

EXPLANATORY MEMORANDUM TO

THE NEW HEAVY DUTY VEHICLES (CARBON DIOXIDE EMISSION PERFORMANCE STANDARDS) (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument uses powers in the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) to correct deficiencies in EU-derived legislation (Regulation (EU) 2019/1242) that regulates CO₂ emissions, and the monitoring and reporting of related data (Regulation (EU) 2018/956), from newly registered heavy-duty vehicles (HDVs) as a result of the UK’s withdrawal from the EU. The instrument ensures that the regulatory framework for CO₂ emissions from HDVs continues to function correctly following the transition period.

Explanations

What did any relevant EU law do before exit day?

- 2.2 Emissions of CO₂ from new HDVs registered in Europe each year are governed by Regulation (EU) 2019/1242¹, which was adopted in April 2019, and came into legal effect on 1 January 2020. This piece of legislation amended Regulation (EC) No 595/2009 and Regulation (EU) 2018/956 and Council Directive 96/53/EC. Deficiencies in Regulation (EU) 2018/956 were corrected by the Heavy Duty Vehicles (Emissions and Fuel Consumption) (Amendment) (EU Exit) Regulations 2019² (“S.I 2019/846”), in March 2019. The UK continues to follow EU rules until transition period completion day (31st December 2020). After that day, Regulation (EU) 2019/1242 and the associated EU Regulations will be retained in domestic law subject to amendments to correct deficiencies as a consequence of the UK’s withdrawal from the EU.
- 2.3 The HDV CO₂ emissions reduction Regulation (EU) 2019/1242 establishes CO₂ emission reduction targets of 15% for 2025 and 30% for 2030 against a 2020/21 baseline (using the data reported by vehicle manufacturers in September 2020), on vehicle manufacturers who register HDVs in the EU single market. It includes fines if manufacturers do not meet their CO₂ targets in the period running from the beginning with 2025 and ending with the end of 2029. From 2030 onwards, a new target should be set based on a review to be carried out in 2022.

¹ <https://www.legislation.gov.uk/eur/2019/1242>

² <https://www.legislation.gov.uk/ukSI/2019/846/made>

2.4 EU Member States and manufacturers are required to record information about new vehicle registrations, for the 12-month period beginning with 1st July and ending with 30th June, within their territories and report it to the European Environment Agency by 30th September each year. This data is collated by the European Commission (“the Commission”), and provisional calculations for the emissions performance of individual manufacturers are published by 30th April of the following year. Manufacturers may then work with the Commission to correct any errors or anomalies within their data set.

Why is it being changed?

2.5 The proposed changes are designed to ensure that the CO₂ emissions of new HDVs registered in the UK continue to be regulated. If these changes are not made, then the retained EU legislation would fail to function and would have no legal impact on newly registered HDVs in the UK. This would mean that, following transition period completion day, newly registered HDVs would not be subject to any functioning CO₂ emissions regulation.

2.6 The proposed changes also ensure the retained EU legislation continues to work as intended and is at least as ambitious as under the current EU regime. The provisions within the EU legislation focus on EU registrations and data. Extracting UK registrations and data from the totals without making sensible amendments would see certain provisions within the legislation failing to operate appropriately, such as fixed derogation thresholds.

2.7 A summary of the changes being made to the current legislation is below. Please refer to section 7 for further detail:

- Replacing references to the European Union, Community, or Member States with the United Kingdom or Secretary of State as appropriate; removing expired time limited clauses and amending other dates within the text to ensure that they are operable after the UK’s withdrawal; and amending cross-references to other pieces of legislation as appropriate.
- Converting excess CO₂ emissions premiums into Sterling from Euros.
- Changing the reporting year dates for UK HDV manufacturers and to transfer responsibility for publishing the annual report to the Secretary of State.

2.8 The two (EU) Regulations mentioned in paragraph 7.5 will, together with Regulation (EC) No 595/2009, all be retained in UK law following transition period completion day. They will be amended to ensure that all of the obligations and commitments listed within them continue to apply in a sensible and effective manner after the end of the transition period.

What will it now do?

2.9 The purpose of the instrument is to make the required amendments to the retained EU legislation regulating CO₂ emissions from newly registered HDVs in the UK to correct for deficiencies arising from the UK’s withdrawal from the EU.

