

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

8042/22+ADD1, COM(2022) 150 FINAL+ ANNEXES 1 TO 10

8042/22 ADD 2, SWD(2022) 95 FINAL

8042/22 ADD 3+4, SWD(2022) 96 FINAL

8042/22 ADD 5, SWD(2022) 97 FINAL

**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL ON FLUORINATED GREENHOUSE GASES, AMENDING
DIRECTIVE (EU) 2019/1937 AND REPEALING REGULATION (EU) NO 517/2014**

- **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 fluorinated greenhouse gases (F-gases). The proposed new Regulation would apply to F-gases and some products and equipment containing F-gases currently regulated under Regulation (EU) No 517/2014, known as the F-gas Regulation. The F-gas Regulation has applied in Northern Ireland under the Northern Ireland Protocol since the end of the transition period on 1 January 2021. This Regulation establishes rules on containment, use, recovery and destruction of F-gases, it imposes conditions on the placing on the market and use of specific products and equipment that contain, or whose functioning relies upon, F-gases and establishes quantitative limits for the placing on the market of hydrofluorocarbons (HFCs) (the most common type of F-gas). The EU intends to revoke this regulation.
2. The F-gas Regulation includes a legal requirement for the European Commission to review the F-gas Regulation. This review has been the basis for the EU proposal on F-gases.

3. The Explanatory Memorandum published on the European Commission website¹ for the proposed EU Regulation outlines the objectives of the review and resulting proposal. These are to align to the Green Deal climate ambition ensuring F-gas contribution to this through additional emissions savings, streamline the F-gas Regulation with Montreal Protocol (and the Kigali Amendment) to ensure EU compliance, to enable better implementation and enforcement, improved monitoring and reporting of F-gases and greater coherence and clarification.
4. The F-gas Regulation controls and reduces the placing on the market of HFCs, required under the Kigali Amendment to the Montreal Protocol, through the implementation of a phasedown and quota system. The proposed regulation amends the existing phasedown and sets a new ambitious HFC phasedown through to 2048 and onwards (including removal of the quota exemption for metered dose inhalers (such as asthma inhalers)). This exceeds the phasedown needed to meet the Kigali Amendment and reduces the quantity of HFCs available for placing on the market to 5% by 2030, compared to the baseline in 2015.
5. The F-gas Regulation includes prohibitions to support and signpost the phasedown. The proposal introduces some additional prohibitions. These include prohibitions on air-conditioners and heat pumps containing or whose functioning relies upon F-gases, non-refillable containers, different types of switchgear (equipment used on the electricity grid), personal care products, skin-cooling equipment, fire protection and the use of desflurane as an anaesthetic gas.
6. The proposal introduces conditions for quota holders to receive their quota allocation, including the need to demonstrate experience in chemical trade and the requirement for undertakings to pay for their quota. The proposal sets the price for quota at €3 per tonne of carbon dioxide equivalent. The desired purpose of these measures is to discourage rogue traders from accessing quota.
7. The proposal sets out the digitisation and automation of customs controls, which will result in every relevant shipment being counter-checked with the EU-central database. This alongside strengthened measures on inspections, penalties and cooperation between authorities, should act to tackle and reduce illegal trade.
8. The proposal retains the existing obligations on certification related to the use of F-gases and extends the scope of training to include HFC alternatives (including hydrofluoroolefins (HFOs)) and energy efficiency aspects. A lack of training for HFCs alternatives has been raised by stakeholders as a key barrier to the uptakes of alternatives.

¹ https://ec.europa.eu/clima/system/files/2022-04/f-gases_proposal_en.pdf

9. The proposed Regulation includes stricter rules on emission prevention (including for HFOs) and requires Member States to promote recovery, recycling, reclamation and destruction. It also strengthens existing provisions, so that only undertakings with certificates/training attestations can buy HFCs/HFOs for installing, servicing, maintenance and repair.
10. The proposal includes labelling requirements for the placing on the market of F-gases in containers and in certain equipment. This includes extending the existing labelling requirements to HFOs, introducing the requirement for labelling for metered dose inhalers (those containing F-gases), as well as HFCs exempted from the quota requirements to enable enforcement of those exemptions.
11. 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. It proposes that following entry in force the regulation shall apply from 1 January the year following the year of entry into force.

