19 November 2018

Dear Gillian

I am writing in response to your correspondence of 14 November concerning The Environment (Miscellaneous Amendments) (EU Exit) Regulations 2018 and The Floods and Water (Amendments etc.) (EU Exit) Regulations 2018. Please see the below annex which provides responses to the questions raised by the Committee.

Yours,

ROSEANNA CUNNINGHAM
ANNEX A

(1) Amendment of regulation-making powers

Question

Paragraph 3(a)(iii) states, “the Pollution Prevention and Control Act 1999 is amended…in relation to regulation-making powers, to set out the areas of retained EU law in which the regulation-making powers have been used in the past and will remain available to be exercised after exit. As the European Communities Act will be repealed, the restrictions contained in that Act are replicated here.”

The regulation-making powers of this Act of 1999 are therefore being amended by the addition of restrictions. Is this a reference to the restrictions in Schedule 2, paragraph 1 of the European Communities Act 1972? If not, we should be grateful if you would confirm the content of these restrictions.

If the regulation-making powers under the Pollution Prevention and Control Act 1999 have been exercised in relation to areas of EU law that will become areas of retained EU law, why is it necessary now to impose restrictions on these powers, imported from the European Communities Act 1972?

Does the Scottish Government agree that amendment of such a power to legislate means this notification falls within Category B of the protocol?

SG Response

The existing power in paragraph 20(1)(b) of schedule 1 of the Pollution Prevention and Control Act 1999 to make regulations to implement directives includes power to make provision which corresponds or is similar to “any provision made, or capable of being made, under section 2(2) of the European Communities Act 1972 (ECA) in connection with one of the relevant directives”.

The modification deals with the deficiency created by the repeal of ECA. The power in paragraph 20 to make regulations is retained, but subject to the same restrictions as in paragraph 1(a) to (c) of Schedule 2 of ECA.

DEFRA is not imposing restrictions on these powers: rather they are replicating the restrictions which have effect due to the reference in paragraph 20(1)(b) to ECA and due to the fact that certain directives have been designated as relevant directives. This ensures that the 1999 Act has equivalent effect after the repeal of the ECA and allows continued function to implement or transpose directives as they have effect on the day before exit day. This provides for continued operability without a change in policy or available powers, and so we consider it remains a Category A modification.
Revocation of Decision No 1386/2013/EU relating to the European Environment Action Plan (EEAP)

Question

The notification states that Part 4 of the proposed Regulations will revoke Decision No 1386/2013/EU) namely the 7th European Environment Action Plan (EEAP). The 7th environmental action programme runs to 2020 (as well as setting out an agreed environmental vision for 2050), and contains a detailed programme for action up to 2020, covering a range of policy areas including biodiversity, air quality, climate change and the circular economy.

Has the Scottish Government assessed the implications of the proposed revoking of Decision No 1386/2013/EU on environmental standards in Scotland? Can further information be provided on the UK Government’s reasoning for revoking this Decision and why it is required? Is the Scottish Government in agreement with this reasoning?

SG Response

Decision 1386/2013/EC adopts the 7th Environment Action Programme (EAP). The EAP provides a general policy framework for the European Union’s environment policy. However, as the UK will cease to be a member of the European Union after exit day, the EAP will no longer be relevant to the UK. It is for this reason that we are agreeing to the revocation of the Decision.

The revocation of the decision does not undermine Scottish Ministers commitment to continuing to protect and enhance our natural environment and maintaining Scotland’s leading role on environment and climate policies. We have committed to maintaining equivalence with EU environmental standards, where appropriate to do so, and to placing the EU environmental principles at the heart of Scotland’s future approach to environmental policy. We already have an ambitious policy agenda for the environment in Scotland and, as our Programme for Government sets out, we are developing our strategic approach to environmental policy to protect and enhance our environment, safeguard natural capital and continue Scotland’s leading role in addressing environmental challenges. Should the UK exit the EU, we will be seeking to explore all mechanisms through which we can continue to influence and align with EU policy and legislation, including the EAP.