EXPLANATORY MEMORANDUM TO

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

2019 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 that regulates carbon dioxide emissions from cars and light commercial vehicles (vans), arising as a result of the withdrawal of the United Kingdom ("UK") from the European Union ("EU"). This will ensure that the legal framework that regulates carbon dioxide emission from cars and vans continues to function correctly after exit day.

Explanations

What did any relevant EU law do before exit day?

2.2 Emissions of CO_2 from new passenger cars and vans registered in Europe each year (registrations) are governed by Regulations (EC) 443/2009 and (EC) 510/2011 respectively. These Regulations establish mandatory fleet average CO_2 emissions targets for all cars and vans registered in the EU, Iceland, Liechtenstein and Norway in each calendar year; and also establish specific targets by which individual manufacturers must abide. Individual targets are based on a formula which compares the mass of the vehicles within a manufacturer's fleet against the average mass of all registered vehicles that are in scope of the regulation. Fines, called 'excess emission premiums', are levied for non-compliance with these individual targets.

2.3 EU Member States are required to record information about new vehicle registrations within their territories and report it to the European Environment Agency by 28 February of the following year. This data is collated by the European Commission, and provisional calculations for the emissions performance of individual manufacturers are published by 30 June of the same year. Manufacturers may then work with the Commission over a period of three months in order to correct any errors or anomalies within their data set, before the Commission publishes the final data by 31 October.

2.4 Varying flexibilities exist within these Regulations in order to allow manufacturers to meet their targets. These include the ability for manufacturers to pool their registrations together; to apply for 'eco-innovation credits' for deploying technologies that contribute towards CO_2 but cannot be tested by the traditional testing protocol; and to apply for derogations from the fleet CO_2 emissions target if classified as a

small or niche volume vehicle manufacturer – a manufacturer registering fewer than 10,000 or 300,000 cars or 22,000 vans in a particular calendar year. The process for applying for these flexibilities is included either within Regulation (EC) 443/2009 & Regulation (EC) 510/2011, or set out in additional delegated regulations.

Why is it being changed?

2.5 The proposed changes are designed to ensure that the CO_2 emissions of new cars and vans registered in the UK after the UK's withdrawal from the European Union continue to be regulated in a manner that is at least as ambitious as current arrangements. If these changes are not made, then the retained EU legislation would have no legal impact on newly registered cars and vans in the UK. This would mean that, after EU withdrawal, newly registered cars and vans in the UK would not be subject to any functioning regulations that seek to limit CO_2 emissions.

2.6 The proposed changes also seek to ensure that the legislation continues to work as intended. The provisions within the EU legislation are based on EU registrations. Extracting the UK registrations from the totals without making sensible amendments would see certain clauses within the legislation, such as fixed derogation thresholds, fail to work sensibly.

2.7 A summary of the changes being made to the current legislation is below:

- Moving from fixed derogation thresholds to thresholds based on each manufacturer's historical share of EEA sales occurring in the UK, thus ensuring that manufacturers retain the same type of CO_2 target after the UK's withdrawal;
- Establishing a domestic approval process for eco-innovation technologies to ensure that new technologies may continue to receive credits for real-world CO_2 reductions without first having to be tested in the EEA;
- Minor amendments to restate retained EU legislation in a clearer and more accessible way, such as omitting time-limited obligations;
- Replacing all references which relate to the UK as an EU Member State in order to ensure that all regulatory requirements continue to apply within the UK; and
- Replacing all obligations to, and enforcement actions undertaken by, the Commission with the Department for Transport Secretary of State to reflect the fact that UK new car and van CO_2 emissions will be regulated domestically after the UK's withdrawal from the EU.

2.8 The eight (EC) Regulations and twenty-five Implementing Decisions mentioned in paragraph 6.5 will all become retained EU law on exit day, and will all be retained and amended in order to ensure that all of the obligations and commitments listed within continue to apply in a sensible and effective manner after the UK's withdrawal from the EU.

What will it now do?

2.9 The purpose of the instrument is to make the required amendments to the retained EU legislation regulating CO_2 emissions from newly registered cars and vans in the UK to correct for deficiencies arising from the UK's withdrawal from the EU.

