Roseanna Cunningham MSP  
Cabinet Secretary for the Environment, Climate Change and Land Reform  
Scottish Government  

By email only  

Dear Cabinet Secretary,

Fluorinated Greenhouse Gases and Ozone-Depleting Substances (EU Exit) (Miscellaneous Amendments) Regulations 2018

Thank you for your letter, dated 8 November 2018, attaching the consent notification for the above SI.

The Committee would appreciate some further information in relation to the following points. **It would be helpful if a response could be provided before close of play on Monday 26 November.**

Under **heading 1 (name of the SI)** of this notification, precisely which “functions currently exercised by the EU Commission of a legislative character” are to be granted instead to a UK public authority?

The SI notification highlights, under **heading 2 (a brief explanation of law that the proposals amend)**, that there is a difference between the reach of the Montreal Protocol and that of the EU regime. In policy terms, therefore, there are two different avenues open to the UK and Scottish governments in future. Is it possible/likely they will downgrade the ODS and F-gas protections in future to the level of the UN Montreal Protocol?

Under **heading 3 (summary of the proposals and how these correct deficiencies)** of the notification, at the top of page 2, does the statement “the UK will mirror these EU arrangements” mean that the UK will mirror EU policy as closely as possible? Will doing this minimise administrative burdens on business?

Further on in this same paragraph is the statement that “the UK SI reassigns EU Commission legislative functions to the appropriate authority, which is the Scottish Ministers within devolved areas, but exercisable by the Secretary of State with the consent of Scottish Ministers...”. What does this mean? Will
Scottish Ministers be the “appropriate authority”, but without the functions of an “appropriate authority”? Can the Scottish Government specifically identify these “legislative functions”?

- Are there policy (or other) reasons for why, “within devolved areas”, the function is still to be exercisable by the Secretary of State? Does this contradict what is said further on, under heading 5 (Scottish Government categorisation of significance of proposals): “it involves the transfer of both legislative and non-legislative functions….Most of these fall within…devolved competence, and therefore…[will be] exercised by the Scottish Ministers and Scottish regulatory agencies.”?

Are there likely to be any practical difficulties in decoupling UK environmental regimes from EU regimes e.g. relating to access to records/information or monitoring/reporting?

In the paragraph at the top of page 2, there is an indication that the Environment Agency is “the default appropriate regulator for the UK quota system…but with the flexibility to allow the Scottish Ministers to designate [SEPA] to act in Scotland instead under any future Scottish arrangement”. Is it likely that SEPA will be designated as the “appropriate regulator” in the future; under what scenarios might this happen?

Under heading 7 (summary of stakeholder engagement/ consultation) there is no mention of consultation with SEPA; is this the case? Has the Scottish Government only consulted with the one Scottish manufacturer; if so, who was this, and what are its views?

Yours sincerely,

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