
DRAFT STATUTORY INSTRUMENTS

2019 No.

The Road Vehicle Emission Performance Standards (Cars and Vans) (Amendment) (EU Exit) Regulations 2019

PART 2

Amendment of retained direct EU legislation: cars

CHAPTER 1

Amendment of Regulation (EC) No 443/2009

Amendment of Regulation (EC) No 443/2009

2.—(1) Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for new passenger cars as part of the Community’s integrated approach to reduce CO₂ emissions from light-duty vehicles is amended as follows.

(2) In Article 1—

(a) in the first paragraph—

(i) omit “ensure the proper functioning of the internal market and to”,

(ii) for “European Community” substitute “United Kingdom”,

(b) omit the third paragraph.

(3) In Article 2—

(a) in paragraph 1, for “Community” in both places where it appears substitute “United Kingdom”,

(b) in paragraph 2, for “Community” in both places where it appears substitute “United Kingdom”,

(c) in paragraph 4—

(i) omit “With effect from 1 January 2012, “,

(ii) for “Union” substitute “United Kingdom”.

(4) In Article 3, in paragraph 1 after point (g) insert—

“(h) ‘passenger cars’ and ‘new passenger cars’ have the meanings given in Article 2(1).”.

(5) In Article 4—

(a) in the first paragraph, for “calendar year commencing 1 January 2012” substitute “period beginning with exit day and ending with 31 December 2019”,

(b) in the second paragraph—

(i) after “year” insert “, or part year in the case of 2019,”,

(ii) omit the first three indents,

(iii) in the fourth indent for “from 2015 to” substitute “in”.

- (6) In Article 5—
- (a) omit the first four indents,
 - (b) in the fifth indent, for “2016” substitute “2019”.
- (7) Omit Article 6.
- (8) In Article 7—
- (a) in paragraph 2—
 - (i) after “more calendar years” insert “, or part year in the case of 2019”,
 - (ii) for “file the following information with the Commission” substitute “provide the following information to the Secretary of State”,
 - (b) in paragraph 3, for “Commission” substitute “Secretary of State”,
 - (c) in paragraph 4, for “Commission” substitute “Secretary of State”,
 - (d) in paragraph 5—
 - (i) for “Articles 81 and 82 of the Treaty” substitute “sections 2 (agreements etc preventing, restricting or distorting competition) and 18 (abuse of dominant position) of the Competition Act 1998⁽¹⁾”,
 - (ii) for “Community competition rules” substitute “any enactment relating to competition”,
 - (e) in paragraph 7, for “filed with the Commission” substitute “provided to the Secretary of State”,
 - (f) after paragraph 7 insert—

“8. Information required to be provided to the Secretary of State by virtue of paragraph 2 or 4 must:

 - (a) be in writing and dated,
 - (b) include the name and address of the pool manager to whom the Secretary of State may respond,
 - (c) include the names of the other manufacturers in the pool,
 - (d) be sent to the Secretary of State by post, delivered by hand or, with the express agreement of the Secretary of State, sent by electronic means.”.
- (9) In Article 8—
- (a) in paragraph 1—
 - (i) in the first sentence, for “calendar year commencing 1 January 2010” substitute “period beginning with exit day and ending with 31 December 2019”,
 - (ii) in the first sentence, for “each Member State” substitute “the Secretary of State”,
 - (iii) in the first sentence, for “its territory” substitute “the United Kingdom”,
 - (iv) in the second sentence, for “each Member State” substitute “the United Kingdom”,
 - (v) omit the third sentence,
 - (vi) in the fourth sentence, for “Each Member State” substitute “The Secretary of State”,
 - (vii) at the end insert—

“The Secretary of State may appoint a person to carry out the Secretary of State’s functions under this paragraph.”,
 - (b) for paragraph 2 substitute—

(1) 1998 c. 41.

“2. The monitoring information specified in points 1 and 3 of Part A of Annex 2 must be determined in accordance with Part B, and collected in accordance with Part C, of that Annex.”,

(c) omit paragraph 3,

(d) in paragraph 4—

(i) in the first subparagraph—

(aa) for “Commission” substitute “Secretary of State”,

(bb) for “reported by Member States” substitute “recorded”,

(cc) for “2011” substitute “2020”,

(dd) at the end of each of points (a), (b) and (c) insert “, or part year in the case of 2019”,

(ii) in the second subparagraph—

(aa) for “Commission” substitute “Secretary of State”,

(bb) omit “for each Member State”,

(e) for paragraph 5 substitute—

“5. A manufacturer may, within three months of being notified of the provisional calculation under paragraph 4, notify the Secretary of State of any errors in the data. Notification given by a manufacturer must:

(a) be in writing and dated,

(b) include:

(i) the provisional calculation,

(ii) the specific emissions target for the preceding year, or part year in the case of 2019,

(iii) the manufacturer’s calculation of their average specific emissions of CO₂,

(iv) any evidence in support of the calculation in (iii),

(c) be sent to the Secretary of State by post, delivered by hand or, with the express agreement of the Secretary of State, sent by electronic means.

