Response by the Department for Environment, Food and Rural Affairs

The legislative functions being transferred under Part 2 of this EU Exit SI (“the instrument”) accurately reflect the functions presently held by the Commission and the procedural requirements that the Commission needs to follow to make them.

The relevant provision of the Ambient Air Quality Directive (2008/50/EC) being transferred in Regulation 7 of the instrument is Article 28(1). This provides that “measures designed to amend the non-essential elements of this Directive” (the Annexes listed in Regulation 7(3)) shall be adopted by the Commission using implementing acts. Recital 32 of the Directive emphasises that the Commission should be empowered to amend the Annexes by way of the implementing act procedure, and the level of scrutiny it entails, “since those measures are of general scope and are designed to amend non-essential elements of this Directive”.

The relevant provision of the National Emissions Ceiling Directive (2016/2284/EU) being transferred in Regulation 12 of the instrument is Article 5(7). This provides the Commission with the power to make implementing acts specifying the rules for the use of the flexibilities set out in Directive (those “flexibilities” are accurately transposed in the relevant domestic regulations).

In both instances the communication from Green Alliance sent to the Secondary Legislation Scrutiny Committee suggests that these functions could be exercised with no “regulatory oversight” and “little legislative scrutiny.”

Regulation 15 of this instrument stipulates that before making any regulations under Part 2, the Secretary of State must consult bodies or persons representative of the interests likely to be substantially affected by the regulations. Those regulations are also subject to Parliamentary scrutiny by way of annulment by a resolution of either House of Parliament. Accordingly, the instrument provides for scrutiny both by virtue of prior consultation and through Parliamentary oversight.

It is the role of Parliament and its select committees to hold the executive to account and this will not change after we leave the EU. However, in addition to this Government has announced its intention to go further to address the issue of environmental law governance once the UK is no longer an EU member. The Government published its draft Environment (Principles and Governance) Bill in December 2018, which stated that we will establish a world-leading, statutory and independent environment body: the Office for Environmental Protection (OEP), which will scrutinise environmental policy and law. This again demonstrates that there will be continued scrutiny and oversight of environmental matters and legislation when the UK is no longer a member of the EU.

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