Dear Cabinet Secretary,

The Air Quality (Amendment etc.) (EU Exit) (No. 1) Regulations 2018 and the Air Quality (Amendment) (EU Exit) (No. 2) Regulations 2018

Thank you for your letter, dated 13 November 2018, attaching the consent notification for the above SIs.

The Committee would appreciate some further information in relation to a number of points which are set out in the annexe to this letter. It would be helpful if a response could be provided before close of play tomorrow, Wednesday 28 November. Apologies for the very tight timescale.

Please contact the clerk to the committee, via the contact details set out above, if officials have any questions in relation to this request.

Yours sincerely,

Gillian Martin MSP
Convener
Environment, Climate Change and Land Reform Committee
1. **Impact on devolved areas**

The notification states with regard to impacts on devolved areas:

> “Although air quality is devolved, all of the changes made by these instruments relate to policies and other procedures which are currently exercised on a joint UK basis for reasons of practicality, efficient use of resources and ease of collaboration. The intention is for this approach to continue and for the UK Government not to make any changes which potentially impact on the devolved administrations without first obtaining their consent.”

The notification however covers a number of Regulations which transpose air quality standards including emissions ceilings, which the UK Government could amend in future. It is not wholly clear in the notification (in light of the reference above to the intention that a joint UK approach should continue) if it is proposed that those powers to set standards will return to the UK Government or to devolved administrations.

Given the indication above that the 2 instruments which are the subject of this notification will continue the approach of the UK Government making changes that impact on the devolved administrations with their prior consent, could it be explained –

(a) Under the proposed Regulations, what powers to set air quality standards will return to Scottish Ministers?

(b) Where powers are conferred by the proposed Regulations on the UK Government, will the Scottish Ministers have powers to set more stringent standards?

2. **Reporting on ambient air quality**

The notification refers to a duty that will be conferred on Scottish Ministers to establish a publicly-accessible data repository for Scotland.

(a) Will Scottish Ministers be in a position to meet this requirement from exit day in the event of ‘no deal’?

(b) Will the public have access to all of the same information under this system about air quality in Scotland as is available under current Regulations?

3. **Transitional national plan**

(a) What will the legal status of the Transitional National Plan be under the proposed Regulations?

(b) How will progress on implementing the TNP be reported on in the absence of the duty to report to the Commission?
4. BAT Conclusions

The notification states with regard to BAT conclusions that amendments are proposed to ensure that BAT conclusions (for several decisions on industrial emissions) will continue to apply in the UK after exit day. In its Technical Notice on ‘Industrial emissions standards (‘best available techniques’) if there’s no Brexit deal’, the UK Government has stated:

“The European Commission holds a power to establish BAT Conclusions for the purpose of environmental permitting for activities within the scope of the IED, which are based on BREFs developed through the EU-level Sevilla process. In a ‘no-deal’ scenario, the UK would no longer be part of the Sevilla process.

The UK government would make secondary legislation to ensure the existing BAT Conclusions continue to have effect in UK law after we leave the EU, to provide powers to adopt future BAT Conclusions in the UK and ensure the devolved administrations maintain powers to determine BAT through their regulatory regimes.

The UK government will put in place a process for determining future UK BAT Conclusions for industrial emissions. This would be developed with the devolved administrations and competent authorities across the UK. The UK government’s Clean Air Strategy consultation for England also seeks views from interested parties on what the UK BAT regime might look like in the future.”

(a) Are the proposed amendments restricted to adopting existing BAT conclusions or do they give the UK or Scottish Ministers new powers to adopt future BAT conclusions?

(b) How would the powers to adopt conclusions be exercised - would it be by transfer of legislative powers such as making future Regulations?

(c) Can the Scottish Government provide any further information on what it anticipates the process will be for adopting future BAT conclusions and what the role of Scottish Ministers may be? Is this process under development or has it been agreed?

5. The Air Quality Standards Regulations 2010

(a) The equivalent Regulations in Scotland which transpose Directive 2008/50/EC on ambient air quality are the Air Quality Standards (Scotland) Regulations 2010 (SSI 2010/204). Can the Committee expect that equivalent changes would be made to SSI 2010/204 to transfer the equivalent powers to the Scottish Ministers “consistent with the devolution settlement”?

(b) Can the Scottish Government provide more detail on what powers are being transferred to Scottish Ministers here, bearing in mind that an indicator for Category B is “sub-delegation- creating or amending a
power to legislate, for example transferring EU legislative powers to a UK public authority"? Is a transfer of legislative powers proposed?

6. The National Emission Ceilings Regulations 2018

The notification explains that these Regulations transpose Directive 2016/2284/EC setting national emissions ceilings for certain atmospheric pollutants, and that the proposed amendments will transfer reporting and emissions projection responsibilities from the Commission to the Secretary of State.

(a) Can the Scottish Government provide more information on where powers to set or amend national emissions ceilings for the pollutants covered by Directive 2016/2284/EC will sit in the event of ‘no deal’ EU Exit?

(b) Will the Scottish Government have powers to set different (including more stringent) targets than those set at UK level?