

EXPLANATORY MEMORANDUM TO

THE MOTOR FUEL (COMPOSITION AND CONTENT) AND THE BIOFUEL (LABELLING) (AMENDMENT) (NO. 2) REGULATIONS 2021

2021 No. 894

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 These Regulations amend The Motor Fuel (Composition and Content) Regulations 1999 (“the 1999 Regulations”) to require the introduction of E10 petrol (petrol with more than 5% ethanol) at filling stations in Great Britain. They also ensure the ongoing availability of E5 petrol (petrol with 5% or less ethanol). The amendment to the Biofuel (Labelling) Regulations 2004 (“the 2004 Regulations”) changes the consumer message that must be displayed when E10 petrol is sold at filling stations.
- 2.2 These regulations also make amendments related to the United Kingdom’s exit from European Union to rectify deficiencies in the regulations and replace references to European Directive 98/70/EC with references to domestic legislation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument remakes the provisions of the Motor Fuel (Composition and Content) and the Biofuel (Labelling) (Amendment) Regulations 2021(S.I. 2021/199). The procedure for free issue has been applied to this instrument. S.I. 2021/199 was treated as if it were subject to the negative resolution procedure but as it amended provision made under section 2(2) of the European Communities Act 1972, using a power conferred before 21 June 2017 (the date of the beginning of the parliamentary session in which the European Union (Withdrawal) Act 2018 was passed), paragraph 13(1) of Schedule 8 to that Act applied meaning that the affirmative procedure should have been used. To reflect issues relating to the validity of S.I. 2021/199, regulation 13 of this instrument contains a statement that S.I. 2021/199 is revoked.

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 varies between provisions but includes Scotland and Northern Ireland.
- 3.3 The amendments made by Part 2 of these regulations applies in respect of Great Britain and those made by Part 3 apply in respect of Northern Ireland.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is; in relation to Part 2, Great Britain and in relation to Part 3, the United Kingdom.
- 4.2 The territorial application of this instrument is; in relation to Part 2, Great Britain and in relation to Part 3, the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State Rachel Maclean MP has made the following statement regarding Human Rights:

“In my view the provisions of The Motor Fuel (Composition and Content) and the Biofuel (Labelling) (Amendment) (No. 2) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument amends the 1999 Regulations to introduce a minimum ethanol content of 5.5% by volume for premium 95 octane petrol and to make provision in relation to the United Kingdom’s exit from the European Union. It also amends the 2004 Regulations.
- 6.2 The introduction of a minimum ethanol content requirement in the premium 95 petrol grade ensures fuel suppliers and retailers will shift to a grade known as “E10” petrol. E10 contains up to 10% ethanol. Blending ethanol into petrol reduces overall greenhouse gas emissions, helping meet climate change targets. The amendment of the 2004 Regulations updates the wording of the consumer message that must be displayed when E10 petrol is sold.
- 6.3 The provisions relating to the UK’s exit from the European Union correct a deficiency within the 1999 Regulations that require notification to the European Commission. It also replaces references to Council directive 98/70/EC (1998) with references to domestic legislation.

7. Policy background

What is being done and why?

- 7.1 To date, petrol sold in the UK has contained no more than 5% ethanol, a grade known as E5. This instrument will introduce petrol with up to 10% ethanol, a grade known as E10. Two petrol options are available in the UK; the standard 95 octane grade known as “premium” and the higher 97+ octane “super” grade. Both are currently E5 in terms of their ethanol content.
- 7.2 This instrument will require that petrol stations in Great Britain change the 95 octane premium petrol to an E10 specification. Ethanol is blended with petrol to reduce overall carbon dioxide emissions to meet climate change targets.
- 7.3 E10 petrol is suitable for the majority of petrol vehicles. However, some older vehicles and certain petrol-powered equipment are not approved to use petrol with more than 5% ethanol. This instrument therefore also ensures the super grade higher octane petrol remains E5 for those that need it.
- 7.4 The E10 requirement is contained within Regulation 4(f) of the instrument. It requires that premium 95 grade petrol contains at least 5.5% ethanol all year round. This

minimum requirement ensures ethanol is blended at a higher rate than is currently the case, whilst providing fuel suppliers flexibility. Biofuel blending levels are generally driven by a separate government scheme known as the Renewable Transport Fuel Obligation (RTFO). By setting the lower ethanol limit of 5.5%, fuel suppliers can adjust their blend levels to best meet wider biofuel blending obligations.

