13 November 2018

Dear Gillian

I am writing in response to your correspondence of 07 November concerning the Health and Safety (Amendment) (EU Exit) Regulations 2018 / The Genetically Modified Organisms and Control of Major Accident Hazards Regulations. Please see below annex which provides responses to the questions raised by the Committee.

Yours,

ROSEANNA CUNNINGHAM
With regard to the proposed amendments to the Control of Major Accident Hazards Regulations 2015—

1. The proposed regulations retain the competent authority obligation to provide other countries with information about major accident hazards with possible transboundary consequences. The notification states that the UK will remain under international obligations to share certain information. What obligations will there be on remaining EU Member States under a “no deal” scenario to share information with the UK regarding major accidents with potential transboundary effects, and how will this differ from current requirements?

Using the definitions in the COMAH Regulations and the UNECE Transboundary Effects of Industrial Accidents (TEIA) Convention as well as the associated guidance GB does not identify any sites with potential transboundary consequences that require reporting under the COMAH Regulations. Nor do we receive any information about sites in other countries that could impact GB. The UK notifies a small number of sites in Northern Ireland that could impact the Republic of Ireland under the TEIA Convention. The Republic of Ireland is not a signatory to Convention but there are arrangements with the authorities in Northern Ireland for information exchange. This proposal does not lead to a reduction in standards and in practice would make no difference to the exchange of information were it to be required.

The TEIA convention includes a requirement for member countries to share information about industrial accidents with potential transboundary effects. This is narrower than the requirements of the Seveso Directive as it only requires information to be shared if a major accident has potential transboundary effects whilst Seveso requires information about the major accidents listed in Annex VI to the Directive to be shared irrespective of whether they have potential transboundary effects. Under Seveso EU member states will continue to report information about major accidents through eMARS (an online reporting system) and the information is openly available to all.

2. The proposed regulations replace a requirement to share information with the European Commission, with a power to share information with ‘international organisations’. Can the Scottish Government provide any further information regarding which organisations it anticipates information would be shared with under these Regulations. Is it anticipated that the European Commission would be one of those organisations?

Yes, it is anticipated that the European Commission would be one of the organisations.

It is proposed that information regarding major accidents continue to be shared using as the EC’s eMARS (electronic Major Accident Report System), this system is currently used by the EU Member States and other countries not part of the EU. The UK will retain obligations under the TEIA Convention to report any incidents with transboundary consequences and this is currently done for EU and non-EU parties to the Convention using eMARS. An OECD Council Recommendation under the Chemicals programme requires information about major accidents to be shared with OECD members also directed towards eMARS.

The Health and Safety Executive, as part of the COMAH Competent Authority, intend to develop a process for deciding information that should be shared via eMARS. This process

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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will be discussed with the devolved administrations and relevant regulators in due course. At this stage there is no intention of any significant departure from the current arrangements.

With regard to proposed amendments to the Genetically Modified Organisms (Contained Use) Regulations 2014—

3. The notification states that the UK will still retain an international obligation to notify affected States as signatory to the Cartagena Protocol on Biosafety. How closely does the Cartagena Protocol reflect these existing EU law obligations? Will the quality of information shared, or speed of information supply, both to and from the UK, if we return to the “default” position of relying on the Cartagena Protocol?

There are no significant discrepancies in regards to our obligations under the Cartagena Protocol, and the Scottish Government is confident that our obligations are essentially the same as those under current (and what will be retained) EU law.

With regard to both Regulations—

4. The proposed Regulations are concerned with the sharing and flow of information of potential transboundary significance between countries and organisations. Are there any non-legislative, supportive functions provided at EU level e.g. provision of registries that currently support Member States in meeting their obligations under the existing Regulations that the UK will no longer have access to in the case of “no deal”? If so, how will those functions be replicated or developed?

COMAH

We will still have access to eMARS as explained above and the intention is to continue to use that.

GMO

There are no supportive functions provided at EU level which the UK would be lacking in the event of a 'no deal' exit scenario, and there are no issues with applying the protocol as it currently stands.