



The Scottish Parliament
Pàrlamaid na h-Alba

Roseanna Cunningham MSP
Cabinet Secretary for Environment,
Climate Change and Land Reform

c/o Clerk to the Committee
Room T3.40
The Scottish Parliament
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By email only

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26 October 2018

Dear Roseanna,

European Union (Withdrawal) Act 2018 Regulations – EU Emissions Trading System

Following your [letter](#) of 2 October notifying the Committee of the Scottish Government's [intention to consent](#) to UK Ministers making regulations on its behalf in relation to the EU Emissions Trading System (ETS) the Committee [wrote](#) to you with a number of questions. We thank you for [responding](#) so promptly.

The Committee also received a copy of your [letter](#) to the UK Government, authored jointly with the Welsh Cabinet Secretary Lesley Griffiths, expressing concerns. The Committee notes that the UK Government Technical Notice on '[Meeting climate change requirements if there's no Brexit deal](#)', referred to in correspondence from the Cabinet Secretary, was published on Friday 12 October and includes its approach to the EU ETS in a 'no deal' scenario.

The Committee heard evidence from the Minister for Rural Affairs and Natural Environment on the EU Emissions Trading System (ETS) Regulations and the related notification on 24 October. I can confirm the Committee agreed that it was content with the Scottish Government granting its consent to the UK Government proposals in order to ensure we can still record, monitor and evaluate industrial emissions information for the purposes of Scotland's climate change statistics.

As you are aware, the Committee is currently engaged in scrutinising the Climate Change (Emissions Reduction Targets) (Scotland) Bill 2018. The Committee recognises the EU ETS is a cornerstone of the EU's policy to combat climate change and a key tool for reducing greenhouse gas emissions cost-effectively and Scotland relies upon EU ETS participation to meet a significant share (35% in 2016) of its emissions reductions.

The notification indicates that the UK will be excluded from participating in the EU ETS in a no deal scenario, hence the proposed UK Regulations will also remove obligations on UK participants in the EU ETS to procure and surrender emissions allowances. Given the significance of the EU ETS, the Committee was disappointed to hear that there have been no formal Ministerial discussions on options for future participation in the EU ETS, despite repeated requests from the Scottish Government. The Committee shares your frustration that two years following the EU referendum we appear to be no further forward and there is now insufficient time to properly design alternatives in a 'no deal' scenario.

We welcome the commitment from the Minister that in the case of 'no deal' and the UK being excluded from the EU ETS, that the Scottish Government will still seek to uphold the highest environmental standards possible, including its commitments to increasing its climate change targets via the currently progressing Climate Bill. However, the Committee was concerned to hear that Scotland could be disproportionately affected by leaving the EU ETS compared to other UK countries, and that it could be more difficult to meet statutory climate targets in the absence of EU ETS participation.

The Committee is also concerned that in the absence of EU ETS requirements for ring-fencing of EU ETS revenues for low carbon spending, there will be no equivalent requirement in domestic governance to ensure minimum levels of investment in decarbonisation. We are particularly concerned about the potential impact of this loss of safeguarded revenue to support innovation in energy intensive sectors, which may be in combination with loss of other EU innovation funding sources in the event of 'no deal'.

The Committee has questions in relation to the Technical Notice which suggests that the long-standing arrangements for emissions trading will be replaced through the taxation system via carbon pricing. It appears that this replaces a devolved mechanism, collectively agreed by all four administrations, with a tax reserved to HM Treasury in which devolved administrations would have no involvement. The Committee shares your concern that there has been no discussion, on this and the impact of the approach, at Ministerial level. The Committee is also concerned that this will reduce access to the most cost-effective decarbonisation routes with carbon leakage protection.

The Committee shares your view that a negotiated deal for the EU ETS is in the best interests of both Scotland and the UK. I can confirm that the Committee intends to liaise directly with the UK Government on this as there are a number of outstanding questions.

We discussed many of these issues with the Minister for Rural Affairs and Natural Environment and the Committee welcomes her assurance that she is keen to share as much information as possible. Specifically, the Committee would welcome:

- Sight of the draft SI to which this notification relates at the earliest opportunity;
- Information on informal discussions with Scottish-based ETS operators on the potential impacts of the proposed 'no deal' solution

- Detail on whether the carbon pricing proposal outlined in the Technical Notice is being planned as an interim, contingency measure to maintain climate incentives in the temporary absence of a trading mechanism, or signals a longer-term policy shift;
- Plans to consult stakeholders on future scenarios in relation to carbon trading and carbon taxation or pricing;
- Information on any relevant consultation with SEPA;
- Information on the impact of leaving the EU ETS under a 'no deal' scenario on the licencing of geological storage of carbon dioxide in Scotland (the Technical Notice refers to a legislative link and requirement for devolved administrations to restore functionality in this area under 'no deal');
- Detail of any Scottish Government plans to consult on the impact of leaving the EU ETS on the licencing regime for the geological storage of carbon dioxide;
- 'An explanation of the Scottish Government's position if it requires to prepare its own legislation on the licencing regime for geological storage of carbon dioxide, due to the inoperability of aspects of the EU ETS in the event of a 'no deal' and why it has not combined those provisions into a SSI also covering the fixes in the notification.

The Committee asks that each future notification be accompanied by the relevant draft SIs (if available) or the instructions to the drafters. The Committee would welcome your commitment to providing this, if it is reasonable to do so.

The Committee also asks that you track the relevant UK SI and advise the Scottish Parliament:

- the SI is consistent with the consent granted; or
- the SI varies from the original proposals but not to the extent of needing additional parliamentary consent, or varies significantly from the original proposals and the Scottish Government is withdrawing consent.

We appreciate timescales are tight in relation to responding to the timetable set by the UK Government for consideration of the relevant SI. However, the Committee would welcome a response from you by 9 November.

Yours sincerely,



Gillian Martin MSP
Convener
Environment, Climate Change and Land Reform Committee

c.c. Mairi Gougeon MSP, Minister for Rural Affairs and Natural Environment