EXPLANATORY MEMORANDUM TO

THE MOTOR FUEL (COMPOSITION AND CONTENT) (AMENDMENT) (NORTHERN IRELAND) REGULATIONS 2022

2022 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.

2. Purpose of the instrument

2.1 These Regulations amend the Motor Fuel (Composition and Content) Regulations 1999 ("the 1999 Regulations") to require the introduction of E10 petrol (petrol with more than 5% ethanol) at filling stations in Northern Ireland. They also ensure the ongoing availability of E5 petrol (petrol with 5% or less ethanol).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The 1999 Regulations, which these Regulations amend, contains provisions made under section 2(2) of the European Communities Act 1972. Paragraph 13 of Schedule 8 of the European Union (Withdrawal) Act 2018 applies to this instrument requiring a draft of the instrument to be laid before both Houses of Parliament and approved by a resolution from each House.

3.2 Paragraph 14 of Schedule 8 of the European Union (Withdrawal) Act 2018 applies to this instrument, and a draft of this instrument and the Explanatory Memorandum have accordingly been published 28 days prior to laying in accordance with paragraph 14(2) of Schedule 8.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Northern Ireland.

4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State Trudy Harrison MP has made the following statement regarding Human Rights:

"In my view the provisions of the Motor Fuel (Composition and Content) (Amendment) (Northern Ireland) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument amends the 1999 Regulations to introduce a minimum ethanol content of 5.5% by volume for premium 95 octane petrol in Northern Ireland. It also ensures the ongoing availability of E5 petrol (petrol with up to 5% ethanol by volume) for those that continue to need it.

6.2 This instrument brings Northern Ireland into line with the rest of UK following the introduction of equivalent regulations which applied to Great Britain from September 2021. These Northern Ireland specific regulations have followed on a later timetable due to the need to notify the European Commission of changes to technical regulations. The application of the Northern Ireland Protocol means that the Technical Standards Directive 2015/1535 still applies in Northern Ireland. Under that Directive it is appropriate to notify EU member states of changes to technical regulations, including those relating to fuel standards. The required notification process was completed on 17th December 2021.

6.3 The introduction of a minimum ethanol content requirement in the premium 95 petrol grade ensures fuel suppliers and retailers will shift to a grade known as "E10" petrol. E10 contains up to 10% ethanol. Blending ethanol into petrol reduces overall greenhouse gas emissions, helping meet climate change targets.

7. Policy background

What is being done and why?

7.1 To date, petrol sold in the Northern Ireland has contained no more than 5% ethanol, a grade known as E5. This instrument will introduce petrol with up to 10% ethanol, a grade known as E10. This change has already been made in Great Britain during 2021.

7.2 Two petrol options are available in NI; the standard 95 octane grade known as "premium" and the higher 97+ octane "super" grade. Both are currently E5 in terms of their ethanol content.

7.3 This instrument will require that petrol stations in NI change the 95-octane premium petrol to an E10 specification. Ethanol is blended with petrol to reduce overall carbon dioxide emissions to meet climate change targets.

7.4 E10 petrol is suitable for the majority of petrol vehicles. However, some older vehicles and certain petrol-powered equipment are not approved to use petrol with more than 5% ethanol. This instrument therefore also ensures the super grade higher octane petrol remains E5 for those that need it.

7.5 The E10 requirement is contained within regulation 4(b) of the instrument (which inserts a new paragraph (8) into regulation 3 of the 1999 Regulations). It requires that premium 95 grade petrol contains at least 5.5% ethanol all year round. This minimum requirement ensures ethanol is blended at a higher rate than is currently the case, whilst providing fuel suppliers with flexibility. Biofuel blending levels are generally driven by a separate government scheme known as the Renewable Transport Fuel Obligation (RTFO). By setting the lower ethanol limit of 5.5%, fuel suppliers can adjust their blend levels to best meet wider biofuel blending obligations.

7.6 Regulation 4(a) amends regulation 3(5) of the 1999 Regulations to reintroduce the requirement that the super grade must contain no more than 5% ethanol and 2.7% oxygen to ensure it remains E5 petrol. This provision previously applied between January 2011 and December 2016 to address the concern petrol retailers might introduce E10 unilaterally by ensuring the super grade would remain E5 in such a scenario.

7.7 E10 petrol has been approved for sale in the UK since 2011. While the RTFO has driven blend levels towards the 5% limit for E5 petrol, no supplier has unilaterally chosen to move above 5%. In Great Britain, the blend level only moved above 5%

following the introduction of similar legislation. Stakeholders have been clear that without a legislative mandate applying in Northern Ireland, the petrol supplied their will remain E5.

