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Edward Mountain MSP

Convener of Net Zero, Energy and Transport
Committee

c/o Clerk to the Committee, Room T3.40

Scottish Parliament

Edinburgh

EH99 1SP

Copied to UKSIs@parliament.scot

31 August 2023

Dear Edward,

THE *FLUORINATED GREENHOUSE GASES (AMENDMENT) REGULATIONS 2023* – EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and then Parliament, accompanied the letter from the then Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach a Type 2 notification which sets out the details of the SI which the UK Government proposes to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note, we are yet to have sight of the final SI and it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

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

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

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

I would be grateful if the Committee could note the notification accompanying this letter.

Yours sincerely

MAIRI MCALLAN

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NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI(s) (if known) or a title describing the policy area

The Fluorinated Greenhouse Gases (Amendment) Regulations 2023

Is the notification Type 1 or Type 2

This is a type 2 notification.

Fluorinated Greenhouse Gases (F-gases) are powerful greenhouse gases with a wide range of commercial, industrial and domestic uses, which include, among others, hydrofluorocarbons (HFCs). The F-gas Regulation was brought into UK legislation as retained EU law and aims to phase out HFCs by 79% between 2015 and 2030.

To ensure the phase-down of HFCs, every year an HFCs quota is brought into the market in accordance with Article 16(3) of the F-gas Regulation 517/2014. However, when the F-gas Regulation was brought into UK legislation as retained EU law, Article 16(3) was incorrectly amended and refers to 1 January 2021 (in place of 1 January 2015) as the start date for quota calculations allocated to sectors. That means companies will receive significantly fewer quota allocations compared to what they should be entitled to in line with the original policy intention.

This statutory instrument will amend Article 16(3) of GB F-gas Regulation to correct this technical error by using the power in section 14(2) of the Retained EU Law (Revocation and Reform) Act 2023.

This amendment will have no practical effect as currently the practical operation of the F-Gases regime is as intended. Before EU Exit, Article 16(1) required the determination of quotas for placing HFCs on the market by every three years with the most recent determination taking place by 31 October 2020. Article 16(3) was amended, with the amendments taking effect from 31 December 2020, to require the next determination to be made on 31 October 2023. The amendment which introduced an error in the calculation also took effect from 31 December 2020. As a result, no determination has yet been taken forward using the incorrect reference value that was introduced as part of the deficiency fixing. Provided that this SI is in force before 31 October 2023, as it is intended to be, then the error introduced will have had no practical effect. This amendment will also align the F-gas Regulation with the EU F-gas Regulation, as having different dates for calculating the HFC quota was never the policy intention. For all reasons described, and as the SI is purely technical, this is a Type 2 notification.

Details of the provisions that Scottish Ministers are being asked to consent to.

The provisions in this SI would amend Article 16(3) to correct this technical error so that the reference value date is changed from 1 January 2021 to 1 January

2015 and to allow for data from 2015 to be used for the recalculation (which occurs every three years), rather than data just from 2021.

Summary of the proposals

The purpose of the SI is to amend Article 16(3) of F-gas Regulation 517/2014 to correct a technical error that will impact the HFCs yearly quota calculation. The proposed amendment ensures annual quotas (which limit how much HFCs can be placed on the market each year) are calculated as intended.

Does the SI relate to a common framework or other scheme?

This SI relates to the ODS/F-Gases Common Framework which operates at GB level. The Common Framework does not apply to Northern Ireland as EU legislation on F-gases continues to apply directly in Northern Ireland in accordance with the terms of the NI Protocol.

Summary of stakeholder engagement/consultation

This SI will be amending an inadvertent technical error that occurred when the F-gas Regulation was retained and amended in preparation for EU Exit. Therefore, no consultation has been undertaken as this amendment will allow the quota calculation to continue as intended.

A note of other impact assessments, (if available)

No impact assessments are required as this SI will be amending an error, not introducing a new change.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

In practice, the UK Government, Scottish Ministers and Welsh Ministers have agreed to single GB-wide F-gas registration, quota, licensing and reporting systems, administered by the Environment Agency. The proposed instrument will ensure the policy intention regarding quota arrangements is achieved across the GB-wide scheme by correcting this technical error.

Intended laying date (if known) of instruments likely to arise

The intended laying date for the SI is on or before 10 October 2023, as it needs to come into force by 31 October at the latest, which is when reference values are recalculated under Art 16(3).

Before laying the SI, a draft will go for sifting in the UK Parliament on the w/c 4th of September. The SI will be subject to the affirmative procedure.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

Not applicable as this is a Type 2 notification. **Information about any time dependency associated with the proposal**

N/A

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

Provided that this SI is in force before 31 October 2023, as it is intended to be, the GB F-gas Regulation will be aligned with the EU F-gas Regulation, as having different dates for calculating the HFC quota was never the policy intention.

Any significant financial implications?

N/A

SI NOTIFICATION: SUMMARY

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|---|
| Title of Instrument |
| The Fluorinated Greenhouse Gases (Amendment) Regulations 2023 |
| Proposed laying date at Westminster |
| 10 October 2023 |
| Date by which Committee has been asked to respond |
| The Committee is invited to note the notification. |
| Power(s) under which SI is to be made |
| Section 14(2) of the Retained EU Law (Revocation and Reform) Act 2023. |
| Categorisation under SI Protocol |
| Type 2 |
| Purpose |
| To amend Article 16(3) of GB F-gas Regulation 517/2014 to correct a technical error that will impact the hydrofluorocarbons (HFCs) yearly quota calculation. The proposed correction would ensure annual quotas (which limit how much HFCs can be placed on the market each year) are calculated as intended. |
| Other information |
| N/A |
| SG Policy contact: |
| Mariana Cover Domestic Climate Change Division |