) vests the UK's petroleum resources in the Crown, but the Oil and Gas Authority (OGA) can grant licences that confer exclusive rights to 'search and bore for and get' petroleum.

Licences fall into several categories. The principal distinctions are between onshore and offshore licences, and between exploration licences (which cover exploration alone) and production licences (which cover both exploration and production).

Licences can be held by a single company or by several working together, but in legal terms there is only ever a single licensee however many companies it may comprise. All companies on a licence share joint and several liability for obligations and liabilities that arise under it. Each licence binds the licensee to obey the licence conditions regardless of whether or not it is using the licence at any given moment.

The Legislative context includes Petroleum Act 1998 and The Petroleum (Transfer of Functions) Regulations 2016

<https://www.legislation.gov.uk/ukdsi/2016/9780111147146/contents>

These Regulations transfer certain functions relating to the licensing and taxation of oil and gas from the Secretary of State for Energy and Climate Change to the Oil and Gas Authority (the OGA) and make consequential amendments. The functions which are being transferred in relation to licensing are set out in Part 1 of the Petroleum Act 1998 (c. 17) (the 1998 Act)

and include granting licences and dealing with rights under licences which are transferred without consent. The functions being transferred in relation to taxation include determining oil fields and cluster areas, which are required for the purposes of assessing tax liability. Functions in respect of onshore petroleum and licensing have been transferred to the Scottish Ministers under sections 47 and 48 of the Scotland Act 2016. See the [Scotland Act 2016 \(Commencement No. 8\) Regulations 2016](#).

## **92. Renewable Energy Directive**

### EU Law

The [Renewable Energy Directive 2009/28/EC](#) establishes the policy for production and promotion of energy from renewable sources in the EU. It requires the EU to fulfil at least 20% of its total energy needs with renewables by 2020 through the attainment of individual national targets. All EU countries must also ensure that at least 10% of their transport fuels come from renewable sources by 2020.

### UK Law

Energy is mostly reserved to the UK Government but many of the ways to achieve renewables are within Devolved Competence. The UK Government and the Devolved Administrations in Wales, Scotland and Northern Ireland share the overall target. The Devolved Administrations are keen to increase the use of renewable energy, the Scottish Government have chosen to implement a target of 20% of energy to be derived from renewable sources by 2020.

### Scottish Policy

The Scottish Government policy is explained by five documents, and renewable energy generation and GHG emissions reduction targets:

The five documents are:

- a) 2020 route map for Renewable Energy
- b) Heat Policy Statement
- c) Low Carbon Economic Strategy
- d) Community Energy Policy Statement
- e) Electricity Generation Policy Statement

The [Climate Change \(Scotland\) Act 2009](#) binds the Scottish Government to cut GHG emissions significantly by 2050.

## HEALTH

See our analysis paper, *the potential impact of Brexit on health related matters*<sup>6</sup>.

### **93. Blood Safety and Quality**

#### EU Law

[https://ec.europa.eu/health/blood\\_tissues\\_organs/policy\\_en](https://ec.europa.eu/health/blood_tissues_organs/policy_en)

Directive 2016/1214/EU: [https://ec.europa.eu/health/blood\\_tissues\\_organs/policy\\_en](https://ec.europa.eu/health/blood_tissues_organs/policy_en) amended Directive 2005/62/EC as regards quality system standards and specifications for blood establishments.

#### UK Law

[The Blood Safety and Quality Regulations 2005.](#)

Under section 57(1) of the Scotland Act [1998 \(c. 46\)](#), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under Community law in relation to devolved matters, the functions of the Secretary of State in relation to implementing these obligations continues to be exercisable by him as regards Scotland.

[The Blood Safety and Quality \(Amendment\) Regulations 2017](#)

### **94. Organs**

#### EU Law

The EU [Communication on organ donation and transplantation](#) is relevant for these purposes.

The [directive on standards of quality and safety of human organs intended for transplantation](#) was adopted on 7 July 2010. It provides for the appointment of Competent Authorities in all Member States, authorisation of procurement and transplantation centres and activities, traceability systems, as well as the reporting of serious adverse events and reactions.

#### UK Law

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<sup>6</sup> <https://www.lawscot.org.uk/media/359202/hea-eu-withdrawal-and-the-potential-impact-on-health-related-matters-law-society-of-scotland-analysis-paper.pdf>



## [Quality and Safety of Organs Intended for Transplantation Regulations 2012](#)

The Secretary of State is a Minister designated for the purposes of [section 2\(2\)](#) of the [European Communities Act 1972](#) in relation to health protection measures regulating the use of material of human origin.

## [The Quality and Safety of Organs Intended for Transplantation \(Amendment\) Regulations 2014](#)

These Statutory Instruments are the basis for the [HTA Framework document \(PDF\)](#). The Framework contains the mandatory regulatory requirements. Where appropriate, the Framework document also signposts the reader to other relevant legislation, codes of practice and guidance.

### Scottish Law

The [Human Tissue \(Scotland\) Act 2006](#) deals with human tissue including transplantation, supplemented by the [Human Organ and Tissue Live Transplants \(Scotland\) Regulations 2006](#).

### **95. Tissues and Cells**

#### EU Law

Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0023>

[Commission Directive 2006/86/EC](#) regarding traceability requirements, notification of serious adverse reactions and events and certain technical requirements for the coding, processing, preservation, storage and distribution of human tissues and cells

[Commission Directive 2006/17/EC](#) regarding technical requirements for the donation, procurement and testing of human tissues and cells.

[Commission Decision C\(2015\) 4460](#) established a model for agreements between the Commission and relevant organisations on the provision of product codes.

[Commission Directive \(EU\) 2015/566](#) set out procedures for verifying the equivalent standards of quality and safety of imported tissues and cells and certain technical requirements for the coding of human tissues and cells.

