30 January 2019

Dear Gillian

THE FLUORINATED GREENHOUSE GASES AND OZONE-DEPLETING SUBSTANCES (EU EXIT) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2018 EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

The Scottish Parliament recommended on 5 December that the above UK SI for no-deal EU Exit should include Scottish devolved matters, as set out in the notification to the Parliament.

The affirmative UK SI was laid in draft in the UK Parliament on 13 December, the date for the debate has not been set. I can now confirm that this SI is consistent with the consent granted on 5 December.

However it does vary in one respect from the original proposal, but this does not change the policy approach set out in the notification and so does not require reconsideration of SI and any further process. The consented approach aimed to maintain a UK-wide approach, with the SI appointing the Environment Agency as appropriate regulator to administer a UK-wide quota and licensing regime of manufacturers and importers placing F-gas and ODS on the UK market. SEPA would remain the appropriate regulator for the compliance and enforcement aspects of the regimes. However the laid SI actually appoints SEPA as the appropriate regulator for quota and licensing in Scotland. Therefore I propose that when the SI comes into force in the event of no-deal, that the Scottish Ministers will direct the Environment Agency as the appropriate regulator in Scotland to administer the quota and licensing regimes. This is only a procedural step and is not a change in policy approach, which remains consistent with the Scottish Ministers’ consent.

I am also responding in this letter to the Committee’s request for further information in its letter of 5 December:
• whether the Scottish Government has powers to set different targets compared to the rest of the UK for banning F-gas and ODS,
• and whether Scottish Ministers view this as a priority.

The Scottish Ministers have devolved competence for control of pollution and protection of the environment, and could introduce different bans on F-gases compared to the rest of the UK. However F-gases currently account for between 2-3% of Scotland’s greenhouse gas emissions and remaining part of a UK-wide approach is proportionate to the scale of the issue in Scotland. In practice the current UK-wide approach provides consistency across the UK (and the EU given that the no-deal SI mirrors the EU regimes), ensuring a level playing field for producers and users. The no-deal SI mirrors the EU F-gas and ODS regimes, including the product bans, which ensures that Scotland continues to meets its international obligations under the Montreal Protocol. International efforts ensure that industry can adapt and develop replacements.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

Yours sincerely

ROSEANNA CUNNINGHAM