2.10 Following the transition period, this instrument will ensure the UK has its own regulatory CO₂ emission regime for newly registered HDVs. The intention is that the legislation remains operable within UK law; continues to regulate CO₂ emissions from newly registered HDVs in the UK in a manner which is at least as ambitious as current

arrangements; and, as far as possible, ensures manufacturers retain the same level of target.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is being made under the affirmative procedure as it will transfer functions and obligations that are currently exercised by the Commission to the Secretary of State. Additionally, there are a number of new regulation making powers granted to the Secretary of State which, among other things, enable the updates to the applicable legislation to be made.
- 3.2 This instrument amends European regulation EU 2019/1242. It also amends an existing EU Exit SI (2019/846) made in April 2019.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.3 The territorial application of this instrument includes England, Wales, Scotland, and Northern Ireland.

4. Extent and Territorial Application

- 4.1 This instrument extends to the United Kingdom.
- 4.2 Its application is the same as its extent.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State, Rachel Maclean MP, has made the following statement regarding Human Rights:
- 5.2 “In my view the provisions of the New Heavy Duty Vehicles (Carbon Dioxide Emission Performance Standards) (Amendment) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is made in exercise of powers in section 8 of the European Union (Withdrawal) Act 2018. The Withdrawal Act also contains powers to make secondary legislation to enable Ministers and the devolved administrations to fix deficiencies in retained EU law, to ensure that the UK’s legal system continues to function properly outside of the EU.
- 6.2 This instrument corrects for deficiencies arising from the UK’s withdrawal from the EU in regulation EU 2019/1242 governing emission reduction standards and EU regulation 2018/956 governing the monitoring and reporting of CO₂ emissions data for HDVs in the UK. The deficiencies mainly relate to:
 - the monitoring and reporting of data fields specified in Part A and Part B of Annex 1 listed in Regulation (EU) 2018/956 (as amended by Regulation (EU) 2019/888) for HDVs registered in UK from 1st January 2019 and in subsequent years
 - the annual reporting of HDV data from 1st July 2019 to 30th June 2020 to the Commission and in subsequent years to the Secretary of State

- the reporting of the baseline data by the European Commission to enable a baseline to be established which will be used to measure compliance with CO₂ emissions standards set out by Regulation EU 2019/1242.

6.3 S.I. 2019/846 has now been partially superseded as a result of changes made during the transition period, including the provisions of Regulation EU 2019/1242. It is therefore amended by this instrument.

7. Policy background

What is being done and why?

7.1 This instrument is designed to ensure that the UK Government is able to regulate CO₂ emissions from newly registered HDVs in the UK following transition period completion day. Amendments are required to the retained EU text in order to ensure that all of the deficiencies, failings and inoperabilities that would exist in the retained text as a result of the UK's withdrawal are corrected.

7.2 The instrument has been designed to:

- maintain a regulatory regime that matches as closely as possible the current arrangements;
- enable the UK government to assume the obligations and functions of the European Commission;
- ensure the UK can meet its commitment to ensuring that UK CO₂ emissions regulation is at least as ambitious as current arrangements; and
- provide certainty to vehicle manufacturers and minimise additional reporting burdens.

7.3 There are some choices that have had to be made in order to ensure that the above criteria are met.

7.4 The HDV CO₂ emission reduction standards Regulation (EU) 2019/1242 sets targets for reducing emissions by 15% in 2025-2029 and by 30% from 2030 from HDVs as defined by the Regulation. These reductions are measured against a 2020/21 baseline using the data reported by vehicle manufacturers in September 2020 as required under the provisions of the monitoring and reporting regulation (Regulation (EU) 2018/956). The baseline will be published by the European Environment Agency on behalf of the European Commission in April 2021. This will include the data for UK registrations and will therefore be adopted as the baseline for the UK only regime after the end of the transition period.

7.5 The provisions of both Regulation (EU) 2019/1242 and Regulation (EU) 2018/956 are being retained in UK law but with the functions currently being performed by the European Commission transferring to the Secretary of State. There are two key changes:

- The change in reporting year dates from 28 February to 30 September each year for UK HDV manufacturers and the change of responsibility for publishing the annual report in the future transferring to the Secretary of State.
- Reporting periods to run from 1 July to 30 June each year as stated in Regulation 2018/956 (as amended by 2019/888) but with the full year's data for 1 July 2020 to 30 June 2021 being reported to the Secretary of State.

7.6 Other such changes that have been made include replacing references to the European Union, Community, or Member States with the United Kingdom or Secretary of State as appropriate; removing expired time limited provisions and amending other dates within the text to ensure that they are operable following the UK's withdrawal; and amending cross-references to other pieces of legislation as appropriate.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address deficiencies of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There are currently no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 A consultation was conducted from 10 July to 21 August 2020. The consultation received eight responses, including from the Society of Motor Manufacturers and Traders (SMMT) and the European Automobile Manufacturers' Association (ACEA).