[Commission Directive 2012/39/EU amending Directive 2006/17/EC](#) concerning certain technical requirements for the testing of human tissues and cells.

[Commission Decision 2010/453/EU](#) established guidelines concerning the conditions of inspections and control measures, and on the training and qualification of officials, in the field of human tissues and cells.

## UK Law

Directive 2004/23/EC came into effect in 2006. In order to comply with the Directive the Human Tissue Authority (HTA) started licensing the storage of human tissues and cells for transplantation on 7 April 2006.

The original Directive, the first technical Directive and the second technical Directive (Directive 2006/86/EC) were formally adopted into UK law on 5 July 2007 by the [Human Tissue \(Quality and Safety for Human application\) Regulations 2007](#). In relation to measures in these Regulations relating to health protection measures regulating the use of material of human origin, the power of the Secretary of State under [section 2\(2\)](#) of the [European Communities Act 1972](#) is exercisable in relation to Scotland by virtue of [section 57\(1\)](#) of the [Scotland Act 1998 \(c.46\)](#).

## **96. Elements of Reciprocal Health Care**

See below.

## **97. Free Movement of Healthcare (the right for EEA citizens to have their elective procedure in another member state)**

## EU Law

[Directive 2011/24/EC](#) on EEA Patients' Rights  
Regulations [1408/71/EEC](#) and [883/2004/EC](#)

There are a number of healthcare arrangements that apply in the EU, the EEA and Switzerland. These arrangements are administered through programmes to which individuals must subscribe to exercise their right to reciprocal healthcare. There are four principal schemes, the EHIC (European Healthcare Insurance Card), S1, S2, and S3 schemes. These arrangements apply equally across the UK and are managed and funded centrally by the UK government.

Eligibility for these schemes is based on residence and economic status, not nationality.

The S1 scheme enables individuals from one nation to get health and social care in another, with the costs of that care met by the state that they would either ordinarily reside in or that provides their exportable benefit.

The S2 scheme enables individuals to travel to another EU or EEA country or Switzerland to access specific healthcare treatments, with the cost of that treatment met by their country of residence.

The S3 scheme provides a certificate of entitlement that enables individuals to access healthcare in a country in which they were previously employed.

#### English Law

The National Health Service (Cross-Border Healthcare) Regulations 2013 (2269)  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/252944/NHS\\_cross\\_border\\_regulations\\_2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/252944/NHS_cross_border_regulations_2013.pdf)

#### Scottish Law

The National Health Service (Cross-Border Health Care) (Scotland) Regulations 2013 292  
<http://www.legislation.gov.uk/ssi/2013/292/contents/made>

#### EU Law

A valid European Health Insurance Card gives EEA nationals the right to access state-provided healthcare during a temporary stay in another European Economic Area (EEA) country or Switzerland:

Anyone insured for healthcare in another EEA member state or Switzerland and who, for medically necessary treatment, presents either a [European Health Insurance Card \(EHIC\)](#) from that member state or a Provisional Replacement Certificate (PRC) for that card, or, for elective treatment, presents an S2 document for that treatment.

The spouse/civil partner and children under 18 of the above are also exempt when lawfully visiting the UK with them.

### **98. Elements of Tobacco Regulation**

#### EU Law

The Tobacco Products Directive 2014/40/EU: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL\\_2014\\_127\\_R\\_0001](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2014_127_R_0001)

#### UK Law

The [Tobacco and Related Products Regulations 2016](#)

Section 2(2) was amended by section 27(1)(a) of the Legislative Reform Act [2006 \(c.51\)](#) and section 3(3) of and Part 1 of the Schedule to the European Union (Amendment) Act [2008 \(c.7\)](#). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act [2006 \(c.51\)](#) and amended by section 3(3) of and Part 1 of the Schedule to the European Union (Amendment) Act 2008. Under section 57(1) of the Scotland Act [1998 \(c.46\)](#), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under Community law in relation to devolved matters, the functions of the Secretary of State in relation to implementing these obligations continues to be exercisable by him as regards Scotland.

### Scottish Law

The Scottish Government supports the action already taken by the EU to control the supply and distribution of tobacco: the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#).

## **99. EU Social Security Coordination**

See below

## **100. Migrant Access to Benefits**

### EU Law

There are EU rules to protect social security rights when moving within [EU 28 + Iceland, Liechtenstein, Norway and Switzerland](#). The rules on social security coordination do not replace national systems with a single European one. All countries are free to decide who is to be insured under their [legislation](#), which benefits are granted and under what conditions.

The rules apply to:-

Nationals of the [EU, Iceland, Liechtenstein, Norway or Switzerland](#) who are or have been insured in one of these countries, and their family members.

[Stateless persons or refugees](#) residing in the EU, Iceland, Liechtenstein, Norway or Switzerland, who are or have been insured in one of these countries, and their family members.

[Nationals of non-EU countries](#), legally residing in the territory of the EU, who have moved between these countries, and their family members.

As from 1 May 2010, new Regulations apply [Regulations 883/2004 and 987/2010](#)

## **101. Minimum Standards – Housing and Care: Regulation of the Use of Animals**

### EU Law

Directive 2010/63/EU <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010L0063> on the protection of animals used for scientific purposes. The Directive applies the principle of the Three R's, to replace, reduce and refine the use of animals used for scientific purposes. It lays down minimum standards for housing and care and regulates the use of animals. It requires inspections and improves transparency through measures such as publication of non-technical project summaries and retrospective assessment.

[Consolidated Commission Implementing Decision 2012/707/EU as corrected by Decision 2014/11/EU](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02012D0707-20140115) <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02012D0707-20140115>

This Decision sets out a common format for submitting information on the use of animals for scientific purposes as referred to in paragraphs 1, 2, and 3 of Article 54 of Directive 2010/63/EU. This allows the Commission to assess effectiveness of the implementation of the legislation and help ensure consistency in its application.

