

UK MINISTERS ACTING IN DEVOLVED AREAS

59 - The Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) Regulations 2018

Laid in the UK Parliament: 11 December 2018

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	8 January 2019
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	w/c 7 January 2019
Date sifting period ends in UK Parliament	10 January 2019
Written statement under SO 30C:	Paper 44
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of the European Union (Withdrawal) Act 2018.

This instrument is part of a package of measures to address the deficiencies within the EU Emissions Trading Scheme ("EU ETS") regime. This instrument amends legislation which largely falls within devolved competence of the National Assembly for Wales and Welsh Ministers' powers in relation to carbon trading. However, there are elements which fall outside competence. The instrument also addresses specific deficiencies within retained EU legislation as a result of the UK exiting the European Union.

In the event of a 'No Deal' exit from the European Union, the UK would not have an agreement in place to continue participating in the EU ETS. The UK would therefore leave the EU ETS on exit day, making the existing

legislation inoperable. This instrument revokes certain provisions that will cease to apply on exit day and amends others so that they will continue to be operable after exit day.

The instrument maintains, and makes technical fixes to, the elements which will continue to be operable, namely the Monitoring, Reporting and Verification (MRV) of greenhouse gas emissions. MRV is designed to ensure transparency over greenhouse gas emissions, and provide information to allow the implementation of HM Treasury's 'Carbon Emission Tax' (announced in the 2018 Autumn Budget). The Tax will temporarily replace the lost EU ETS carbon price in a 'No Deal' scenario, maintaining a carbon pricing policy for industry in an interim period (i.e. from exit day until a long-term alternative is established). However, the substance of this interim carbon pricing will be included in a power under the Finance Bill 2018-19, which will be debated by Parliament separately, and does not form part of this instrument.

The Explanatory Memorandum to this instrument notes that the interim policy is without prejudice to any final decision on the UK's future approach to carbon pricing.

Legal Advisers agree with the statement laid by the Welsh Government dated 12 December 2018 regarding the effect of these Regulations. The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.