

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION
WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND
WINDSOR FRAMEWORK**

- C(2023)6751: Commission Delegated Regulation supplementing Directive 2003/87/EC of the European Parliament and of the Council by laying down rules on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances**
- C(2023)6783: Commission Implementing Regulation amending Implementing Regulation (EU) 2018/2066 as regards updating the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council**
- C(2023)7112: Commission Delegated Regulation amending Delegated Regulation (EU) 2019/1122 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry C(2023) 7112 final¹**
- C(2023)7298: Commission Implementing Regulation laying down rules for the application of Directive 2003/87/EC of the European Parliament and of the Council as regards the content and format of climate-neutrality plans needed for granting free allocation of emission allowances**

Submitted by the Department for Energy Security & Net Zero, 22nd March 2024.

SUBJECT MATTER

1. The European Climate Law (Regulation (EU) 2021/1119) set a union-wide target of at least 55% net emission reductions by 2030 compared to 1990. Subsequent to this, the EU Council and Parliament adopted a legislative package of climate measures, known as the Fit for '55 Package, which included reform of the existing EU Emissions Trading System. The final texts for five legislative proposals within the Fit for '55 Package were adopted by the European Parliament on 18 April 2023 and then by the Council on 25 April 2023. As part of this agreement, Directive 2003/87/EC ("the EU ETS Directive") was amended by Directive (EU) 2023/959. Subsequent to the amendment of the Directive, a number of regulatory changes – including those listed above, and to which this explanatory memorandum refers – have been proposed, negotiated, and adopted. Amendments to both the Directive and the supporting regulations were intended to revise the EU ETS and implement the Fit for 55 agenda.

¹ C(2023)8592 final is a Corrigendum Commission Delegated Regulation (EU) of 25 October 2023 amending Delegated Regulation (EU) 2019/1122 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry C(2023) 7112 final

SCRUTINY HISTORY

2. On 1 June 2021, the Department for Business Energy and Industrial Strategy submitted Explanatory Memorandum (EM) C(2021)3188 on a European Commission Delegated Regulation of 10 May 2021 amending Delegated Regulation (EU) 2019/856 as regards the application and selection procedures under the Innovation Fund. The House of Commons European Scrutiny Committee completed scrutiny 23 June 2021 without a substantive report to the House, Fourth Report of Session 2021-2022. The House of Lords European Affairs Committee cleared the EM during sift 3, Tuesday 10 June 2021.
3. EM 10875/21 on the EU proposal on the EU greenhouse gas emission trading allowance scheme was submitted by the Department for Business, Energy and Industrial Strategy on 2 August 2021. The House of Commons European Scrutiny Committee (ESC) reported on three occasions on issues of legal and political importance arising from the proposal and completed their scrutiny in report 19, 22/23 on 14 June 2023. The proposal remains under scrutiny by the House of Lords European Affairs Sub-Committee on the Windsor Framework where the Sub-Committee's Chair remains in correspondence with the Government.

MINISTERIAL RESPONSIBILITY

4. The Secretary of State for the Department for Energy Security and Net Zero is responsible for UK climate policy, including the UK's Emissions Trading Scheme (UK ETS) and Industrial Decarbonisation, and any resulting interaction with the EU ETS.
5. HM Treasury is responsible for all legislation relating to tariffs and has ownership of the market framework of the UK ETS, including the operation of UK ETS auctions, and the resulting revenue.

INTEREST OF THE DEVOLVED GOVERNMENTS (DGs)

6. EU ETS regulations are a devolved matter under the devolution settlements in Scotland, Wales and Northern Ireland.
7. The EU ETS Directive is listed in Annex 4 to the Windsor Framework. The EU ETS Directive was amended by Directive (EU) 2023/959 of 10 May 2023, and the regulations listed above fall under this Directive.
8. This EM has been shared with DAERA colleagues and they have responded in agreement with it.

LEGAL AND PROCEDURAL ISSUES

9. The electricity industry operates a single wholesale market across the island of Ireland which is known as the Single Electricity Market. All electricity across the island is bought and sold through a single pool at a single half-hourly price, which has increased competition, efficiency, and security of supply.
10. Accordingly, having differing carbon prices across the island of Ireland would have potentially substantive distortionary impacts on the power market. Under Article 9 and Annex 4 of the Windsor Framework, electricity generators in Northern Ireland remain within scope of the EU ETS. This is to avoid divergent carbon prices applying to different generators within the Single Electricity Market on the island of Ireland and thereby avoiding such distortions.
11. The amendments to the Directive (EU) 2023/959 apply as regards Energy from Waste (EfW) sites in NI and will require domestic implementation.

POLICY AND LEGAL IMPLICATIONS

12. In accordance with the Windsor Framework, the EU ETS Directive as amended by Directive (EU) 2023/959 and the EU regulations that are the subject of this EM apply in the UK in respect of NI only insofar as they apply to “the generation, transmission, distribution, and supply of electricity, trading in wholesale electricity or cross-border exchanges in electricity.”
13. The amended EU ETS Directive alters the scope to apply monitoring, reporting and verification obligations to energy from waste (EfW) sites. This will bring one EfW operator in NI into scope of the EU ETS Directive.
14. Specifically, it would impose monitoring, reporting and verification (MRV) requirements in relation to emissions. This would also apply to any future installations of this kind, though there aren't any new such installations currently planned.
15. For the avoidance of any doubt, the regulations would not require the operator to purchase and submit allowances. We will be keeping this under close review as we develop our approach to implementation.
16. The adoption of amended Directive 2003/87/EC will not cause any substantive regulatory divergence between GB and NI.
17. It is expected that EfW installations of the kind referred to above could eventually be included within a carbon price, most likely from 2028. This is broadly in line with the approach being considered for GB. In particular, the UK ETS Authority (comprised of UKG, the Scottish Government, the Welsh Government and DAERA) has independently signalled its intention to include waste incineration

and energy from waste sectors in the UK ETS from 2026, with an MRV-only transitional period from 01 January 2026 to 31 December 2027.

CONSULTATION

18. In drafting this EM, my officials have been in consultation with DAERA who have consulted with the NI Operator which falls into scope. We will engage with the Commission as needed regarding technical details of the regulations.

FINANCIAL IMPLICATIONS

19. It is expected that there will be some costs arising from the MRV requirements. My officials will work with DAERA and the Regulator to determine what these will be. However, it is worth noting that there will be no anticipated additional financial impact in NI compared with GB, given broadly equivalent measures are also expected to be introduced in GB.



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