[Recommendation 2007/526/EC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2007.197.01.0001.01.ENG) [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2007.197.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2007.197.01.0001.01.ENG) introduces guidelines for the accommodation and care of animals used for experimental and other scientific purposes. This Recommendation complements Annex III of Directive 2010/63/EU. It also aligns EC legislation with the revised Council of Europe guidelines (Appendix A of Convention ETS 123) on accommodation and care of laboratory animals.

### UK Law

The use of animals in experiments and testing is regulated under the [Animals \(Scientific Procedures\) Act 1986](#) (ASPA). ASPA has been revised to take account of the European Directive 2010/63/EU as amended. ASPA is implemented by the Home Office in England, Scotland and Wales and by the Department for Health, Social Security and Public Safety in Northern Ireland.

The Code of Practice for the Housing and Care of Animals Bred, Supplied or Used for Scientific Purposes (2014) contains standards for the care and accommodation of animals at licensed breeder, supplier and user establishments in accordance with section 21 of ASPA.

## **102. Public Health (serious cross-border threats to health)**

## EU Law

In 2013, [the EU adopted a Decision 1082/2013/EU](#) to improve preparedness across the EU and strengthen the capacity to coordinate responses to health emergencies.

A [report on the implementation of the Decision](#) was adopted in December 2015. It was an important step towards improving health security in the EU and protecting citizens from health threats. It is designed to help Member States prepare for and protect against future pandemics and cross-border threats caused by communicable diseases, chemical, biological or environmental events: <https://ecdc.europa.eu/en/publications-data/guide-revision-nationalpandemic...>

The Decision gives the [Health Security Committee](#) a legal footing in co-ordinating preparedness. In case of crisis, the HSC is now to decide on the coordination of national responses, and communication messages to the public healthcare professionals.

## Scottish Policy

International Health Regulations (2005) and the EU Decision on serious cross-border threats to health (No 1082/2013/EU):

<http://www.hps.scot.nhs.uk/documents/ewr/pdf2017/1746.pdf>

## EDUCATION

### 103. *Mutual Recognition of Professional Qualifications*

#### EU Law

Professionals in the EU can move across borders and practice their occupation or provide services abroad.

#### Recognition of professional qualifications in practice

The recognition of professional qualifications in Directive 2005/36/EC enables the free movement of professionals such as doctors or architects within the EU. This directive has now been amended by [Directive 2013/55/EU](#). Other professions, such as lawyers or sailors, fall under the scope of different legislation.

In January 2016, the Commission introduced an EU-wide digital procedure for the recognition of professional qualifications – the [European Professional Card \(EPC\)](#). The procedure makes it easier for nurses, physiotherapists, pharmacists, real estate agents and mountain guides to work across the UK.

#### UK Law (England and Wales and Scotland)

In order to implement Directive 2005/36/EC into UK law, it was necessary to transpose the Directive in UK statutory regulations: [European Union \(Recognition of Professional Qualifications\) Regulations 2015](#)

The relevant sections of these regulations have now been incorporated into the Medical Act 1983 under The [European Qualifications \(Health and Social Care Professions\) Regulations 2016](#). Under section 57(1) of the Scotland Act 1998 despite the transfer to Scottish Ministers of functions in relation to implementation obligations under Union Law in relation to certain matters by virtue of section 53 of that Act, the function of the Secretary of State in relation to any matter continues to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

The regulation of certain professions eg Architects and Auditors is reserved under the Scotland Act 1988.

## MISCELLANEOUS

### 104. *Control of Major Accident Hazards*

#### EU Law

Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012L0018>

#### UK Law

The Control of Major Accident Hazards Regulations 2015/483:

[http://www.legislation.gov.uk/ukxi/2015/483/pdfs/ukxi\\_20150483\\_en.pdf](http://www.legislation.gov.uk/ukxi/2015/483/pdfs/ukxi_20150483_en.pdf) : ECA 1972 c.68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The power of Ministers of the Crown to make regulations in relation to matters as regards Scotland is preserved by section 57(1) of the Scotland Act 1998 (c.46).

### 105. *Elements of the Network and Information Security (NIS) Directive*

#### EU Law

The [Directive on security of network and information systems](#) the NIS Directive, entered into force in August 2016. Member States have 21 months to transpose the Directive into their national laws and 6 months more to identify operators of essential services.

The NIS Directive provides legal measures to boost the overall level of cybersecurity in the EU by ensuring:

- Member States preparedness by requiring them to be appropriately equipped, eg via a Computer Security Incident Response Team (CSIRT) and a competent national NIS authority
- Cooperation among all Member States, by setting up a cooperation group, in order to support and facilitate strategic cooperation and information exchange, and CSIRT Network, to promote operational cooperation on specific cybersecurity incidents and risks

#### UK Implementation

The UK Government issued a consultation on its plans to implement the Security of Network and Information Systems Directive which closed on 30 September 2017. The Government stated that in connection with various proposals it was consulting with the



Scottish Government.

## **106. Equal Treatment Legislation**

### EU Law

[Directive 2010/41 of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive of 11 December 1986](#)

[Directive 2010/18 of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive of 3 June 1996](#)

[Directive 2006/54 of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation \(recast\)](#)

[Directive 2004/113 of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services](#)

[Directive 92/85 of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding](#)

[Directive 79/7 of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security](#)

### UK Law

#### Equality Act 2010

#### Scottish Law and Policies

The [Equality Act 2010 \(Specific Duties\) \(Scotland\) Regulations 2012](#)

<http://www.gov.scot/Topics/People/Equality>

**107. Provision in the 1995 Data Protection Directive (soon to be replaced by the General Data Protection Regulation) that allows for more than one supervisory authority in each member state**

### EU Law

[Regulation \(EU\) 2016/679](#) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

[Directive \(EU\) 2016/680](#) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA to be transposed by 16 May 2018.