2.10 The intention is that the legislation remains operable within UK law; continues to regulate CO_2 emissions from newly registered cars and vans 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 European Commission to a public authority within the UK. Additionally, there are a number of sub-delegated clauses within the Regulations that allow for updates to the legislation to be made, such as updating the formula that sets manufacturers' targets to reflect changes to the weight of the relevant vehicle fleet.

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 is England, Wales, Scotland and Northern Ireland.

4. Extent and Territorial Application

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

4.2 The territorial application of this instrument is England, Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

5.1 The Minister of State for Transport, Jesse Norman, has made the following statement regarding Human Rights:

"In my view the provisions of the Road Vehicle Emission Performance Standards (Cars and Vans) (Amendment) (EU Exit) Regulations are compatible with the Convention rights."

6. Legislative Context

6.1 These Regulations are made in exercise of powers in section 8 of the European Union (Withdrawal) Act 2018.

6.2 The European Union (Withdrawal) Act 2018 makes provision for repealing the European Communities Act 1972 (ECA) and will preserve EU law, as it stands at the moment of exit, 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.

6.3 The 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.

6.4 This instrument corrects a number of inoperabilities in the legislation that enforces CO_2 emissions standards from newly registered cars and light commercial vehicles when the EU legislation is converted into UK law at the point of the UK's withdrawal from the European Union. There is currently no domestic-only legislation that regulates CO_2 emissions from newly registered cars and light commercial vehicles in the UK.

6.5 This instrument corrects for deficiencies arising from the UK's withdrawal from the EU in eight retained EU regulations: Regulation (EC) 443/2009; Regulation (EC) 1014/2010; Regulation (EC) 63/2011; Regulation (EC) 725/2011; Regulation (EC) 510/2011; Regulation (EC) 293/2012; Regulation (EC) 114/2013; and Regulation (EC) 427/2014. All eight EU Regulations currently have direct effect in the UK, and apply to all vehicle registrations, manufacturers, and to the UK Government. The instrument will also correct for deficiencies in twenty-five retained Implementing Decisions: 2012/99/EU; 2012/100/EU; 2013/128/EU; 2013/341/EU; 2013/451/EU; 2013/529/EU; 2014/128/EU; 2014/465/EU; 2014/806/EU; 2015/158; 2015/206; 2015/279; 2015/295; 2015/1132; 2015/2280; 2016/160; 2016/265; 2016/362; 2016/587; 2016/588; 2016/1721; 2016/1926; 2017/785; 2017/1402; and 2018/1876.

6.6 Regulation (EC) 443/2009 and Regulation (EC) 510/2011 establish mandatory annual fleet CO_2 emissions targets for new cars and vans registered in the EU, Iceland, Liechtenstein and Norway, as well as specific CO_2 emissions targets for manufacturers. The Regulations also provide the legislative basis for flexibilities that may be used by manufacturers, including the ability to pool registrations with other manufacturers; apply for derogations from the mandatory annual fleet CO_2 emissions target if a small or niche volume manufacturer; or to apply for eco-innovation credits for technologies that reduce emissions in the real-world but that are not taken into consideration during the vehicle emissions test.

6.7 Regulations (EC) 1014/2010 and (EC) 293/2012 establish the rules for the collection, monitoring and reporting of registrations and emissions data by EU Member States to the European Commission. Currently, Member States capture specific information on every car and van registered in their territory. This information is then transferred to the European Commission for analysis.

6.8 Regulations (EC) 63/2011 & (EC) 114/2013 establish the procedure for manufacturers of cars and of vans to apply for derogations from the annual fleet CO_2 emissions target. Manufacturers registering fewer than 300,000 cars or 22,000 vans in a given calendar year may apply for a different style of CO_2 reduction target that reflects their ability to deploy/develop technologies on their vehicles. This allows them to remain competitive in the EU market against manufacturers that have greater economic ability to develop new technologies.

