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The Scottish Parliament
Edinburgh
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8 November 2021

Dear Dean

THE WASTE AND AGRICULTURE (LEGISLATIVE FUNCTIONS) REGULATIONS 2021

Thank you for your letter of 29 October 2021 on behalf of the Net Zero, Energy and Transport Committee, to Michael Matheson, Cabinet Secretary for Net Zero, Energy and Transport, seeking clarification on certain aspects of the above SI. As waste management issues fall under my portfolio, I am replying.

My response is as follows:

1). Article 5 of the Waste Framework Directive on by-products requires that, in the case where the Commission adopts implementing acts in order to establish detailed criteria on the uniform application of conditions to by-products, that those criteria shall “ensure a high level of protection of the environment and human health and facilitate the prudent and rational utilisation of natural resources”. **Will the powers being taken by Scottish Ministers also be subject to this requirement?**

I confirm that the Scottish Ministers will be required to ensure a high level of protection of the environment and human health, to facilitate the prudent and rational utilisation of natural resources, and to prioritise replicable practices of industrial symbiosis. These provisions are in line with the existing requirements on the Commission in Article 5(2) of the Waste Framework Directive.

2). Similarly, in exercising powers to set end-of-waste criteria under Article 6 of the Waste Framework Directive, the Directive requires that criteria adopted by the Commission “ensure a high level of protection of the environment and human health and facilitate the prudent and rational utilisation of natural resources”, and meet a number of further specified criteria, e.g.

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requirements for management systems to demonstrate compliance with the end-of-waste criteria, including for quality control and self-monitoring, and accreditation, and allowed treatment processes and techniques. There is also a requirement to be assisted by a Committee. **Will the powers being taken by Scottish Ministers also be subject to these requirements?**

I confirm that the Scottish Ministers will be required to ensure a high level of protection of the environment and human health and to facilitate the prudent and rational utilisation of natural resources. The Scottish Ministers will also be required include provision in relation to:

- *permissible waste input material for the recovery operation*
- *permissible treatment processes and techniques*
- *quality criteria for end-of-waste materials resulting from the recovery operation in line with the applicable product standards*
- *requirements for management systems to demonstrate compliance with the end-of-waste conditions*
- *a requirement for a statement of conformity.*

These provisions are in line with the existing requirements on the Commission in Article 6(2) of the Waste Framework Directive.

The Scottish Government is aware that Article 6(2) of the Waste Framework Directive requires that any act of the Commission is to be adopted in accordance with the examination procedure referred to in Article 39(2) of the Directive. The examination procedure is regulated by Regulation (EU) No 182/2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers. The main purpose of that examination procedure is to allow member states to have a role in the Commission's decision-making. So the requirement to be assisted by a Committee is not contained in the SI as that would not have been appropriate given the purpose of the Committee requirement in the Waste Framework Directive.

3). Under Article 8(4) of Directive 2012/19/EU on waste electrical and electronic equipment (WEEE), the Commission has powers of modification of any provision corresponding to Annex VII of the Directive in order to introduce other treatment technologies “that ensure at least the same level of protection for human health and the environment”. **Will Scottish Ministers’ (or UK Secretary of State) new powers of modification of these standards be constrained in the same way?**

I confirm that the Scottish Ministers will be permitted to exercise the power only where the technology specified ensures a level of protection for human health and the environment equivalent to that provided by the technologies currently set out in Annex VII, in line with article 8(4) of the WEEE Directive.

4). The notification states that in future, the use of the any of the regulation-making powers will be covered by the Waste and Resources Common Framework. **What implications does this have for the Scottish Government’s policy commitment to continue to align with EU environmental standards?**

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The Waste and Resources Common Framework will not affect Scottish Ministers' ability to remain aligned with EU environmental standards. The functions being transferred from the various Directives dealing with waste, all fall within devolved areas and can be exercised solely by Scottish Ministers when they choose to do so. That will therefore allow them to make provision separately for Scotland to allow alignment with EU environmental standards when it is appropriate and practicable to do so.

Common Frameworks will maintain equivalent flexibility for tailoring policies to the specific needs of Scotland as was afforded by EU rules since the Frameworks are founded on the principle that they will respect the devolution settlement.

I hope the above information is helpful to the committee in its consideration of the SI.

Kind regards



LORNA SLATER

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