EXPLANATORY MEMORANDUM TO

THE VEHICLE EMISSIONS TRADING SCHEMES (AMENDMENT) ORDER 2024

2024 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.

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

2. Declaration

2.1 Lilian Greenwood MP, Parliamentary Under Secretary of State for the Future of Roads at the Department for Transport, confirms that this Explanatory Memorandum meets the required standard.

2.2 Rosalind Marshall, Deputy Director for Zero Emission Vehicle Regulations and Heavy Duty Vehicles, at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Zack Campbell at the Department for Transport Telephone: 07977 360637 or email: zack.campbell@dft.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the Vehicle Emissions Trading Schemes Order 2023 ("VETS") to include Northern Ireland in the Zero Emission Vehicle ("ZEV") Mandate. VETS consists of four trading schemes made with powers in the Climate Change Act 2008 ("CCA") two of which implement in Great Britain ("GB") the ZEV Mandate that sets targets for the registration[1] of new non-zero emission cars and vans. The other two schemes implement a carbon dioxide baseline target that limits CO2 emissions from new non-zero emission cars or vans. The four schemes form part of the transition to zero emission vehicles that is underpinned by the United Kingdom Government's commitment to net zero by 2050. The purpose of this instrument is to expand the territorial scope of VETS to include Northern Ireland, replacing the existing assimilated New Car and Van CO2 Emissions Regulation[2] that are in force

[1] "Registration" is the process enabling new vehicles to be driven on the road in the UK. A manufacturer is responsible for registrations of vehicles of which it is the manufacturer.

[2] List of new 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 S.I. 2019/550, S.I. 2020/1418, S.I. 2021/898, S.I. 2021/1242, S.I. 2022/1361, and the Vehicle Emissions Trading Schemes Order 2023.

there. The instrument further makes small, technical amendments to VETS to update the framework and correct oversights.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, Wales, Scotland, and Northern Ireland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales, Scotland, and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 The UK Government is legally committed to net zero emissions by 2050 through the 2019 amendment to the Climate Change Act 2008. The Northern Ireland Executive is similarly committed to net zero by 2050 through the Climate Change Act (Northern Ireland) 2022, with equivalent commitments made by the Welsh Government and the Scottish Government.

5.2 To achieve these goals, the previous UK Government, the Department for Infrastructure (Northern Ireland), the Welsh Government, and Transport Scotland (the Scottish Government) consulted on a final design for a zero emission vehicle mandate and CO_2 emissions framework in 2023. This framework was subsequently created as the Vehicle Emissions Trading Schemes Order 2023 and approved in the House of Commons, House of Lords, Scottish Parliament, and Senedd Cymru before making on 13 December 2023 by HM The King in Council.

5.3 VETS established four separate trading schemes using powers contained in section 44, 46(3), 54, and 90(3) of, and Parts 1 and 3 of Schedule 2 and paragraph 9 of Schedule 3 to, the CCA. All four trading schemes came into force 3 January 2024. The Westminster and devolved parliamentary procedures for making a GB-wide trading scheme are set out in Schedule 3 to the CCA. Paragraph 9 of that Schedule enables such a scheme to be established by Order in Council. Pursuant to paragraph 11 of Schedule 3, before a recommendation may be made to His Majesty in Council to make the Order in Council, a draft of the instrument containing the Order in Council must be laid before, and approved by, a resolution of each House of Parliament and the relevant devolved legislatures.

5.4 At the time VETS was laid on 16 October 2023, the Northern Ireland Assembly was unable to meet this requirement as it was not sitting. As such, the territorial extent of VETS could not include Northern Ireland. Consequential amendments to the existing assimilated New Car and Van CO2 Emissions Regulations[3] were made under section 54 of the CCA to preserve that regime for Northern Ireland to ensure emissions from new cars and vans continued to be regulated.

5.5 On 3 February 2024, the Northern Ireland Assembly returned and an Executive was formed. On 10 May 2024, John O'Dowd MLA, the Minister for Infrastructure in the Executive, wrote to his Ministerial counterparts in the previous UK Government, the Scottish Government, and the Welsh Government to inform them of his intent for

[3] List of new car and van CO2 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 S.I. 2019/550, S.I. 2020/1418, S.I. 2021/898, S.I. 2021/1242 and S.I. 2022/1361.

Northern Ireland to join VETS. UK, Scottish, and Welsh Ministers unanimously support this change.

5.6 The principal purpose of this instrument is therefore to expand the scope of VETS to include Northern Ireland. This legislation further updates and corrects aspects of VETS.

5.7 Part 1 of this instrument establishes the coming into force dates of the provisions and establishes the citation, commencement, and extent.