6.9 Regulations (EC) 725/2011 and (EC) 427/2014 establish the application process for manufacturers or parts suppliers that deploy technologies on their vehicles but which are not taken into account during the usual vehicle emissions test procedure, such as LED lightbulbs.

6.10 Implementing Decisions 2012/99/EU and 2012/100/EU establish the procedure through which the European Commission is able to collect any Excess Emissions

Premiums that have been levied as result of exceeding a specific emissions of CO_2 target.

6.11 Implementing Decision 2013/128/EU; 2013/341/EU; 2013/451/EU; 2013/529/EU; 2014/128/EU; 2014/465/EU; 2014/806/EU; 2015/158; 2015/206; 2015/279; 2015/295; 2015/1132; 2015/2280; 2016/160; 2016/265; 2016/362; 2016/587; 2016/588; 2016/1721; 2016/1926; 2017/785; 2017/1402; and 2018/1876 are eco-innovation approvals. These Implementing Decisions specify the technologies that have been approved; the 'eco-innovation code' that should be entered into the vehicle's paperwork as proof of that technology being deployed on the vehicle; and the test procedure that the vehicle and/or technology should be subject to in order to determine the CO_2 savings as a result of the deployment of the technology.

6.12 This instrument is being made in order to correct various inoperabilities which arise from the UK's withdrawal from the European Union. It also transfers the rights and obligations that are currently conferred on the European Commission to the UK Government in order to allow the Government to regulate domestic new car and van CO_2 emissions.

7. Policy background

What is being done and why?

7.1 This instrument is designed to ensure that the UK Government is able to continue to regulate the CO_2 emissions from newly registered cars and vans in the UK after the UK's withdrawal from the European Union. 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 meet two criteria:

- That at the point of withdrawal, the UK is able to meet its commitment to ensuring that approach to emissions regulation is at least as ambitious as current arrangements; and
- To maintain regulations that as closely as possible match the current arrangements in the UK in order to minimise any potential additional burden to both administration and environmental performance as a direct consequence of the UK's withdrawal from the EU.

7.3 There are some choices that have been made in order to ensure that both of the criteria above have been met.

7.4 Currently, manufacturer targets are established by formulae which compare the mass of all newly registered cars and/or vans in a manufacturer's fleet against the average mass of all such vehicles in the European Union. This approach is designed to ensure that, as it is only the fleet average that is regulated, manufacturers may register any vehicle they like within the EU market, thereby protecting the diversity of the fleet, whilst the fleet as a whole becomes more efficient. The average mass figure is updated every three years in order to ensure that it keeps pace with any changes to the overall mass of the European fleet. At the point of exit, the average mass figure that all other vehicles are compared against will be retained in order to ensure continuity for vehicle manufacturers. At the first such update to the average vehicle mass after the UK's withdrawal, the mass will be amended to reflect the average mass of all relevant vehicles registered within the United Kingdom only.

7.5 Manufacturers may currently apply for derogations from the formula that establishes the manufacturer fleet CO_2 target if their total registrations for any calendar year fall beneath pre-defined thresholds. For cars, these thresholds are 300,000 vehicles for a 'niche volume' derogation or 10,000 vehicles for a 'small volume' derogation, whilst for vans the threshold is 22,000 for a 'small volume' derogation – there is no 'niche volume' derogation for vans. A small volume derogation allows the manufacturer to work directly with the European Commission to negotiate a CO_2 reduction that is appropriate for the type of vehicle that they sell, that is reflective of the markets they sell in to and reflects the manufacturer's economic capability to reduce emissions/deploy emission reduction technologies. A niche volume derogation allows a manufacturer to meet a fixed reduction percentage based on their own historical emissions.

7.6 Directly pro rating these thresholds to account for the UK share of the EU market is problematic as different manufacturers see different shares of their EU sales occur in the UK – a direct ratio would have the effect of moving some manufacturers either into or out of the derogation thresholds that they currently use, and may therefore mean they receive significantly tougher/weaker CO_2 targets than they otherwise would have received. Therefore, each manufacturer will receive individual thresholds based on their share of EU sales that occurred in the UK in 2017 (the latest year for which we have complete and ratified data). This will ensure that manufacturers qualify for the same type of derogation in the UK that they would have received through the EU regulation. The de minimis threshold of 1,000 vehicles is retained: more information on the de minimis threshold can be found in paragraph 13.2 below.

