

EXPLANATORY MEMORANDUM TO
THE HEAVY DUTY VEHICLES (EMISSIONS AND FUEL CONSUMPTION)
(AMENDMENT) (EU EXIT) REGULATIONS 2019

[2019] No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Act.
- 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 (EUWA) to correct deficiencies in EU Regulation 2018/956, which concerns the monitoring and reporting of CO₂ emissions from, and fuel consumption of, heavy duty vehicles (“HDVs”). It will be brought into UK law on exit day¹ and addresses the need to have the regulation fully functional after exit day. This instrument is made pursuant to section 8 of the EUWA to address failures of the regulation to operate effectively and/or to resolve deficiencies (as defined in s8 (2) of the EUWA) arising as a result of the UK’s exit from the European Union.

Explanations

What did any relevant EU law do before exit day?

Overview

- 2.2 EU Regulation 2018/956 came into force on the 29 July 2018. It requires EU Member States and EU HDV manufacturers to monitor (from 1 January 2019) and report to the European Commission (“the Commission”) (from 28 February 2020) data relating to the CO₂ emissions and fuel consumption of new HDVs registered in the EU. From this data the Commission will hold a database, verify data quality, and compile and publish an annual report. There are provisions for administrative fines for HDV manufacturers if data requirements are not met. The main purpose of the monitoring and reporting requirements is to provide the required data to produce baseline reference data from which new CO₂ emission reduction targets for HDV manufacturers can be set. A regulation will be introduced in due course as proposed by the Commission in May 2018. The collection and publication of data collected under this regulation will increase the transparency of HDV CO₂ emissions and fuel consumption. This will enable transport operators to make better informed purchasing decisions for cleaner and more fuel efficient vehicles.

EU Regulation Detail

¹ This is on the assumption that there is sufficient Parliamentary time for debates regarding the instrument to take place before exit day. If this is not the case, the instrument will come into force 1 day after it is made

- a) Member States are required to monitor certain data points on newly registered HDVs from 1 January 2019 as set out in Part A of Annex I. This data include manufacturer name, make, and vehicle identification number. This information has to be reported to the European Commission by 28 February annually, starting in 2020, and will provide a record of the configuration of the HDV fleet in the EU.
- b) Manufacturers are required to monitor and report various data points for each new heavy-duty vehicle registered in the EU as included in Point 2, Part B of Annex I. This data is required to be reported to the Commission and relates to individual components of HDVs (e.g. axle configuration and engine performance) and CO₂ emissions and fuel consumption obtained from a computer software simulation tool. The EU Regulation includes a timetable which sets the starting year to monitor and report for different vehicle categories and their subgroups. Data for some vehicle categories and subgroups has been required to be monitored since 1 January 2019 and will need to be reported from 28 February 2020, whilst others will need to be monitored from 1 January 2020 and reported from 28 February 2021. These requirements are set out in a table in Point 1, Part B of Annex I.
- c) Both Member States and manufacturers are responsible for data quality and providing correct data to the Commission. The data reported by manufacturers and Member States will be maintained and managed by the Commission and published in a register. Some data is commercially sensitive and exempt from publication. There are obligations on the Commission to ensure verification of test data via on-road tests and to verify data received from manufacturers and Member States. This also includes correcting any errors identified before or after data publication. The Commission will publish an annual report which will provide an annual analysis of CO₂ emission trends and developments of the HDV fleet in the EU, individual Member States and individual manufacturers. This report will be published by 31 October, starting in 2020, and will be based on data monitored in the preceding calendar year. This analysis could contribute to future policy measures and will provide increased transparency regarding the performance of HDV fleets regarding CO₂ emissions and fuel consumption.
- d) There are measures in the EU regulation for the Commission to impose fines on manufacturers of up to EUR 30 000 per HDV where errors in the data submitted are due to serious or intentional negligence, or delay that is not justifiable. The Commission is planning to take forward delegated acts which will further set out the procedure, methods for calculation and collection of the fines. Article 9, paragraph 3 specifies the high level principles the Commission should take into account when adopting delegated acts. There are provisions that enable the Commission to adopt delegated and implementing acts. For example, these acts allow the Commission to: specify data to be reported by Member States for monitoring the results of on-road verification tests (Article 7); determine verification and correction measures (Article 8); establish the procedure, calculation and collection of fines (Article 9); and amend the annexes (Article 11). Article 13 sets out the conditions for the Commission adopting delegated acts.
- e) There are two annexes to the regulation. Annex I specifies the rules on data to be monitored and reported and Annex II sets out the mechanisms for data reporting and management.

