EXPLANATORY MEMORANDUM TO

THE ROAD VEHICLE CARBON DIOXIDE EMISSION PERFORMANCE STANDARDS (CARS AND VANS) (AMENDMENT) (EU EXIT) REGULATIONS 2021

2021 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport ("DfT") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument deals with matters arising out of, or related to, the Northern Ireland Protocol ("NIP") by extending the application of EU-derived legislation that regulates carbon dioxide (CO_2) emissions from new passenger cars ("cars") and new light commercial vehicles ("vans") in Great Britain ("GB") to Northern Ireland, in effect creating a United Kingdom ("UK") wide regime.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 The powers under which this SI is made cover the entire United Kingdom (see section 24 of the European Union (Withdrawal) Act 2018) and the territorial application of this SI is not limited either by the Act or by the SI.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the whole of the UK.

4.2 The territorial application of this instrument is the whole of the UK.

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 Road Vehicle Carbon Dioxide Emission Performance Standards (Cars and Vans) (Amendment) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 The Withdrawal Act converted the body of EU law in force immediately before the end of the transition period, 23:00 on 31 December 2020, into domestic law. As part

of this body of law, Regulation (EU) 2019/631[1] and related EU tertiary legislation, including Commission Delegated Regulation (EU) 114/2013[2], were retained in UK law following the end of the transition period. These regulations set and manage CO_2 emissions standards for new cars and vans in the EU. Two EU Exit Statutory Instruments ("SIs"), The Road Vehicle Emission Performance Standards (Cars and Vans) (Amendment) (EU Exit) Regulations 2019[3] ("SI 2019/550") and the Road Vehicle Carbon Dioxide Emission Performance Standards (Cars and Vans) (Amendment) (EU Exit) Regulations 2020[4] ("2020/1418"), were made using powers under the Withdrawal Act to correct deficiencies that would arise when retaining these regulations from EU to UK law.

6.2 Regulation (EU) 2019/631 repealed and replaced Regulations (EU) 443/20095 and (EU) 510/20116, which previously set CO2 targets in the EU. These predecessor regulations were listed in Annex 2 of the NIP and by association Regulation (EU) 2019/631 was deemed to fall within scope of Annex 2. As a result, the amendments made by SI 2020/1418 to retained Regulation (EU) 2019/631 provided for the regime set out in that regulation to apply to GB only. On 18 December 2020 the EU-UK Joint Committee removed Regulations (EC) 443/2009 and (EU) 510/2011, and by association its successor Regulation (EU) 2019/631 from Annex 2 of the NIP. As a consequence, vehicles registered in Northern Ireland were not within scope of either regime.

6.3 This instrument extends the current GB regime to Northern Ireland, by making amendments to retained Regulation (EU) 2019/631 as amended by SI 2020/1418, as well as an associated Commission Delegated Regulation (EU) 114/2013 as amended by SI 2019/550 and SI 2020/1418.

7. Policy background

What is being done and why?

7.1 This instrument is designed to extend the application of the current GB new car and van CO_2 emission standards regulations to Northern Ireland, forming a UK-wide regime. The draft instrument has been proposed in order to deal with matters arising out of, or related to, the NIP.

7.2 Before the end of the transition period, CO_2 emissions from new cars and vans in the EU, including UK, were regulated by EU legislation - prior to 1 January 2020 by Regulation (EC) 443/2009 and Regulation (EU) 510/2011, and from 1 January 2020 by Regulation (EU) 2019/631, along with eight associated delegated regulations and various implementing decisions. Two EU Exit SIs were made in order to correct for deficiencies arising as a result of these regulations being retained in UK law, SI 2019/550 and SI 2020/1418.

7.3 SI 2019/550 was made on 11 March 2019 and amended the predecessor regulations, (EC) 443/2009 and (EU) 510/2011, along with much of the associated delegated

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02019R0631-20201119&from=EN#tocId32 as amended by SI 2020/1418
[2] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02013R0114-20140602&from=EN as amended by SI 2019/550 and SI 2020/1418.
[3] https://www.legislation.gov.uk/uksi/2019/550/made
[4] https://www.legislation.gov.uk/uksi/2020/1418/made
[5] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02009R0443-20180517&from=EN
[6] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32011R0510&from=EN

regulations, including (EU) 114/2013. At this time the regulations were not listed in Annex 2 of the NIP so provisions were made for the UK.

7.4 SI 2020/1418 was made on 1 December 2020 and amended (EU) 2019/631, which at an EU level had replaced and repealed (EC) 443/2009 and (EU) 510/2011. A few other delegated regulations, including (EU) 114/2013, were also amended. By this time (EC) 443/2009 and (EU) 510/2011, and by association (EU) 2019/631, were listed in Annex 2 of the NIP. Therefore SI 2020/1418 when amending (EU) 2019/631 and SI 2019/550 made provisions for GB only. Northern Ireland was going to continue to be covered by the EU regime.

