EXPLANATORY MEMORANDUM TO

THE GREENHOUSE GAS EMISSIONS TRADING SCHEME (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2026

S.R. 2026 No. xxxx

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Agriculture, Environment and Rural Affairs (the Department) to accompany the Statutory Rule which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under section 11 of, and paragraph 11M of Part 1C of Schedule 2 to, the European Union (Withdrawal) Act 2018 and is subject to the negative resolution procedure.

2. Purpose

2.1. This Statutory Rule completes the transposition of Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system.

2.2. The Statutory Rule amends the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (2012 Regulations) to provide operators with a choice to remain within the EU Emissions Trading System (EU ETS) for greenhouse gases, when there has been a change in production that results in the installation no longer meeting the prescribed threshold. It also includes a number of technical amendments that remove or update relevant definitions or dates within the 2012 Regulations.

3. Background

3.1. Directive 2003/87/EC (EU ETS Directive) established the EU ETS by creating a cap-and-trade scheme for greenhouse gas emissions across the European Union. The EU ETS was implemented in the UK through the 2012 Regulations.

3.2. In 2020 the Greenhouse Gas Emissions Trading Scheme (Withdrawal Agreement) (EU Exit) Regulations amended the 2012 Regulations to apply to Northern Ireland only, in relation to any emissions created in respect of electricity generation for the

Single Electricity Market (SEM), so that Northern Ireland could continue to meet its obligations under the Windsor Framework.

3.3. Directive (EU) 2023/959 also introduces emissions from incineration of municipal waste within scope of the EU ETS with effect from 1 January 2024, on a monitoring, reporting and verification (MRV) basis only, via amendment to Annex 1 of the EU ETS Directive, which does not require transposition.

3.4. The transposition of Directive (EU) 2023/959 was delayed in Northern Ireland due to clarification on its applicability in respect of waste incineration in Northern Ireland in relation to the operation of the SEM being sought from the EU.

4. Consultation

4.1. The amendments contained in this Statutory Rule do not reflect a policy change that would require public consultation. However, as Directive (EU) 2023/959 introduced a mandatory requirement for MRV of emissions generated from municipal waste incineration, Departmental officials have engaged regularly with the only Northern Ireland waste incineration facility since the Directive was published.

5. Equality Impact

5.1. The Department is required under section 75 of the Northern Ireland Act 1998 to screen the proposed changes to ascertain if an Equality Impact Assessment is required. A screening exercise was, therefore, carried out on the Statutory Rule. No equality issues were identified.

6. Regulatory Impact

6.1. Although this Statutory Rule does not include provision relevant to the mandatory MRV requirements for municipal waste incineration the Department has prepared a Regulatory Impact Assessment (RIA) to assess the impact of this new requirement on the Northern Ireland municipal waste incineration sector. The RIA will accompany this Statutory Rule.

7. Rural Needs Impact

7.1. A Rural Needs Impact Assessment has been carried out, and it concluded that there were no rural needs implications associated with the Statutory Rule.

8. Financial Implications

8.1. This Statutory Rule has no financial implications for the Department. The limited costs incurred by the Northern Ireland municipal waste incineration sector to comply with the mandatory MRV are reflected in the RIA.

9. Section 24 of the Northern Ireland Act 1998

9.1. This Statutory Rule complies with the requirements of section 24 of the Northern Ireland Act 1998, as amended by the European Union (Withdrawal) Act 2018.

10. EU Implications

10.1. The EU ETS Directive is directly applicable in Northern Ireland insofar as it applies to the generation, transmission, distribution, and supply of electricity, trading in wholesale electricity or cross border exchanges in electricity under Article 9 and Annex 4 to the Windsor Framework.

10.2. This Statutory Rule does not include additional provision beyond what is necessary to transpose Directive (EU) 2023/959 in Northern Ireland law. A Transposition Note has been prepared and is available alongside the legislation.

11. Parity or Replicatory Measure

11.1. This Statutory Rule gives effect to requirements arising from Directive (EU) 2023/959. Maintaining alignment with the EU ETS is necessary for Northern Ireland to fulfill its obligations under Article 9 of, and Annex 4 to, the Windsor Framework and to maintain parity with electricity generators in ROI who also participate in the EU ETS.

11.2. The implementation of this Statutory Rule will cause a temporary divergence in policy between Northern Ireland and GB. The UK ETS Authority plan to include energy from waste within the scope and will set out a timeline to include full detail of policy design in due course. A non-statutory voluntary MRV regime is however currently available for the waste incineration sector in GB.

12. Additional Information

12.1. N/A.