- 7.5 Regulation 4(d) also amends regulation 3 of the 1999 Regulations to reintroduce the requirement that the super grade must contain no more than 5% ethanol or 2.7% oxygen to ensure it remains E5 petrol.
- 7.6 E10 petrol has been approved for sale in the UK since 2011. While the RTFO has driven blend levels towards the 5% limit for E5 petrol, no supplier has unilaterally chosen to move above 5%. Legislating for the whole sector to change their premium 95 grade together has been the only route identified to ensure E10 is introduced. The legislation ensures a level playing field for fuel suppliers and retailers. The universal introduction also ensures a single consumer messaging campaign can be delivered, rather than a piecemeal approach by individual retailers in different areas.
- 7.7 The E10 requirement comes into force on 1 September 2021. This aligns with the change from summer to winter fuel specifications as provided for in the 1999 Regulations. By aligning the change in ethanol content with existing changes in fuel specifications, additional costs and complexities for fuel suppliers are minimised. Aligning with the change from summer to winter petrol grade is also preferred as increasing ethanol content during this change is facilitated by the corresponding changes to vapour pressure in fuel standards at this time. The reversal of the vapour pressure limits as we switch from the winter grade back to summer grade every April would make increasing ethanol content challenging for fuel suppliers. Such a change could result in fuel quality issues which are hard to manage as low ethanol winter petrol is mixed with high ethanol summer petrol both at forecourts and in driver's fuel tanks. These concerns do not arise for the 1 September change and is therefore considered the ideal date to require an increased ethanol content in petrol.
- 7.8 Regulation 7 amends regulation 6 of the 1999 Regulations to create a number of exemptions to the requirement for petrol with 5.5% ethanol to be distributed or sold. First, there is an exemption for where a refinery or fuel blending facility is unable to meet the 5.5% requirement due to an issue at that facility. This is to ensure that short term technical issues do not impact security of petrol supply. Where such issues occur, distribution of fuel with less than 5.5% ethanol can continue provided a notification is submitted to the Secretary of State within two days of the issue occurring. The exemption would automatically last for 10 days from the issue occurring. An extension can be granted by the Secretary of State where necessary. Petrol supplied under these exemptions would still need to meet all other elements of the existing fuel specifications. A single facility can operate under this exemption no more than 3 times in any 12-month period.
- 7.9 Secondly, regulation 7 amends regulation 6 to permit existing fuel terminals that are unable to blend any ethanol into their petrol products to apply for a permission to be exempt from the 5.5% requirement. This exemption has been introduced as we are aware of certain fuel terminals that currently blend no ethanol into their petrol products and will be unable to comply by September 2021. Without such an exemption these sites would be unable to continue to operate, impacting fuel supply in those regions. Upon successful application for such an exemption a facility will be

permitted to distribute petrol which does not meet the 5.5% requirement for two years. Any application to extend that period will be subject to public consultation.

- 7.10 Thirdly, Regulation 7 introduces exemptions to the 5.5% requirement for very small filling stations (those that sell under one million litres of fuel per year) and filling stations located in the Rural Fuel Duty Relief area defined in the Hydrocarbon Oils and Biofuels (Road Fuels in Defined Areas) (Reliefs) Regulations 2011. This ensures that specialist retailers and very remote filling stations can continue to stock ethanol free 95 octane petrol where needed.
- 7.11 Regulation 12 amends the 2004 Regulations to make amendments to the consumer message that must accompany the sale of E10 petrol at forecourts. The message has been updated to reflect that most petrol vehicles are compatible with E10, but users should check before use.
- 7.12 The amendments to the 1999 Regulations made by Part 2 of these Regulations extend to Great Britain. The 1999 Regulations implemented Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC (“the 1998 Directive”). Due to the operation of the Northern Ireland Protocol, the 1998 Directive continues to apply to and in the United Kingdom in respect of NI. Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, also continues to apply in respect of NI. This requires that the Commission be notified in advance of technical regulations which would introduce E10 petrol in NI. A separate instrument introducing the changes to the 1999 Regulations in NI will be introduced in due course.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because the 1999 Regulations implement part of the 1998 Directive. The 1998 Directive sets motor fuel standards relating to environmental concerns and vehicle operability. Fuel specifications are defined within the 1999 Regulations by references to the 1998 Directive. The power of the Secretary of State (SoS) to grant exemptions to fuel specifications also requires the European Commission to be notified and authorise any such exemption.
- 8.2 Following EU exit it is appropriate for UK motor fuel specifications to be defined in domestic legislation. The European Commission notification process for the issuing of exemptions is also no longer appropriate in Great Britain. These changes do not apply to Northern Ireland.
- 8.3 Where necessary, the 1999 Regulations will reference domestic legislation for relevant fuel quality specifications. The SoS will have the power to issue exemptions to specifications when necessary.

