

Annex: Submission from ClientEarth and Defra's Response

Q1: References throughout the SI to the European Commission's oversight and enforcement role have been replaced by references to the 'appropriate regulator'. For example, Regulation 3(6) replaces the European Commission's role in assessing the completeness and accuracy of information provided by undertakings to ensure the smooth functioning of the electronic registry for quotas for placing hydrofluorocarbons on the market, with a role for the 'appropriate regulator' in its place. It is not clear who the 'appropriate regulator' is, and there may be a risk that any such regulator does not have the equivalent capacity, expertise or resources as the European Commission to perform this role effectively.

A1: The definition of 'appropriate regulator' in Regulation (EU) No 517/2014 on fluorinated greenhouse gases (as it applies in Great Britain) flows through to Commission Implementing Regulation (EU) 2016/661 without being redefined. The 'appropriate regulator' is defined in Article 2 (7D) of Regulation (EU) No 517/2014 on fluorinated greenhouse gases (as it applies in Great Britain). The 'appropriate regulator' in relation to England is the Environment Agency. As regards Scotland and Wales, Article 2 (7D) is to be read in accordance with Article 2A and 2B of the Regulation. Article 2A provides that the Scottish Environmental Protection Agency is the appropriate regulator, unless the Scottish Ministers direct that another person or body is instead to be the appropriate regulator in relation to cases of a particular description or in a particular case. Article 2B provides that Natural Resources Body for Wales is the appropriate regulator, unless the Welsh Ministers direct that another person or body is instead to be the appropriate regulator in relation to cases of a particular description or in a particular case.

Q2: Regulation 3(8) removes Article 8 of Commission Implementing Regulation (EU) 2019/661, which provides that Member States shall cooperate and exchange information with the Commission when it is necessary for the assessment of the completeness and accuracy of information provided by undertakings for registration purposes. Maintaining the accuracy of the registry for quotas for placing hydrofluorocarbons on the market is vital to ensure effective implementation of the quota allocation, avoid distortion of quota allocations and prevent circumvention and abuses of legislative requirements. Removing this important mechanism to exchange information with other countries to ensure the accuracy of the register could allow for harmful levels of quotas for hydrofluorocarbons.

A2: Article 8 of Commission Implementing Regulation (EU) 2019/661 relates to the internal functioning of the EU F-gas system. Article 8 requires Member States to cooperate and share information with the European Commission who manage the EU's F-gas registration and quota system. It is not about exchanging information with other countries that are not covered by that system. Article 8 is not relevant in the context of the separate GB F-gas system, therefore has been omitted by this instrument.

Regulation (EU) No 517/2014 on fluorinated greenhouse gases (as it applies in Great Britain) currently supports compliance with the UK's international obligations under the UN Montreal Protocol. The obligation to phase down consumption of HFCs is achieved through applying quota restrictions. Phasing down the amount of HFCs that can be placed on the GB market is achieved by allocating steadily-reducing quotas to HFC producers and importers. The UK Government, Scottish Ministers and Welsh Ministers agreed to jointly operate a single GB-wide quota system for F-gases, administered by the Environment Agency from 1 January 2021. Under this arrangement, GB quota is determined and allocated by the Environment Agency, calculated on the basis of the prior submission of data by a business to the Environment Agency.

The principles around information exchange and cooperation within the GB system and at a UK level are set out in the UK ODS and F-gas Common Framework between the Scottish, Welsh, Northern Irish and UK Governments. The terms under which information exchange and cooperation with other countries occurs can be appropriately dealt with through other means, such as the provisions of an international trade agreement, rather than through specific legislation.

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