EXPLANATORY MEMORANDUM TO

THE ROAD VEHICLE CARBON DIOXIDE EMISSION PERFORMANCE STANDARDS (CARS, VANS AND HEAVY DUTY VEHICLES) (AMENDMENT) 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 His Majesty.

1.1 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends the retained EU law which sets the carbon dioxide ("CO_2") emissions requirements for new cars, light commercial vehicles ("van") and heavy-duty vehicles ("HDV"), so that it continues to function as intended following amendments to legislation on type-approval as a result of the UK's withdrawal from the EU.

2.1 This instrument also corrects a minor error in the Road Vehicle Carbon Dioxide Emission Performance Standards (Cars and Vans) (Miscellaneous Amendments) Regulations 2021 ("the 2021 Regulations"). The procedure for free issue has therefore been applied and a printed copy of these Regulations is being issued free of charge to all known recipients of the 2021 Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These regulations correct a minor error in the 2021 Regulations. Regulation 2(2)(f) of the 2021 Regulations substituted point 5 of Part A of Annex 1 to Regulation (EU) 2019/631 and in doing so introduced an error in the formula used to calculate derogated CO_2 emission targets. Regulation 3(10)(b) of these regulations corrects that error and a printed copy of these regulations is therefore being issued free of charge to all known recipients of the 2021 Regulations. The Department for Transport has complied with the requirement stated in paragraph 4.7.6 of Statutory Instrument Practice to consult with the SI Registrar on the use of the free issue procedure.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the whole of the UK.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the whole of the UK.

5. European Convention on Human Rights

5.1 The Minister of State, Lucy Frazer MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Road Vehicle Carbon Dioxide Emission Performance Standards (Cars, Vans and Heavy Duty Vehicles) (Amendment) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 The primary purpose of this instrument is to correct deficient references to type-approval[1] within the retained car, van[2] and HDV[3] CO_2 emission regulations resulting from the UK's withdrawal from the EU. Following EU exit and due to the relevant type-approval regulations being listed in the Northern Ireland Protocol ("the Protocol"), multiple vehicle type-approval routes now exist in the UK. The type-approval routes include EU, Great Britain ("GB") and UK Northern Ireland ("UK(NI)") type-approval. Vehicles sold in GB will need GB type-approval and vehicles sold in Northern Ireland will need either EU or UK(NI) type-approval. As a result, references in the car, van and HDV CO_2 emissions regulations need to expand from EU type-approval to EU, GB and UK(NI) type-approval. This will ensure that these vehicles are in scope of the relevant CO_2 emissions regime and their emissions are effectively regulated. This Instrument relates to the Statutory Instrument which corrects deficiencies in retained EU law on vehicle type-approval and implements the GB type-approval scheme ("the GB type-approval 2022 Regulations")[4].

6.2 Similarly, other amendments in this SI are being made to update the retained car and van CO_2 emission regulations to ensure they operate effectively. Regulations (EU) 1014/2010, (EU) 293/2012 and (EU) 63/2011 all as amended, are updated to ensure that they operate effectively and in line with the primary car and van CO_2 regulation, Regulation (EU) 2019/631 as amended. A minor, non-EU exit related, error introduced by SI 2021/1242 relating to how derogated CO_2 emission targets are calculated in Regulation (EU) 2019/631 as amended is required, as referred to in paragraphs 2.2 and 3.1 above. Therefore, to avoid stakeholder confusion this SI will amend these regulations to ensure they are up to date with all relevant policy changes.

7. Policy background

What is being done and why?

7.1 This Instrument corrects deficient references in the car, van and HDV CO_2 emission regulations to the retained EU vehicle type-approval regulations. Following EU exit, 36 vehicle type-approval regulations were retained in UK law, but were not immediately corrected. As a result, the car, van, and HDV CO_2 emission regulations continued to reference the relevant EU type-approval legislation. The type-approval

[1] Type approval is the assessment of vehicles against statutory safety and environmental standards, without which a vehicle cannot be manufactured or sold.

