26 November 2018

Dear Gillian,

I am writing in response to your correspondence of 20 November concerning the Persistent Organic Pollutants (EU Exit) Regulations 2018 and the Control of Mercury (EU Exit) Regulations 2018 Regulations. Please see below annex which provides responses to the questions raised by the Committee.

Yours,

ROSEANNA CUNNINGHAM
ANNEX A – FURTHER INFORMATION

1. **What level of consultation currently takes place on POP and control of mercury between UK and Scottish Ministers?**

There has been regular dialogue at official level between the administrations and the relevant regulators, including SEPA. There has not previously been a great need for formal consultation between Ministers while the UK has been operating under the standards set at a European level, which have been in the form of directly-applicable EU Regulations, and given the very technical nature of the issues involved. SEPA has played a significant role in the POPs regulation and informs the UK government on our behalf of information which feeds into the UK position in EU decisions.

2. **Generally, is there any policy choice over which UK or Scottish bodies EU functions should transfer to both in relation to POP and control of mercury?**

In relation to Ministerial functions, powers over POPs transfer to the Scottish Ministers as this is a devolved area. We could have chosen to allow the Secretary of State to operate these at a UK level but, in our view, this would not have been consistent with the devolution settlement.

For Mercury, we have worked with the Department for the Environment Food and Rural Affairs (Defra) and have aimed to transfer as many functions as possible to the Scottish Ministers in line with the devolution settlement, for example on industrial processes. Where decisions are in a clearly reserved area, for example on the import and export of Mercury and its compounds, we have agreed to a model of decision making where the Scottish Ministers must be consulted in any decision taken by the Defra Secretary of State.

In relation to regulatory and enforcement powers, these currently sit with SEPA and we are not aware of any reason to move these to a different body.

3. **Would SEPA be gaining, or losing, any functions as a result of these instruments?**

In practice, we expect SEPA functions will be unchanged, however in some cases functions which were carried out on an administrative basis will be formalised within legislation. It is likely that there will be additional scrutiny applied across regulators and administrations to ensure we uphold our commitments that EU exit should not cause any deterioration of environmental standards.

4. **If so, will this have financial/resourcing implications for SEPA?**

Whilst we have formalised a number of functions previously done on an administrative basis, we do not expect this change to have any cost implications. There may be an increased call on SEPA to provide advice to Scottish Government in relation to the powers that have been transferred to Ministers, but we do not expect this to be significant in terms of SEPA’s overall resources.
5. Have SEPA been consulted on these EU exit instruments?

We have discussed the policy approach with SEPA, but there is agreement amongst administrations that the detailed text of SIs should not be shared outside government. SEPA has agreed that maintaining the status quo in relation to the substance of their functions is the preferred outcome.

6. Can you provide further information on the package of wider legislation on the regulation of chemicals arising from EU withdrawal. How many instruments are expected and what are the timescales for laying?

We expect a single instrument from the Department of Work and Pensions, on behalf of the Health and Safety Executive, regarding the Biocidal Products, Classification Labelling & Packaging and Prior Informed Consent regulations and associated domestic legislation which implements those EU regulations, as well as other 'non-chemicals' legislation on Genetically Modified Organisms and Plant Protection Products. The intended laying date is the 17th December, although the Scottish Government has not yet seen a finalised SI so this may be subject to change.

We also expect a further instrument from the Department for the Environment Food and Rural Affairs (Defra) regarding the EU Regulation on the Registration Evaluation Authorisation and restriction of Chemicals (REACH) and the domestic legislation which implements REACH. This is the main regime that regulates the placing of a wide range of chemical products on the market. This instrument is intended to be laid early in the new year.

7. Will consultation be conducted in respect of this wider package of legislation? If so, what?

The UK government have carried out a prolonged period of informal stakeholder engagement in their efforts to produce these instruments. The overall approach has been to reproduce the existing EU regimes in a domestic context and to avoid substantive changes in policy. As such we do not believe a formal consultation is required.

8. Can you provide further information about the current framework discussions that are taking place between the UK administrations and relevant regulators specifically on the regulation of chemicals

Discussions at official level to date have been very constructive. The work is focused on how the future regulation of Chemicals and Pesticides will be governed and on the practicalities of giving effect to the proposed new framework for Ministerial decision-making.

We have agreed that these discussions should alternate around all of the nations of the UK, which reflects the view that there is a 'marbled' mixture of devolved and reserved competence at play in the wider Chemicals regulatory regime and no one organisation should lead or dominate these discussions or the regulatory regime. The Scottish Government hosted the latest discussion in Edinburgh on 21st November.

HSE currently carry out a number of functions in the regulation of Chemicals as a result of agency agreements between them and the various administrations. We anticipate that the framework discussions will lead to updated agency agreements which allow for a greater role for all of the governments, particularly the Devolved Administrations, in the oversight of the
UK’s Chemicals regulatory regime. These agency agreements are likely to supplemented by Memoranda of Understanding where Ministers agree on the overall aim and approach to Chemicals regulation.