

This Statutory Instrument has been laid and published in consequence of S.I. 2021/199 being laid before Parliament under the incorrect parliamentary procedure. It is being issued free of charge to all known recipients of that Statutory Instrument.

Draft Regulations laid before Parliament under paragraph 13(1) of Schedule 8 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2021 No. 000

PUBLIC HEALTH, ENGLAND AND WALES

PUBLIC HEALTH, SCOTLAND

CONSUMER PROTECTION

**The Motor Fuel (Composition and Content) and the Biofuel
(Labelling) (Amendment) (No. 2) Regulations 2021**

Made - - - - - ***

Laid before Parliament ***

Coming into force in accordance with regulation 1(2) and (3)

The Secretary of State, in exercise of the powers conferred by sections 30(1) and (3), 31(1), 32(1) and 63(1) of the Clean Air Act 1993(a) makes the following Regulations.

In accordance with section 30(2) of the Clean Air Act 1993, the Secretary of State has consulted such persons as appeared to the Secretary of State to represent manufacturers and users of motor vehicles, and to represent the producers and users of fuel for motor vehicles, and to be conversant with the problems of air pollution.

In accordance with paragraph 13(1) of Schedule 8 to the European Union (Withdrawal) Act 2018(b), a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

(a) 1993 c. 11. Section 63(1) was amended, in relation to Scotland only, by the Environment Act 1995 (c. 25), section 120, Schedule 22, paragraph 199.

(b) Paragraph 13(1) was amended by the European Union (Withdrawal Agreement) Act 2020 (c. 1), section 41(4), Schedule 5, paragraph 54(1) and (8)(b).

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Motor Fuel (Composition and Content) and the Biofuel (Labelling) (Amendment) (No. 2) Regulations 2021.

(2) Except as specified in paragraph (3), these Regulations come into force 21 days after the day on which the Regulations are made.

(3) Regulations 3(2)(h), 4(d) and (f), 5 and 7(b) and Part 5 come into force on 1st September 2021.

(4) The amendments to the Motor Fuel (Composition and Content) Regulations 1999(a) made by Part 2 extend to Great Britain.

(5) The amendments to the Biofuel (Labelling) Regulations 2004(b) made by Part 3 extend to the United Kingdom.

PART 2

Amendments to the Motor Fuel (Composition and Content) Regulations 1999

2. The Motor Fuel (Composition and Content) Regulations 1999 are amended in accordance with regulations 3 to 10.

Amendments to regulation 2

3.—(1) Regulation 2(c) is renumbered as paragraph (1) of that regulation.

(2) In paragraph (1), as renumbered—

(a) at the appropriate places, insert—

““blending facility” means a facility, that is not a refinery, where motor fuel is blended with ethanol or FAME;”;

““BS EN 228:2012” means the British Standard which is entitled “Automotive fuels. Unleaded petrol. Requirements and test methods” and was published under number BS EN 228:2012;”;

““BS EN 14214:2012” means the British Standard which is entitled “Liquid petroleum products. Fatty acid methyl esters (FAME) for use in diesel engines and heating applications. Requirements and test methods” and was published under number BS EN 14214:2012;”;

““BS EN 590:2013” means the British Standard which is entitled “Automotive fuels. Diesel. Requirements and test methods” and was published under number BS EN 590:2013;”;

““BS EN ISO 4259:2017” means the British Standard which is entitled “Petroleum and related products. Precision of measurement methods and results. Interpretation and application of precision data in relation to methods of test” and was published under number BS EN ISO 4259:2017;”;

““FAME” means fatty acid methyl ester;”;

““Regulation (EC) No 715/2007” means Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with

(a) S.I. 1999/3107.

(b) S.I. 2004/3349.

(c) Regulation 2 was amended by S.I. 2003/3078, S.I. 2010/3035, S.I. 2012/2567 and S.I. 2015/1796.

respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, as it had effect immediately before IP completion day;”;

““Regulation (EC) No 595/2009” means Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC, as it had effect immediately before IP completion day;”;

(b) for the definition of “diesel fuel” substitute—

““diesel fuel” means a gas oil falling within CN code 2710 19 43 and used for self-propelling vehicles as referred to in Regulation (EC) No 715/2007 and Regulation (EC) No 595/2009;”;

(c) omit the definition of “the Directive”;

(d) in the definition of “distribute”, in paragraph (b), after “refinery” insert “or from a blending facility”;

(e) in the definition of “gas oil” for “2710 19 41 and 2710 19 45” substitute “2710 19 43 and 2710 19 46”;

(f) in the definition of “leaded petrol”, for “Annex 1 of the Directive”, in each place it occurs, substitute “Table 1 of Schedule AA1”;

(g) for the definition of “petrol” substitute—

““petrol” means any volatile mineral oil intended for the operation of internal combustion positive-ignition engines for the propulsion of vehicles and falling within CN codes 2710 12 41, 2710 12 45, 2710 12 49 and 2710 12 50;”;

(h) after the definition of “petrol” insert—

““premium 95 grade petrol” means petrol that has a research octane number of at least 95 but less than 97 measured in accordance with the test method referred to in Table 1 of Schedule AA1;”.

