Explanatory Memorandum to the Vehicle Emissions Trading Schemes (Amendment) Order 2025

This Explanatory Memorandum has been prepared by the Transport and Digital Connectivity Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Vehicle Emissions Trading Schemes (Amendment) Order 2025. I am satisfied that the benefits justify the likely costs.

Ken Skates MS
Cabinet Secretary for the Economy, Transport and North Wales

18 June 2025

PART 1

1. Description

1.1 The Vehicle Emissions Trading Schemes (Amendment) Order 2025 ("this instrument") amends the Vehicle Emissions Trading Schemes Order 2023 ("the 2023 Order") and the Vehicle Emissions Trading Schemes (Amendment) Order 2024 ("the 2024 Order") to specify how provisions of Regulation (EU) 2019/631 saved by the 2023 and 2024 Order can be exercised for the purposes of administering previous compliance years. This instrument enables the Secretary of State to calculate the specific CO_2 emission targets for vehicle manufacturers under Regulation (EU) 2019/631 using inputs from UK or EU derived values in specific parts of the relevant calculation.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 Part 3 of Schedule 3 to the Climate Change Act 2008 (CCA) states that an emissions trading scheme that applies to England, Scotland, Wales and Northern Ireland must be established by Order in Council. The appropriate procedure for an Order in Council is prescribed by section 48 to the CCA. As this instrument is not providing for any of the matters set out in section 48(3) of the CCA, it is subject to the negative procedure by virtue of section 48(5).

2.2 As this instrument will be subject to UK, Scottish and Northern Irish Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

2.3 Alongside the consultation, the UK Government and Devolved Governments jointly commissioned the Climate Change Committee ("CCC") for advice on this instrument in accordance with section 48 of the Climate Change Act 2008. This advice was published by the CCC on their website. Letter: Advice on zero-emissions vehicle (ZEV) mandate and carbon dioxide regulations for new cars - Climate Change Committee.

3. Legislative background

3.1 The power to make an instrument to put in place 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, the Welsh Ministers, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland),[1] in relation to matters within

[1] The definition of relevant national authority is set out at section 47 of the CCA 2008.

- The Scottish Ministers are the relevant national authority in relation to matters within the legislative competence of the Scottish Parliament.
- The Welsh Ministers are the relevant national authority in relation to matters that— (a) are within the legislative competence of the National Assembly for Wales, or (b) relate to limiting or encouraging the limitation of activities in Wales that consist of the emission of greenhouse gas, other than activities in connection with offshore oil and gas exploration and exploitation.

their legislative competence. This instrument relates to climate policy and is therefore devolved.

3.2 The Westminster and Devolved Parliamentary procedures for making a UK 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. In accordance with paragraph 12 of Schedule 3 to the CCA, this instrument is required to be laid in the Northern Ireland Assembly, the Scottish Parliament, Senedd Cymru, and the UK Parliament. If any one of the administrations object to this instrument, it could be annulled, meaning that nothing further can be done under it and the King may revoke it.

4. Purpose and intended effect of the legislation

4.1 In March 2021 the Senedd established Wales's statutory target of net zero greenhouse gas emissions in 2050.[2] Net Zero Wales: Carbon Budget 2, published in October 2021 illustrates the importance of reducing emissions from transport in Wales as part of this ambition and the Welsh Government's support for stretching targets for the uptake of electric vehicles.[3]

4.2 Regulation (EU) 2019/631 ("the Regulation") is assimilated law that sets annual specific CO_2 emission targets for manufacturers registering new cars and light commercial vehicles ("vans") in the UK. Targets are calculated based on the mass of the manufacturer's fleet of vehicles, in accordance with a three-part formula found in Annex I of the Regulation. If a manufacturer exceeds their target, they are liable to pay an excess emissions premium.

4.3 Prior to EU Exit, the UK Government (DfT) held several consultations and workshops on the retention of the Regulation and how it should work once assimilated into UK law. In the Government's consultation response in 2020, DfT confirmed that EU values would be used within the first two formulas of Annex I when calculating the specific CO_2 emissions target. This was to ensure that the Regulation remained at least as ambitious after EU Exit as it was before – as the same result would be generated under the UK scheme as would have been generated under the EU scheme. Guidance[4] and workshops reiterated this approach.

4.4 Since its assimilation into UK law, the Regulation has been amended a number of times. Notably, S.I. 2020/1418 and S.I. 2021/898 amended the scope (Article 2) of the Regulation to Great Britain and then to the UK (respectively).

- The Secretary of State or the relevant Northern Ireland department is the relevant authority in relation to reserved matters within the meaning of the Northern Ireland Act 1998.
- The relevant Northern Ireland department is the relevant authority in relation to all other matters within the legislative competence of the Northern Ireland Assembly.
- The Secretary of State is the relevant national authority in relation to all other matters.

[2] The Environment (Wales) Act 2016 (Amendment of 2050 Emissions Target) Regulations 2021

[3] Net Zero Wales: Carbon Budget 2

[4] (Section 7. Calculation of emission targets and performance)

4.5 A discrepancy has since been identified in DfT's approach (to use some EU values) for the specific CO2 emissions targets as the scope of the Regulation only permits UK values to be used when calculating the relevant targets, contrary to the policy intention and the interpretation put forward in guidance.