#### UK Law

The Data Protection Bill currently being considered in the House of Commons.

### **108. Public Sector Procurement**

#### EU Law

EU directives on public procurement and on procurement by public utilities (including privately owned utilities) cover tenders that are expected to be worth more than a given threshold. These directives apply transparency, equal treatment, open competition, and procedural management. They are designed to achieve a procurement market that is competitive, open and well regulated.

The [section on legal rules, implementation and enforcement](#) covers current public procurement rules, modernised rules entered into force in 2016, and the monitoring and enforcement of rules.

#### [Concessions Directive 2014/23/EU](#)

Procedures for the award of works and services concession contracts.

#### [Public Contracts Directive 2014/24/EU](#)

Procedures for the award of public works contracts, public supply contracts and public service contracts.

#### [Utility Contracts Directive 2014/25/EU](#)

Procedures of entities operating in the water, energy, transport and postal services sectors.

#### [Defence & Security Directive 2009/81/EC](#)

Procedures of entities operating in the fields of defence and security.

#### [Standard Forms - Regulation 296/2015](#)

Commission Implementing Regulation (EU) 2015/1986 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02015R1986-20151112> established standard forms for the publication of notices in the field of public procurement and repealing Implementing

Regulation (EU) No 842/2011

## UK Law

[Statutory Instrument 2015 No. 102](#)

The Public Contracts Regulations 2015

[Statutory Instrument 2016 No. 274](#)

The Utilities Contracts Regulations 2016

[Statutory Instrument 2016 No. 273](#)

The Concession Contracts Regulations 2016

[Statutory Instrument 2011 No. 1848](#)

The Defence and Security Public Contracts Regulations 2011

## Scottish law

The [Procurement Reform \(Scotland\) Act 2014](#) provides Ministers with powers to make regulations and issue statutory guidance. The work to develop the regulations and guidance was aligned to the work on the development of regulations to implement the EU Procurement Directives.

[The Procurement \(Scotland\) Regulations 2016](#)

[Public Contracts \(Scotland\) Regulations 2015](#)

[Utilities Contracts \(Scotland\) Regulations 2016](#)

[Concessions Contracts \(Scotland\) Regulations 2016](#)

## **109. State Aid**

### EU Law

Compilation of State aid rules

[Treaty Provisions on State aid](#)

[Rules on Procedure](#)

[Forms for Notifications and Reporting](#)

[Guidance on the notion of State aid](#)

[Block Exemption Regulations](#)  
[Temporary rules in response to the crisis](#)  
[Horizontal rules](#)  
[Sector-specific rules](#)  
[Specific aid instruments](#)  
[Reference/discount rates and recovery interest rates](#)  
[Transparency of public undertakings](#)  
[Services of General Economic Interest \(SGEI\)](#)  
[Rules applicable to State aid in transport sector](#)  
[Rules applicable to State aid in coal sector](#)

## UK Law

State aid is any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the EU.

The definition of state aid is very broad. An advantage is anything which an organisation engaged in economic activity could not get on the open market.

### *State Aid Rules*

State aid rules apply to the following:

- grants
- loans
- tax breaks, including enhanced capital allowances
- the use or sale of a state asset for free or at less than market price

The rules can apply to funding given to charities, public authorities and other non-profit making bodies where they are involved in commercial activities.

In principle, state aid is not allowed in the EU. However, some state aid is beneficial to the economy and supports growth and other policy objectives. State aid can be given to support a wide variety of activities including research and development, environmental protection and aid for small to medium-sized businesses. The state aid rules allow for good aid, which is necessary to deliver growth and other important objectives. However in order to be lawful, aid must either be granted in compliance with the EU's exemption rules (which require a monitoring and reporting process or else come under a scheme that has been duly notified and approved. Aid that should have been notified but was not, is unlawful and, as such, is, like any other unlawful state aid, subject to clawback.

## Scottish and Other Devolved Administrations Policy

State aid is not devolved. Enforcement of State Aid Rules is an EU competence. Each of the devolved administrations has their own state aid unit that can provide advice and guidance.

### **110. Statistics**

#### EU Law

EU Legislation on Statistics: <http://eur-lex.europa.eu/content/legis/legis-statistiques.html>  
The UK has legal statistical obligations to the EU which are set out in regulations in the [European Statistical System](#).

#### UK Law

The UK's system of official statistics is governed by the [Statistics and Registration Service Act 2007](#) (the 2007 Act).

The 2007 Act enabled the creation of the UK Statistics Authority <https://www.statisticsauthority.gov.uk> with statutory responsibility to promote and safeguard the production and publication of official statistics that serve the public good.

The UK Statistics Authority's responsibilities cover the whole UK statistical system, including the UK Government and the devolved administrations in Northern Ireland, Scotland and Wales.

There are a number of other Acts which affect how official statistics are produced in the UK:

[Census Act 1920](#)

[Agriculture Act 1947](#)

[Statistics of Trade Act 1947](#)

[Agricultural Statistics Act 1979](#)

[Data Protection Act 1998](#)

[Freedom of Information Act 2000](#).

## **111. Voting Rights and Candidacy Rules for EU Citizens in Local Government Elections**

### EU Law

EU citizenship gives every EU citizen the right to vote for and stand as a candidate in municipal and European Parliament elections in whichever EU country the citizen resides, under the same conditions as nationals. This right is conferred directly on every EU citizen by [Article 22 of the EU Treaty](#). It is also taken up in [Articles 39 and 40 of the EU Charter of Fundamental Rights](#) and [Directive 94/80/EC](#).

