Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No. 0000

EXITING THE EUROPEAN UNION
ROAD TRAFFIC
ENVIRONMENTAL PROTECTION

The Road Vehicle Emission Performance Standards (Cars and Vans) (Amendment) (EU Exit) Regulations 2019

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018(**1**).

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Road Vehicle Emission Performance Standards (Cars and Vans) (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

(**1**) 2018 c. 16.

PART 2

Amendment of retained direct EU legislation: cars

CHAPTER 1

Amendment of Regulation (EC) No 443/2009

Amendment of Regulation (EC) No 443/2009

2.—(1) Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO_2 emissions from light-duty vehicles is amended as follows.

(2) In Article 1—

(a) in the first paragraph—

(i) omit "ensure the proper functioning of the internal market and to",

(ii) for "European Community" substitute "United Kingdom",

(b) omit the third paragraph.

(3) In Article 2—

(a) in paragraph 1, for "Community" in both places where it appears substitute "United Kingdom",

(b) in paragraph 2, for "Community" in both places where it appears substitute "United Kingdom",

(c) in paragraph 4—

(i) omit "With effect from 1 January 2012, ",

(ii) for "Union" substitute "United Kingdom".

(4) In Article 3, in paragraph 1 after point (g) insert—

"(h) 'passenger cars' and 'new passenger cars' have the meanings given in Article 2(1).".

(5) In Article 4—

(a) in the first paragraph, for "calendar year commencing 1 January 2012" substitute "period beginning with exit day and ending with 31 December 2019",

(b) in the second paragraph—

(i) after "year" insert ", or part year in the case of 2019,",

(ii) omit the first three indents,

(iii) in the fourth indent for "from 2015 to" substitute "in".

(6) In Article 5—

(a) omit the first four indents,

(b) in the fifth indent, for "2016" substitute "2019".

(7) Omit Article 6.

(8) In Article 7—

(a) in paragraph 2—

(i) after "more calendar years" insert ", or part year in the case of 2019",

(ii) for "file the following information with the Commission" substitute "provide the following information to the Secretary of State",

(b) in paragraph 3, for "Commission" substitute "Secretary of State",

(c) in paragraph 4, for "Commission" substitute "Secretary of State",

(d) in paragraph 5—

(i) for "Articles 81 and 82 of the Treaty" substitute "sections 2 (agreements etc preventing, restricting or distorting competition) and 18 (abuse of dominant position) of the Competition Act 1998(**2**)",

(ii) for "Community competition rules" substitute "any enactment relating to competition",

(e) in paragraph 7, for "filed with the Commission" substitute "provided to the Secretary of State",

(f) after paragraph 7 insert—

"**8.** Information required to be provided to the Secretary of State by virtue of paragraph 2 or 4 must:

(a) be in writing and dated,

(b) include the name and address of the pool manager to whom the Secretary of State may respond,

(c) include the names of the other manufacturers in the pool,

(d) be sent to the Secretary of State by post, delivered by hand or, with the express agreement of the Secretary of State, sent by electronic means.".

(9) In Article 8—

(a) in paragraph 1—

(i) in the first sentence, for "calendar year commencing 1 January 2010" substitute "period beginning with exit day and ending with 31 December 2019",

(ii) in the first sentence, for "each Member State" substitute "the Secretary of State",

(iii) in the first sentence, for "its territory" substitute "the United Kingdom",

(iv) in the second sentence, for "each Member State" substitute "the United Kingdom",

(v) omit the third sentence,

(vi) in the fourth sentence, for "Each Member State" substitute "The Secretary of State",

(vii) at the end insert—

"The Secretary of State may appoint a person to carry out the Secretary of State's functions under this paragraph.",

(b) for paragraph 2 substitute—

"**2.** The monitoring information specified in points 1 and 3 of Part A of Annex 2 must be determined in accordance with Part B, and collected in accordance with Part C, of that Annex.",

(c) omit paragraph 3,

(d) in paragraph 4—

(i) in the first subparagraph—

(aa) for "Commission" substitute "Secretary of State",

(bb) for "reported by Member States" substitute "recorded",

(cc) for "2011" substitute "2020",

(**2**) 1998 c. 41.