Why is it being changed?

- 2.3 This instrument uses powers under the EUWA to make the necessary changes to the EU Regulation to ensure that the law functions correctly after the UK has left the EU. If the instrument were not in force from exit day, the EU Regulation would be transferred into UK domestic law under the EUWA without any amendments. In such circumstances, the EU Regulation would not have any effect in the UK as the EU regulation is written in a way which means that it only applies to HDVs registered in the EU.
- 2.4 It is important that this legislation, when copied across to UK law, is corrected to enable it to function as intended. As set out in section 2.2 and 7, this EU Regulation will provide the necessary data for setting CO₂ emission reduction targets for new HDVs, and transparency for HDV CO₂ emission and fuel economy performance. The measures in this EU regulation will therefore play a significant role in the UK's commitment to reducing road transport emissions for all vehicles, including HDVs.
- 2.5 It is necessary to include various amendments in this instrument to correct deficiencies and inoperabilities in the EU Regulation as transposed into UK domestic law under the EUWA. The main focus of these amendments is ensuring that the EU Regulation will apply to HDVs registered in the UK and transferring responsibilities from the Commission to the Secretary of State. For example, after EU Exit, manufacturers will need to report data for new HDVs registered in the UK to the Secretary of State and not the Commission.

What will it now do?

Overview

- 2.6 This instrument transfers the powers and obligations of the Commission to the Secretary of State. Manufacturers that register new HDVs in the UK after exit must ensure the monitoring and reporting of CO₂ emissions and fuel consumption for new HDVs continues in the UK. The main policy content, including purpose and objectives of the current EU Regulations, remains unchanged. Obligations on EU and UK manufacturers under the current EU Regulation will broadly remain the same after UK exit. Provisions about the monitoring and reporting timetable, data to be monitored, HDVs in scope, fines and publication of data will also remain unchanged. The instrument focuses on ensuring that the regulation is applicable to any new HDVs registered and sold in the United Kingdom and for the UK and its authorities to have the power and responsibility to monitor and report the data.

Detail on amendments

- a) The obligation on the United Kingdom to monitor data specified in Part A of Annex I remains in this instrument. However, the instrument removes the requirement for the United Kingdom to report this data to the European Commission after exit as the UK will no longer be a Member State.
- b) Manufacturers still have to comply with the same requirements in data reporting and monitoring for new HDVs registered in the UK as set out in Part B of Annex I. However, this data is reported to the Secretary of State after EU exit instead of the Commission. The instrument also introduces a new requirement for manufacturers to report the five data points (a - e) in Part A of Annex I. Although the EU regulation requires UK authorities to monitor this data, two of the data points are currently not collected by UK authorities and

the other three are collected through a separate reporting process. This new requirement has therefore been introduced in order to ensure that all five data points are collected in an efficient manner as a consequence of other changes made by this instrument.

- c) The obligation remains for manufacturers and the UK to ensure good quality data is collected and reported. This instrument makes amendments to require manufacturers to inform the Secretary of State of any errors in data related to UK registered HDVs to ensure robustness of data. This instrument sets out the Secretary of State will verify data quality and correct errors as required before publication and includes powers for the Secretary of State to make further regulations for this purpose. The obligation for monitoring on-road verification tests for new HDVs under the type approval regulation will be transferred from the Commission to the Secretary of State for Transport. Responsibility for the publication of data in a central register and the annual report which analyses CO₂ emission trends will sit with the Secretary of State for Transport instead of the Commission.
- d) The instrument also transfers the power from the Commission to the Secretary of State to impose fines of up £26 000 per HDV on manufacturers relating to data errors due to serious or intentional negligence. 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 the figure of EUR 30 000 into a sterling amount, rounded to 2 significant figures. This instrument also provides the Secretary of State with powers to make further regulations to set out how these fines will be administered, which are equivalent to the Commission's ability to adopt delegated acts for this purpose in the EU regulation. This instrument introduces powers for the Secretary of State to make further regulations. This covers equivalent powers to those of the Commission to adopt delegated and implementing acts.
- e) The content of Annex I in the EU Regulation will remain broadly the same apart from some minor textual amendments. However, Annex II in the EU regulation has been incorporated into Articles 5 and 6A by this instrument.