### UK Law

Representation of the People Act 1983: <http://www.legislation.gov.uk/ukpga/1983/2>

The relevant subsection is in the following terms:

1. 4 (3). *A person is entitled to be registered in the register of local government electors for any electoral area if on the relevant date he—*
  - (c) *is a qualifying Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the Union.*

European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 <http://www.legislation.gov.uk/id/ukdsi/2001/0110286545>

The Local and European Parliamentary Elections (Registration of Citizens of Accession States) Regulations 2003: <http://www.legislation.gov.uk/ukpga/1983/2>

### Scottish Law

The Scotland Act 1998 section 11 provided that persons entitled to vote in elections to the Scottish Parliament are those entitled to vote and be registered in the register of local government electors. Under the Representation of the People Act 1983 EU citizens can register to vote in local government elections in Scotland, therefore they automatically can vote in elections to the Scottish Parliament.

Furthermore the Scotland Act 2016 section 3 devolves the power to decide on the franchise for local government elections in Scotland, and for the Scottish Parliament itself. It is within the competence of Scottish Parliament to decide whether or not EU citizens are able to register and vote in those elections.

## ACKNOWLEDGEMENTS

<http://www.ca-eed.eu>

<http://www.copfs.gov.uk>

<https://www.theccc.org.uk>

<http://eur-lex.europa.eu/homepage.html>

[https://ec.europa.eu/commission/index\\_en](https://ec.europa.eu/commission/index_en)

<http://www.foodstandards.gov.scot>

<https://www.food.gov.uk>

<http://scotland.forestry.gov.uk>

<http://www.gov.scot>

<https://www.gov.uk>

<https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs>

<https://www.gov.uk/government/organisations/department-for-business-energy-and-industrial-strategy>

<https://www.gov.uk/government/organisations/environment-agency>

<http://www.harbourmaster.org>

<http://www.legislation.gov.uk>

<https://legalresearch.westlaw.co.uk>

<https://www.nature.scot>

<http://www.onr.org.uk>

<https://osha.europa.eu/en>

<http://www.parliament.scot>

<https://www.parliament.uk>

<https://www.sepa.org.uk>

<https://www.transport.gov.scot>



## ANNEX

### Food and Feed Law Analysis Paper

	Legislation (SSI/SI)	EU legislation and amendments
<b>Framework Legislation</b>	The Agriculture Act 1970 (as amended)	
	The Food Safety Act 1990 (1990 Chapter 16)	Regulation (EC) No 178/2002
<b>Food Safety Legislation</b>	The Animal Feed (Scotland) Regulations 2010 (SSI 2010 No. 373) (as amended)	Regulation (EC) No 1831/2003 Regulation (EC) No 767/2009 Commission Directive 82/475/EEC Directive 2002/32/EC Commission Directive 2008/38/EC
	The Contaminants in Food (Scotland) Regulations 2013 (SSI 2013 No. 217)	Commission Regulation (EC) No 1881/2006 Amended by: Commission Regulation (EC) No 1126/2007 Commission Regulation (EC) No 565/2008 Commission Regulation (EC) No 629/2008 Commission Regulation (EC) No 124/2009 Commission Regulation (EU) No 105/2010 Commission Regulation (EU) No 165/2010 Commission Regulation (EU) No 420/2011 Commission Regulation (EU) No 835/2011 Commission Regulation (EU) No 1258/2011 Commission Regulation (EU) No 1259/2011 Commission Regulation (EU) No 1058/2012 Commission Regulation (EU) No 1067/2013

		<p>Commission Regulation (EU) No 212/2014  Commission Regulation (EU) No 488/2014  Sampling methods: Commission Regulation (EC) No 401/2006  Commission Regulation (EC) No 1882/2006  Commission Regulation (EC) No 1883/2006  Commission Regulation (EC) No 333/2007  Council Directive 76/621/EEC  Commission Directive 80/891/EEC</p>
	The Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 (SSI 2005 No. 608)	<p>Regulation (EC) No 178/2002  Regulation (EC) No 882/2004  Regulation (EC) No 183/2005</p>
	The Feed (Sampling and Analysis and Specified Undesirable Substances) (Scotland) Regulations 2010 (SSI 2010 No. 354)	<p>Commission Regulation (EC) No 152/2009  Commission Directive 2009/141/EC</p>
	The Fishery Products (Official Controls Charges) (Scotland) Regulations 2007 (SSI 2007 No. 537)	<p>Regulation (EC) No 882/2004: Articles 26 and 27</p>
	The Food Hygiene (Scotland) Regulations 2006 (SSI 2006 No. 3)	<p>Regulation (EC) No 852/2004  Regulation (EC) No 853/2004  Regulation (EC) No 854/2004  Regulation (EC) No 882/2004  Commission Regulation (EC) No 2073/2005  Commission Regulation (EC) No 2074/2005  Commission Regulation (EC) No 2075/2005  Commission Regulation (EC) No 2076/2005  Commission Regulation (EC) No 101/2013  Regulation (EU) No 1308/2013  Commission Regulation (EU) No 216/2014  Commission Regulation (EU) No 217/2014</p>

