THE RENEWABLES OBLIGATION (AMENDMENT) (EU EXIT) REGULATIONS 2018
EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament.

As you know, Mike Russell wrote to the Conveners of the Finance & Constitution and Delegated Powers and Legislative Reform Committees on 11 September setting out the Scottish Government’s views on EU withdrawal. That letter also said that we must respond to the UK Government’s preparations for a No-Deal scenario as best we can, despite the inevitable widespread damage and disruption that would cause. It is our unwelcome responsibility to ensure that devolved law continues to function on and after EU withdrawal.

I attach a notification which sets out the details of the SIs which the UK Government proposes to make and the reasons why, on this occasion I am content that Scottish devolved matters are to be included in these SIs. The changes proposed are minor and technical in nature – they will not affect the operation of the legislation. Legal and policy officials in both organisations have considered the changes and see no issue with these being implemented by the UK Government as proposed.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you within 28 days from the date of this letter.

Kind regards,

[Signature]

PAUL WHEELHOUSE
Brief explanation of law that the proposals amend
The Renewables Obligation (RO) is one of the main policy instruments for the promotion of renewable electricity in the UK, with separate obligations covering Scotland, Northern Ireland, and England and Wales.

The RO obliges electricity suppliers to source a proportion of the electricity they sell from renewable sources. Suppliers demonstrate compliance by presenting certificates purchased from renewable generators (Renewables Obligation Certificates, or ROCs) to Ofgem. Suppliers who do not have enough ROCs to fulfil their Obligation can pay a ‘buy out’ price. Any money raised this way is redistributed to companies that have met their obligation, in proportion to the number of ROCs they presented that year.

Summary of the proposals and how these correct deficiencies
The UK Government proposes to amend the UK Renewables Obligation Orders to remove references (where they occur in the separate Orders) to the UK being a Member State, and to the jurisdiction of the Court of Justice of the European Union (reference to the latter appears only in the Order covering England and Wales).

An explanation of why the change is considered necessary
The Renewables Obligation (Scotland) Order 2009 Order (as amended) contains references to a potential role for the European Commission in respect of “permitted termination events”. These will no longer be valid following the UK’s exit from the EU.

Scottish Government categorisation of significance of proposals
Category A – these are minor technical changes, solely to remove references to the European Commission from the legislation. The changes will not affect the operation of the Renewables Obligation in any way.

Impact on devolved areas
No impact. The Renewables Obligation legislation will continue to function exactly as it does now.

Summary of stakeholder engagement/consultation
None.

We are in regular contact with all our stakeholders regarding the move towards leaving the EU. However, these measures are aimed solely at making minor and technical amendments and so we have not undertaken any focussed engagement or formal consultation on this basis.
A note of other impact assessments, (if available)
We have discussed with the UK Government and on the basis that this does not infer any policy changes, there is not a requirement to undertake an impact assessment.

Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation
These are minor technical changes to remove reference to the EU and EU bodies from the regulations. Scottish Government lawyers have reviewed the amendments and Scottish Government officials have liaised with UK Government on the changes and agree in principle to the changes.

Intended laying date (if known) of SI/SIs
30 November 2018

If the Scottish Parliament will not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?
N/A

Information about any time dependency associated with the proposal
N/A

Any significant financial implications?
No.