7.5 As set out in paragraph 6.2, the car and van CO_2 regulations were originally listed in Annex 2 of the NIP, but then removed less than two weeks before the end of the transition period. As a result, neither the EU nor GB new car and van CO_2 emission regulations currently apply in Northern Ireland, meaning newly registered vehicles in Northern Ireland are not subject to any CO_2 emission limits. In the absence of legislation manufacturers are free to sell highly polluting vehicles in Northern Ireland without repercussions.

7.6 This instrument therefore amends Regulation (EU) 2019/631 to extend the existing GB regime to Northern Ireland, forming a UK-wide regime. This will ensure that the UK Government is able to regulate CO_2 emissions from newly registered cars and vans in Northern Ireland in the same manner that emissions from such vehicles are currently regulated in GB, from 1 September 2021. It also makes a number of consequential amendments to Commission Delegated Regulation (EU) No 114/2013.

Explanations

What did any law do before the changes to be made by this instrument?

7.7 Regulation (EU) 2019/631, as amended by SI 2020/1418, regulates CO_2 emissions from newly registered cars and vans in GB. As set out in paragraphs 7.4 to 7.5, provisions were set in GB only because the EU regulations were listed in the NIP.

7.8 Regulation (EU) 2019/631 as retained, sets mandatory fleet average CO_2 emission targets for new cars and vans registered in GB. Car and van manufacturers are set individual specific average emission targets, in grams of CO_2 per kilometre, which is based on the average mass (average weight in kilograms) of their fleet compared to the average mass of all of the vehicles in scope of the regulations. Targets are set annually and fines (excess emission premiums) are levied if a manufacturer exceeds their specific emissions target.

7.9 By 28 February each year, vehicle registration data from the previous calendar year is sent by the Vehicle Statistics team at DfT to the Vehicle Certification Agency ("VCA" - the enforcement authority acting on the Secretary of State's behalf for the purposes of these regulations). The VCA will then collate this information and provisionally calculate specific average emissions and targets for every manufacturer by 30 June for the preceding calendar year. Manufacturers are then able to review and make amendments to the dataset, with a finalised dataset being published by 31 October. Excess emissions premiums are then levied if required. This process will commence in 2022.

7.10 Regulation (EU) 2019/631 as amended, allows for flexibilities to be granted in relation to the targets to help manufacturers in certain circumstances. This includes: 'eco-innovations' where manufacturers can receive credits for using CO_2-reducing

technologies in their vehicles; 'pooling' where manufacturers can group together to be considered as one entity; and 'super-credits' where manufacturers can receive credits for producing more zero and low emission vehicles.

7.11 Derogations also exist which protect smaller manufacturers which may not have the financial or technological ability to achieve significant CO_2 savings. There are two types of derogation, niche and small volume; the type of derogation granted depends on how many vehicles a manufacturer registers. Annex 4 of Regulation (EU) 2019/631, as amended by SI 2020/1418, provides an equation for manufacturers to calculate their individual derogation thresholds. In the EU, thresholds were based on fixed values, however when transitioning to a GB scheme to ensure every manufacturer qualified for the same type of derogation thresholds are now calculated on an individual basis. This will be reviewed for 2025.

7.12 Manufacturers registering fewer than 1,000 vehicles are excluded from the scope of the specific emissions target and the excess emissions premium.

7.13 Commission Delegated Regulation (EU) No 114/2013, which supplements Regulation (EU) 2019/631, was also retained in UK law and specifies the rules for an application for a derogation from the standard CO_2 emissions target.

Why is it being changed?

7.14 The draft instrument has been proposed in order to deal with matters arising out of, or related to, the NIP following the laying and making of SI 2020/1418.

7.15 Regulations (EC) 443/2009 and (EU) 510/2011, and therefore by association Regulation (EU) 2019/631, were removed from Annex 2 of the NIP on 18 December 2020 by the EU-UK Joint Committee. SI 2020/1418 which amended (EU) 2019/631 and made provisions for GB only, was laid on the 13 October 2020, therefore was unable to account for the removal of the regulations from the NIP. As a result, Northern Ireland currently has no CO_2 regulations for new cars and vans, meaning manufacturers are free to sell highly polluting vehicles in Northern Ireland without restriction.

7.16 The changes proposed to retained Regulation (EU) 2019/631 will replace all references to Great Britain with United Kingdom. A carve out provision has also been added to this regulation to ensure that regulation will only apply to new cars and vans registered in Northern Ireland from 1 September. Any vehicles registered in Northern Ireland from 1 January 2021 to 31 August 2021 will not be in scope and will not be used to calculate manufacturers' average, specific emissions or targets.