9. Consolidation

- 9.1 There is no intention to consolidate the Motor Fuel (Composition and Content) Regulations 1999 or the Biofuel (Labelling) Regulations 2004 at this time.

10. Consultation outcome

- 10.1 The government published a public consultation on proposals to introduce E10 petrol. The consultation was open between 4 March and 3 May 2020. The government received 208 responses to the consultation and call for evidence. This included 65 responses from organisations and 143 responses submitted by private individuals.
- 10.2 Around two-thirds of organisations responding were broadly supportive of E10 introduction, with several further organisations' responses raising some specific concerns but not opposing the introduction in principle. Around a third of private individuals either explicitly supported the introduction of E10 or did not object in principle. Respondents in favour of the proposals agreed that introducing E10 would be effective policy for reducing greenhouse gas emissions.
- 10.3 A small number of organisations and more than two thirds of private individuals raised concerns about the introduction of E10. The main concern expressed was about vehicle compatibility, particularly amongst owners of classic and older cars and motorbikes.
- 10.4 The government has addressed these concerns by ensuring the current E5 grade remains available at many filling stations.
- 10.5 The formal government response to the consultation has been published on <https://www.gov.uk/government/consultations/introducing-e10-petrol> and includes a more detailed summary of the consultation questions, responses and government decision.
- 10.6 No formal consultation was carried out for the amendments in relation to the EU exit elements of instrument. The changes are only to update references from an EU Directive to domestic legislation.

11. Guidance

- 11.1 Guidance is not required.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is dependent on future decisions in relation to the Renewable Transport Fuel Obligation (RTFO).
- 12.2 Until RTFO targets can be increased, the policy will cost around £87 million per year and decrease CO₂ savings by around 0.2 megatonnes per year. These costs will be borne by motorists. The forecast reduction in CO₂ savings is due to a corresponding reduction in biodiesel blending by obligated RTFO suppliers.
- 12.3 While aligning E10 petrol introduction with changes to the RTFO could ensure overall carbon savings are maximised in the short term, it presents additional challenges and complexities for fuel suppliers. The timing of introduction during September 2021 coincides with the change from summer to winter fuel grade and significantly changing ethanol levels outside this window would be complex resulting in further costs on industry.
- 12.4 The policy intention is to maximise carbon savings from the RTFO scheme to help meet future carbon budgets and support domestic biofuel producers. Additional analysis indicates that if RTFO targets are increased as soon as possible after E10 introduction, it could help reduce CO₂ emissions by an additional 0.8 megatonnes per year, compared with current levels. Abatement costs are calculated at around £199.9/

per tonne of CO₂, based on carbon budget accounting, which is within the range expected for Carbon Budget 5 (2028-2032), where there is currently a significant policy shortfall in required carbon savings.