[2] List of car and van CO_2 emission regulations: Regulation (EU) 2019/631, Regulation (EU) 1014/2010, Regulation (EU) 293/2012, Regulation (EU) 63/2011, Regulation (EU) 114/2013, Regulation (EU) 725/2011, Regulation (EU) 427/2014, Regulation (EU) 2017/1152 and Regulation (EU) 2017/1153 all as amended in different capacities by SI 2019/550, SI 2020/1418, SI 2021/898 and SI 2021/1242.

[3] List of HDV CO_2 emission regulations: Regulation (EU) 2018/956 and Regulation (EU) 2019/1242 both as amended by SI 2019/846 and SI 2020/1402.

[4] The Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment and Transitional Provisions) (EU Exit) Regulations 2022

regulations have now been corrected by the GB type-approval 2022 Regulations to ensure they operate effectively, creating multiple type-approval routes, including, but not limited to: GB whole vehicle type-approval, GB medium series approval and GB small series approval: collectively these will be called GB type-approval. From 1st February 2024, new types of vehicles sold into the GB market must first receive GB type-approval through a GB type-approval scheme to prove they have been built to the required safety and environmental standards. Ahead of this date, manufacturers can voluntarily apply. In Northern Ireland, UK(NI) type-approval regulations, providing the VCA with the ability to approve vehicles based on the EU type approval regulations as they apply in Northern Ireland, have also been created due to EU exit and the Protocol.

7.2 Prior to this instrument being made, only vehicles with EU type-approval as granted under the EU type-approval regulations were in scope of the car, van and HDV CO_2 emission regulations. This Instrument is required to ensure that vehicles with GB type-approval or UK(NI) type-approval (the latter aligning with EU type-approval, for the avoidance of doubt) are brought into scope of the vehicle CO_2 emission regulations. Given the introduction of GB type-approval, it is essential that these vehicles are brought into scope of the CO_2 emission regulations to ensure they are regulated and monitored appropriately. If the car, van and HDV CO_2 emission regulations did not include vehicles with any form of GB or UK(NI) type-approval, the CO_2 emissions from these vehicles would be unregulated (approximately 2-3 million vehicles once the GB scheme is fully operational in 2026), resulting in significant amounts of carbon being emitted, risking legally binding carbon budgets and the Government's net zero commitments. This Instrument will correct the car, van and HDV CO_2 emission regulations to correct references to EC or EU type-approval to include references to EC/EU, GB and UK(NI) type-approval to reflect the creation of these new schemes. As the GB and UK(NI) type-approval schemes replace the EU type-approval schemes, this Instrument ensures the continuation of current standards.

7.3 This Instrument makes a number of minor amendments to the car and van CO_2 emission regulations to ensure they are up to date and consistent with one another. The amendments include:

- Clarifying the monitoring and reporting data points that the Driver and Vehicle Licensing Agency ("DVLA") are due to report to the VCA as listed in both Regulations (EU) 1014/2010 and (EU) 293/2012 as amended, to ensure consistency with the primary regulation, Regulation (EU) 2019/631 as amended.
- Clarifying how CO_2 emission targets should be set for smaller volume manufacturers in Regulation (EU) 63/2011 as amended, to ensure consistency with the primary regulation, Regulation (EU) 2019/631 as amended.
- To correct a minor error, unrelated to EU exit, and created by SI 2021/1242, clarifying how a derogated CO_2 emission target should be calculated in Regulation (EU) 2019/631 as amended.

Explanations

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

7.4 Prior to EU exit, the car, van and HDV CO_2 emission regulations monitored and set CO_2 emission standards which all manufacturers of new cars, vans and HDVs must follow.