5.8 Part 2 includes twelve articles making technical updates and corrections. These are:

- Article 3: Corrects an inadvertent technicality that prevents hydrogen fuel cell powered vehicles from being classed as zero emission, adds a UN Regulation definition and adds a reference to heavy duty type-approval.
- Articles 4 and 6: Removes inadvertent restrictions for zero emission wheelchair accessible vehicle credits and zero emission special purpose vehicle credits.
- Articles 5 and 7: Fixes an error in the calculation of a manufacturer's cap on converting allowances, a flexibility included in VETS that allows participants that beat their CO_2 target to transfer that overcompliance to use against their ZEV target.
- Article 8: Fixes an error requiring vehicle information from an incorrect source.
- Article 9: Clarifies the definition of the term "banked", a reference to the flexibility included in VETS that allows participants to store overcompliance against ZEV targets for use in future years.
- Article 10: Fixes a grammatical error for clarity of meaning.
- Article 11: Adds the civil penalty for providing false information when questioned under the enforcement power provided for in article 87 of VETS.
- Articles 12 and 14: Updates a value used in multi-stage vehicle calculations.
- Article 13: Fixes an oversight on the manner in which an application form be provided and one point of information required within that application.

5.9 Part 3 of this instrument expands the territorial scope of VETS from England, Wales, and Scotland to include Northern Ireland, following the decision of the Minister for Infrastructure in the Northern Ireland Executive.

5.10 Part 4 makes consequential amendments, principally revocations, to the remaining assimilated direct emissions regulations.

5.11 The effect of these provisions is that VETS will extend to Northern Ireland from 1 January 2025. The existing New Car and Van CO_2 Emissions Regulation as they apply in Northern Ireland will be sunset simultaneously, with certain administrative powers saved until assessment of the 2024 compliance year is complete. The technical amendments in part 2 will come into force 21 days after the Order is made or on 1 January 2025, depending on their utility.

What was the previous policy, how is this different?

5.12 Prior to this amendment, the previous UK Government's policy and that of the Scottish Government and the Welsh Government was for VETS to be a UK-wide scheme and that when the Northern Ireland Assembly could approve joining VETS and should it choose to do so, Northern Ireland would join VETS.

6. Legislative and Legal Context

How has the law changed?

6.1 The power to make an instrument to establish a trading scheme relating to greenhouse gas emissions in section 44 of the Climate Change Act 2008 ("CCA") is exercisable by "the relevant national authority" (the Secretary of State, the Scottish Ministers, Welsh Ministers, the Department for Infrastructure in Northern Ireland), in relation to matters within their legislative competence. This instrument is made under the Climate Change Act 2008 and is therefore devolved.

6.2 This instrument amends VETS to include Northern Ireland using powers under sections 44, 46(3), 54 and 90(3) of, and Parts 1 and 3 of Schedule 2 and paragraph 9 of Schedule 3 to, the CCA. The relevant Parliamentary procedure for amending a UK-wide trading scheme are set out in Schedule 3 to the CCA. Paragraph 9 of that Schedule enables amendment by Orders in Council. Pursuant to paragraph 11 of Schedule 3, before a recommendation may be made to His Majesty in Council to make the Order in Council, a draft of the instrument containing the Order in Council must be laid before, and approved by, a resolution of each House of Parliament and the relevant devolved legislatures.

6.3 The existing New Car and Van CO_2 Emissions Regulations are not included in the Windsor Framework. Assimilated ("EU") law on the type-approval of vehicles, to which cross-reference is made in VETS, is included in the Windsor Framework. VETS therefore refers to both the domestic and the EU versions of the retained EU law on type-approval, though this specific instrument does not. This is relevant, for example, to UK (NI) type-approvals, which are valid in GB but continue to follow EU rules.

Why was this approach taken to change the law?

6.4 No alternative routes to make the necessary changes were identified.

7. Consultation

Summary of consultation outcome and methodology

7.1 Between 30 March 2023 and 24 May 2023, the previous UK Government, the Department for Infrastructure (Northern Ireland), the Welsh Government, and Transport Scotland (The Scottish Government) ran a public consultation seeking views on "A zero emission vehicle (ZEV) mandate and CO2 emissions regulation for new cars and vans in the UK". This consultation stated that emissions trading schemes are the UK Government and Devolved Administrations' preferred policy approach for the transition to zero emission vehicles.

7.2 This consultation informed the development and eventual coming into force of VETS. Owing to the absence of a sitting Northern Ireland Assembly in the autumn of 2023, even though the consultation proposed a UK-wide implementation of the ZEV Mandate it was not possible for it to apply in Northern Ireland. This was communicated in the consultation response (published 28 September 2023) alongside a commitment from the Department for Infrastructure (Northern Ireland), the previous UK Government, the Welsh Government, and the Scottish Government that it remained their collective intent that Northern Ireland join the ZEV Mandate should a sitting assembly choose to do so. This amending legislation implements that commitment as well as making technical updates and corrections to bring the legislative framework into closer alignment with this consultation and response.

7.3 Alongside the consultation, the UK Government and Devolved Governments jointly commissioned the Committee on Climate Change ("CCC") for advice on this instrument in accordance with section 48 of the CCA. This advice was published by the CCC on their website.

