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Edward Mountain MSP
Convenor, Net Zero, Energy and Transport
Committee
c/o Clerk to the Committee
Room T3.40
The Scottish Parliament
Edinburgh
EH99 1SP

25 September 2023

Dear Edward,

UK Retained EU Law (Revocation and Reform) Act 2023 - environmental provisions

Thank you for your letter of 5 September 2023 seeking clarification on several areas of my letter of 31 July 2023 to the Committee providing further information on environmental provisions of the UK Retained EU Law (Revocation and Reform) Act 2023 (the Act). I have addressed each of your questions below. Also relevant in this context is my letter of 5 September on the UK Government's [Retained EU Law \(Revocation and Reform\) Act 2023 \(Revocation and Sunset Disapplication\) Regulations 2023](#).

Intergovernmental discussions

The UK Government has proposed a replacement for the National Air Pollution Control Programme (NAPCP) and my officials are currently in discussion with Defra counterparts around the details of this, including seeking clarification on the timeline for putting in place this replacement and what, if any, provisions will be made for public scrutiny and consultation. Once these discussions are concluded, I will write to the Committee with a further update. In the meantime I do not anticipate any practical implications for pollutant reduction, as policy development and implementation remains ongoing independent of this process.

I will also provide the Committee with an update on the UK Government's secondary legislation programme under the REUL Act once the impacts of this are clearer in relation to environmental law.

Keeping pace power

As I have indicated above, Defra has put forward proposals for a joint UK approach and these are currently being considered by the Scottish Government.

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Implications of the removal of air quality laws in Schedule 1 of the REUL Act

The Cabinet Secretary for Constitution and External Affairs will shortly be writing to the Constitution, Europe, External Affairs and Culture Committee with an update on Schedule 1 of the REUL Act and associated preservation powers, and you will be copied into this.

As I indicated in my previous response to the Committee, there are other provisions in law requiring the Scottish Ministers to produce air quality plans and strategies. However, there is no specific requirement in any of these provisions for the publication of the information set out in the NAPCP. The Air Quality Standards (Scotland) Regulations 2010, which form part of retained EU law, require the Scottish Ministers to draw up and implement an air quality plan for any zone where a limit or target value for any of several air pollutants set out in the 2008 Ambient Air Quality Directive is not being achieved.

There is requirement as part of this legislation for public consultation whenever a plan is being prepared, reviewed or modified. Once the plan has been published, the Scottish Ministers must also provide information to the public as to the reasons for the contents of the plan together with information about the public participation process that has been carried out.

The Environment Act 1995 (the 1995 Act) requires the preparation of a UK air quality strategy. Unlike the NAPCP, this strategy does not have to be prepared for the whole of the UK and the function can be exercised by the Scottish Ministers. There is a UK Air Quality Strategy published under the 1995 Act. The most recent version was published in 2011 (the 2011 strategy). In addition, the Scottish Government has also produced , Cleaner Air for Scotland, which was published in 2015 and the current version, Cleaner Air for Scotland 2 (CAFS 2), which was published in 2021. Both of these supplement the 2011 strategy.

Section 80 of the 1995 Act was amended by the Environment Act 2021 (the 2021 Act) to require the review of the UK air quality strategy by 1 May 2023 and every five years thereafter. There are no changes to reporting requirements applicable to Scotland, nor to the roles and responsibilities of SEPA and Scottish local authorities.

The Scottish Government completed this initial review of the 2011 strategy as it applies in Scotland and concluded that the air quality objectives set out in the 2011 strategy are unchanged, and that additional and updated measures have been introduced to meet those objectives in the form of CAFS 2. Therefore the Scottish Government's view is that the 2011 strategy does not need to be modified at present. A review of CAFS 2 is due to be completed by the end of 2026, with the publication of a new Cleaner Air for Scotland 3 strategy (CAFS 3). This review will also incorporate a further review of the 2011 strategy, and the intention is that at this point CAFS 3 will replace the 2011 strategy for the purposes of fulfilling the Scottish Ministers' air quality responsibilities under the 1995 Act.

Whilst the loss of the NAPCP does not directly impact on the delivery of the plans and strategies outlined above, these focus on actions for reducing concentrations of air pollutants. The role of the NAPCP is to set out the UK's approach for reducing pollutant emissions, specifically progress towards achieving the thresholds set in the National Emission Ceilings Directive. Although work to meet the emission ceilings is not impacted, the replacement for the NAPCP proposed by the UK Government does not currently include any provisions for publishing or consulting on any relevant information. This point remains the subject of ongoing discussions at official level, as I have indicated above.

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In response to your final point on the operation of the air quality Common Framework, the Common Framework Agreement includes a commitment to deliver future NAPCPs which demonstrate the policies measures that each administration is implementing or planning to implement in order to reach the UK emission reduction ceilings. The Framework has therefore not been followed on this issue.

I hope you find this information helpful.

Yours sincerely,

MAIRI MCALLAN

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