7.5 For the new car and van CO_2 emission regulations, the primary retained regulation is Regulation (EU) 2019/631 as amended and is supported by eight other pieces of tertiary legislation. Together these pieces of legislation set CO_2 emission reduction targets on a manufacturer's new vehicle fleet. Financial penalties apply for non-compliance with these targets. There are various flexibilities within the regulations that help manufacturers achieve these targets including, but not limited to: derogations/adapted CO_2 emission targets for small volume manufacturers; the use of CO_2 reducing technologies deployed in vehicles to lower overall emissions; allowing manufacturers to 'pool' together to be considered one manufacturer to offset any non-compliance; and super-credits which enable manufacturers to lower their average emissions based on the amount of vehicles they sell with emissions below 50g CO_2/km.

7.6 For the HDV CO_2 emission regulations, retained Regulation (EU) 2018/956 as amended and Regulation (EU) 2019/1242 as amended require manufacturers of new HDVs to send data points related to characteristics of their vehicles to the enforcement body, the VCA. This data will help to set HDV manufacturers their first CO_2 emission target in 2025. Failing to provide the required data or non-compliance with CO_2 targets in 2025 will result in financial penalties.

7.7 The vehicles in scope of the car, van and HDV CO_2 emission regulations were only those vehicles with EU vehicle type-approval.

Why is it being changed?

7.8 Following the UK's departure from the EU, the car, van and HDV CO_2 emission regulations have been corrected to work in a UK context by SI 2019/550, SI 2019/846, SI 2020/1402, SI 2020/1418 and SI 2021/898. These Instruments ensured the UK had its own functioning version of the CO_2 emission regulations. However, the only vehicles currently in scope of the UK car, van and HDV CO_2 emission regulations are those with EU vehicle type-approval.

7.9 The GB type-approval 2022 Regulations have been made to correct the retained EU vehicle type-approval regulations, establishing GB-wide type-approval routes. These regulations apply solely in GB as the EU vehicle type-approval regulations were listed in the Protocol, therefore vehicles sold in Northern Ireland will continue to need EU type-approval or the equivalent UK(NI) type-approval. As a result of EU exit and the GB type-approval 2022 Regulations vehicles with either GB, UK(NI) or EU type-approval can be sold on the UK market.

7.10 The car, van and HDV CO_2 emission regulations need to be corrected to expand the vehicles in scope from those with only EU type-approval to those with GB, UK(NI) or EU type-approval.

7.11 In addition, three tertiary pieces of the new cars and vans CO_2 emission regulations, Regulation (EU) 63/2011, (EU) 1014/2010 and (EU) 293/2012 all as amended, are being updated with the information contained in Regulation (EU) 2019/631 as amended. Prior to EU exit, the EU did not update these pieces of legislation with the most recent legislative text as set out in Regulation (EU) 2019/631 as amended. These tertiary regulations will be updated to ensure they operate effectively.

What will it now do?

7.12 The Instrument will correct the UK car, van and HDV CO_2 emission regulations to ensure vehicles with GB and UK(NI) type-approval are in scope of the regulations in

addition to those with EU type-approval. This will ensure the CO_2 emissions from vehicles registered in the UK with any of the aforementioned type-approval routes will be regulated effectively. If not corrected, the CO_2 emissions from approximately two to three million vehicles will be unregulated, risking carbon budgets and Government's commitment to reaching net zero emission by 2050.

7.13 Expanding the scope of the CO_2 emission regulations from vehicles with EU-derived type-approval, to those with EU, GB or UK(NI) type-approval, will ensure that the same vehicles that were in scope of the CO_2 regulations prior to these changes being made, will continue to remain in scope of the CO_2 regulations going forward.

7.14 In addition, Regulation (EU) 63/2011, (EU) 1014/2010 and (EU) 293/2012 all as amended, will now contain the most up-to-date legislative information and be consistent with Regulation (EU) 2019/631 as amended.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is being made using the power in section 8(1) of the European Union (Withdrawal) Act 2018 in order to address failures 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.