		Commission Regulation (EU) No 218/2014 Commission Regulation (EU) No 219/2014 Commission Regulation (EU) No 579/2014 Commission Regulation (EU) No 210/2013 (EC) No 882/2004 Commission Implementing Regulation (EU) No 2015/1375
	The Food Irradiation (Scotland) Regulations 2009 (SSI 2009 No. 261)	Directive 1999/2/EC Directive 1999/3/EC Commission Decision 2002/840/EC Amended by: Commission Decision 2004/691/EC; Commission Decision 2007/802/EC and Commission Decision 2010/172
	The Food Protection (Emergency Prohibitions) (Dalgety Bay) (Scotland) Order 2012 (SSI 2012 No. 135)	
	The Food Protection (Emergency Prohibitions) (Dounreay Nuclear Establishment) Order 1997 (SI 1997 No. 2622)	
	The Genetically Modified Animal Feed (Scotland) Regulations 2004 (SSI 2004 No. 433)	Regulation (EC) No 1829/2003
	The Genetically Modified Food (Scotland) Regulations 2004 (SSI 2004 No. 432)	Regulation (EC) No 1829/2003
	The Genetically Modified Organisms (Traceability and Labelling) (Scotland) Regulations 2004 (SSI 2004 No. 438)	Regulation (EC) No 1830/2003
	The Materials and Articles in Contact with Food (Scotland) Regulations 2012 (SSI 2012 No. 318)	Regulation (EU) No 10/2011 Regulation (EC) No 1935/2004 Regulation (EC) No 2023/2006, as amended by Regulation (EC) No 282/2008

		Regulation (EC) No 450/2009 Commission Directive 2007/42/EC Council Directive 84/500/EEC as amended by Commission Directive 2005/31/EC Council Directive 78/142/EEC Regulation (EC) No 1895/2005
	The Meat (Official Controls Charges) (Scotland) Regulations 2009 (SSI 2009 No. 262)	Regulation (EC) No 882/2004: Articles 26 and 27
	The Milk and Dairies (Scotland) Regulations 1990	
	The N-nitrosamines and N-nitrosatable Substances in Elastomer or Rubber Teats and Dummies (Safety) Regulations 1995 (SI 1995 No. 1012)	Commission Directive 93/11/EEC
	The Novel Foods and Novel Food Ingredients (Fees) Regulations 1997 (SI 1997 No. 1336)	Regulation (EC) No 258/97
	The Novel Foods and Novel Food Ingredients 1997 (SI 1997 No. 1335)	Regulation (EC) No 258/97
	The Official Feed and Food Controls (Scotland) Regulations 2009 (SSI 2009 No. 446)	Regulation (EC) No 882/2004 Commission Regulation (EC) No 669/2009 Commission Implementing Regulation EU 2017/1142 (Annex 1) Commission Regulation (EU) No. 704/2014 amending Commission Regulation (EU) 211/2013
	The Plastic Kitchenware (Conditions on Imports from China) (Scotland) Regulations 2011 (SSI 2011 No. 282)	Commission Regulation (EU) No 284/2011
	The Specified Products from China (Restriction on first placing on the Market) (Scotland) Regulations 2008 (SSI 2008 No. 148)	Commission Implementing Decision 2011/884/EU Commission Implementing Decision 2013/287/EU amending Implementing Decision 2011/884/EU on

		emergency measures regarding unauthorised genetically modified rice in rice products originating from China.
	Emergency Declarations made under the Trade in Animals & Related Products (Scotland) Regulations 2012 (SSI 2012 No. 177 regulation 25)	Commission Decision 2007/82/EC Com Dec 2007/642/EC Com Dec 2008/352/EC Com Reg EC/1135/2009 Com Reg EU/258/2010 Com Dec 2010/220/EU Com Dec 2010/381/EU Com Dec 2011/742/EU Com Dec 2012/482/EU Com Reg EU/2016/6 Com Reg EU/2017/122 Com Dec 2015/2022/EU
<b>Food Standards Legislation</b>	The Addition of Vitamins, Minerals and Other Substances (Scotland) Regulations 2007 (SSI 2007 No. 325)	Regulation (EC) No 1925/2006
	The Bread and Flour Regulations (SI 1998 No. 141)	
	The Casein and Caseinates (Scotland) (No2) Regulations 2016	Directive (EU) 2015/2203
	The Cocoa and Chocolate Products (Scotland) Regulations 2003 (SSI 2003 No. 291)	Directive 89/397 Directive 2000/36/EC
	The Coffee Extracts and Chicory Extracts (Scotland) Regulations 2001 (SSI 2001 No. 38)	Directive 1999/4/EC
	The Condensed Milk and Dried Milk (Scotland) Regulations 2003 (SSI 2003 No. 311)	Council Directive 2001/114/EC Commission Directive 79/1067/EEC Commission Directive 87/524/EEC Directive 89/397

	The Country of Origin of Certain Meats (Scotland) Regulations 2016 ( <a href="http://www.legislation.gov.uk/ssi/2016/84/made/data.pdf">http://www.legislation.gov.uk/ssi/2016/84/made/data.pdf</a> )	Commission Implementing Regulation (EU) No 1337/2013
	The Fish Labelling (Scotland) Regulations 2013 (SSI 2013 No. 256)	Council Regulation (EC) No. 1224/2009 Commission Implementing Regulation (EU) No. 404/2011 Regulation (EU) No. 1379/2013
	The Food Information (Scotland) Regulations 2014	Regulation (EU) No. 1169/2011 (FIC) Commission Delegated Regulation (EU) No 1155/2013 Commission Delegated Regulation (EU) No 78/2014 Commission Implementing Regulation (EU) No 828/2014
	The Food (Lot Marketing) Regulations 1996	Council Directive 89/396/EEC
	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Scotland) Regulations 2013	Regulation (EC) No. 2065/2003 Regulation (EC) No. 1332/2008 Commission Regulation (EU) 1056/2012 Commission Regulation (EU) 562/2012 Regulation (EC) No. 1333/2008 Commission Regulation (EC) No. 1334/2008 Commission Regulation (EU) 1321/2013 Commission Regulation (EU) 873/2012 Commission Regulation (EU) 872/2012 Commission Regulation (EU) No 231/2012 Council Directive 2009/32/EC
	The Food for Particular Nutritional Uses (Addition of Substances	Commission Regulation (EC) No 953/2009