Where notification is given by a manufacturer, the Secretary of State must confirm or amend the provisional calculation under paragraph 4, and notify the manufacturer accordingly by 31 October.”,

(f) in paragraph 6—

(i) omit “in relation to the calendar year 2010 or 2011,”,

(ii) after “for that year” insert “or part year in the case of 2019,”,

(iii) for “Commission” in both places where it appears substitute “Secretary of State”,

(g) for paragraph 7 substitute—

“7. The Secretary of State may appoint a person to act on behalf of the Secretary of State in collecting and communicating monitoring data in accordance with this Regulation.”,

(h) omit paragraph 8,

(i) for paragraph 9 substitute—

“9. Regulations may—

- (a) make provision about the procedures for monitoring and reporting of data under this Article and on the application of Annex 2,
 - (b) amend the data requirements and data parameters set out in Annex 2.”.
- (10) After Article 8 insert—

“Article 8a

Appeals

1. Where:

- (a) a manufacturer gives notification to the Secretary of State under Article 8(5),
- (b) the Secretary of State does not agree the manufacturer’s calculation of their average specific emissions of CO₂, and
- (c) the Secretary of State notifies the manufacturer under Article 8(6) that it has exceeded its specific emissions target,

the manufacturer or pool manager may appeal against the notification under Article 8(6) to the First-tier Tribunal on the ground that the Secretary of State’s calculation under Article 8(5) was based on an error of fact.

2. The Secretary of State may not impose an excess emissions premium on the manufacturer or, in the case of a pool, the pool manager under Article 9 pending final determination or withdrawal of the appeal.

3. The First-tier Tribunal may—

- (a) confirm the Secretary of State’s provisional calculation, or
- (b) substitute its own calculation.”.

(11) In Article 9—

(a) in paragraph 1—

- (i) for “each calendar year from 2012 onwards” substitute “the period beginning with exit day and ending with 31 December 2019 and each subsequent calendar year”,
- (ii) for “Commission” substitute “Secretary of State”,

(b) in paragraph 2—

- (i) for “formulae” substitute “formula”,
- (ii) omit point (a),
- (iii) in point (b) omit “(b) From 2019:”,
- (iv) in the formula for “95 €/g” substitute “£83/g”,
- (v) after “calendar year” insert “, or part year in the case of 2019,”,

(c) for paragraphs 3 and 4 substitute—

“3. Where the Secretary of State decides to impose an excess emissions premium under paragraph 1, the Secretary of State must serve a notice of civil penalty on the manufacturer or, in the case of a pool, the pool manager.

A notice of civil penalty must:

- (a) be in writing;
- (b) be dated;
- (c) set out the reasons for which the excess emissions premium is imposed;

- (d) set out the amount of the excess emissions premium and how it has been calculated;
 - (e) set out how to pay the excess emissions premium;
 - (f) require payment before the end of a period of 28 days after the date of the notice;
 - (g) include an explanation of the steps the manufacturer or, in the case of a pool, the pool manager, must take if they wish to object to the excess emissions premium, including the manner and form in which any notice of objection must be served; and
 - (h) include an explanation of the steps the Secretary of State may take to recover any unpaid excess emissions premium.
4. The amount of any excess emissions premium payable under this Article—
- (a) in England and Wales is recoverable as if it were payable under an order of the county court in England and Wales;
 - (b) in Scotland may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland;
 - (c) in Northern Ireland is recoverable as if it were payable under an order of a county court in Northern Ireland.
5. Where action is taken under this Article for the recovery of any excess emissions premium, the amount payable is—
- (a) in relation to England and Wales, to be treated for the purposes of section 98 of the Courts Act 2003 (register of judgments and orders etc.)(2) as if it were a judgment entered in the county court;
 - (b) in relation to Northern Ireland, to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981 (register of judgments)(3) as if it were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order.
6. Any excess emissions premium received by the Secretary of State must be paid into the Consolidated Fund.”
- (12) In Article 10—
- (a) in paragraph 1—
 - (i) for “2011, the Commission” substitute “2020, the Secretary of State”,
 - (ii) in point (d), omit “in the Community”,
 - (iii) in point (e), omit “in the Community”,
 - (iv) after point (e) insert—
 - “(f) whether the manufacturer has complied with the requirements of Article 4 with respect to the preceding calendar year.”,
 - (b) for paragraph 2 substitute—
 - “2. Any reference in paragraph 1 to a calendar year includes, in the case of 2019, a part year.”