7.4 The consultation received over 148 responses, from a range of stakeholders including vehicle manufacturers, chargepoint operators, and NGOs, with the majority supporting most of the proposals on the design of a ZEV mandate and CO_2 emissions standard. A large proportion of stakeholders expressed a preference that the schemes be UK-wide in their territorial extent.

7.5 On whether VETS should apply UK-wide (Q1 & Q2), approximately 96% of respondents who answered the relevant question wanted VETS to apply UK wide. While it was not practically possible for VETS to apply in Northern Ireland due to the absence of a sitting Northern Ireland Assembly in 2023, following the return of the Northern Irish Ministers in February and the Minister for Infrastructure's decision that Northern Ireland should be included in the schemes, this instrument amends the original VETS Order to deliver on the consultation outcome.

7.6 The Government Response to the consultation was published on 28 September 2023. Full details of the consultation can be found at: A zero emission vehicle (ZEV) mandate and CO2 emissions regulation for new cars and vans in the UK - GOV.UK (www.gov.uk).[4]

7.7 The consultation built on the two preceding consultations: Policy design features for the car and van zero emission vehicle (ZEV) mandate - GOV.UK (www.gov.uk)[5] (consultation open 7 April – 10 June 2022) and CO2 emissions regulatory framework for all newly sold road vehicles in the UK - GOV.UK (www.gov.uk) [6] (consultation open 14 July – 22 September 2021).

8. Applicable Guidance

8.1 Guidance for participation in VETS is available online here: https://www.gov.uk/government/publications/vehicle-emissions-trading-schemes-how-to-comply[7]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the impacts assessed in the cost benefit analysis published in October 2023 to accompany the laying of VETS have not substantively changed. That analysis included a sensitivity analysis accounting for the possibility of a UK-wide scheme from paragraph 3.128, available online here: https://www.legislation.gov.uk/uksi/2023/1394/pdfs/uksiod_20231394_en_001.pdf[8]

[4] https://www.gov.uk/government/consultations/a-zero-emission-vehicle-zev-mandate-and-co2-emissions-regulation-for-new-cars-and-vans-in-the-uk
[5] https://www.gov.uk/government/consultations/policy-design-features-for-the-car-and-van-zero-emission-vehicle-zev-mandate
[6] https://www.gov.uk/government/consultations/co2-emissions-regulatory-framework-for-all-newly-sold-road-vehicles-in-the-uk
[7] https://www.gov.uk/government/publications/vehicle-emissions-trading-schemes-how-to-comply
[8] https://www.legislation.gov.uk/uksi/2023/1394/pdfs/uksiod_20231394_en_001.pdf

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is significant, however the effect of this amendment is relatively limited compared to the overall impact of VETS. The VETS cost benefit analysis (assessed using 2021 prices) estimates that the implementation of VETS on a UK-wide basis has costs of between £52bn - £130bn against benefits of £170bn, resulting in a social net benefit of between £40bn - £119bn, increasing from the GB-only basis figure by a net benefit of between £867m - £2,532m.[9] The principally affected businesses are vehicle manufacturers registering vehicles in the UK, though all businesses that make use of passenger cars and light commercial vehicles may be impacted to an extent.

9.3 The legislation does impact small or micro businesses.

9.4 To minimise the impact of the requirements on small or micro businesses (employing up to 50 people), the approach taken is to offer derogations from ZEV targets to vehicle manufacturers registering 2,499 or fewer cars or vans and an exemption from the CO_2 standard schemes for manufacturers registering fewer than 1,000 non-zero emission cars or vans.

9.5 The impact on the public sector is low because while vehicle fleets are an important aspect of public service, the market is expected to meet demand. Where zero emission models are not widely available in an appropriate configuration, there are exemptions in place (e.g. for ambulances and armoured vehicles) and new internal combustion engine models or hybrid models may continue to be sold.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring of VETS as amended by this instrument is for a statutory post-implementation review published before 2 January 2029, supplemented by non-statutory annual reporting, a non-statutory mid-point review in 2027, and continuous monitoring of vehicle data by the administrator and national authorities to safeguard against any potential adverse effects.

10.2 In accordance with article 118 of VETS, the Secretary of State for Transport is under an existing duty to review the regulatory provisions contained in VETS and publish reports setting out the conclusions of the review. Reports must be published at intervals not exceeding 5 years. No additional review provision has been included in this instrument.

[9] Paragraphs 3.128-3.135, Zero Emission Vehicle Mandate and CO_2 Regulations Joint Government Response Cost Benefit Analysis, https://www.legislation.gov.uk/uksi/2023/1394/pdfs/uksiod_20231394_en_001.pdf

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument corrects defects in the Vehicle Emissions Trading Schemes Order 2023. Therefore, it is appropriate to apply the free issue procedure to this instrument.

12. European Convention on Human Rights

12.1 The Parliamentary Under Secretary of State for the Future of Roads, Lilian Greenwood MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Vehicle Emissions Trading Schemes (Amendment) Order 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts"). It does however relate to the withdrawal of the United Kingdom from the European Union because it is revoking assimilated EU law that was previously amended to apply to Northern Ireland only.