7.7 Under the EU regulations, manufacturers can apply for credits against their CO_2 targets for technologies on their vehicles that reduce emissions but are not 'seen' during the regulatory type approval test. To gain credit, manufacturers must demonstrate the emissions saving, have it independently verified and apply to the European Commission who adjudicate.

7.8 In order to ensure that these technologies are still deployed on UK vehicles, this instrument automatically recognises all such eco-innovation approvals that have occurred at the point of withdrawal. After the UK's withdrawal from the European Union, this instrument mirrors the current approvals system domestically, ensuring that new technologies can continue to be tested and approved in the UK.

7.9 'Excess emissions premiums' are levied for non-compliance of manufacturer CO_2 targets. At the point of the UK's withdrawal, this fine will be €95 per gram of exceedance per vehicle registered. As per guidance issued by the Department for Exiting the European Union, the average exchange rate between the euro and pound sterling in 2017 of £1:€1.14615 has been used to convert this figure into a sterling amount, rounded to 2 significant figures. Therefore, the excess emissions premium in this instrument is £83 per gram of exceedance per vehicle registered.

7.10 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 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.

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 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.

9. Consolidation

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

10. Consultation outcome

10.1 A public consultation was carried out on the draft proposals for the proposed UK Regulations over the period from 7 November to 28 November. The consultation document is at: www.gov.uk/government/consultations/regulating-co2-emission-standards-for-new-cars-and-vans-if-theres-no-brexit-deal

10.2 There were seven responses to the consultation all of which were broadly supportive of the proposals. The key issues raised were a concern on the potential for manufacturers' UK CO_2 targets to be weakened (the proposals do not change the existing cars and vans CO_2 reduction end targets that the manufacturers must meet out to 2020 and the emissions reduction will be the same); and, the possibility of simplifying the arrangements for approving eco-innovations (we have provided further clarity in the Government's response to consultation). The Government's response to the consultation can be found on the www.gov.uk website (being published 18 December 2018).

11. Guidance

11.1 Detailed guidance on how the regulations will function and how the various flexibility mechanisms should be applied for will be provided to manufacturers, and made available on line, as soon as it practicable to do so.

12. Impact

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

12.2 There is 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 maintains existing regulatory standards for CO_2 emissions from newly registered cars and vans in the UK, so will not impose any additional regulatory burden at the point of the UK's withdrawal from the EU.

12.4 When the formulae are updated as required by the legislation, and the average mass figure in the formulae reflects a UK average rather than an EU average, economic models indicate that increasing uptake of electric vehicles through the early 2020s will allow manufacturers to meet the new targets without any additional economic burden.

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. This 1,000 vehicle de minimis threshold is being retained by this instrument.

13.3 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.

14.2 Every three years, the formulae that define the individual manufacturer emission targets are updated to reflect the average of mass of all relevant vehicles over a prior time frame. This instrument does not amend this requirement.

15. Contact

15.1 James Vickery at the Department for Transport, Telephone: 07773 074513 or email: james.vickery@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Dr. Bob Moran, Deputy Director, Environment Strategy Division at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jesse Norman, Minister 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 13, 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 16, 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 Minister of State for Transport, Jesse Norman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Road Vehicle Emission Performance Standards (Cars and Vans) (Amendment) (EU Exit) Regulations do no more than is appropriate. This is the case because the instrument ensures that the regulations governing CO_2 emissions from newly registered cars and vans in the United Kingdom will continue to be legally operable when the United Kingdom withdraws from the European Union".

2. Good reasons

2.1 The Minister of State for Transport, Jesse Norman, 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 CO_2 emissions from newly registered cars and vans in the United Kingdom 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 CO_2 emissions from newly registered cars and vans in the UK are regulated in an effective manner after the UK's withdrawal from the EU."

3. Equalities

3.1 The Minister of State for Transport, Jesse Norman, 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 Minister of State for Transport, Jesse Norman, 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.