(2) 2003 c.39; section 98 has been amended by sections 48(1) and 106(2) of, and paragraph 55(1), (2), (3)(a) and (b) of Schedule 8 and paragraph 15 of Schedule 16 to, the Tribunals, Courts and Enforcement Act 2007 (c.15) and section 17(5) of, and paragraph 40(a) and (c) of Part 2 of Schedule 9 to, the Crime and Courts Act 2013 (c.22). Further amendments made by the Tribunals, Courts and Enforcement Act 2007 have yet to be brought into force.

(3) S.I. 1981/226 (N.I. 6).

(13) In Article 11—

(a) in paragraph 1—

(i) for “which is responsible for fewer than 10 000 new passenger cars registered in the Community per calendar year and” substitute “where the number of new passenger cars registered in the United Kingdom for which that manufacturer is responsible per calendar year is less than the small volume derogation threshold (calculated in accordance with Annex 3), and where the manufacturer”,

(ii) in point (b) for “that is responsible in total for fewer than 10 000 new passenger cars registered in the Community per calendar year” substitute “where the number of new passenger cars registered in the United Kingdom for which that group is responsible per calendar year is less than the small volume derogation threshold”,

(b) in paragraph 2, for “Commission” substitute “Secretary of State”,

(c) in paragraph 3, for “Commission” in both places where it appears substitute “Secretary of State”,

(d) in paragraph 4—

(i) for “which is responsible, together with all of its connected undertakings, for between 10 000 and 300 000 new passenger cars registered in the Community per calendar year” substitute “where the number of new passenger cars registered in the United Kingdom for which that manufacturer, together with all of its connected undertakings, is responsible per calendar year is not less than the small volume derogation threshold and is not more than the niche volume derogation threshold (calculated in accordance with Annex 3)”,

(ii) for “Commission” in each place where it appears substitute “Secretary of State”,

(e) in paragraph 5, for “Commission” substitute “Secretary of State”,

(f) in paragraph 6—

(i) for “Commission” substitute “Secretary of State”,

(ii) for “it” substitute “Secretary of State”,

(g) in paragraph 7, for “Commission” substitute “Secretary of State”

(h) in paragraph 8, for “The Commission shall be empowered to adopt delegated acts in accordance with Article 14a laying down rules to” substitute “Regulations may”,

(i) in paragraph 9, for “, subject to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents” substitute “by the Secretary of State, subject to any relevant provisions of the data protection legislation (within the meaning of section 3(9) of the Data Protection Act 2018(4))”.

(14) In Article 12—

(a) omit paragraph 2,

(b) in paragraph 3, for “Commission” substitute “Secretary of State”,

(c) omit paragraph 4.

(15) In Article 13—

(a) omit paragraph 1,

(b) in paragraph 2—

- (i) for “By 31 October 2014, and every three years thereafter, measures shall be adopted to” substitute “Regulations may”,
- (ii) omit the second and third subparagraphs,
- (c) omit paragraphs 3, 4, 5 and 6,
- (d) in paragraph 7—
 - (i) in the first subparagraph, for “The Commission shall, by means of implementing acts,” substitute “Regulations may”,
 - (ii) in the first subparagraph, omit the second sentence,
 - (iii) in the second subparagraph, for “The Commission shall be empowered to adopt delegated acts in accordance with Article 14a in order to” substitute “Regulations may”.
- (16) For Article 14 substitute—

*“Article 14
Regulations*

- 1. Any power to make regulations under this Regulation—
 - (a) is exercisable by the Secretary of State by statutory instrument; and
 - (b) includes power to make:
 - (i) different provision for different cases or descriptions of case, different circumstances or different purposes;
 - (ii) consequential, incidental, supplementary, transitional or transitory provision or savings.
- 2. A statutory instrument containing regulations under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.”.
- (17) Omit Articles 14a, 15 and 16.
- (18) After Article 16, omit the sentence beginning “This Regulation shall be binding”.
- (19) In Annex 1—
 - (a) in paragraph 1, omit points (a) and (b),
 - (b) in paragraph 2, after “year” in both places where it appears insert “, or part year in the case of 2019,”,
 - (c) in paragraph 5, for “granted by the Commission” substitute “set by the Secretary of State”.
- (20) In Part A of Annex 2—
 - (a) in paragraph 1—
 - (i) in the first subparagraph, for “Member States shall, for each calendar year” substitute “The Secretary of State shall, for each calendar year, or part year in the case of 2019”,
 - (ii) in the first subparagraph, for “their territory” substitute “the United Kingdom”,
 - (iii) omit the second, third and fourth subparagraphs,
 - (b) in paragraph 2—
 - (i) for “Member States” in each place where it appears substitute “the Secretary of State”,
 - (ii) in point (b), for “EC” substitute “UK”,
 - (iii) omit point (e).