(dd) at the end of each of points (a), (b) and (c) insert ", or part year in the case of 2019",

(ii) in the second subparagraph—

(aa) for "Commission" substitute "Secretary of State",

(bb) omit "for each Member State",

(e) for paragraph 5 substitute—

"**5.** A manufacturer may, within three months of being notified of the provisional calculation under paragraph 4, notify the Secretary of State of any errors in the data. Notification given by a manufacturer must:

(a) be in writing and dated,

(b) include:

(i) the provisional calculation,

(ii) the specific emissions target for the preceding year, or part year in the case of 2019,

(iii) the manufacturer's calculation of their average specific emissions of CO_2,

(iv) any evidence in support of the calculation in (iii),

(c) be sent to the Secretary of State by post, delivered by hand or, with the express agreement of the Secretary of State, sent by electronic means.

Where notification is given by a manufacturer, the Secretary of State must confirm or amend the provisional calculation under paragraph 4, and notify the manufacturer accordingly by 31 October.",

(f) in paragraph 6—

(i) omit "in relation to the calendar year 2010 or 2011,",

(ii) after "for that year" insert "or part year in the case of 2019,",

(iii) for "Commission" in both places where it appears substitute "Secretary of State",

(g) for paragraph 7 substitute—

"**7.** The Secretary of State may appoint a person to act on behalf of the Secretary of State in collecting and communicating monitoring data in accordance with this Regulation.",

(h) omit paragraph 8,

(i) for paragraph 9 substitute—

"**9.** Regulations may—

(a) make provision about the procedures for monitoring and reporting of data under this Article and on the application of Annex 2,

(b) amend the data requirements and data parameters set out in Annex 2.".

(10) After Article 8 insert—

"Article 8a

Appeals

1. Where:

(a) a manufacturer gives notification to the Secretary of State under Article 8(5),

(b) the Secretary of State does not agree the manufacturer's calculation of their average specific emissions of CO_2, and

(c) the Secretary of State notifies the manufacturer under Article 8(6) that it has exceeded its specific emissions target,

the manufacturer or pool manager may appeal against the notification under Article 8(6) to the First-tier Tribunal on the ground that the Secretary of State's calculation under Article 8(5) was based on an error of fact.

2. The Secretary of State may not impose an excess emissions premium on the manufacturer or, in the case of a pool, the pool manager under Article 9 pending final determination or withdrawal of the appeal.

3. The First-tier Tribunal may—

(a) confirm the Secretary of State's provisional calculation, or

(b) substitute its own calculation.".

(11) In Article 9—

(a) in paragraph 1—

(i) for "each calendar year from 2012 onwards" substitute "the period beginning with exit day and ending with 31 December 2019 and each subsequent calendar year",

(ii) for "Commission" substitute "Secretary of State",

(b) in paragraph 2—

(i) for "formulae" substitute "formula",

(ii) omit point (a),

(iii) in point (b) omit "(b) From 2019:",

(iv) in the formula for "95 €/g" substitute "£83/g",

(v) after "calendar year" insert ", or part year in the case of 2019,",

(c) for paragraphs 3 and 4 substitute—

"**3.** Where the Secretary of State decides to impose an excess emissions premium under paragraph 1, the Secretary of State must serve a notice of civil penalty on the manufacturer or, in the case of a pool, the pool manager.

A notice of civil penalty must:

(a) be in writing;

(b) be dated;

(c) set out the reasons for which the excess emissions premium is imposed;

(d) set out the amount of the excess emissions premium and how it has been calculated;

(e) set out how to pay the excess emissions premium;

(f) require payment before the end of a period of 28 days after the date of the notice;

(g) include an explanation of the steps the manufacturer or, in the case of a pool, the pool manager, must take if they wish to object to the excess emissions premium, including the manner and form in which any notice of objection must be served; and

(h) include an explanation of the steps the Secretary of State may take to recover any unpaid excess emissions premium.