



Ein cyf/Our ref: RE/514/21

Mick Antoniw MS,  
Chair of the Legislation, Justice and Constitution Committee

19 March 2021

Dear Mick,

**Standing Order 30C Written Statement - The Greenhouse Gas Emissions (Kyoto Protocol Registry) (Amendments) (EU Exit) Regulations 2021**

Thank you for your letter seeking clarification as to:

- 1) why a Statutory Instrument Consent Memorandum (SICM) was not laid before the Senedd in relation to this SI; and,
- 2) why the approach to the Kyoto Protocol scheme does not follow the joint UK-wide approach of the UK emissions trading scheme (ETS) (established via the Greenhouse Gas Emissions Trading Scheme Order 2020, as amended).

In relation to question (1), I have concluded that a SICM is not required in relation to this SI for the following reasons.

Section 41A(7) of the Environment Act 1995 currently defines a “trading scheme registry” as any registry operated by the Environment Agency for the purpose of meeting the obligations of the United Kingdom referred to in Articles 4(3) and 5(1) of the Registries Regulation 2013 (Commission Regulation (EU) No 389/2013). The amendment made by Regulation 11 of this SI will change the reference to a “trading scheme registry” in section 41A(7) to “the Kyoto Protocol Registry”, and define the latter as the registry administered on behalf of the UK for the purposes of its obligations as a party to the Kyoto Protocol.

This is necessary because these specific Articles of the Registries Regulation 2013 refer to the Union Registry, which is the EU registry for allowances under both the EU ETS and the Kyoto Protocol. When the UK participated in the EU ETS, the Environment Agency was designated the UK national administrator and registry administrator for the Kyoto Protocol, for the purposes of the Union Registry<sup>1</sup>. Post-Brexit, the UK isn't part of the Union Registry, but has its own UK ETS registry and its own UK Kyoto Protocol Registry. The two are separate,

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<sup>1</sup> See Regulations 8 and 81 of the Greenhouse Gas Emissions Trading Scheme Regulations 2012.

and whilst the new UK ETS legislation designates all 4 UK regulators as joint registry administrators for the UK ETS, that is not the case with the UK Kyoto Protocol registry. This touches upon your second question and I return to this in more detail below.

In order for the SICM test to be met, it would need to be argued it is within the legislative competence of the Senedd to amend section 41A(7) Environment Act 1995, either to:

- Establish a Welsh Kyoto Protocol registry, administered by NRW: or
- Designate either NRW, the Environment Agency or all 4 UK environmental regulators as the UK Kyoto Protocol registry administrator.

Whilst it is arguable that the Senedd pass legislation to establish a Welsh Kyoto Protocol registry, such a registry would in reality be an empty vessel. It would not be capable of holding Welsh allowance units for trading (because the Kyoto Protocol is concerned with UK units, being held under the name of the government of the country that is signed up to the Protocol, i.e. the UK Government). The Welsh Ministers could not create a Welsh Kyoto unit for the purposes of a Welsh Kyoto Protocol registry, and therefore our view is that we could not achieve substantially the same effect in Wales as is achieved by this SI.

In addition, designating NRW as the UK Kyoto Protocol registry administrator is highly likely to fall foul of section 108A(2)(a) and (b) of the Government of Wales Act 2006, as the provision would extend beyond England and Wales and apply otherwise than in relation to Wales. Like the UK ETS registry, making these arrangements would need to be done jointly.

This brings me back to question (2). The UK Government developed the two work-streams independently of one another. Regrettably, the UK Government did not accept that the subject matter of the SI is devolved for around 18 months, despite repeated challenge from us (particularly on the basis of the UK ETS comparator). In September 2020, the UK Government did accept that the subject matter is devolved but the delay meant that insufficient time was available to design the scheme on a 4-nations basis (like the UK ETS). We acknowledge that this position is disappointing, consequently I am clear that we reserve the right to revisit the design of the scheme in future, in particular who carries out the regulatory role.

Finally, you have indicated that the title of the SI is incorrect on the written statement. The Welsh Ministers provided consent to what we understood to be the final SI, however, the UK Government amended the title of the SI when they shared a definitive 'final' SI. Titles of SIs can be subject to amendment by the UK Government prior to being laid before Parliament. On this occasion the late change to the title was not picked up at the point of issue of the notification statement.

Yours sincerely,



**Rebecca Evans AS/MS**  
Y Gweinidog Cyllid a'r Trefnydd  
Minister for Finance and Trefnydd