10.2 There were three key issues which were consulted on:

10.2.1 Baseline data reported by manufacturers to the Commission in Sept 2020: DfT proposed to adopt the CO₂ baselines to be published by the Commission in April 2021 against which the 2025 and 2030 CO₂ emission reductions targets will then be measured under the resulting UK only regime.

Respondents were generally supportive but suggested a study of the UK fleet to act as a comparator to the EU baseline.

10.2.2 Baseline data reported by the UK to the Commission on 30 September 2020: the UK is required to report the six data fields for the period 1 January 2019 to 30 June 2020 to the European Commission. All six data fields are recorded on the vehicle's certificate of conformity but only three of these fields are currently held by DfT, the other three data fields are held by vehicle manufacturers. The consultation proposed requiring manufacturers to report the six data fields for the period 1 January 2019 to 30 June 2020 to the Secretary of State by 31 January 2021. These could then be passed to the European Commission.

Respondents strongly opposed this as HDV manufacturers only hold data for 60% of vehicles (the other 40% are multi-stage builds and therefore not registered by the manufacturer) and the requirement is therefore a large burden with impacts on their IT systems. It is important to note that this requirement to report to the Commission would be for one year only (2020) and does not affect the CO₂ calculation.

10.2.3 Annual reporting of data by manufacturers from September 2021: as the transition period ends on 31 December 2020 the reporting period (June-July) is divided in two. To resolve this inoperability, three options were posed with the recommendation that reporting of data for the full reporting period 1 July 2020

to 30 June 2021 by HDV manufacturers to the Secretary of State would be required as was previously to the Commission.

Respondents supported this proposal.

- 10.3 As a result, the Government has decided to remove the requirement for manufacturers to report the six data fields for the period 1 January 2019 to 30 June 2020 to the Secretary of State by 31 January 2021 (10.2.2). A solution to the data required for the EU will be found using existing data. This clause has therefore been removed from the SI.

11. Guidance

- 11.1 Detailed guidance on how the Regulation will function and how manufacturers can apply for certain flexibilities will be made available online, as soon as it is practicable to do so.

12. Impact

- 12.1 The proposed regulation is expected to have a minimal regulatory impact on UK businesses. It is not expected to create additional costs for manufacturers to comply with the new UK monitoring and reporting regime.
- 12.2 The instrument will aim to minimise this impact by mirroring EU processes and maintain targets, keeping in line with manufacturer's existing business processes. Departmental analysis suggests that the total business impact will be less than £5 million.
- 12.3 A De Minimis Impact Assessment has been completed for this Instrument, highlighting that the costs and benefits for businesses are expected to fall below £5m in any one calendar year. The statutory instrument is part of a legislative package which maintains existing regulatory standards for CO₂ emissions from newly registered heavy-duty vehicles in the UK and is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

- 13.1 The instrument in the main only applies to large vehicle manufacturers. However, activities are undertaken by a small number of SMEs who adapt other manufacturers' vehicles and who are required to report the data collected by the main manufacturer in some instances at the point of registration.

14. Monitoring & review

- 14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Henry Robinson at the Department for Transport. Telephone: 07971 144048 or email: Henry.Robinson@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Dr Bob Moran, Deputy Director for Environment Strategy at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rachel Maclean MP at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

- 1.1 The Parliamentary Under Secretary of State, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the New Heavy Duty Vehicles (Carbon Dioxide Emission Performance Standards) (Amendment) (EU Exit) Regulations 2020 do no more than is appropriate. This is the case because the instrument ensures that the Regulations governing CO₂ emissions from newly registered heavy duty vehicles in the UK will continue to be legally operable when the United Kingdom withdraws from the European Union”.

2. Good reasons

- 2.1 The Parliamentary Under Secretary of State, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. This instrument ensures that the Regulations governing CO₂ emissions from newly registered heavy duty vehicles in the UK will continue to be legally operable when the United Kingdom withdraws from the European Union”.

- 2.2 “The instrument corrects a number of inoperabilities and/or deficiencies that exist in the retained EU legislation created as a result of the UK’s withdrawal from the EU. Amending these deficiencies will ensure that the CO₂ emissions from newly registered heavy duty vehicles in the UK are regulated in an effective manner after the UK’s withdrawal from the EU.”

3. Equalities

- 3.1 The Parliamentary Under Secretary of State, Rachel Maclean MP, has made the following statement(s):

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

- 3.2 The Parliamentary Under Secretary of State, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, the Department for Transport has had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.