

The House of Lords European Affairs Committee Inquiry into dynamic alignment

Response from the Constitutional Law and
Human Rights Sub-committee

April 2026

Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors. We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Constitutional Law and Human Rights Sub-committee welcomes the opportunity to respond to the House of Lords European Affairs Committee inquiry into dynamic alignment.

General Comments

1. What is dynamic alignment? How does dynamic alignment operate under EU agreements with non-EU countries other than the UK?

Our comment

This question raises the issue of dynamic alignment agreements between the EU and non-EU countries other than the UK. However, it overlooks the developments in Scotland regarding alignment between Scots law and EU law.

The Scottish Government, has in contrast to the UK Government (except in the context of the Windsor Agreement), enacted legislation to actively align with the EU in policy areas over which it has power.

The specific issue of dynamic alignment of Scots law with EU law initially arose in the Scottish Parliament with the introduction of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill on 27 February 2018: <https://www.parliament.scot/bills-and-laws/bills/s5/uk-withdrawal-from-the-european-union-legal-continuity-scotland-bill>. At the time of introduction, the Scottish Government set out its intention that the Legal Continuity Bill should complete its parliamentary passage and become law before the Bill which was to become the European Union (Withdrawal) Act 2018: <https://www.legislation.gov.uk/ukpga/2018/16/contents>. Therefore, the Scottish Government asked the Scottish Parliament to agree to designate the Bill as an Emergency Bill.

On 21 March 2018, the Scottish Parliament passed the Legal Continuity Bill. Section 32 of the Scotland Act 1998 (Scotland Act) provides that a Bill, once passed, may be submitted for Royal Assent by the Presiding Officer after a period of four weeks. Section 33(1) of the Act provides that during this four week period, questions about the competence of the Bill can be referred to the UK Supreme

Court for a decision. Such a referral can be made by the Advocate General for Scotland, the Lord Advocate or the Attorney General.

In the four-week period, the Attorney General and the Advocate General for Scotland referred the Bill to the Supreme Court for a ruling on whether it was within the Scottish Parliament's legislative competence. The Court ruled that, as a result of section 17 (Requirement for Scottish Ministers' consent to certain subordinate legislation) and the inclusion of the European Union (Withdrawal) Act 2018 in Schedule 4 to the Scotland Act, a number of provisions within the Continuity Bill would modify the European Union (Withdrawal) Act 2018 contrary to section 29(2)(c) of the Scotland Act 1998 and the Bill was therefore outside competence: <https://www.supremecourt.uk/cases/uksc-2018-0080> .

The Lord Advocate, in a statement to the Scottish Parliament on 13 December 2018 identified sections within the Continuity Bill which could become law, following the Supreme Court's judgment. These included the powers in section 13 to "keep pace" with EU law after exit day: <http://parliament.scot/parliamentarybusiness/report.aspx?r=11843&i=107174> .

After a period of reflection, the Scottish Government took the view that the extent to which devolved law aligns itself with the law of the EU should be a decision for the Scottish Parliament to take, not the UK Government. The purpose of introducing the UK Withdrawal from the European Union (Continuity) (Scotland) Bill ("the Bill") on 18 June 2020 was to enable the Scottish Ministers to make provision to allow Scots law to be able to 'keep pace' with EU law in devolved areas, where appropriate: <https://www.parliament.scot/-/media/files/legislation/bills/s5-bills/uk-withdrawal-from-the-european-union-continuity-scotland-bill-2020/introduced/policy-memorandum-uk-withdrawal-from-the-european-union-continuity-scotland-bill.pdf>

The policy memorandum in Paragraph 21 elaborated the Scottish Government's view that there should be a power for devolved matters in Scotland to keep pace with EU law, where appropriate. This would ensure consistency and predictability for the people who live and work in Scotland, and those who do business here and with Scotland in Europe, by updating or aligning devolved law with new EU law where that is appropriate and practicable: <https://www.parliament.scot/-/media/files/legislation/bills/s5-bills/uk-withdrawal-from-the-european-union-legal-continuity-scotland-bill/introduced/policy-memorandum-uk-withdrawal-from-the-european-union-legal-continuity-scotland-bill.pdf>

