November 2018

Dear Gordon,

THE CRC ENERGY EFFICIENCY SCHEME EU EXIT REGULATION

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 of Intention to Consent which sets out the details of the UK SI which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this UK SI. Please note, we are yet to have sight of the final SIs and they are not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

The UK Government intends to lay this SI shortly after 22 November therefore I request that you report back to me by 21 November, recognising that this is less than the 28 days set out in the protocol for Scottish Parliament scrutiny.

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

Kind regards,

PAUL WHEELHOUSE

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew’s House, Regent Road, Edinburgh EH1 3DG
www.gov.scot
THE CRC ENERGY EFFICIENCY SCHEME EU EXIT REGULATIONS

ANNEX A - NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI(s) (if known) or a title describing the policy area
The CRC Energy Efficiency Scheme (Amendment) (EU Exit) Regulations 2018. This relates to the Carbon Reduction Commitment Energy Efficiency Scheme (the CRC scheme) which is within the Economy, Energy & Fair Work (EEFW) portfolio.

A brief explanation of law that the proposals amend
The UK SI makes two small technical changes to the CRC Energy Efficiency Scheme Order 2013. The CRC scheme is a UK wide scheme to incentivise energy efficiency from medium sized energy consumers, requiring them to report annual energy consumption and buy allowances to cover the resulting CO₂ emissions.

The CRC Energy Efficiency Scheme (Revocation and Savings) Order 2018 ("the 2018 closure Order") already revokes the 2013 Order after the 31 March 2019 (it was laid in the Scottish Parliament in July and came into force on 1 October 2018)¹. However, given that there is a gap between EU Exit day of 29 March 2019, and the revocation of the CRC scheme on 31 March 2019, an additional UK SI is needed to make consequential provision to fix deficiencies for these two days, to prevent any additional reporting and financial burden to CRC scheme participants.

Summary of the proposals and how these correct deficiencies
The UK SI corrects two deficiencies in the CRC scheme to ensure that exemptions defined in relation to EU law continue to be available between exit day on 29 March and closure of the CRC scheme on 31 March. The exemptions are for energy supplies covered by the EU ETS and consumed by the metallurgical sector.

An explanation of why the change is considered necessary
Without the changes these energy supplies would not be exempted for the two days between EU Exit and CRC scheme closure.

Scottish Government categorisation of significance of proposals
The Scottish Government considers this as category A as the changes are technical and only apply for two days until the 2018 closure Order closes the CRC scheme.

Impact on devolved areas
There is no impact on devolved areas as the proposed UK SI maintains the current CRC scheme until it is closed on 31 March 2019 by the 2018 closure Order.

¹ In 2016 the UK Government announced the closure of the CRC from April 2019, to be replaced with new emissions reporting scheme for companies and increased Climate Change Levy rates. Both these reserved measures apply UK wide. The Scottish Government has the Public Bodies Reporting Duty for the public sector.
Summary of stakeholder engagement/consultation
There has been extensive stakeholder engagement on the non-Brexit related CRC scheme closure, which culminated in the 2018 closure Order, including the Scottish Ministers consulting Scottish stakeholders in May 2018. As the proposed UK SI only maintains the CRC scheme for two days until the 2018 closure Order closes the CRC scheme, there has been no further stakeholder consultation.

A note of other impact assessments
The UK Government has not undertaken an impact assessment as the UK SI only maintains the CRC scheme for two days until the 2018 closure Order closes it.

Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation
Scottish Ministers propose that consent be given to the UK SI, given that the fixes only maintain the CRC scheme for two days until the 2018 closure Order closes it.

Detail how Scottish Ministers’ have had regard to the guiding principles on animal welfare and the environment
This is not applicable as the UK SI only maintains the CRC scheme for two days until the 2018 closure Order closes it.

Intended laying date of instruments
The UK Government has indicated that the UK SI will go to the Sifting Committee on 22 November. The Committee has 10 days to consider whether the UK SI can be laid under the negative procedure, after which it will be laid in the UK Parliament.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister’s proposal to consent, why not?
The UK Government has not yet formally written to Scottish Ministers seeking their consent to the UK SI. However this Notification has been provided now in order to allow the Scottish Parliament as much time as possible to scrutinise the consent before the UK Government lays the UK SI.

Information about any time dependency associated with the proposal
The fixes need to be made before the EU Exit to ensure that the exemptions continue to apply until the CRC closes on 31 March 2019.

Any significant financial implications?
There are no financial implications for the Scottish Government as the UK SI only maintains the CRC scheme for two days until the 2018 closure Order closes it.