

**Cabinet Secretary for Environment, Climate Change  
and Land Reform**

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**Graeme Dey**

Convenor

Environment, Climate Change and Land Reform Committee

The Scottish Parliament

Edinburgh

EH99 1SP

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Dear Graeme,

**INTRODUCTION OF CIVIL PENALTIES AND OTHER CHANGES TO THE  
REGULATION OF FLUORINATED GREENHOUSE GASES**

I am writing to inform the Committee that the UK Government intends, with my agreement, to lay the Fluorinated Greenhouse Gases (Amendment) Regulations 2018 in Westminster on 30 January 2018. These extend to Scotland and include provision for devolved purposes.

The 2018 Regulations amend the current Fluorinated Greenhouse Gas Regulations 2015 (“the 2015 Regulations”), which were also made on a UK basis to enforce the EU Fluorinated Greenhouse Gas Regulation 2014. The 2018 Regulations include technical changes such as updated references to new EU Implementing Acts. It also introduces a new civil penalty regime in England and Scotland for infringements of the EU Regulation. This will provide the enforcing authorities in Scotland with more proportionate enforcement tools.

**Background**

Fluorinated Greenhouse Gases (F-Gases) are stable, non-toxic gases with a range of uses including refrigeration, the production of insulating foam, and fire protection. They are also powerful greenhouse gases, and are covered by the Kyoto Protocol.

The 2018 Regulations provide new tools for the enforcement of the EU F-Gas Regulation 2014 (originally made in 2006, recast in 2008), which is directly applicable in the UK. The EU Regulation aims to phase out F-gas by 80% by 2030 through market restrictions, obligations for the containment, use, recovery and destruction of various industrial gases, reporting of information on those gases, and the training and certification of personnel and companies. The EU Regulation requires Member States to introduce penalties for infringement of the EU Regulation

and the subsequent domestic F-Gas Regulations were made at Westminster through powers under section 2(2) of the ECA 1972 (originally 2007, 2009 and 2015).

### **Use of section 57 powers**

The 2015 Regulations were made on a UK wide basis (in Northern Ireland only insofar as they apply to import and export), relying on section 57(1) of the Scotland Act 1998 to include provision for devolved purposes. The 2018 Regulations will amend the 2015 Regulations. In policy terms, it is considered appropriate to make amendments to the regime in Scotland in a manner which is broadly equivalent to the amendments which are to be made in England. Maintaining a clear and consistent enforcement regime will minimise the risks to businesses operating in Scotland. The 2018 Regulations do not introduce new burdens to businesses, but provide enforcing authorities with more appropriate and proportionate enforcement tools.

Therefore, I have consented to the UK Government including provision in the 2018 Regulations to amend the 2015 Regulations for devolved purposes, relying on section 57(1) of the Scotland Act 1998. The 2018 Regulations are due to be laid on 30 January 2018.

### **Conclusion**

I am content that this approach is the most appropriate way to progress this matter with regard to Scotland. Scottish Government officials are working closely with officials in Defra to ensure Scotland's interests are maintained.

A copy of this letter has also been sent to the Convener of the Culture, Tourism, Europe and External Relations Committee.

Yours,

A handwritten signature in black ink, appearing to read 'Roseanna', with a large, stylized initial 'R'.

**ROSEANNA CUNNINGHAM**