Accordingly, the UK Withdrawal from the European Union (Continuity)(Scotland) Act 2021 (the 2021 Act): <https://www.legislation.gov.uk/asp/2021/4/contents> (Part 1 of which is headed "Alignment with EU Law") provides for a power to enable Scottish Ministers to continue to keep devolved law updated and in line with EU law following the end of the implementation period provided for in the European Union (Withdrawal Agreement) Act 2020 (31 December 2020). The Act came into effect on 30 January 2021.

The central provision of the 2021 Act is section 1 augmented by sections 2-11. For ease of reference, see the majority of those provisions in the annex attached to this submission.

The provisions of the 2021 Act contain many lessons which the UK could draw on when seeking to align laws in the UK with EU laws. The EU laws with which alignment is sought can be defined in the legislation. Alignment provisions can be made by regulations (following the pattern adopted by the European Communities Act 1972: <https://www.legislation.gov.uk/ukpga/1972/68/enacted>). We highlight the legislation can provide for the regulation making power to be widely drawn. We accept that framework legislation is a necessary aspect of law-making today especially where Government policy is in the course of development and the subject matter of the legislation concerned is technical in nature. However, Government should act with restraint when planning to use such a mechanism and should be open to the use of enhanced supplementary materials to explain what the bill intends to do. Henry VIII powers should only be enacted in extremis.

We highlight the requirement on Ministers to publish a statement of their policy on the approach to be taken, the factors to be taken into account, and the process to be followed when considering making regulations (noting that both Affirmative and Negative resolution procedure can be applied to the regulations dependent on their subject matter). In connection with the explanatory statement we point out that its contents are important and include an explanation of the regulation, the effect (if any) of the instrument or draft on Convention rights and other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom, and the effect on Equality legislation effect (if any) of the instrument or draft on employment rights, health and safety and consumer protection.

Another feature of the legislation is the requirement of Ministers to issue annual reports relating to the use of the regulation making powers. The annual reports reflect that the regulation making power has not often been used:

2021-2022 The power was not used during the reporting period.

2022-2023 The power was not used during the reporting period.

2023-2024 The power was used once in the reporting period: The Public Water Supplies (Scotland) Amendment Regulations 2022 (found here: [The Public Water Supplies \(Scotland\) Amendment Regulations 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2022/12/12/12/12/12)) which partially aligns with the EU Drinking Water Directive 2020/2184 (Recast) on the quality of water for human consumption (EUR-Lex - 32020L2184 - EN - EUR-Lex (europa.eu)). This is designed to protect drinking water from source to tap, put in place measures in relation to access to water and drive efficiency by tackling pollutants at source.

2024-2025 The power was not used during the reporting period.

2025-2026 The power was used once in the reporting period: The Masterplan Consent Area Scheme (Environmental Impact Assessment)(Scotland) Regulations 2024

The purpose of the Regulations (in force on 5 December 2024) is to ensure that a planning authority, when creating a Masterplan Consent Area (MCA) scheme, makes its decision in full knowledge of the likely significant effects on the environment by using an Environmental Impact Assessment (EIA). The requirements for EIA originate from EU Directive 2011/92/EU. After the UK's withdrawal from the EU the Scottish Ministers could no longer use the European Communities Act 1972, to create or amend EIA legislation. Therefore, it was necessary to use the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, as well as planning powers, to make the EIA Regulations.

2. In developing its arrangements for dynamic alignment, are there lessons that the UK should draw from:
 - a) the other countries that engage in, or are preparing to engage in, dynamic alignment with the EU—namely the European Free Trade Association (EFTA) countries of Iceland, Liechtenstein and Norway, within the European Economic Area (EEA); and Switzerland?
 - and/or
 - b) the experience of a form of dynamic alignment with respect to Northern Ireland under the Withdrawal Agreement Protocol/Windsor Framework?

