EXPLANATORY MEMORANDUM TO

THE CLEANER ROAD TRANSPORT VEHICLES (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 964

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 that regulates the environmental impact of public sector and utilities' procurement of vehicles. This will ensure that the legal framework that regulates relevant public procurement of vehicles continues to function correctly at the end of the transition period.

Explanations

What did any relevant EU law do before exit day?

2.2 The Cleaner Road Transport Vehicles Regulations 2011 (CRTVR)[1] implemented EU Directive 2009/33[2] on the procurement of cleaner vehicles by the public sector.

Why is it being changed?

2.3 Directive 2009/33 aimed to:

- contribute to the objectives of increasing energy efficiency in the transport sector and protecting the environment by reducing emissions of carbon dioxide and air pollution from vehicles;
- result in long-term benefits by stimulating the market for cleaner vehicles;
- help to create economies of scale in clean vehicle production thereby lowering the cost of such technologies and facilitating improvements in the emissions performance of the entire EU fleet; and
- create early markets and bring down high initial costs of the technologies required.

Intervention was considered necessary to correct market failures and required energy and environmental impacts to be taken into account in the public procurement of vehicles.

2.4 The CRTVR which implemented Directive 2009/33 in 2011 therefore requires public authorities, utilities and some private sector providers of passenger transport services to take into account energy and environmental impacts, including energy consumption

[1] S.I. 2011/1631

[2] Directive 2009/33/EC

and emissions of carbon dioxide (CO_2) and certain other pollutants, when purchasing or leasing road transport vehicles.

2.5 A further Directive (Directive (EU) 2019/1161) amending Directive 2009/33/EC was agreed by the EU in July 2019 and is due to be adopted by Member States by August 2021, i.e. after the end of transition period. Powers under the Withdrawal Act only allow for the correction of deficiencies in existing law that will be transposed into UK at the end of the transition period, they do not permit policy proposals. As Directive 2019/1161 has not been implemented in the UK this instrument does not propose any potential changes arising from it.

2.6 The proposed changes to the CRTVR are designed to ensure that after the transition period ends, the public procurement of vehicles in the UK continues to be regulated in a manner that is at least as ambitious as current arrangements.

2.7 The provisions cross refer to related public procurement legislation. These are also the subject of an Exit SI, The Public Procurement (Amendment etc.) Regulations 2020, which will be laid later in the year and be subject to the affirmative procedure.

What will it now do?

2.8 The purpose of this instrument is to make the required amendments to the existing CRTVR to correct for minor deficiencies arising from the UK's withdrawal from the EU so that the Regulations continue to function.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The instrument was presented to the Sifting Committees for consideration on the 15 July 2020. It was considered by the House of Commons European Statutory Instrument Committee on 21 July 2020 and the House of Lords Secondary Legislation Scrutiny Committee on 28 July 2020. The Sifting Committees both agreed that the instrument should proceed by way of negative resolution procedure. The Minister has considered the decisions of the Sifting Committees and has approved and signed the instrument.

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)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England, Wales, Northern Ireland.

4.2 Separate regulations apply in Scotland, 'the Cleaner Road Transport Vehicles (Scotland) Regulations 2010'.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 These Regulations are made in exercise of powers in section 8 of the European Union (Withdrawal) Act 2018 which makes provision for repealing the European Communities Act 1972 (ECA) and will preserve EU law, as it stands at the end of the transition period, in UK law. It enables the creation of a new body of domestic legislation by bringing the texts of directly applicable EU legislation into domestic legislation, as well as saving EU-derived domestic legislation which was made to implement the UK's obligations as a member of the EU. The Act also contains temporary powers to make secondary legislation to enable Ministers and the devolved administrations to deal with deficiencies in retained EU law, to ensure that the UK's legal system continues to function properly outside the EU.

6.2 This instrument corrects a number of deficiencies that will arise in the existing EU-derived domestic legislation that regulates the public procurement of vehicles at the end of the transition period.

7. Policy background

What is being done and why?

7.1 This instrument is designed to ensure that the existing regulation the public procurement of vehicles continues to function at the end of the transition period. Amendments are required to the retained text in order to correct the retained text.

7.2 A summary of the changes being made to the existing legislation are:

- in the definition of an "economic operator", changing "a relevant State" to "the United Kingdom or Gibraltar" recognising that a 'relevant state' would include duties to EU Member States;
- at the end of the definition of "public service contract" and "public service obligation" so that "as in force on implementation period completion day" is added recognising a related negative Exit SI (amending Regulation (EC) No 1370/2007; and
- amending references in Table 2 in the Annex to the directive to a specified number of Euros ("EUR") to be read, for the purpose of paragraph (1), as that sum converted into pounds sterling ("GBP") using the exchange rate of GBP1 = EUR 1.11003.

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

8.1 This instrument is being made using the powers in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU derived domestic law to operate effectively following the withdrawal of the United Kingdom from the European Union.

9. Consolidation

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

10. Consultation outcome

10.1 There have been no substantial changes to the policy or requirements of the existing CRTVR so no consultation has been carried out.

10.2 The devolved Administrations have been consulted and are content with the changes being made.

10.3 The Scottish Government will make changes to the Cleaner Road Transport Vehicles (Scotland) Regulations 2010.

11. Guidance

11.1 Given that there are no substantial changes to the policy or requirements no guidance is being provided.

12. Impact

12.1 A minimal assessment has been carried out as the costs and benefits to business are expected to fall well below £5m net in any one year. This is because there is no effect on existing duty holders as the instrument does not change the existing requirements other than as outlined in 7.2 above. It simply enables the existing CRTVR to continue to function at the end of the transition period.

13. Regulating small business

13.1 As this instrument maintains the current regulatory position and is not expected to have any impact on small businesses, it is not necessary to take additional action to minimise the impact of the requirements on small business.

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 Steve Ives at the Department for Transport - Telephone: 07977 433313 or email: Steve.ives1@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, Parliamentary Under Secretary of State 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. Sifting statement(s)

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

"In my view the Cleaner Road Transport Vehicle (Amendment) (EU Exit) Regulations 2020 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure).

This is the case because the amendments being made are minor and no more than those necessary to maintain the operability of existing law after the end of the transition period."

2. Appropriateness statement

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

"In my view the Cleaner Road Transport Vehicle (Amendment) (EU Exit) Regulations 2020 do no more than is appropriate. This is the case because the purpose of this instrument is simply to ensure that the legislation continues to function correctly once the UK has left the EU. This will ensure that the public procurement of clean vehicles continue to be regulated in an effective manner at the end of the transition period."

3. Good reasons

3.1 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".

3.2 These are that this Instrument ensures that the public procurement of cleaner vehicles in the UK, after the UK's withdrawal from the European Union, will continue to be regulated in a manner that is at least as ambitious as current arrangements and that the legislation continues to work as intended.

4. Equalities

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

"The draft 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."

4.2 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."

5. Explanations

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