Strategic Planning and Corporate Services Group
Strategic Support Directorate

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FROM: **PAUL MCGRANAGHAN**
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DATE: **14 OCTOBER 2026**

TO: **DR. JANICE THOMPSON**
AERA COMMITTEE CLERK

The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations (Northern Ireland) 2026

Summary: The Department of Agriculture, Environment and Rural Affairs intends to lay a Statutory Rule (SR), the Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations (Northern Ireland) 2026. The purpose of this letter is to give advance notice to Committee of the laying before the NI Assembly of the above-mentioned SR. This SR amends the Greenhouse Gas Trading Scheme Regulations 2012 to implement the requirements of Directive (EU) 2023/959 insofar as they relate to electricity generation, as necessary under Article 9 and Annex 4 of the Windsor Framework. This SR will be subject to negative resolution procedure.

Business Area: Carbon Pricing and Windsor Framework Team (CCLPD)

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Issue:	SL1 for the Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations (Northern Ireland) 2026
Restrictions:	None
Action Required:	Committee members are invited to consider the proposed Statutory Rule (SR)
Officials Attending:	Richard Coey – Deputy Director Emissions Trading Scheme, Carbon Pricing & Windsor Framework Patricia Hutchinson – Head of Carbon Pricing & Windsor Framework (EU ETS)

Background

The Department of Agriculture, Environment and Rural Affairs proposes to make the above named Statutory Rule under powers conferred within Section 11 of, and paragraph 11M and of Part 1C of Schedule 2 to, the European Union (Withdrawal) Act 2018.

The Statutory Rule will be laid before the Assembly under the negative resolution procedure and it is anticipated that it will come into operation 21 days thereafter. A copy of the SR is attached at **Annex A**. A copy of the Explanatory Memorandum is attached at **Annex B**. A copy of the Regulatory Impact Assessment is attached as **Annex C**.

Purpose of legislation/policy background

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 (the ETS Directive).

The Statutory Rule will amend the Greenhouse Gas Emissions Trading Scheme Regulations 2012 to implement the requirements of Directive (EU) 2023/959 in Northern Ireland (NI).

The EU ETS Directive (2003/87/EC) established the EU Emissions Trading System (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 Greenhouse Gas Emissions Trading Scheme Regulations 2012 (2012 Regulations).

As a consequence of EU Exit, the Windsor Framework (WF) outlines the areas of EU law that continue to apply in NI. Article 9 and Annex 4 of the WF specify the EU laws governing the wholesale electricity market in NI. The ETS Directive is listed in Annex 4 and continues to apply in NI in respect of electricity generation transmission, distribution and supply. This is to preserve the effective operation of the all Ireland Single Electricity Market (SEM), ensuring a common carbon price with respect to electricity generation across the island of Ireland.

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Amending Directive (EU) 2023/959, published on 10 May 2023, amended the ETS Directive and introduced emissions from municipal waste incineration within scope of the EU ETS with effect from 1 January 2024 on a Monitoring, Reporting and Verification (MRV) basis only. The purchasing and surrendering of EU ETS allowances is not required at this stage.

The implementation of Directive (EU) 2023/959 was delayed in NI, as clarity was being sought from the EU on its applicability in respect of waste incineration in NI in relation to the operation of the SEM.

The proposed SR does not explicitly reference waste incineration; instead, waste incineration is now included as a regulated activity under Annex I of the EU ETS Directive (as amended by Directive (EU) 2023/959), and as such will directly apply. The amendments in the proposed SR largely relate to administrative requirements, such as permit application deadlines and associated compliance obligations.

The amendments will also provide operators with a choice to remain in the EU ETS when there is a change in production that results in the installation no longer meeting the prescribed threshold required to remain in the EU ETS.

No alternative to making this SR is available, as legislation is required to ensure compliance with obligations arising under Directive (EU) 2023/959, as necessary under the terms of the WF.

Previous Engagement with the Committee

There has been no previous direct engagement with the Committee on the subject matter of this Statutory Rule. However the Committee was issued correspondence on the 18th July 2025 regarding the publication of UK ETS scope expansion consultation responses, which advised of potential Windsor Framework obligations for NI as waste incineration facilities generate electricity. The Department intends to brief the Committee on the proposed amendments on 3rd December 2026.

Financial Implications

The proposed Statutory Rule has no financial implications for the Department arising from this Rule. One NI waste incineration facility has been identified as being subject to the requirements of the Rule, and may incur costs associated with mandatory MRV compliance. These costs are however expected to be limited and are estimated within the Regulatory Impact Assessment included as **Annex C**.