[Our Comment](#)

We have no comment to make.

3. Can formal 'decision-shaping' by non-EU states, under agreements with the EU, deliver real influence over the EU law to which it applies? If so, what institutional arrangements and resources should the UK Government have in place—in London, Brussels and national capitals around Europe—to ensure that it can participate in EU 'decision-shaping' as effectively as possible?

[Our Comment](#)

This question involves an assessment of the political influence of the UK with the EU which we are not in a position to comment upon.

4. Are current arrangements for parliamentary scrutiny of UK-EU relations adequate for scrutinising dynamic alignment? What would an ideal system for parliamentary scrutiny of UK dynamic alignment comprise?

Our Comment

So far as the House of Lords is concerned the European Affairs Committee was appointed to consider matters relating to the United Kingdom's relationship with the European Union and the European Economic Area, including the implementation and governance structures of any agreements between the United Kingdom and the European Union save for the Protocol on Ireland/Northern Ireland and the Windsor Framework; to consider all European Union documents (except matters falling within the scope of the Protocol/Windsor Framework) deposited in the House by a minister; and to support the House as appropriate in interparliamentary cooperation with the European Parliament and the Member States of the European Union.

This seems to be a comprehensive remit (apart from the exception of matters falling within the scope of the Protocol/Windsor Framework which have their own particular provisions in connection with UK-EU alignment) and would be able to satisfy the scrutiny and reporting obligations regarding EU laws which are subject to an alignment agreement.

As regards the House of Commons however the European Scrutiny Committee operated until 2024. While the UK was a member of the European Union, the Committee examined new and proposed EU laws that would become UK law. It assessed the legal and/or political importance of EU documents deposited by the Government in Parliament. Naturally, following the UK's withdrawal from the European Union the number of documents submitted to the Committee for scrutiny declined and the decision was taken to disestablish the Committee. Currently, EU laws and proposals that could have an impact on the UK fall under the remit of the relevant departmental or other committees. In order to ensure a strategic overview of incoming EU law and to build expertise in the scrutiny of that law amongst MPs we suggest that the House of Commons re-establish the European Scrutiny Committee.

The Inter-Parliamentary Forum which last met on 12 June 2025 would be an essential mechanism for maintaining contacts between relevant members of all the legislatures in the UK. It would be especially helpful were a Forum sub-group on EU Reset arrangements established to ensure that views could be exchanged on matters relevant to UK-EU Alignment. Crucially such a sub-group could meet more frequently than the Forum as a whole.

Good intergovernmental relations are also vital in connection with UK-EU Alignment. The Interministerial Group on UK-EU Relations last met on 21 January 2026. Unfortunately, the Communique issued after that meeting lacks detail about the topics discussed. It is important that there is more transparency in this area. The Concordat which applies to the handling of the coordination of EU policy and implementation should be revised to ensure that it is fit for the new relationship between the UK and the EU.

5. What impact are the three new UK-EU agreements that are currently in prospect likely to have on UK GDP? (the three agreements being on: the creation of a Common Sanitary and Phytosanitary (SPS) Area; the linkage of the UK and EU Emissions Trading Schemes (ETSs); and UK participation in the EU's internal electricity market)

Our Comment

We have no comment to make as this matter is outwith our area of expertise.

6. To what extent are the drawbacks and benefits of these prospective agreements for the UK, including with respect to GDP, likely to depend on their precise terms—for example, with respect to the scope and operation of, and exemptions from, dynamic alignment?

Our Comment

We have no comment to make.

7. Should the UK make a financial contribution to the EU or EU policies as part of its dynamic alignment agreements? Is there a level of contribution that would mean that such agreements do not represent value-for-money for the UK?

Our Comment

We have no comment to make.

