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Dear Edward

**REGULATING PESTICIDES
MANUFACTURING AND MARKETING FERTILISERS
EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT**

The Scottish Parliament recommended on 28 November 2018 that the following UK SIs should include Scottish devolved matters, as set out in the notification to the Parliament.

- The Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations
- The Pesticides (Maximum Residue Levels) etc. (Amendment) (EU Exit) Regulations
- The Pesticides (Miscellaneous Amendments) (EU Exit) Regulations
- The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations

The following SIs were thereafter laid at Westminster:

The Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations were laid in Parliament on 13 December, subject to affirmative procedure, and is consistent with the consent granted by the Parliament.

The Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations (please note the small *change in title*) were laid in Parliament, subject to affirmative procedure, on 13 December, and varies in some respect from the original proposals but that variation is not so significant as to need any further process.

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The Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations (please note the *change in title*) were laid 19 February 2019 and varies in some respect from the original proposals but that variation is not so significant as to need any further process.

The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations were laid in Parliament, subject to affirmative procedure on 16 January 2019 and varies in some respect from the original proposals but that variation is not so significant as to need any further process.

In relation to the last three SIs noted immediately above the reasons for the variation from the original proposals as reflected in the notification to the Scottish Parliament are inextricably linked and noted below:

The notification to the Scottish Parliament indicated that the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations were to be subject to negative procedure. In fact though the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations have now been laid as an affirmative instrument. The UK Government laid the draft for sifting on 1 November 2018. The Lords sifting committee agreed that this statutory instrument could follow the negative procedure. However, the Commons sifting committee disagreed and recommended that the statutory instrument should be debated in the UK Parliament, for the reasons set out the in the House of Commons European Statutory Instruments Committee's Eighth Report of Session 2017–19, and that the procedure be altered to affirmative.

The UK Government agreed that the instrument should proceed subject to affirmative procedure.

As a consequence of the change of procedure, a number of provisions which were contained in the other pesticides and fertilisers instruments were moved between instruments, notably:

- amendments to the Ammonium Nitrate (High Nitrogen Content) Safety Regulations 2003 (subject to neagative procedure) which were intially included in the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations have been moved to the (now titled) Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations and;
- affirmative provisions relating to fertilisers (powers to make Regulations) which were as detailed in the notification originally included in the Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations have been inserted into the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations.

To summarise, as a package the four SIs as laid are in substance consistent with the proposals set out in the notification to the Scottish Parliament and consent granted. The package varies from the notification in that one of the instruments – the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations – is now subject to affirmative procedure, rather than negative procedure as indicated in the notification and as a consequence provision has been moved between instruments in the package. This variation is not considered significant.

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I am copying this letter to the Conveners of the Environment, Climate Change & Land Reform Committee and the Delegated Powers and Law Reform Committee.



MAIRI GOUGEON

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