

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION  
WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND  
NORTHERN IRELAND PROTOCOL**

**8048/22+ADD1, COM(2022) 151 FINAL + ANNEXES 1 TO 8**

**8048/22 ADD 2, SWD(2022) 98 FINAL**

**8048/22 ADD 3, SWD(2022) 99 FINAL**

**8048/22 ADD 4, SWD(2022) 100 FINAL**

**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF  
THE COUNCIL ON SUBSTANCES THAT DEplete THE OZONE LAYER AND  
REPEALING REGULATION (EC) NO 1005/2009**

- **COMMISSION STAFF WORKING DOCUMENT SUBSIDIARITY GRID**
- **COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT REPORT**
- **COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT**

Submitted by the Department for Environment, Food and Rural Affairs

17 May 2022

**SUBJECT MATTER**

1. The EU has proposed a new Regulation on ozone-depleting substances (ODS). ODS are currently regulated under Regulation (EC) No 1005/2009, known as the ODS Regulation. The ODS Regulation has applied in Northern Ireland under the Northern Ireland Protocol since the end of the transition period on 1 January 2021. This Regulation lays down rules on the production, import, export, placing on the market, use, recovery, recycling, reclamation and destruction of ODS. It sets out requirements on the reporting of information related to ODS and on the import, export, placing on the market and use of products and equipment containing or relying on ODS. The EU intends to revoke this regulation.
2. The EU proposal has emerged following a 'REFIT' evaluation, which concluded that the Regulation was generally fit for purpose but it could be better aligned with the European Green Deal and there were areas that could be streamlined for greater efficiency.

3. The Explanatory Memorandum published on the European Commission website<sup>1</sup> for the proposed EU Regulation outlines the objectives of the proposal. These are to align to the Green Deal climate ambition, ensure more comprehensive monitoring of ODS including of substances that are not (yet) controlled, to simplify and improve the efficiency of existing rules to reduce the administrative costs and to improve clarity and coherence.
4. The proposal includes measures intended to simplify and reduce the burden on companies and authorities, whilst improving and strengthened the existing controls. This includes the removal of the registration requirements for laboratory uses and the annual quota allocation systems. These removals will result in cost and administrative savings for undertakings.
5. The proposal modernises the existing ODS licensing systems and sets out the digitisation and automation of customs controls, which will allow for automatic customs controls per shipment. These arrangements will remove the need for per shipment licences. As a result, importers and exporters of ODS and products relying on these substances will only need to apply for 'traders' licences. This will further reduce burdens on undertakings and authorities.
6. The proposed Regulation sets out measures to avoid further emissions through the explicit requirement to recover certain types of ODS foams from construction and demolition, and to destroy or reuse the ODS contained within them. The EU estimated this could save approximately 180 million carbon dioxide equivalents by 2050.
7. The proposal introduces a prohibition on the destruction of halons. The purpose of this measure is to preserve non-virgin stocks of halons for exempted critical uses. This will prevent the need for new halon production to restart to service these uses.
8. The proposed Regulation introduces further reporting obligations for Member States and undertakings to ensure compliance with the Montreal Protocol. Further reporting requirements have been introduced in relation to emissions and sales in the Union, in order to provide more complete monitoring of ODS.
9. The proposal establishes measures on fines and penalties, to penalise illegal production, use or trade of ODS or products and equipment covered under the Regulations. These provisions are aligned with relevant EU policies on the protection of the environment through criminal penalties.

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<sup>1</sup> [https://ec.europa.eu/clima/system/files/2022-04/ods\\_proposal\\_en.pdf](https://ec.europa.eu/clima/system/files/2022-04/ods_proposal_en.pdf)

10. The proposed Regulation includes a requirement for the European Commission to review and publish a report on the implementation of the regulation by 1 January 2033 and sets out proposals for how and when the Regulation should enter into force and apply from.

### **SCRUTINY HISTORY**

11. The Parliamentary scrutiny history relevant to this Explanatory Memorandum is contained in Annex A.

### **MINISTERIAL RESPONSIBILITY**

12. The Secretary of State for Environment, Food and Rural Affairs has responsibility for ODS policy.

### **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

13. This policy area is devolved and is covered by a common framework.

14. The UK Government, the Scottish Government and the Welsh Government have agreed to jointly run a GB-wide ODS regulatory regime under the common framework. This regime has been in place since 1 January 2021. In accordance with the Northern Ireland Protocol, Northern Ireland remains subject to EU ODS legislation and within the EU ODS regime.