8. What are the implications of the three prospective agreements with the EU, and of the Government's general policy of dynamic alignment with the bloc, for the UK's trade relations with countries outside the EU—with respect especially to the United States, and the UK's membership of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)?

Our Comment

The three prospective agreements with the European Union, and the Government's wider policy of dynamic alignment with EU rules, have significant implications for the United Kingdom's trade relations with non-EU partners.

Alignment with the EU may, in some areas, constrain the UK's ability to conclude comprehensive trade agreements with third countries, most notably the United States. While alignment does not automatically preclude a trade deal, it may limit the extent of regulatory flexibility that the US has traditionally sought, particularly in areas such as agri-food standards, sanitary and phytosanitary (SPS) measures, and regulatory recognition. It is well established that the EU and US approaches to agricultural production (for example, in regard to the use of growth hormones) are fundamentally different. Dynamic alignment with EU SPS rules would make it very difficult for the UK simultaneously to meet US expectations in these areas.

It is worth emphasising that in some areas it is very important that the UK maintains alignment with the EU as it remains firmly in the UK's national interest. A key example is data protection. Any divergence that would jeopardise the UK's EU data adequacy decision would carry significant economic and operational risks for UK businesses, including for legal firms.

9. What issues does prospective UK dynamic alignment raise for the UK's devolved administrations and legislatures? How should the UK Government and Parliament engage with the devolved administrations and legislatures in a system of dynamic alignment?

Our Comment

Prospective UK dynamic alignment is very important for the Scottish Parliament and the Scottish Government. The Scottish Government produced position papers ahead of the UK-EU Summit, which set out Scottish Ministers' key priorities for rebuilding closer cooperation with the EU across a broad range of areas:

- Agrifood trading arrangements with the EU
- Closer energy and climate cooperation with the EU
- Erasmus+ reassociation
- Creative Europe reassociation
- Youth mobility agreement with the EU
- Law enforcement and criminal justice cooperation with the EU
- Addressing barriers to trade with the EU

Obviously the proposed Sanitary and Phytosanitary Agreement will be one in which the Scottish Government will take considerable interest. The agreement will cover a wide range of matters Farmers and primary producers – changes to animal health, plant health, feed, pesticides.

Food, feed and drink businesses – changes to hygiene rules, food law, additives, pesticide maximum residue levels, marketing standards, labelling and food contact materials.

Hauliers and logistics providers – changes to movement requirements for animals, plants and SPS goods.

Importers and exporters of SPS goods – changes to certification, checks, official controls and digital systems.

Pesticide and biocide manufacturers and suppliers – changes to pesticide and biocide active substance approvals, plant protection product (PPP) and biocide authorisations, and PPP maximum residue levels.

Retailers and wholesalers – changes to consumer information, compositional standards, traceability, labelling and sourcing requirements.

Seed, plant and horticultural suppliers – changes to plant health, reproductive material and plant passporting.

Veterinarians – changes to veterinary medicine Maximum Residue Limits and antimicrobial resistance

We have set out some ideas as to how the UK Government and Parliament engage with the devolved administrations and legislatures in our answer to question 4.

10. What actions need to be taken and arrangements put in place—in legal, institutional and practical terms—before UK dynamic alignment under the three prospective agreements is operating fully and smoothly? How long might this process take?

Our Comment

We have no comment to make.

Annex --The European Union (Continuity)(Scotland) Act 2021

Section 1 of the Act provides that:

- (1) Scottish Ministers may by regulations
 - (a) make provision—
 - (i) corresponding to an EU regulation, EU tertiary legislation or an EU decision,
 - (ii) for the enforcement of provision made under sub-paragraph (i) or otherwise to make it effective,
 - (iii) to implement an EU directive, or
 - (iv) modifying any provision of assimilated law relating to the enforcement or implementation of an EU regulation, EU tertiary legislation, an EU decision or an EU directive,
 - so far as the EU regulation, EU tertiary legislation, EU decision or EU directive has effect in EU law after IP completion day, or
 - (b) otherwise make provision for the purpose of dealing with matters arising out of, or related to, the operation from time to time of—
 - (i) any rights, powers, liabilities, obligations or restrictions created by regulations made under this subsection, or
 - (ii) any remedies or proceedings provided for by those regulations."

