



The Scottish Parliament
Pàrlamaid na h-Alba

Màiri McAllan
Cabinet Secretary Transport,
Net Zero and Just Transition,
The Scottish Government

By email only

**Net Zero, Energy and Transport
Committee**

c/o Clerk to the Committee
Room T3.40
The Scottish Parliament
Edinburgh
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4 July 2023

Dear Màiri

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

The above (the ‘REUL Act’) was raised during your appearance before the Committee on 27 June, just before it was enacted. Specifically, you were asked about the proposed repeal in Schedule 1 of provisions on air quality:

- the Commission Implementing Decision (EU) 2018/1522 laying down a common format for national air pollution control programmes under Directive (EU) 2016/2284 of the European Parliament and of the Council on the reduction of national emissions of certain atmospheric pollutants, and
- Regulations 9 and 10 of the National Emission Ceilings Regulations 2018;

In guidance on Schedule 1, the UK Government says these and other laws listed in the Schedule have “either been superseded by UK legislation” or are “a duplicate of existing domestic legislation and is no longer required”. But on 27 June you said (referring to the air quality provisions) “I do not understand the justification for their inclusion [in Schedule 1]. I do not know what the UK Government intends to do in the absence of that law. It is very concerning”.

You also noted that these concerns were shared by Environmental Standards Scotland. In a 5 June letter to the Constitution, Europe, External Relations and Culture Committee, ESS commented of Regulations 9 and 10 that:

“We are not aware of any legislation that supports Defra’s view that these regulations are duplicative in the case of Scotland. Despite potential for improvement in informing the effectiveness of country-level plans, we find no direct comparison, either statutory or non-statutory, for the National Air Pollution Control Programme (NAPCP). Without the NAPCP, there will be loss of public accountability on current and future emissions targets and emissions projections in Scotland.”

I would be grateful for an update on the following matters:

Intergovernmental discussions

You told us that the Scottish Government's concerns about removal of the air quality provisions had been discussed by senior officials but that, as the UK Government had not agreed to move on this issue, the matter was now "escalated" to a political level. You said that it would now be for "me in the case of a refusal, making the case for why things should not be in the schedule. However, I do not lead on the Scottish Government's response to the REUL bill at large. It would be for Angus Robertson [Cabinet Secretary for Constitution, External Affairs and Culture]."

Question 1: I would be grateful if you could clarify who in the Scottish Government is leading in communication with the UK Government on proposed environmental law repeals in the REUL Act. The Committee would welcome an update on any discussions and on whether progress has been made in resolving disagreements over the air quality provisions, or any other environmental measures listed in Schedule 1 whose inclusion concerns the Scottish Government.

Powers of the Scottish Ministers under the REUL Act

You told us "... as far as I aware, we do not have any tool to change what the UK proposes in the Schedule. I do not think that there is a mechanism that Scottish ministers could use to do that." It would be helpful if you could expand on these comments, by reference particularly to Section 1 (4) of the Act, which gives a regulation-making power in relation to Schedule 1 to a "relevant national authority". We understand this to include the Scottish Ministers and we further understand that this power would be usable until 31 October 2023.

Question 2: Please clarify whether the Section 1(4) power is usable to address your concerns about repeal of the air quality provisions in Schedule 1- or any other proposed environmental repeals in relation to which you have concerns – and, if so, whether you propose to use it.

Keeping pace power

Section 1(1) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 gives the Scottish Ministers the power to make provisions corresponding to EU law. This is commonly known as the "keeping pace" power as its broad intention is to maintain the same level of regulation under Scots law as is required under EU law, despite Scotland no longer being part of the EU. We note that, unlike the power in Section 1(4) of the REUL Act, this power is not time-limited.

Question 3: The Committee would welcome your views on whether the Scottish Ministers could use this power to retain the air quality provisions in Schedule 1 or, alternatively, to maintain the same overall regulatory regime in this area notwithstanding repeal of the air quality regulations under the REUL Act. We would also welcome clarification as to whether this power could be used in relation to any other environmental provisions in Schedule 1 in relation to which you have concerns.

Implications of the removal of air quality laws in Schedule 1

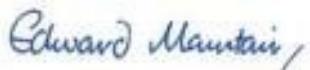
The Committee understands that the air quality provisions in Schedule 1 relate to requirements for the preparation and implementation of a national air pollution control programme (NAPCP), with duties imposed on public authorities in relation to the NAPCP.

Question 4: Please set out what the Scottish Government sees as the impact of the repeal of the air quality laws in Schedule 1. It would be helpful if your reply could address the following specific points:

- a) is there any other provision in law requiring the Scottish Government to publish, consult on and review a national air quality plan, or any other requirement for a UK-wide strategy?
- b) is there any other provision in law requiring Scottish public bodies to have regard to Scottish Government policies on air quality?
- c) Is it your understanding that there will continue to be a UK-wide NAPCP, with input from devolved administrations, whether or not this remains a formal legal requirement? Is this something the Scottish Government has discussed with the UK Government?
- d) does repeal of the air quality provisions have any impact on the usability and interpretation of the provisional Common Framework on air quality which contains several references the NAPCP? Does it now require to be revised?
- e) Could the Scottish Government devise a robust standalone regulatory regime for air quality, for instance, by use of the keeping pace power? Or does the interplay of devolved and reserved legal powers in this area or practical cross-border aspects of air quality policy make this difficult?

It would be helpful to have your response by 4 August so that the Committee may consider next steps on this matter.

Yours sincerely



Edward Mountain MSP
Convener
Net Zero, Energy and Transport Committee