7.17 Regulation (EU) 2019/631 has eight pieces of tertiary legislation, including Commission Delegated Regulation (EU) No 114/2013. One of the Annexes in this delegated regulation deals with the formatting of an application for a derogation and makes a number of references to GB. This instrument replaces those references with references to the UK.

What will it now do?

7.18 The purpose of the instrument is to ensure CO_2 emissions from newly registered cars and vans in Northern Ireland are regulated from 1 September 2021. The intention of the instrument is to form a UK-wide CO_2 emissions regime for new cars and vans.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union because it is being made under section 8C of the European Union (Withdrawal) Act 2018. The Minister has made any relevant statements 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 No formal consultation has been held specifically on the corrections proposed in this instrument.

10.2 On 11 March 2021, the VCA published a non-statutory, draft guidance document on how manufacturers will be expected to meet their obligations under the regulations in relation to GB. This explicitly stated the intention to regulate for vehicles registered in Northern Ireland at the earliest possible opportunity. Following feedback from manufacturers it was decided to regulate for vehicles in Northern Ireland from 1 September 2021. This provides vehicle manufacturers with a specific date, thereby removing uncertainty around when the regulations would come into force in Northern Ireland, whilst also providing a short time period to allow industry to adapt to the regulations coming into force.

10.3 A prior consultation was conducted in relation to the proposed changes to the regulations as they currently apply to GB, as made by SI 2020/1418.

10.4 DfT ran a six-week public consultation on the draft proposals for the GB cars and vans CO2 regime over the period from 10th July to 21st August 2020. The consultation document, and the Government's response to that consultation, can be found at: https://www.gov.uk/government/consultations/regulating-co2-emission-standards-fornew-cars-and-vans-after-transition.

10.5 In total there were eighteen responses to the consultation including from car manufacturers, trade associations, campaign and environmental groups. The responses were generally supportive of the Government's proposals to ensure that there was a continuation of CO2 emissions regulation post the transition period. The response was published on 13 October 2020.

10.6 A prior consultation had also been held in 2018 in relation to SI 2019/550, which was developed in preparation for a potential 'no deal' EU Exit scenario. This SI amended the then primary CO_2 regulations, Regulation (EC) 443/2009 and Regulation (EU) 510/2011, along with a number of delegated regulations and implementing decisions, and was based on UK-wide implementation, as the NIP had not yet been agreed.

10.7 This public consultation was carried out between 7 November 2019 to 28 November 2019. The consultation document can be found at: www.gov.uk/government/consultations/regulating-co2-emissionstandards-for-new-cars-and-vans-if-theres-no-brexit-deal

10.8 There were seven responses to that consultation, all of which were broadly supportive of the proposals. The key issues raised were a concern as to the potential for manufacturers' UK CO2 targets to be weakened and the possibility of simplifying the

arrangements for approving eco-innovations (we provided further clarity in the Government's response to consultation). The Government's response to that consultation can be found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/934127/government-response-co2-emission-standards.pdf

11. Guidance

11.1 A draft guidance document has been published for the retained EU law relating to CO_2 rules for new cars and vans and can be found at https://www.vehicle-certification-agency.gov.uk/wp-content/uploads/2021/03/New-Car-and-Van-CO2-Regulations-Guidance-2020-V10.pdf

11.2 This guidance document is kept under review and is updated periodically following engagement with industry and to reflect any legislative changes. Officials from the VCA and DfT have also committed to establishing a technical working group for the overall regime and will provide advice to industry as required.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

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

12.3 An Impact Assessment has not been prepared for this instrument because the costs and benefits to business are expected to fall below £5m in any one calendar year. The instrument extends existing regulatory standards for CO_2 emissions from newly registered cars and vans in GB to newly registered cars and vans in Northern Ireland, so will not impose any additional regulatory burden at the point of its entry into force.

13. Regulating small business

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

13.2 An exemption for vehicle manufacturers registering fewer than 1,000 vehicles into the EU market per calendar year already exists in order to mitigate the impacts on small businesses. The 1,000 vehicle de minimis threshold has been retained in UK law, and will remain unaffected by this Instrument.

13.3 As this instrument extends the current regulatory position and is not expected to have any significant 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 European Union (Withdrawal) Act 2018, no review clause is required.

14.2 The approach to monitoring of this legislation is specified in Article 15 of Regulation 2019/631, as amended by SI 2020/1418, which requires the effectiveness of the regulation to be reviewed by 2023. Article 15 also stipulates the policy areas that should be considered in this review, although the review is not restricted to this list.

15. Contact

15.1 Alexandra Geraghty at the Department for Transport, Telephone: 07866012746 or email: alexandra.geraghty@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Bob Moran, Deputy Director for the Environment Strategy Division, 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 and the European Union (Future Relationship) Act 2020

Part 1A

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) or 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) or 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) or 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) or 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) or 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 IP completion 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) or 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 section 8 or 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 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament 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.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion 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 IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 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

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Explanations

1.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.