7.8 Legislating for the whole sector to change their premium 95 grade together has been the only route identified to ensure E10 is introduced. The legislation ensures a level playing field for fuel suppliers and retailers. The universal introduction also ensures a single consumer messaging campaign can be delivered, rather than a piecemeal approach by individual retailers in different areas.

7.9 The E10 requirement comes into force on 1st November 2022. This date has been chosen following discussion with industry and considering the experience when E10 was introduced in GB. In GB, the move to E10 happened on 1st September 2021, the same date as the switch to the winter specification. While suppliers were able to manage this change in both ethanol blending and vapour pressure, they highlighted that some separation would be significantly simpler to ensure fuel quality is maintained at lowest additional cost.

7.10 Introducing E10 during the supply period of the winter petrol grade is preferred as increasing ethanol content is facilitated by the corresponding vapour pressure requirements of the fuel standard at this time. These matters were considered at length in the original consultation and through ongoing engagement with relevant stakeholders.

7.11 Regulation 7 amends regulation 6 of the 1999 Regulations to create a number of exemptions to the requirement for petrol with 5.5% ethanol to be distributed or sold. First, there is an exemption for where a refinery or fuel blending facility is unable to meet the 5.5% requirement due to an issue at that facility. This is to ensure that short term technical issues do not impact security of petrol supply. Where such issues occur, distribution of fuel with less than 5.5% ethanol can continue provided a notification is submitted to the Secretary of State within two days of the issue occurring. The exemption would automatically last for 10 days from the issue occurring. An extension can be granted by the Secretary of State where necessary. Petrol supplied under these exemptions would still need to meet all other elements of the existing fuel specifications. A single facility can operate under this exemption no more than 3 times in any 12-month period.

7.12 Secondly, regulation 7 amends regulation 6 to permit existing fuel terminals that are unable to blend any ethanol into their petrol products to apply for a permission to be exempt from the 5.5% requirement. This exemption has been introduced as we are aware of certain fuel terminals that currently blend no ethanol into their petrol products and are unable to comply within the required timeframe. Without such an exemption these sites would be unable to continue to operate, impacting fuel supply in those regions. Upon successful application for such an exemption a facility will be permitted to distribute petrol which does not meet the 5.5% requirement for two years. Any application to extend that period will be subject to public consultation. It is relevant that we are not aware of any such sites in Northern Ireland, however it is considered appropriate that the Regulations in Northern Ireland mirror those that apply in the rest of the UK.

7.13 Thirdly, regulation 7 introduces exemptions to the 5.5% requirement for very small filling stations (those that sell under one million litres of fuel per year) and filling stations located in the Rural Fuel Duty Relief area defined in the Hydrocarbon Oils

and Biofuels (Road Fuels in Defined Areas) (Reliefs) Regulations 2011. This ensures that specialist retailers and very remote filling stations can continue to stock ethanol free 95 octane petrol where needed. We acknowledge that no areas of Northern Ireland are within the Rural Fuel Duty Relief area. However, the preference is for these regulations to mirror those that apply to the rest of the UK.

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

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There is no intention to consolidate the Motor Fuel (Composition and Content) Regulations 1999 at this time.

10. Consultation outcome

10.1 The government published a public consultation on proposals to introduce E10 petrol. The consultation proposed to introduce E10 across the UK. While the introduction of E10 in Great Britain followed the passing of specific legislation in 2021, these regulations bring Northern Ireland into line with Great Britain.

10.2 The consultation was open between 4th March and 3rd May 2020. The government received 208 responses to the consultation and call for evidence. This included 65 responses from organisations and 143 responses submitted by private individuals. Responses included those with an interest in fuel supply in Northern Ireland.

10.3 Around two-thirds of organisations responding were broadly supportive of E10 introduction, with several further organisations' responses raising some specific concerns but not opposing the introduction in principle. Around a third of private individuals either explicitly supported the introduction of E10 or did not object in principle. Respondents in favour of the proposals agreed that introducing E10 would be effective policy for reducing greenhouse gas emissions.

10.4 A small number of organisations and more than two thirds of private individuals raised concerns about the introduction of E10. The main concern expressed was about vehicle compatibility, particularly amongst owners of classic and older cars and motorbikes.

10.5 The government has addressed these concerns by ensuring the current E5 grade remains available at many filling stations. Filling stations that stock two grades of petrol will be required to ensure one meets the E5 specification.

