Dear Ms Perry and Mr Hammond


I am writing to you on behalf of the Environment, Climate Change and Land Reform (ECCLR) Committee of the Scottish Parliament to express our deep concern and shared frustration with the Scottish Government in respect of the continued lack of Ministerial engagement at a UK level with the Scottish Government on the future of the EU ETS.

As you may be aware there is a protocol between the Scottish Government and Scottish Parliament ensuring that Scottish Ministers do not give consent to UK Ministers to legislate on behalf of Scotland in respect of EU exit legislation without the consent of the Scottish Parliament.

The Committee received a letter dated 2 October from the Cabinet Secretary for Environment, Climate Change and Land Reform, notifying the Committee of the Scottish Government’s intention to consent to UK Ministers making regulations on its behalf in relation to the EU Emissions Trading System (ETS). The Committee subsequently received a copy of a letter from the Cabinet Secretary to the UK Government, authored jointly with the Welsh Cabinet Secretary Lesley Griffiths, expressing a number of concerns.

The Committee notes that the UK Government Technical Notice on ‘Meeting climate change requirements if there’s no Brexit deal’, was published on Friday 12 October, some days after the notification to consent, and includes the UK’s approach to the EU ETS in a ‘no deal’ scenario. It states that the UK will be excluded from participating in the EU ETS in a ‘no deal’ scenario, and that
carbon pricing commitments will be maintained via the tax system, taking effect in 2019:

“A carbon price will apply across the UK, including Northern Ireland. The Single Electricity Market is being accounted for in all options.

The UK government will publish more details of how it will initially apply a carbon price in a ‘no deal’ scenario at Budget 2018 and legislation will be included in the Finance Bill 2018-19.”

The Committee heard evidence from the Minister for Rural Affairs and Natural Environment on the EU Emissions Trading System (ETS) Regulations and the related notification on 24 October. I can confirm the Committee agreed that it was content with the Scottish Ministers granting their consent to the UK Government proposals as set out in the notification, in order to ensure we can still record, monitor and evaluate industrial emissions information for the purposes of Scotland’s climate change statistics.

However, the Committee is significantly concerned with the process of engagement between the UK Government and the Scottish Government in developing the SI, in planning for the UK’s approach to emissions trading and in mitigating industrial Greenhouse Gas emissions following the UK exit from the EU.

As you may be aware, this Committee is currently engaged in scrutinising the Climate Change (Emissions Reduction Targets) (Scotland) Bill 2018. The Committee recognises the EU ETS is a cornerstone of the EU’s policy to combat climate change and a key tool for reducing greenhouse gas emissions cost-effectively and Scotland relies upon EU ETS participation to meet a significant share (35% in 2016) of its emissions reductions.

The notification indicates that the UK will be excluded from participating in the EU ETS in a ‘no deal’ scenario, hence the proposed UK Regulations will also remove obligations on UK participants in the EU ETS to procure and surrender emissions allowances. Given the significance of the EU ETS, the Committee was disappointed to hear that there have been no formal Ministerial discussions on options for future participation in the EU ETS, despite repeated requests from the Scottish Government. The Committee shares the frustration of the Scottish Government that two years following the EU referendum we appear to be no further forward and there is now insufficient time to properly design alternatives in a ‘no deal’ scenario with appropriate input from stakeholders.

We welcome the commitment from Scottish Ministers that in the case of ‘no deal’ and the UK being excluded from the EU ETS, the Scottish Government will still seek to uphold the highest environmental standards possible, including its commitments to increasing its climate change targets via the currently progressing Climate Change etc. Bill. However, the Committee was concerned to hear that Scotland could be disproportionately affected by leaving the EU ETS compared to other UK countries, and that it could be more difficult to meet statutory emissions reduction targets in the absence of EU ETS participation.
The Committee is also concerned that in the absence of EU ETS requirements for ring-fencing of EU ETS revenues for low carbon spending, there will be no equivalent requirement in domestic governance to ensure minimum levels of investment in decarbonisation. We are particularly concerned about the potential impact of this loss of safeguarded revenue to support innovation in energy intensive sectors, which may be in combination with loss of other EU innovation funding sources in the event of ‘no deal’.

