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Edward Mountain MSP
Convener
Net Zero, Energy and Transport Committee
Scottish Parliament
Edinburgh
EH99 1SP
By email - netzero.committee@Parliament.Scot

21 June 2024

Dear Mr Mountain,

1. Environmental Standards Scotland (ESS) welcomes the opportunity to contribute to the Committee's consideration of the Persistent Organic Pollutants (Amendment) Regulations 2024. In this letter, we focus on the questions that the Committee's letter posed to ESS and the notification letter detailing the provisions that Scottish Ministers are being asked to consent to by the UK Government.

Has ESS carried out any investigative work related to Persistent Organic Pollutants or is any work planned in this area under your work programme?

2. ESS has not received any representations on this topic to date. Our analytical work on this topic has been limited to responding to this Committee request, which has included an initial conversation with Scottish Government policy officials. ESS does not currently have further analytical work planned on Persistent Organic Pollutants (POPs). However, this could change if potential concerns are identified on this topic where ESS could add value through further analysis.

The notification sets out areas where UK POPs law will diverge from EU law – does ESS have any comments on the significance of these areas of divergence and what their implications could be for the environment?

3. The objective of the Stockholm Convention ('the Convention') is to protect human health and the environment from POPs by prohibiting, phasing out as soon as possible, or restricting the manufacturing, placing on the market and use of POPs. The notification letter sets out that the Scottish Government and the UK Government are proposing to meet their obligations under the Convention through this amendment. It also notes that the majority of changes align with the approach the EU is taking.
4. There is a robust evidence base that these substances are harmful to the environment and human health. The EU approach, where different to the UK approach, takes a more precautionary approach when setting the concentration limits for POPs based on both stakeholder engagement and analysis of the risks and impacts involved. This includes a detailed assessment of the economic impacts of potential concentration limits and consideration of the amount of waste going to incineration and associated emissions.
5. The notification to the Scottish Parliament includes details of where the Scottish Government and the UK Government have, through consultation, identified constraints such as capacity, impact on recycling processes, regulatory uncertainty or evidence gaps for specific POPs. These are presented as the rationale for the differences between the proposed changes in the UK and the EU, where the EU has more stringent limits that are either already in force or apply as part of a 'ratcheting' mechanism. For example, with Hexabromocyclododecane where the initial new limit is supplemented by a further review no later than December 2027 with a reduced maximum limit.
6. To determine concentration limits for POPs in waste as part of the amendments in Regulation (EU) No 2019/1021, the [EU approach](#) used a methodology that calculated a risk value, above which there is the potential for adverse effects on the environment or human health. These were derived from existing Predicted No Effect Concentrations (PNEC) and Environmental Quality standards (EQS) for POP substances, combined with a waste operation concentration reduction factor. PNEC and EQS are standard metrics

that are calculated on the basis on prescribed toxicology tests for substances, with a range of different values for substances reported in the scientific literature. The EU have used these values in combination with assessment of the economic feasibility, the analytical detection capability, and the capability of disposal and recovery for different concentration limits to determine appropriate limits and timeframes for implementation. As part of the Defra-led consultation on POPs regulations amendments in the UK, Defra [published a report](#) that considers the difference between the UK and EU approach and undertakes analysis. This report sets out the UK Government's evidence base for the proposed approach with a breakdown across each substance of environmental and economic factors and cites a number of additional sources, including unpublished Environment Agency assessments. It is unclear whether this evidence basis applies equally in Scotland and therefore whether the UK Government's rationale for less stringent standards than the EU is appropriate in a Scottish context.

7. The Scottish Government should seek (through partnership with the UK Government or independently) to address the evidence gaps highlighted in the notification letter promptly and consider what approaches to develop capacity and technology might be feasible to ensure that implications for the environment and human health in Scotland are fully understood. It is unclear whether the evidence base produced by Defra to develop the UK policy options and support the consultation is fully applicable to Scotland.
8. Section 14(1) of the [UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021](#) ('the Continuity Act') states that 'the Scottish Ministers must, in making policies (including proposals for legislation), have due regard to the guiding principles on the environment'. This also applies to Ministers of the Crown, when acting in relation to Scotland. The Scottish Government's [Guiding Principles on the Environment: Statutory Guidance](#) provides further guidance on how this applies. Section 13(1) of the Continuity Act lists the guiding principles, including the precautionary principle. The guidance goes on to explain that 'the precautionary principle enables proportionate decision-making in areas of scientific uncertainty that allow for protective measures to be taken without having to wait until the hazard or harm is realised'.
9. The guidance notes that the duties should be considered early in the decision-making process and that it must be given the appropriate significance while taking into account

other factors such as other legislative duties. The guidance also states that there should be an appropriate and proportionate record of the consideration of the duties and that it will be best practice to ensure that this shows that Ministers have had due regard to the guiding principles and that this is publicly available.

10. Publishing this information would help to address some of the points raised in this letter and by the Committee as well as helping to ensure that the public are well informed about the proposal and the implications for human health and the environment in Scotland.

Does ESS have any concerns about the capacity of the Scottish Government or regulators in this area regarding policy, enforcement or monitoring of environmental impacts?

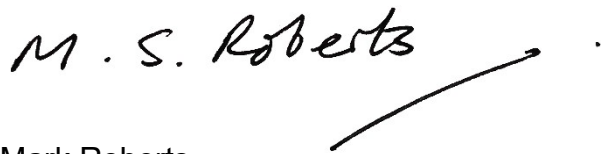
11. There is benefit in taking a consistent approach to the regulation of POPs across UK (noting that Northern Ireland applies the EU approach) where this delivers effective regulation and prevention of harm to the environment and human health in Scotland. ESS recognises that this is a complex and developing area of legislation and regulation and acknowledges that any limits set must be technically and economically viable to be able to be implemented. However, it is important that the Scottish Government and Scottish Parliament are assured that the balance of risk to the environment and human health from following the UK approach, and setting less stringent limits than the EU, is appropriately understood, applied and communicated for the Scottish context.

12. The notification states that the UK Government will continue to work with Devolved Governments to review potential amendments to the POPs regulation on an ongoing basis where new evidence emerges. It is essential that where constraints such as evidence gaps have been identified or where there are potential issues of feasibility of processing or regulatory approach, the Scottish Government, in partnership with other UK administrations, reviews and resolves these gaps in a timely manner. These constraints should not result in significant delay in implementing more stringent standards if there is a clear evidence base that a substance exceeding a set limit is harmful to the environment and human health.

13. The Scottish Government should consider whether indicative timelines for review or setting of lower limits is possible to ensure that industry and regulators have appropriate notice to plan for their adoption. This will also help to avoid future delay if there is evidence that a lower limit is necessary in Scotland.

I hope this information is useful in the Committee's considerations.

Yours sincerely

A handwritten signature in black ink that reads "M. S. Roberts". The signature is written in a cursive style. A long, thin, curved line extends from the end of the signature towards the right, ending in a small dot.

Mark Roberts

Chief Executive Officer