SCRUTINY HISTORY

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

MINISTERIAL RESPONSIBILITY

13. The Secretary of State for Environment, Food and Rural Affairs has responsibility for F-gas policy.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

14. This policy area is devolved and is covered by a common framework.
15. The UK Government, the Scottish Government and the Welsh Government have agreed to jointly run a GB-wide F-gas 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 F-gas legislation and within the EU F-gas regime.
16. Devolved Administrations are aware of this proposed EU Regulation and have been consulted. No concerns were raised by them.

17. UK, Scottish and Welsh Governments are jointly assessing the GB F-gas Regulation and will co-publish an assessment report relating to it later this year. 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 remains subject to EU F-gas legislation, the Northern Ireland Executive is involved in discussions relating to GB F-gas legislation under the common framework arrangements.

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

LEGAL AND PROCEDURAL ISSUES

19.

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

20. EU F-gas legislation is listed in Annex 2 of the Northern Ireland Protocol and therefore continues to apply in Northern Ireland.

21. Initial analysis of the EU's revised F-gas Regulation highlights that its key proposal is to introduce an ambitious amendment to the current HFC phasedown schedule and end target. We continue to assess the practicalities of its application from a GB/UK perspective to inform thinking for our review of the GB F-gas Regulation given the UK's net zero objective. A particular focus for such assessment is the

interaction of the phasedown proposal with the separate climate policy of increasing the rollout of heat pumps since heat pumps currently mainly use HFCs as their refrigerant.

22. The EU's existing HFC phasedown limits the amount of HFC that can be moved from GB into NI (and from the rest of the world). However, the same limits apply in GB under the retained F-gas legislation. A further tightening of the EU's HFC phasedown will be felt between GB and NI, although we may choose to implement similar measures following our review of GB legislation in order to support the UK's target of achieving net zero.
23. The implementation of new bans under the EU's proposed revised F-gas Regulation may also have an impact on movements of goods between GB and NI, depending on whether our GB review results in different approaches to such bans.
24. The proposal retains the existing obligations on certification related to the use of F-gases. In NI, UK certification and training may continue to be used, so the retention of existing obligations should enable this to continue. However, the proposal extends the scope of training to include HFC alternatives (including hydrofluoroolefins (HFOs)) and energy efficiency aspects, although similar measures may be implemented following our review of GB legislation in order to ensure and encourage the transition to HFC alternatives.
25. Given we are undertaking our own review of GB F-gas legislation, we aim to engage with the EU to better understand the proposals and emerging changes to them. Such engagement will also inform our thinking for our review of the GB legislation. Alignment between GB and NI will form part of our considerations under our review.

CONSULTATION

26. We are continuing stakeholder engagement as part of our review of GB F-gas legislation. As part of that, we are gathering views on the EU's proposals (including on their accompanying impact assessment: [f-gases impact assessment en.pdf \(europa.eu\)](https://ec.europa.eu/eip/eip-f-gases-impact-assessment_en.pdf)) as a marker for consideration in the development of our own proposals for change that will be consulted on in late 2022.
27. Our planned consultation will include our own impact assessment.

FINANCIAL IMPLICATIONS

28. 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 FLUORINATED GREENHOUSE GASES, AMENDING DIRECTIVE (EU) 2019/1937 AND REPEALING REGULATION (EU) NO 517/2014

8713/18, COM(18)218: PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE PROTECTION OF PERSONS REPORTING ON BREACHES OF UNION LAW

BEIS EM SUBMITTED: 15/06/2018

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
COMMONS ESC REPORTED ON THE PROPOSAL ON 5 OCCASIONS AS RAISING ISSUES OF LEGAL AND POLITICAL IMPORTANCE AND COMPLETED THEIR SCRUTINY ON 16/10/19 IN REPORT 1, 19/20	LORDS EUC EXAMINED THE PROPOSAL IN THE THEN JUSTICE SUB-COMMITTEE AND COMPLETED SCRUTINY ON 22/02/21.

EM 15984/12, COM(2012) 643 FINAL: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON FLUORINATED GREENHOUSE GASES

DATE DEFRA EM SIGNED: 26/11/2012

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
COMMONS REPORT 05/12/2012 - DID NOT CLEAR AND HAS BEEN RECOMMENDED FOR A DEBATE, COMMITTEE A AND CLEARED ON 21/01/2013.	SIFTED TO SUB-COMMITTEE D AT THE CHAIRMAN'S SIFT 1488 04/12/2012 CLEARED BY MINISTERIAL CORRESPONDENCE 17/10/2013