Section (1)(2) provides that regulations may remove and replace deficiencies in EU law to make the transposed provisions work.

Section (1)(3) provides that Regulations under subsection (1)(a)(i), (ii) or (iii) may provide for functions of EU entities or public authorities in member States (including making an instrument of a legislative character or providing funding) to be—

(a) exercisable instead by a Scottish public authority (whether or not established for the purpose), or by any person whom the authority authorises to carry out functions on its behalf, or

(b) omitted or otherwise differently provided for.

Section (1)(4) provides that Regulations under subsection (1)(a)(iv) may, in relation to any functions in EU instruments that are already exercisable by a Scottish public authority—

(a) provide for the authority to—

(i) delegate any of the functions to another person, or

(ii) arrange for any of the functions to be carried out by another person, or

(b) otherwise provide for the functions to be conferred instead on another Scottish public authority.

Section (1)(5) deals with the charging of fees or other charges.

Section (1) (6) provides that Regulations under subsection (1) may make any provision that could be made by an Act of the Scottish Parliament.

Section 2 of the Act provides The purpose of section 1(1) is, among other things, to contribute towards maintaining and advancing standards in relation to the following matters—

(a) environmental protection,

(b) animal health and welfare,

(c) plant health,

(d) equality, non-discrimination and human rights,

(e) social protection.

Section 3 of the Act provides for limitations on the Section 1(1) power. Regulations under section 1(10) cannot be made for the following purposes:

(a) impose or increase taxation,

(b) make retrospective provision,

(c) create a relevant criminal offence,

(d) provide for the establishment of a Scottish public authority,

(e) remove any protection relating to the independence of judicial decision-making, or decision-making of a judicial nature, by a person occupying a judicial office, or otherwise make provision inconsistent with the duty in section 1 of the

Judiciary and Courts (Scotland) Act 2008 (guarantee of the continued independence of the judiciary),

(f) confer a function on a Scottish public authority that is not broadly consistent with the general objects and purposes of the authority,

(g) modify any of the matters listed in section 31(5) of the Scotland Act 1998 (protected subject-matter),

(h) modify the Scotland Act 1998,

(i) modify the Equality Act 2006, or

(j) modify the Equality Act 2010.

Section 4 provides that the duration of the section 1(1) powers is 6 years from 30 January 2021. Scottish Ministers can by regulations subject to affirmative procedure extend this period (more than once).

Section 5 provides the application of affirmative procedure to section 1(1) regulations which:

(a) abolishes a function of an EU entity or a public authority in a member State without providing for an equivalent function to be exercisable by any person,

(b) provides for a function mentioned in section 1(3) or (4) to be exercisable by a Scottish public authority, or by a different Scottish public authority (as the case may be), or by any person whom the Scottish public authority authorises to carry out functions on its behalf,

(c) falls within section 1(5), regarding the charging of fees or other charges in connection with the exercise of a function by a Scottish public authority, except for provision which relates only to altering the amount of a fee or charge to reflect changes in the value of money,

(d) creates, or widens the scope of, a criminal offence,

(e) creates or amends a power to legislate.

Section 6 requires Scottish ministers to publish a statement of their policy on the approach to be taken, the factors to be taken into account, and the process to be followed when considering whether to use the power under section 1(1).

Section 7 sets out the procedure for publication of the policy statement.

Section 8 makes provision for Explanatory Statements for regulations under section 1(1).

Section 9 sets out the requirement for Explanatory statements to contain a statement of good reasons, the effect on convention rights or any other international human rights.

Section 10 sets out the requirement for Scottish Ministers to issue annual reports relating to the use of the section 1(1) power.

Section 11 makes provision for consultation on reports under section 10(1).



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