Dear Cabinet Secretary,

The REACH (Amendment) (EU Exit) Regulations 2019

Thank you for your letter, dated 27 November 2018, relating to the consent notification for the above proposed SI.

In advance of the Committee’s consideration, members would find it helpful to have further information on a number of points. These are set out in the annexe to this letter.

The Committee intends to hear oral evidence from stakeholders in relation to this consent notification at its meeting on 11 December, followed by evidence from you on 18 December.

In order for this information to inform the Committee’s consideration, therefore, it would be helpful to have a response by Wednesday 5 December at 12 noon. I recognise this is a very tight turnaround for your officials and appreciate in advance their hard work to meet this timescale.

Yours sincerely,

Gillian Martin MSP
Convener
Environment, Climate Change and Land Reform Committee
Parliamentary procedure and reasons for not using joint procedure—
- What parliamentary procedure will the UK SI be subject to?
- Why did the Scottish Government rule out using the joint procedure for these Regulations given the complex nature of chemicals regulation and intertwining of reserved and devolved interests?

Common framework—
- What stage are discussions at on the “common framework” referred to?

Timing and readiness—
- The notification states that there are three further notifications being prepared that will "exist as a package". Will the committee be able to consider all notifications together ahead of the laying date?

Scope of devolved competence—
- What areas of the proposed SI does the Scottish Government consider to be within devolved competence?
- Are the devolved competences in the area of chemicals regulation greater than, the same as, or less than the functions held by Scottish Ministers as a Competent Authority? If greater, please describe how.

How will ‘consent of the Devolved Administrations’ work?—
The notification states that Ministerial powers will transfer to the UK Secretary of State, who will require the consent of the Devolved Administrations to take decisions in areas of devolved competence.

- What decisions by the UK Secretary of State/HSE will require the consent of Scottish Ministers? For example, will these include all decisions to evaluate, authorise and restrict chemical substances.
- Will that consent be a statutory requirement, and if not, how will the Scottish Parliament have the opportunity to scrutinise such decisions? What is the Scottish Government’s position on the role of the Scottish Parliament in decisions to authorise or restrict chemical substances under this SI?
- Similarly, the notification states that the devolved administrations will be able to take urgent provisional action in relation to a substance of concern in their own nation. How will such decisions be effected? Will the Scottish Parliament have the opportunity to scrutinise the exercise of such powers?
- Will the Scottish Government or SEPA be a voting member of any management or oversight board for HSE’s chemical regulation functions?
- Will the Scottish Government or SEPA be a voting member of any technical or regulatory board for HSE’s chemical regulation functions?

Engagement—
- Which stakeholders has Scottish Government consulted on post EU Exit proposals for the REACH regime?
- What are the key concerns that have been raised by stakeholders?
Appeals—
- The notification states that the SI will transfer the role of hearing appeals against HSE decisions to the First Tier Tribunal. Can the Scottish Government confirm:
  (a) which Chamber of the First Tier Tribunal will hear these appeals; and
  (b) whether the SI extends the jurisdiction of the First Tier Tribunal?
- Is the Scottish Government satisfied with the proposal that the Regulations will not establish an appeal body?

Regulatory autonomy and capacity of HSE and Scottish agencies—
- How will SEPA’s functions change as a result of this SI?
- How will functions of local authorities change as a result of this SI?
- Under this proposed SI, will it be possible to make different authorisation or restriction decisions in Scotland compared with other parts of the UK (other than "urgent provisional action")?
- Has the Scottish Government considered what additional resources may be required by bodies taking on additional duties (e.g. SEPA, local authorities)?

Costs for affected companies—
- What are the estimated costs to Scottish companies of complying with the additional requirements to provide data to populate a UK database?

Impacts on non-UK based companies—
The notification sets out the proposed process for UK based companies with existing REACH registrations transferring their registrations into a UK system.

- What are the implications for non-UK based companies (that operate within the REACH system) that have registrations that are relevant to the UK?
- Will non-UK based companies that currently operate within the REACH system and export chemicals into the UK be able to continue to access the UK market?
- Is there a process to enable the transfer of existing REACH registrations held by non-UK based companies?

Information-sharing and consumer information—
- What will replace the EU arrangements for sharing information about the properties and safe use of chemicals with users and manufacturers in the UK?
- What will replace RAPEX, the EU rapid alert system for dangerous non-food products?
- Will the same information be available to Scottish consumers about chemicals in products as under the current system (including in the 2-year transitional period)?