8.2 Alongside the European Union (Withdrawal) Act 2018 powers the instrument is also being made under the power in Article 10, paragraph 8 of Regulation (EU) 2019/631 as amended. This amendment corrects a minor, non-EU exit related, error introduced by SI 2021/1242 related to how derogated CO_2 emission targets should be calculated in Regulation (EU) 2019/631 as amended.

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 amendments proposed in this instrument for the reasons outlined below.

10.2 These changes are of a technical and uncontroversial nature. In early 2021, the VCA published a non-statutory, draft guidance document on how car, van and HDV manufacturers will be expected to meet their obligations under the UK regulations. These documents explained that as soon as GB and UK(NI) type-approval schemes were in place, the UK vehicle CO_2 emission regulations would bring these type-approval routes into scope, therefore these changes are expected by stakeholders.

10.3 In addition, a consultation has already been held on the introduction of GB vehicle type-approval post-EU exit as well as another two on the retained, UK wide car, van and HDV CO_2 emission regulations. For vehicle type-approval a recent public consultation was held on establishing a GB type-approval scheme, from 1 June 2022

to 29 June 2022.[5] For the car, van and HDV CO_2 emission regulations two public consultations were previously held on the creation of the UK schemes, the first was during 7 to 28 November 2019 on the contents of SI 2019/550,[6] which was drafted based on a no deal scenario. The other consultation was during 10 to 21 August 2020 and was on the contents of both SI 2020/1418 and SI 2020/1402[7] which were drafted on the basis of a post-EU exit deal between the UK and EU.

11. Guidance

11.1 As mentioned in section 10.2, guidance for vehicle manufacturers on the new UK wide car, van and HDV CO_2 emission regulations is publicly available on the VCA website and can be found using the following link: https://www.vehicle-certification-agency.gov.uk/fuel-consumption-co2/average-emissions-monitoring/

11.2 Following this instrument being made the guidance documents will be updated to reflect the changes made to the regulations.

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 A full Impact Assessment has not been prepared for this instrument because the direct impacts on business have been assessed at under £5m per year. Instead, light-touch internal analysis has been conducted, the findings of which are presented below.

12.4 The impacts of this Instrument are expected to be negligible as it is a technical Instrument, with no new policy measures being introduced. It will provide a continuation of current standards by ensuring that the appropriate vehicles are in scope of the car, van and HDVs CO_2 emission regulations and that the regulations are consistent with one another.

12.5 **Rationale –** The primary reason to intervene is to ensure the UK continues to effectively regulate CO_2 emissions from new road vehicles placed onto the UK market. Without this SI it is expected that CO_2 emissions will rise, putting at risk meeting legally binding carbon budgets and net zero commitments.

12.6 **Costs and benefits –** They are expected to be negligible to stakeholders as this SI presents a continuation of current standards. A potential cost may arise from stakeholders needing to familiarise themselves with the regulations, however as stakeholders are expecting these changes and as they reflect an on-going of current legislation these costs are likely to be negligible.

[5] The GB vehicle type-approval consultation and its outcome can be found here: https://www.gov.uk/government/consultations/vehicle-type-approval-establishing-a-gb-road-vehicle-approval-scheme.

[6] The consultation and outcome on SI 2019/550 can be found here: http://www.gov.uk/government/consultations/regulating-co2-emissionstandards-for-new-cars-and-vans-if-theres-no-brexit-deal

[7] The consultation and outcome on SI 2020/1418 and SI 2020/1402 can be found here: https://www.gov.uk/government/consultations/regulating-co2-emissionstandards-fornew-cars-and-vans-after-transition.

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 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 is merely a continuation of 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 The approach to monitoring of this legislation is for there to be no formal review of the amendments set out in this Instrument.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Minister of State, Lucy Frazer MP, has made the following statement: "As the expected net impact of this Instrument on business is negligible, falling well below £5 million, a statutory review clause is deemed to not be required."

14.3 In addition, as the majority of this instrument is made under the European Union (Withdrawal) Act 2018 no review clause is required for these amendments.

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 Decarbonisation Strategy, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lucy Frazer MP, Minister of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.