15. Devolved Administrations are aware of this proposed EU Regulation and have been consulted. No concerns were raised by them.

16. UK, Scottish and Welsh Governments are jointly assessing the GB ODS Regulation (as part of a more comprehensive review of the retained F-gas Regulation). Subject to UK, Scottish and Welsh Ministerial agreement, it is currently intended that this publication will be followed by a consultation towards the end of 2022 on proposed changes to the GB Regulation. The existing common framework provides the governance arrangements required to support joint working on any such proposals. While Northern Ireland remain subject to EU ODS legislation, the Northern Ireland Executive is involved in discussions relating to GB ODS legislation under the common framework arrangements.

17. Defra will continue to engage with Devolved Administrations as the details of the EU proposal evolve.

### **LEGAL AND PROCEDURAL ISSUES**

18.

**i. Legal Base**

The EU proposal is based on Article 192(1) of the Treaty on the Functioning of the European Union, in line with the objective to preserve, protect and improve the quality of the environment; protect human health; and to promote measures at international level to deal with climate change.

**ii. Voting Procedure**

Ordinary legislative procedure.

**iii. Timetable for adoption and implementation**

Some of the provisions in the draft Regulation are due to come into force from 1 January 2024. We therefore understand the EU aim to adopt the Regulation before the end of 2023.

## **POLICY IMPLICATIONS**

19. EU ODS legislation is listed in Annex 2 of the Northern Ireland Protocol and therefore continues to apply in Northern Ireland.

20. Initial analysis of the EU's revised ODS Regulation highlights that its key proposal is to increase efficiency of regulating ODS and reduce the administrative and cost burden on undertakings and authorities. This includes removing the need for per shipment licences, the removal of the registration requirements for laboratory uses and removing the annual quota allocation systems. This would result in cost and administrative savings for NI undertakings who use or trade in ODS and authorities who enforce the Regulation.

21. The measures within the proposal mostly impact the functioning and operation of the ODS Licensing System and will therefore have internal impact rather than impacting on trade outside of the EU. There should not therefore be significant trade implications between NI and GB. In addition, we may choose to implement similar measures, as we are keen to streamline the ODS Regulation and also need to consider the role of ODS in supporting the UK's target of achieving net zero.

22. If we do propose changes to the GB ODS legislation, we will aim to engage with the EU to better understand the proposals and emerging changes to them. Such engagement will also inform our thinking for ODS policy development. Alignment between GB and NI will form part of our considerations under our review.

## **CONSULTATION**

23. We intend to take into consideration the EU's impact assessment ([ods\\_impact\\_assessment\\_en.pdf \(europa.eu\)](#)) as we develop our own proposals for change that will be consulted on in late 2022. The consultation will include our own impact assessment.

### **FINANCIAL IMPLICATIONS**

24. We do not have a clear assessment of the financial implications of the EU's proposals at this stage. Any implications will depend on the final shape of the legislation and its application to Northern Ireland.

A handwritten signature in black ink, appearing to read 'Jo Churchill', written in a cursive style.

17/5/22

**JO CHURCHILL MP  
PARLIAMENTARY UNDER SECRETARY OF STATE  
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON SUBSTANCES THAT DEplete THE OZONE LAYER AND REPEALING REGULATION (EC) NO 1005/2009

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12832/08, COM(08)505: COMMUNICATION FROM THE COMMISSION: COMPLETING THE PHASE-OUT OF SUBSTANCES THAT DEplete THE OZONE LAYER BETTER REGULATION BUILDING ON 20 YEARS OF SUCCESS AND INCORPORATING A PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON SUBSTANCES THAT DEplete THE OZONE LAYER.

DEFRA SUBMITTED TWO EMS DATED 15 OCTOBER 2008 AND 14 JANUARY 2009

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
COMMONS ESC REPORTED THAT THE PROPOSAL RAISED ISSUES OF POLITICAL IMPORTANCE IN REPORTS 38, 07/087 & 6, 08/09 AND A DEBATE WAS HELD IN A EUROPEAN COMMITTEE ON 10/3/09	LORDS EUC EXAMINED THE PROPOSAL IN THE THEN ENVIRONMENT SUB-COMMITTEE AND COMPLETED SCRUTINY ON 3/4/09.