	for Specific Nutritional Purposes) (Scotland) Regulations 2009 (SSI 2009 No. 427)	
	The Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997 (SI 1997 No. 2182)	Commission Directive 96/8/EC Commission Directive 2007/29/EC
	The Foods for Special Medical Purposes (Scotland) Regulations 2000 (SSI 2000 No 130)	Commission Directive 1999/21/EC
	The Food Labelling Regulations 1996 (SI 1996 No. 1499)	Directive 2000/13/EC Commission Directive 2008/5/EC Council Directive 90/496/EEC on nutrition labelling for foodstuffs Commission Directive 87/250/EEC Council Directive 89/398/EEC Regulation (EU) No 1308/2013
	The Food Supplements (Scotland) Regulations 2003 (SSI 2003 No. 278)	Directive 2002/46/EC
	The Fruit Juices and Fruit Nectars (Scotland) Regulations 2013 (SSI 2013 No. 305)	Directive 89/397 Council Directive 2001/112/EC Directive 2009/106/EC Directive 2012/12/EU
	The Honey (Scotland) Regulations 2015 (SSI 2015 No. 208)	Directive 2001/110/EC Directive 014/63/EU
	The Infant Formula and Follow on Formula (Scotland) Regulations (SSI 2007 No. 549)	Directive 2006/141/EC Implements Commission Directive 2013/46/EU amending Directive 2006/141/EC with regard to protein requirements for infant formulae and follow-on formulae Regulation (EU) No 609/2013 which repeals

		Directive 92/52/EEC from 20 July 2016
	The Jam and Similar Products (Scotland) Regulations 2004 (SSI 2004 No. 133)	Directive 89/397 Directive 2001/113/EC
	The Kava-kava in Food (Scotland) Regulations 2002 (SSI 2002 No. 523)	
	The Products Containing Meat etc. (Scotland) Regulations 2014 (SSI 2014 No. 289)	
	The Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No 2) Regulations 2007 (SSI 2007 No. 483)	Council Directive 2009/54/EC Council Directive 98/83/EC Commission Directive 2003/40/EC Commission Regulation 115/2010 Euratom Regulation 2013/51
	The Foods for Specific Groups (Scotland) Regulations 2016	Regulation (EU) No. 609/2013
	The Nutrition and Health Claims (Scotland) Regulations 2007 (SSI 2007 No. 383)	Regulation (EC) No 1924/2006/EC
	The Processed Cereal-based Foods for Infants and Young Children (Scotland) Regulations 2004 (SSI 2004 No. 8)	Commission Directive 2006/125
	The Quick Frozen Foodstuffs Regulations 1990 (SI 1990 No. 2615)	Council Directive 89/108/EEC Commission Regulation (EC) 37/2005
	The Specified Sugar Products (Scotland) Regulations 2003 (SSI 2003 No 527)	Directive 89/397 Directive 2001/111/EC
	The Spreadable Fats, Milk and Milk Products (Scotland) Regulations 2008 (SSI 2008 No 216)	Council Regulation (EC) No 1234/2007 - supplemented by Commission Regulation (EC) No 445/2007 Regulation (EU) No 1308/2013 CMO Regulation for agricultural products
	The Tryptophan in Food (Scotland) Regulations 2005 (SSI 205 No.	



	479)	
	The Wine Regulations 2011 (SI 2001 No. 2936)	Council Regulation (EEC) No 1601/91
<b>Food Legislation led by Other Government Departments</b>		
	Alcoholic Liquor Duties Act 1979	
	The Alcoholic Liquor Duties (Definition of Cider) Order 2010	
	The Drinking Milk (Scotland) Regulations 2011 (SSI 2011 No 84)	Council Regulation (EC) No 1234/2007
	The Food & Environment Protection Act 1985 (FEPA)	National Legislation
Animal By-Products Regulations	The Animal By-Products (Enforcement) Scotland Regulations 2013 (SSI 2013 No. 307)	Commission Regulation (EC) No 1069/2009 Commission Regulation (EU) No 142/2011 Commission Regulation (EC) No 1069/2009
	The Animal By-Products (Miscellaneous Amendments) (Scotland) Regulations 2015	
Beef Labelling Scheme Regulations	The Beef and Veal Labelling (Scotland) Regulations 2010 (SSI 2010 No. 402)	Commission Regulation (EC) No 1760/2000 Commission Regulation (EC) 1825/2000 Commission Regulation (EC) 1234/2007 Commission Regulation (EC) 566/2008
Genetically Modified Organisms - Deliberate Release	The Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (SSI 2002 No. 541)	Directive 2001/18/EC Regulation (EC) No 1829/2003 on genetically modified food and feed
	The Genetically Modified Organisms (Contained Use) Regulations 2014 (SI 2014 No. 1663)	Directive (EC) 41/2009
	The Genetically Modified Organisms (Risk Assessment) (Records and Exemptions) Regulations 1996 (SI 1996 No. 1106)	
	The Genetically Modified Organisms (Transboundary Movements) (Scotland) Regulations 2005 (SSI 2005 No. 316)	Regulation (EC) No 1946/2003
Imported Foods	The Trade in Animals and Related Products (Scotland)	Council Directive 89/662/EEC