- 12.5 There is no, or no significant, impact on the public sector.
- 12.6 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses the E10 petrol requirement will only apply to filling stations with an annual fuel throughput of over 1 million litres per annum.
- 13.3 The basis for the final decision on what action to take to assist small businesses was taken following the public consultation on proposals. Small businesses were largely represented by trade associations who did not raise that specific mitigation would be needed based on our original proposals. While both smaller filling stations and small businesses using petrol vehicles will be affected by the policy, the impact will be small and no proportionate mitigation was identified or proposed through the consultation process.
- 13.4 The Impact Assessment published alongside the Explanatory Memorandum includes a full Small and Micro Business Assessment.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is for it to be monitored in the course of normal departmental business. This includes the existing reporting mechanism within the RTFO scheme. The initial roll out of the new fuel grade will be monitored via engagement with the fuel sector and relevant trade associations as well as working closely with officials from the Department for Business, Energy and Industrial Strategy.
- 14.2 A statutory review clause is included in the Regulations which provides for the Secretary of State to undertake a review of the regulatory provisions contained in the Regulations on a five-yearly basis.

15. Contact

- 15.1 Tim Simon at the Department for Transport, Telephone: 07773 643828 email: tim.simon@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Rachel Solomon Williams, Deputy Director for Low Carbon Fuels, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rachel Maclean MP at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising 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 14, 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 15, 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

under the European Union (Withdrawal) 2018 Act

1. Scrutiny statement

- 1.1 The Parliamentary Under Secretary of State Rachel Maclean MP has made the following scrutiny statement in accordance with paragraph 14(4) of Schedule 8 to the European Union (Withdrawal) 2018 Act:

“In accordance with the requirements of paragraph 14 of Schedule 8 to the European Union (Withdrawal) Act 2018, a draft of the Motor Fuel (Composition and Content) and the Biofuel (Labelling) (Amendment) (No. 2) Regulations 2021 was published on the Gov.UK website on 13 May 2021. Copies of the draft instrument were also deposited in the libraries of both Houses of Parliament on 13 May 2021 for comment and for any recommendations.

A recommendation was received from the House of Lords Secondary Legislation Scrutiny Committee in their 3rd Report of Session 2021-22. The report noted that the requirement to introduce E10 from 1 September 2021 did not align with planned increases to the RTFO scheme in January 2022 and as result, did not increase carbon savings during the interim, at a higher overall cost. The report noted that no justification was provided for this and recommended that E10 is not introduced until it can align with RTFO target increases.

In light of these recommendations this Explanatory Memorandum has been updated to include relevant justification for E10’s introduction in September 2021. Paragraph 7.7 has been amended to include detailed technical rationale for the 1 September date and paragraph 12.3 has been added to provide further context for the anticipated impact of the September date.”

2. Explanatory statements

- 2.1 The Parliamentary Under Secretary of State Rachel Maclean MP has made the following statements in accordance with paragraph 15(3) of Schedule 8 to the European Union (Withdrawal) 2018 Act:

“Paragraph 15(3)(a): Law which is relevant to the amendment:

Requirements relating to motor fuel quality and specifications are currently contained the Motor Fuel (Composition and Content) Regulations 1999 (S.I. 1999/3107) (the “1999 Regulations”). These Regulations were made under section 2(2) of the European Communities Act 1972, and therefore constitutes EU-derived domestic legislation (which is retained EU law) within the meaning of the European Union (Withdrawal) Act 2018. The 1999 Regulations implemented into domestic law the requirements of EU Directive (Council Directive 98/70/EC) (the 1998 Directive) which set out standardised petrol and diesel fuel quality specifications.

Paragraph 15(3)(b): Effect of the amendment or revocation on retained EU law:

The effect of the amendments on retained EU law, as set out in the 1999 Regulations, which are introduced by these Regulations ensures that fuel specifications and the

notification process for temporary exemptions, are defined within domestic legislation rather than the 1998 Directive.

These Regulations also increase the minimum ethanol content of the standard petrol grade to ensure E10 petrol is introduced in Great Britain to help reduce CO₂ emissions of petrol vehicles and ensure climate change targets can be met. The increase in minimum ethanol content is within the existing ethanol content specifications required by the 1998 Directive and all petrol supplied under the new regulations will still meet EU specifications as currently drafted.”

3. Good reasons

3.1 The Parliamentary Under Secretary of State Rachel Maclean has made the following statement in accordance with paragraph 15(2) of Schedule 8 to 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.

These are: because of the on-going need to decarbonise road transport via the increased use of sustainable biofuels like bioethanol. It is also important that overarching fuel standards are brought into domestic legislation to ensure motor fuel specifications are appropriate for UK motorists.”