10.6 The formal consultation process did not identify any specific issues relating to the introduction of E10 in Northern Ireland. We have since engaged directly with those involved in fuel supply in Northern Ireland to capture lessons learnt from the GB introduction and ensure its roll out in Northern Ireland is as smooth as possible.

10.7 The formal government response to the consultation has been published on https://www.gov.uk/government/consultations/introducing-e10-petrol and includes a more detailed summary of the consultation questions, responses and government decision.

11. Guidance

11.1 Guidance is not required.

12. Impact

12.1 The impact of the introduction of E10 petrol has been assessed on a UK wide basis via both a specific impact assessment (IA) developed alongside the 2020 consultation and published with the GB SI and via a cost benefit analysis (CBA) undertaken as part of the process to increase the Renewable Transport Fuel Obligation targets, which applied from 1st January 2022. Both sets of analysis covered the UK wide impacts. A summary explaining how these relate to both the whole UK and specifically Northern Ireland is provided below.

12.2 UK wide RTFO targets were increased by 1.5% from January 2022. This increase was broadly equivalent to the additional blending capacity fuel suppliers could utilise following the roll out of E10 petrol. The 1.5% increase in targets would mean suppliers would likely continue supplying a similar volume of biodiesel while increasing ethanol blending in petrol towards 10% to account for the additional target level. This was modelled in the CBA as providing additional carbon savings of around 1 megaton of CO2 per year at a cost of around £200 million. This gave a carbon cost effectiveness of £200 per tonne in 2022. The cost was expected to be equivalent to an extra 0.5p per litre across the fuel market (i.e. both petrol and diesel). These are the figures for the 2022 year, when targets were increased by the capacity that E10 would provide. In the CBA, renewable fuel targets continue to rise gradually through to 2032 by a further 3.5%.

12.3 As the increased higher RTFO targets have applied from 1st January 2022, it is likely the additional cost of meeting this target has already been passed on to motorists in Northern Ireland even while ethanol blending remains at 5% in petrol. Northern Ireland represents around 3% of the UK's fuel market, while the majority of fuel suppliers involved in the Northern Irish market also supply Great Britain. These suppliers' RTFO targets are set at a UK level and the renewable fuel blending required to meet the targets will likely be priced into general fuel prices regardless of the specific renewable fuel content of petrol or diesel on a given day or in a given area. The costs of blending are spread across a supplier's operations over the course of the year and across their whole fuel supply portfolio. While some areas will see lower biofuel blending, and others higher – the biofuel cost premium is generally shared across the fuel supply. As a result, it is likely the direct costs of increasing the RTFO by 1.5% have already been passed on to motorists in Northern Ireland.

12.4 In relation to the specific cost of E10 petrol, the E10 IA concluded that introducing E10 would likely have a negligible impact on pump prices. However, ethanol has a lower energy density than fossil petrol. This means drivers are expected to require around 2% more blended petrol to cover the same distance when blended at a 90-10 petrol-ethanol ratio. As a result, petrol users in Northern Ireland are expected to see their fuel use rise by around 2% as a result of the increased ethanol blending, based on a basic assessment of average energy density of the fuels.

12.5 However, we understand the simple energy density calculations are likely not an ideal basis for predicting fuel efficiency impacts in the real world. In many cases, fuel suppliers will use a more energy dense base petrol to which the ethanol is blended to produce a final petrol blend. This is to ensure compliance with wider fuel standards but also means the final fuel is closer in energy density to the current E5 blend. Some

engines will also be able to adapt to differing energy density fuel more effectively depending on the engine management system in the vehicle. As a result, motorists will see varying changes to fuel efficiency based on supplier blending preferences, engine management systems and driving style.

12.6 We have also been made aware during our discussions with Northern Irish petrol suppliers that the added complexity of supplying a 95 octane E10 grade in Great Britain while still supplying a 95 octane E5 grade in Northern Ireland is adding to fuel supplier costs. Most petrol sold in Northern Ireland is refined in Great Britain. These refineries are now needing to produce an additional grade for supply in Northern Ireland which requires separate production processes and storage. This is increasing costs for fuel suppliers; however precise figures are not available due to commercial sensitivity. Introducing E10 in Northern Ireland will offset these costs to a degree as suppliers are able to streamline processes. Precise impacts on petrol users are therefore difficult to quantify beyond the basic 2% reduction in calorific content provided in the IA.