The Committee has questions in relation to the Technical Notice which suggests that the long-standing arrangements for emissions trading will be replaced through the taxation system via carbon pricing. It appears that this replaces a devolved mechanism, collectively agreed by all four administrations, with a tax reserved to HM Treasury in which devolved administrations would have no involvement. The Committee shares the concern of the Scottish Government that there has been no discussion, on this and the impact of the approach, at Ministerial level. The Committee is also concerned that this will reduce access to the most cost-effective decarbonisation routes with carbon leakage protection.

The Committee notes that since hearing from the Minister for Rural Affairs and Natural Environment, the UK Government has provided further detail regarding these tax proposals in the budget on 29 October, stating:

“In the unlikely event no mutually satisfactory agreement can be reached and the UK departs from the EU ETS in 2019, the government would introduce a Carbon Emissions Tax to help meet the UK’s legally binding carbon reduction commitments under the Climate Change Act. The tax would apply to all stationary installations currently participating in the EU ETS from 1 April 2019. A rate of £16 would apply to each tonne of carbon dioxide emitted over and above an installation’s emissions allowance, which would be based on the installation’s free allowances under the EU ETS. The government is also legislating so it can prepare for a range of long-term carbon pricing options.”

The Committee shares the view of the Scottish Government that a negotiated deal for the EU ETS is in the best interests of both Scotland and the UK. The Committee agreed to liaise directly with the UK Government as it has a number of outstanding questions.

We discussed many of these issues with the Minister for Rural Affairs and Natural Environment and the Committee welcomes her assurance that the Scottish Ministers are keen to share as much information as possible. This is, however, dependent on the effectiveness of their engagement with the UK Government. We are therefore also contacting you directly on these issues. Specifically, the Committee would welcome:

1. Information on any discussions the UK Government has had with Scottish-based ETS operators on the potential impacts of the proposed ‘no deal’ solution;

2. Detail on whether the carbon pricing proposal outlined in the Technical Notice and further detailed in the Budget 2018 is being planned as an interim, contingency measure to maintain climate incentives in the temporary absence of a trading mechanism, or signals a longer-term policy shift;
3. Information on how the UK Government arrived at the proposed level of tax (of £16/tonne of carbon dioxide) and what assessment it has made on how the proposed tax will contribute to emissions reductions, including in comparison to the current EU ETS system;

4. Information on how the UK Government proposes to review the level of the proposed Carbon Emissions Tax on an ongoing basis to ensure it is fulfilling its objectives;

5. Plans to consult stakeholders on future scenarios in relation to carbon trading and carbon taxation or pricing;

6. Information on any relevant consultation with SEPA;

7. Information on the systems in place or planned to ensure the UK keeps pace with changes in best practice with regard to the monitoring and reporting of industrial emissions;

8. Clarification as to who is responsible in the UK for keeping up to date with these changes;

9. Clarification as to whether the UK Government has ruled out the possibility of developing alternative emissions trading arrangements, or seeking to replicate the working of the ETS at UK level, in the event of the UK leaving the EU ETS under ‘no deal’;

10. Information on the impact of leaving the EU ETS under a ‘no deal’ scenario on the licensing of geological storage of carbon dioxide in England and Wales (the Technical Notice refers to a legislative link and requirement for devolved administrations to restore functionality in this area under ‘no deal’);

11. Detail of any UK Government plans to consult on the impact of leaving the EU ETS on the licensing regime for the geological storage of carbon dioxide;

12. Further information regarding the proposed timing for the UK Finance Bill 2018-19 (the mechanism the UK Government suggests will be used to introduce a new carbon price); and

13. In light of the UK Government’s announcement that a carbon price will be introduced in the event of ‘no deal’, assurance that at least equivalent revenues will be made available in Scotland for low carbon policies (compared to levels made available by virtue of the required ring-fencing of EU ETS revenue).
You will be aware that timescales are tight in relation to responding to the timetable set by the UK Government for consideration of the relevant SI. However, the Committee would welcome a response from you by 9 November, in advance of the SI being laid in the UK Parliament.

Yours sincerely,

Gillian Martin MSP
Convener
Environment, Climate Change and Land Reform Committee

c.c. Roseanna Cunningham, Cabinet Secretary for Environment, Climate Change and Land Reform
Mairi Gougeon MSP, Minister for Rural Affairs and Natural Environment