Consultation

The amendments contained in the SR do not reflect a policy change that would require a public consultation. However, as Directive (EU) 2023/959 introduced a mandatory requirement for MRV of emissions generated from municipal waste incineration, officials are regularly engaging with the facility mentioned in the above paragraph. When analysis of Directive (EU) 2023/959 was completed in 2026, this facility was advised of the requirements and is preparing a Monitoring Plan to demonstrate compliance.

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The UK Emissions Trading Scheme Authority consulted on the potential expansion of the UK ETS to the waste incineration sector between 23 May and 2 August 2024. The requirement for NI facilities to align with the EU ETS under the terms of the WF was set out in the interim response to that consultation, which was published in July 2025, and about which Committee were informed, by way of DALO letter, on 18 July 2025.

Compliance with Section 24 of the Northern Ireland Act 1998

The Department is satisfied that this Statutory Rule is compatible with human rights obligations, is compatible with relevant EU law, complies with the requirements of section 24 of the Northern Ireland Act 1998 (as amended by the European Union (Withdrawal) Act 2018) and complies with the requirements of Article 2(1) of the Windsor Framework.

Consideration by the Executive

In May 2020, the previous Executive were advised of the obligation to align with the EU ETS under what was, at the time, the Northern Ireland Protocol, as part of a wider Executive paper on the design of the new UK Emissions Trading Scheme. Specific agreement to the NI Protocol obligation was not sought at that time, and no significant, controversial or cross cutting issues were raised.

Minister Muir has issued a memo to his Executive Colleagues informing them that, subject to Committee approval of the SR, he intends to make and lay the SR and that by doing so the Department is complying with the statutory obligations of the WF relating to the EU ETS.

Equality Impact

In accordance with the Department's obligations under Section 75 of the Northern Ireland Act 1998, the equality implications have been assessed. The assessment concluded that scope expansion of municipal waste incineration in the EU ETS is unlikely to negatively impact equality of opportunity as per Section 75 Statutory Equality Duties.

Regulatory Impact

The Department has prepared a Regulatory Impact Assessment to assess the impact of the MRV requirement on the one NI municipal waste incineration facility and this is included as **Annex C** and will be published with the SR.

Rural Needs Impact

In accordance with the Department's obligations, a Rural Needs Impact Assessment was completed. The assessment concluded that there will be no significant impact on NI rural communities with the introduction of a mandatory MRV regime for waste incineration, introduced to the EU ETS via amending Directive (EU) 2023/959.

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Data Protection Impact

No data protection impacts have been identified. This Statutory Rule is amending existing policy and no impacts on data protection are anticipated.

Child Rights Impact

The main purpose of the proposed Statutory Rule will be to implement amending Directive (EU) 2023/959 to include energy from waste into scope of the EU ETS. It will have no impact upon child rights.

Position in Great Britain

These Regulations give effect to requirements arising from Directive (EU) 2023/959. Maintaining alignment with the EU ETS is necessary in accordance with NI's obligations under Article 9 of the WF and to maintain parity with Irish electricity generators who also participate in the EU ETS.

However, the implementation of this SR will cause a temporary divergence in policy between NI and Great Britain. The UK ETS Authority plans to update legislation to include MRV requirements for waste incineration in due course however, the timeframe for this is currently under consideration. A non-statutory voluntary MRV regime is however currently available for the waste incineration sector in GB.

Proposed timing of consideration of the SL1

This SL1 has been submitted to the Committee in accordance with the minimum four-week timeframe. The Department proposes that officials will provide oral briefing for the SL1 before the Committee on 3rd December 2026.

Proposed Operational Date

As the rule is subject to the negative resolution procedure, officials will make and lay the SR as soon as possible following the oral briefing scheduled for 3rd December 2026. As this is a negative resolution SR, the legislation will enter into force 21 days after it is laid.

The draft of the proposed Statutory Rule and Explanatory Memorandum are attached, and you will wish to bring this matter to the attention of the Committee for Agriculture, Environment and Rural Affairs.

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This SL1 is being copied to the Human Rights Commission, Equality Commission and Assembly & Legislation Section of The Executive Office.

Yours sincerely,

[redacted]

Paul McGranaghan
Departmental Assembly Liaison Officer

Enc.

Annex A: Statutory Rule - The Greenhouse Gas Emission Trading Scheme (Amendment) Regulations (Northern Ireland) 2026

Annex B: Explanatory Memorandum - The Greenhouse Gas Emission Trading Scheme (Amendment) Regulations (Northern Ireland) 2026

Annex C: Regulatory Impact Assessment

Cc: Human Rights Commission
Equality Commission

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