12.7 In addition to the changes in fuel economy for those using E10, around 3.4% of petrol cars are incompatible with E10 petrol and will need to use E5. This will remain available in the super grade. The super grade is typically around 10p per litre more expensive than the regular grade. Based on current petrol prices in Northern Ireland, the increase in price of the super grade is around 6.7%. Further analysis on the impact of owners of incompatible vehicles is provided in the UK E10 Impact Assessment and these trends will apply proportionately in Northern Ireland.

12.8 There is no, or no significant, impact on the public sector.

12.9 A full Impact Assessment has not been prepared for this instrument because the impacts have already been covered by separate published analysis which considered the UK wide introduction of E10. The UK wide E10 impact assessment and RTFO cost benefit analysis are published at the following links: www.legislation.gov.uk/uksi/2021/894/impacts and www.legislation.gov.uk/uksi/2021/1420/pdfs/uksiod_20211420_en_001.pdf .

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses, the E10 petrol requirement will only apply to filling stations with an annual fuel throughput of over 1 million litres per annum.

13.3 The basis for the final decision on what action to take to assist small businesses was taken following the public consultation on proposals. Small businesses were largely represented by trade associations who did not raise that specific mitigation would be needed based on our original proposals. While both smaller filling stations and small businesses using petrol vehicles will be affected by the policy, the impact will be small, and no proportionate mitigation was identified or proposed through the consultation process.

13.4 The UK E10 impact assessment includes a Small and Micro Business Assessment.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is for it to be monitored in the course of normal departmental business. This includes the existing reporting mechanism within the RTFO scheme. The initial roll out of the new fuel grade will be monitored via engagement with the fuel sector and relevant trade associations as well as working closely with officials from the Department for Business, Energy and Industrial Strategy and the Northern Ireland Assembly.

14.2 A statutory review clause is included in the Regulations which provides for the Secretary of State to undertake a review of the regulatory provisions contained in the Regulations on a five-yearly basis.

15. Contact

15.1 Tim Simon at the Department for Transport, Telephone: 07773 643828 email: tim.simon@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Debbie Stockwell and Vicky Edmonds, Joint Deputy Directors for Low Carbon Fuels, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Trudy Harrison 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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	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 under the European Union (Withdrawal) Act 2018

1. Scrutiny statement

1.1 The Parliamentary Under Secretary of State Trudy Harrison MP has made the following scrutiny statement in accordance with paragraph 14(4) of Schedule 8 to the European Union (Withdrawal) Act 2018:

"In accordance with the requirements of paragraph 14 of Schedule 8 to the European Union (Withdrawal) Act 2018, a draft of the Motor Fuel (Composition and Content) (Amendment) Regulations (Northern Ireland) 2022 was published on the Gov.UK website on 12th May 2022. Copies of the draft instrument were also deposited in the libraries of both Houses of Parliament on 12th May 2022 for comment and for any recommendations.

This instrument was considered by the House of Lords Secondary Legislation Scrutiny Committee in their report published 26th May 2022. The committee made no recommendations."

2. Explanatory statements

2.1 The Parliamentary Under Secretary of State Trudy Harrison MP has made the following statements in accordance with paragraph 15(3) of Schedule 8 to the European Union (Withdrawal) 2018 Act:

"Paragraph 15(3)(a): Law which is relevant to the amendment:

Requirements relating to motor fuel quality and specifications are currently contained in the Motor Fuel (Composition and Content) Regulations 1999 (S.I. 1999/3107) (the "1999 Regulations"). These Regulations were made under section 2(2) of the European Communities Act 1972, and therefore constitute EU-derived domestic legislation (which is retained EU law) within the meaning of the European Union (Withdrawal) Act 2018. The 1999 Regulations implemented into domestic law the requirements of EU Directive (Council Directive 98/70/EC) (the 1998 Directive) which set out standardised petrol and diesel fuel quality specifications.

Paragraph 15(3)(b): Effect of the amendment or revocation on retained EU law:

These Regulations increase the minimum ethanol content of the standard petrol grade to ensure E10 petrol is introduced in Northern Ireland to help reduce CO_2 emissions of petrol vehicles and ensure climate change targets can be met. The increase in minimum ethanol content is within the existing ethanol content specifications required by the 1998 Directive and all petrol supplied under the new regulations will still meet EU specifications as currently drafted."

3. Good reasons

3.1 The Parliamentary Under Secretary of State Trudy Harrison MP has made the following statement in accordance with paragraph 15(2) of Schedule 8 to 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.

These are: because of the on-going need to decarbonise road transport via the increased use of sustainable biofuels like bioethanol. It is also important that fuel standards remain aligned across the UK. This statutory instrument updates the petrol specification requirements for Northern Ireland so that they match those that have applied in Great Britain since September 2021."