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. It will transfer functions and obligations that are currently exercised by the European Commission to a public authority in the UK. Additionally, there are a number of sub-delegated clauses within the Regulations that allow for updates to the legislation to be made.

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 powers under which this instrument is made (section 24 of the EUWA) cover the entire United Kingdom and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.
- 4.3 In particular, the purpose and content of the SI relates to a reserved matter within the meaning of section 29(2)(b) of the Scotland Act 1998, section 108A(2)(c) of the Government of Wales Act 2006 and section 4(1) of the Northern Ireland Act 1998. This EU Regulation is concerned with monitoring of CO₂ emissions from heavy duty vehicles. It has been enacted for the purpose of enabling the setting of CO₂ emissions standards for heavy duty vehicles which will be set out in a separate EU regulation, and for the purpose of ongoing monitoring and reporting of emissions from new HDVs. The forthcoming EU regime to set emission standards for new HDVs could not operate without this Regulation. The EU Regulation which this SI amends therefore concerns technical standards and requirements in relation to products in pursuance of an obligation under EU law. Formal consent of Devolved Administrations need not be sought under the terms of the protocol, therefore.

5. European Convention on Human Rights

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

“In my view the provisions of the Heavy Duty Vehicles (Emissions and Fuel Consumption) (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is made in exercise of powers in section 8 of, and paragraph 21 of Schedule 7 to, the EUWA.
- 6.2 The EUWA makes provision for repealing the European Communities Act 1972 and will retain certain European Union (EU) law, as it stands at the moment of exit, in UK law. It provides for 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.
- 6.3 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 United Kingdom’s legal system continues to function properly outside the EU.
- 6.4 The instrument is made pursuant to section 8 of the EUWA to address failures of the EU regulation to operate effectively and resolve deficiencies. Schedule 7 of the EUWA provides that the affirmative procedure applies where an SI makes provision falling within paragraph 1(2). Provisions in paragraph 1(2) include where the SI creates or amends a power to legislate (paragraph 1(2)(d)). The instrument will create various powers to make further regulations (in place of existing powers of the Commission to adopt delegated and implementing acts) and is therefore being made pursuant to the affirmative procedure.

7. Policy background

What is being done and why?

- 7.1 The EU HDV sector is a significant source of greenhouse gas (GHG) emissions. In 2014, GHG emissions from HDVs represented 5% of total EU emissions, a fifth of all transport emissions and about a quarter of road transport emissions. In comparison the UK HDV sector contributed 5.2% to domestic CO₂ emissions and 16.0% to domestic CO₂ emissions from transport in 2016. In the past, CO₂ emissions and fuel consumption from new HDVs placed on the EU market have not been certified or monitored and reported. The Commission proposed three new measures to rectify this and help reduce CO₂ emissions in the sector.
- 7.2 As a first measure the “certification regulations” 2017/2400, including the simulation software “the Vehicle Energy Consumption calculation Tool (VECTO)²”, came into force in December 2017. From 1st January 2019, a simulation of CO₂ emissions and fuel consumption using VECTO has to be carried out for each new HDV in scope and placed on the EU market as part of the type approval process.
- 7.3 The second measure concerns the monitoring and reporting of CO₂ emissions from new HDVs. EU regulation 2018/956 came into force in July 2018 and into practical effect from 1 January 2019. Through this Regulation, all relevant data calculated in line with the certification methodology will be monitored, reported and published. The data will be made available to all stakeholders and gives transport operators access to information on the performance of HDVs of different makes with similar characteristics, allowing them to make better informed purchasing decisions. Vehicle manufacturers are able to compare their vehicles’ performance with their competitors, providing an increased incentive for innovation. Finally, it enables analysis of the data, e.g. to assess the penetration level of certain technologies. This is a necessary step for implementing future CO₂ emission standards for HDVs as a third measure, proposed by the Commission in May 2018³ and currently being discussed at EU level. A monitoring and reporting system is particularly necessary for assessing and evaluating the compliance of any future standards.
- 7.4 The Commission’s impact assessment highlights benefits to the EU economy in the medium and long-term. They anticipate that the measures will likely foster competition to produce more energy-efficient vehicles and incentivise innovation. Other benefits include reduced fuel costs for freight transport operators, reduced GHG emissions and increased global competitiveness. Significant markets such as the United States, Canada, Japan and China have, in recent years, implemented certification and fuel efficiency measures in the form of fuel consumption and/or emission standards. All three measures support the Government’s aim to decarbonise road transport and will be beneficial to UK businesses in the long term. Better market transparency will enable informed purchasing decisions of the most fuel efficient vehicles which, through fuel cost savings, can reduce operational costs and increase competitiveness.