4.6 To reconcile this discrepancy, this instrument enables manufacturers to receive the higher specific CO2 emissions target from either the EU-derived approach (as previously communicated by DfT) or a UK-derived approach (as strictly read from the Regulation).

4.7 The Regulation was largely revoked, subject to savings for monitoring and compliance for prior compliance years, by the 2023 Order and 2024 Order. Once monitoring and compliance is complete for 2021-2023 in the UK and 2024 in Northern Ireland, the Regulation as it regulates CO2 emissions will no longer apply.

4.8 This instrument therefore delivers an interim measure to correct the discrepancy in target setting for the 2021-2023 and 2024 compliance years, before the CO2-reduction obligations in Regulation (EU) 2019/631 are fully replaced from 2025 onwards.

4.9 The 2023 Order establishes trading schemes that set targets for the registration of new non-zero emission cars and vans each year and also implements a CO2 baseline target to limit CO2 emissions from new non-zero emission cars and vans. Manufacturers' specific CO2 emissions targets from the Regulation inform the CO2 baselines for the 2023 Order.

5. Consultation

5.1 On 24 December 2024, the UK Government, the Department for Infrastructure (Northern Ireland), the Welsh Government, and the Scottish Government launched a public consultation[5] seeking views on a number of proposals relating to the transition to zero-emission cars and vans, including the proposal to correct the legislative discrepancy. As part of this, the Department for Transport also delivered a series of workshops with industry, including one workshop specifically focused on the proposal to rectify the discrepancy. The consultation closed on 18 February 2025.

5.2 The consultation received over 600 responses, from a range of stakeholders including vehicle manufacturers, chargepoint operators, and non-government organisations.

5.3 The consultation posed the following question: "Question 17: Do you agree with the proposal to allow UK derived or EU derived WLTP specific emission reference targets to apply from 2021-2023 in the United Kingdom, and in 2024 in Northern Ireland? If not, why?"

5.4 A significant portion of industry respondents to this question agreed with the proposal set out in the consultation to permit both EU and UK inputs for the

[5] https://www.gov.uk/government/consultations/phasing-out-sales-of-new-petrol-and-diesel-cars-from-2030-and-supporting-the-zev-transition

purposes of calculating specific emissions targets under the Regulation. Both industry and individual stakeholders stated the preferred approach would result in a fair outcome for all manufacturers and would precipitate the publishing of the 2023 Order baseline targets.

5.5 Some industry stakeholders noted that certainty on the proposal should be provided in advance of the November 2025 trading window under the 2023 Order. An industry respondent noted that the outcome of this proposal should not jeopardise the compliance, or commercial arrangements of manufacturers complying with the regulation as a pool participant.

5.6 The joint government response to the consultation was subsequently published on 7 April 2025 and noted that government would bring forward regulations to implement the proposal as soon as possible and ahead of the November 2025 trading window. Full details of the consultation can be found online[6].

[6] https://www.gov.uk/government/consultations/phasing-out-sales-of-new-petrol-and-diesel-cars-from-2030-and-supporting-the-zev-transition

PART 2 – REGULATORY IMPACT ASSESSMENT

As this instrument does not significantly alter the policy in Wales or its impact in Wales, a Regulatory Impact Assessment (RIA) has not been prepared. This is in line with the policy set out in the Welsh Ministers' code of practice for carrying out regulatory impact assessments for subordinate legislation. The RIA for the 2023 Order assessed the likely impacts of the proposed legislation in Wales and was based on a Cost Benefit Analysis[7] of the schemes' impact across the UK as a whole and is therefore still appropriate.

The UK Government has produced a Cost Benefit Analysis relating to the changes related to this instrument which is published alongside its explanatory memorandum on the legislation.gov.uk website.

Impacts

In summary, the UK Government's Cost Benefit Analysis concludes that as a result of this regulatory amendment manufacturers may receive an updated 2021 specific emissions targets under Regulation (EU) 2019/631.

This may change their CO_2 baseline set under the VETS order. It is expected to increase their target (i.e. making it easier to comply with, all else equal).

A higher fleet target for 2021 could see some manufacturers receive a higher CO_2 target under the VETS. With higher VETS CO_2 targets, a manufacturer could:

- Increase the future emissions intensity of their new non-zero emission vehicle (non-ZEV) sales, assuming their current non-ZEV average is below the existing target.
- Transfer greater possible CO2 overcompliance to reduce ZEV delivery under the ZEV scheme.
- Or trade with other manufacturers to reduce CO2 compliance elsewhere in the market.

Each of these options could increase the level of CO_2 emissions from the new sales fleet and reduce the regulatory compliance costs for manufacturers across the market.

CO_2 emissions

The additional headroom in the CO_2 backstop is estimated to increase carbon emissions of the average non-zero emission car and vans sold following the change against the baseline (which sees falling emissions due to VETS). The non-traded changes in emissions at an UK level and set against UK Carbon Budget periods, are estimated in Figure 1. These positive changes can also be expressed in negative terms, as 'lost savings'.

7 https://www.gov.uk/government/consultations/a-zero-emission-vehicle-zev-mandate-and-co2-emissions-regulation-for-new-cars-and-vans-in-the-uk

MtCO2e	CB4	CB5	CB6	2024-2050
Car	0.0	0.0	0.1	0.3
Van	0.1	0.3	0.3	1.6
Total	0.1	0.3	0.4	1.8

Figure 1 UK Carbon Impacts – change in average annual and total tailpipe emissions.