- (21) In Part B of Annex 2—
- (a) in the opening words, for “Member States are” substitute “the Secretary of State is”,
 - (b) in paragraph 1—
 - (i) for “Member States” substitute “The Secretary of State”,
 - (ii) for “EC” substitute “UK”,
 - (c) omit paragraph 3.
- (22) In Part C of Annex 2—
- (a) in the opening words, for “For each year, Member States shall report” substitute “For each year, or part year in the case of 2019, the Secretary of State shall collect”,
 - (b) in section 1—
 - (i) omit “Member State”,
 - (ii) for “EC” substitute “UK”,
 - (c) in section 2, for “Member State registry” substitute “UK registry”.
- (23) After Annex 2, insert—

“ANNEX 3

DEROGATION THRESHOLDS

Small volume derogation thresholds

1. For 2019—
- (a) the small volume derogation threshold in relation to a manufacturer that was responsible for new passenger cars registered in both the United Kingdom and in an EEA state in the period beginning with 1 January 2017 and ending with 31 December 2017 (“the relevant period”) is:

$$\left(\frac{UK}{EEA} \times 10,000 \right) \times \left(\frac{d}{365} \right)$$

- (b) the small volume derogation threshold in relation to a manufacturer not falling within point (a) is:

$$1,700 \times \left(\frac{d}{365} \right)$$

where:

“d” is the number of days in the period beginning with exit day and ending with 31 December 2019,

“EEA” is the number of new passenger cars registered in an EEA state in the relevant period for which that manufacturer was responsible, and

“UK” is the number of new passenger cars registered in the United Kingdom in the relevant period for which that manufacturer was responsible.

2. For each of the years from 2020 to 2024—
- (a) the small volume derogation threshold in relation to a manufacturer that was responsible for new passenger cars registered in both the United Kingdom and in an EEA state in the period beginning with 1 January 2017 and ending with 31 December 2017 (“the relevant period”) is:

$$\frac{UK}{EEA} \times 10,000$$

where:

“EEA” is the number of new passenger cars registered in an EEA state in the relevant period for which that manufacturer was responsible, and

“UK” is the number of new passenger cars registered in the United Kingdom in the relevant period for which that manufacturer was responsible,

- (b) the small volume derogation threshold in relation to a manufacturer not falling within point (a) is 1,700.

3. For 2025 and subsequent years, the small volume derogation threshold shall be such amount as is specified in Regulations.

Niche volume derogation thresholds

4. For 2019—

- (a) the niche volume derogation threshold in relation to a manufacturer that was responsible for new passenger cars registered in both the United Kingdom and in an EEA state in the period beginning with 1 January 2017 and ending with 31 December 2017 (“the relevant period”) is:

$$\left(\frac{UK}{EEA} \times 300,000 \right) \times \left(\frac{d}{365} \right)$$

where:

“d” is the number of days in the period beginning with exit day and ending with 31 December 2019,

“EEA” is the number of new passenger cars registered in an EEA state in the relevant period for which that manufacturer was responsible, and

“UK” is the number of new passenger cars registered in the United Kingdom in the relevant period for which that manufacturer was responsible,

- (b) the niche volume derogation threshold in relation to a manufacturer not falling within point (a) is the threshold in paragraph 1(b).

5. For each of the years from 2020 to 2024—

- (a) the niche volume derogation threshold in relation to a manufacturer that was responsible for new passenger cars registered in both the United Kingdom and in an EEA state in the period beginning with 1 January 2017 and ending with 31 December 2017 (“the relevant period”) is:

$$\frac{UK}{EEA} \times 300,000$$

where:

“EEA” is the number of new passenger cars registered in an EEA state in the relevant period for which that manufacturer was responsible, and

“UK” is the number of new passenger cars registered in the United Kingdom in the relevant period for which that manufacturer was responsible,

- (b) the small volume derogation threshold in relation to a manufacturer not falling within point (a) is 50,000.

6. For 2025 and subsequent years, the niche volume derogation threshold shall be such amount as is specified in Regulations.”.