² https://ec.europa.eu/clima/policies/transport/vehicles/vecto_de

³ https://ec.europa.eu/clima/policies/transport/vehicles/heavy_en

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 no plans to consolidate.

10. Consultation outcome

10.1 A thorough consultation process with industry and trade associations was carried out by the European Commission (EC) in 2016 before the final proposal for the EU Regulation was published.⁴ The EC received over 100 responses from a broad spectrum of stakeholders with views on objectives, options and anticipated impact. Stakeholders' views were considered and fed into the final impact assessment. This ensured industry were able to feed into the process at an early stage. Given the minor impact of this instrument on industry and businesses a consultation has not been carried out for this instrument by the UK Government. However, the Government made stakeholders and particularly trade associations aware of this instrument and its plans for introduction into UK law.

11. Guidance

11.1 The Department for Transport will continue to engage relevant stakeholders on this regulation and SI, and will consider whether guidance is needed to help clarify the SI requirements.

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 A full impact assessment was carried out by the EU when the proposal for the EU Regulation was published and which considered business impact for all EU Member States and EU HDV manufacturers. UK Government's own analysis for this SI has been informed by the full impact analysis by the European Commission. The instrument ensures the transfer of the Commission's responsibilities to UK bodies and for appropriate arrangements to be in place for manufacturers to report the data entries to relevant UK authorities instead of EU authorities. Manufacturers who sell and register new HDVs into the UK are therefore affected by the EU regulation (as copied into UK law and amended by this instrument) after exit day in the same way that they are by the EU regulation before exit day. This means that manufacturers selling HDVs in the UK will have to report the data to, and be subject to administrative fines from, UK authorities instead of the Commission.

⁴ The results are available at http://ec.europa.eu/clima/consultations/articles/0031_en.

13. Regulating small business

- 13.1 The regulation and the changes made via the SI mainly applies to larger vehicle manufacturers who manage the collection process of the required data under this regulation. It may also affect a small number of SMEs based in the UK who adapt other manufacturer's vehicles and may need to pass on the data collected by the main manufacturer in some instances at the point of registration.

14. Monitoring & review

- 14.1 As this instrument is made under the EUWA, no review clause is required.

15. Contact

- 15.1 Adele Rodrian at the Department for Transport, email: Adele.Rodrian@dft.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Dr Bob Moran at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Jesse Norman MP at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal 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 Jesse Norman has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018: “In my view the Heavy Duty Vehicles (Emissions and Fuel Consumption) (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate.”
- 1.2 This is the case because the draft instrument ensures that the existing EU regulation on monitoring and reporting of CO₂ emissions for newly registered HDVs in the United Kingdom will remain operable when the United Kingdom has withdrawn from the European Union.

2. Good reasons

- 2.1 The Minister of State 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.”
- 2.2 These are that this instrument ensures that the existing EU regulation on the monitoring and reporting of CO₂ emissions for newly registered HDVs in the United Kingdom will remain operable when the United Kingdom (UK) has withdrawn from the European Union (EU). The instrument corrects deficiencies and inoperability’s in the existing EU regulation as a result of the UK’s withdrawal from the EU. This instrument will preserve the legal status quo and ensure that the UK continues to monitor and report on HDV CO₂ emissions and fuel consumption performance after EU withdrawal.

3. Equalities

- 3.1 The Minister of State has made the following statement(s):
“The draft 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 Jesse Norman has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
“In relation to the draft instrument, the Department for Transport have 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.