	Regulations 2012 (SSI 2012 No. 177)	Council Directive 90/425/EEC Council Directive 97/78/EC Commission Decision 2007/275/EC Regulation (EC) No 1069/2009
	The Products of Animal Origin (Disease Control) (Scotland) Order 2008	Council Directive 2002/99/EC
Marketing Standards	The Eggs and Chicks (Scotland) (No.2) Regulations 2008 (SSI 2008 No. 395)	Council Regulation (EC) No 1234/2007 Regulation (EEC) No 2782/75 Commission Regulation (EEC) No 1868/77 Regulation (EEC) No 2782/75 Council Regulation (EC) No 1028/2006 Commission Regulation (EC) No 557/2007
	The Marketing of Horticultural Produce (Scotland) Regulations 2009 (SI 2009 No. 23)	
	The Olive Oil (Marketing Standards) Regulations 1987 (SI 1987 No. 1783)	
	The Olive Oil (Marketing Standards) Regulations 2003 (SI 2003 No. 2577)	Council Regulation (EC) No 1513/2001 Commission Regulation (EC) No 1019/2002
	The Olive Oil (Designations of Origin) Regulations 1999 (SI 1999 No. 1513)	Commission Regulation (EC) No. 2815/98
	The Organic Products Regulations 2009 (SI 2009 No. 842)	Council Regulation (EC) No 834/2007
	The Preserved Sardines (Marketing Standards) (Scotland) Regulations 1990 (SI 1990 No 1139)	Council Regulation (EEC) No. 2136/89
	The Sea Fish (Marketing Standards) (Scotland) Regulations 2004 (SSI 2004 No. 498)	Council Regulation (EC) No. 104/2000
Pesticides	The Pesticides (Maximum Residue Levels) (Scotland) Regulations 2008 (SSI No. 2008/342)	Council Directive 91/414/EEC) (Repealed by Regulation (EC) No 1107/2009)

		Council Regulation (EC) No 396/2005
Poultrymeat	The Poultrymeat (Scotland) Regulations 2011 (SSI No. 2011/318)	
Protection of Food Names	[Legislation title blank]	Regulation 510/2006 EC Reg. 1898/2006 EC Reg. 509/2006 EC Reg. 1216/2007 Regulation (EU) No 1151/2012
Scotch Whisky & Spirit Drinks	The Scotch Whisky Regulations 2009 (SI 2009 No 2890)	Regulation (EC) No 110/2008
	The Scotch Whisky Order 1990 (SI 1990 No. 998)	
	The Spirit Drink Regulations 2008 (SI 2008 No 3206)	Regulation (EC) No 110/2008
TSE Legislation	The Transmissible Spongiform Encephalopathies (Scotland) Regulations 2010 (SSI 2010 No. 177)	Regulation 999/2001/EC of the European Parliament and of the Council Commission Decision 2009/719/EC amended by Decision 2010/66/EU Commission Decision 2007/411/EC Commission Regulations (EC) No. 956/2008 and (EC) No. 163/2009 Commission Regulation (EC) No. 103/2009
Veterinary Medicines	The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (England and Scotland) Regulations 2015	Council Directive 1996/23 Council Directive 1996/22 Regulation (EC) 470/2009 Commission Regulation (EU) 37/2010 Implements Commission Decision 2000/68
	The Charges for Residues Surveillance Regulations 2006 (SI 2006 No. 2285)	
	The Veterinary Medicines Regulations 2011 (SI 2011 No. 2159)	Directive 2001/82/EC Commission Regulation (EC) 1234/2008

		Council Directive 90/167 Commission Directive 91/412/EEC Regulation (EC) 1831/2003
	The Charges for Residues Surveillance Regulations 2006 [not sure if this is mentioned twice - see above]	
Weights and Measure Legislation	Weights and Measures Act 1985	Article 9 1 (e) of Regulation (EU) No 1169/2011 on net quantity
	The Weights and Measures (Packaged Goods) Regulations 2006 (SI 2006 No. 659)	Article 9 1 (e) of Regulation (EU) No 1169/2011 on net quantity
	The Weights and Measures (Specified Quantities) (Pre-packed Products) Regulations 2009 (SI 2009 No. 663)	
	The Weights and Measures Act 1963 (Cheese, Fish, Fresh Fruit and Vegetables, Meat and Poultry) Order 1984 (SI 1984 No. 1315)	Article 9 1 (e) of Regulation (EU) No 1169/2011 on net quantity
	The Weights and Measures (Miscellaneous Foods) Order 1988 (SI 1988 No. 2040)	Article 9 1 (e) of Regulation (EU) No 1169/2011 on net quantity
	The Weights and Measures (Intoxicating Liquor) Order 1988 (SI 1998 No. 2039) - poss typo in SI title	Article 9 1 (e) of Regulation (EU) No 1169/2011 on net quantity
<b>Recently Revoked Legislation (within last 2 years)</b>		
	The Honey (Scotland) Regulations 2003 The Foodstuffs Suitable for People Intolerant to Gluten Regulations 2010 Regulations 26 and 27 of the Infant Formula and follow-on Formula (Scotland) Regulations 2007 The Notification of Marketing of Food for particular Nutritional Uses (Scotland) Regulations 2007 The Caseins and Caseinates (Scotland) Regulations 1986	

	The Caseins and Caseinates (Scotland) Amendment Regulations 1990	
<b>List of Legislation Expected to Come Into Force in the Next 12 Months</b>		
	The Jam and Similar Products (Scotland) Regulations 2017	
	The Animal Feed (Scotland) Amendment Regulations 2017	Commission Regulation (EU) 2015/327 Commission Regulation (EU) 2015/2294
	The Materials and Articles in Contact with Food (Scotland) Amendment Regulations 2017	Commission Regulation (EU) 2016/1416
	The Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) Amendment Regulations 2017	Commission Directive 2015/1787
	The Materials and Articles in Contact with Food (Scotland) Amendment (No. 2) Regulations 2017	Regulation (EC) No 2023/2006, as amended by Regulation (EC) No 282/2008
	The Novel Food (Scotland) Regulations 2018	Regulation (EU) 2015/2283