(3) After paragraph (1) as renumbered, insert—

“(2) In these Regulations any reference to a numbered CN code is a reference to the code set out in Annex 1 to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as it had effect immediately before IP completion day.”.

Amendments to regulation 3

4. In regulation 3(a)—

(a) in paragraph (2), for “Annex I of the Directive”, substitute “Table 1 of Schedule AA1”;

(b) in paragraph (3), from “Annex I” to the end, substitute “Table 1 of Schedule AA1”;

(c) in paragraph (4), for “Annex II of the Directive”, substitute “Table 2 of Schedule AA1”;

(d) in paragraph (5)—

(i) omit “before 1st January 2017”;

(ii) for “3” substitute “1”;

(e) in paragraph (7), for “Annex I of the Directive”, in both places it occurs, substitute “Table 1 of Schedule AA1”;

(f) after paragraph (7) insert—

(a) Regulation 3 was substituted by S.I. 2007/1608 and amended by S.I. 2010/3035 and S.I. 2013/2897.

“(8) Premium 95 grade petrol will not comply with a specified requirement unless, in addition to the requirements of paragraphs (2) or (3), it has a minimum ethanol content of 5.5% by volume measured in accordance with the test method referred to in Table 1 of Schedule AA1.”.

Amendment to regulation 5

5. In regulation 5(a), after paragraph (1) insert—

“(1A) Paragraph (1) does not apply to premium 95 grade petrol which is sold during the period beginning on 1st September 2021 and ending on 1st November 2021 if that petrol complies with the winter petrol requirement, except for the minimum ethanol content specified in regulation 3(8).”.

Amendment to regulation 5B

6. In regulation 5B(b), in paragraph (7)(d), for “Article 1(3) of Council Directive 94/25/EC” substitute “regulation 2(1) of the Recreational Craft Regulations 2017”(c).

Amendments to regulation 6

7. In regulation 6(d)—

- (a) omit paragraph (4);
- (b) after paragraph (6) insert—

“(7) Where, as a consequence of any issue occurring at a refinery or at a blending facility, there is a shortage of premium 95 grade petrol that has the required minimum ethanol content then, notwithstanding regulation 4(1) and (2), a person may, during the periods specified in paragraph (8), distribute premium 95 grade petrol which except for the required minimum ethanol content complies with specified requirements.

(8) The periods specified for the purposes of paragraph (7) are—

- (a) the relevant period, and
- (b) any period for which consent is given under paragraph (11).

(9) A person must, within 2 working days beginning with date on which the relevant period begins, notify the Secretary of State that they are distributing, or will distribute, premium 95 grade petrol pursuant to paragraph (7) and the notification must also provide—

- (a) details of the issue referred to in paragraph (7) and the date on which it first occurred,
- (b) the name and address of the refinery or the blending facility at which the issue occurred, and
- (c) information on any steps that are being taken to address the issue.

(10) A person may, at the same time as they notify the Secretary of State under paragraph (9), request the Secretary of State’s consent to distribute premium 95 grade petrol pursuant to paragraph (7) for longer than the relevant period.

(11) The Secretary of State may consent to the request referred to in paragraph (10) if the Secretary of State considers that, at the end of the relevant period, the issue referred to in paragraph (7) is unlikely to be resolved.

(12) A person who distributes petrol pursuant to paragraph (7) must, before the end of the period of 30 days beginning with the date on which the relevant period ends or, where

(a) Regulation 5 was amended by S.I. 2003/3078 and S.I. 2010/3035.

(b) Regulation 5B was inserted by S.I. 2010/3035 and amended by S.I. 2012/2567, S.I. 2018/236 and S.I. 2018/764.

(c) S.I. 2017/737.

(d) Regulation 6 was amended by S.I. 2007/1608 and S.I. 2010/3035.

consent is given under paragraph (11) to distribute for a longer period, beginning with the date on which that period ends, provide the Secretary of State with details of the measures that have been taken to prevent a reoccurrence of the issue mentioned in paragraph (7).

(13) A person must not distribute premium 95 grade petrol pursuant to paragraph (7) more than 3 times in any 12 month period as a consequence of an issue occurring at the same refinery or blending facility.

(14) Notwithstanding regulation 4(1) and (2), a person may, with the Secretary of State's consent, distribute premium 95 grade petrol which, except for the required minimum ethanol content, complies with specified requirements, from premises where it—

- (a) is not technically feasible to blend ethanol with petrol in commercial volumes, and
- (b) was not technically feasible to do so during the previous calendar year,

and for the purpose of this paragraph, distribute includes distribution from those premises.

(15) An application for the Secretary of State's consent to distribute petrol pursuant to paragraph (14) must include—

- (a) the applicant's full name,
- (b) the name and address of the premises from which the petrol will be distributed, and
- (c) a declaration by the applicant that the matters mentioned in paragraph (14)(a) and (b) apply.

(16) On a first application made under paragraph (15), the Secretary of State may give consent for a person to distribute petrol pursuant to paragraph (14) for a period of 2 years.

(17) On subsequent applications made under paragraph (15), the Secretary of State may, after consulting with such persons as the Secretary of State considers appropriate, give consent for a person to distribute petrol pursuant to paragraph (14) for a period of up to 2 years at a time.

(18) Notwithstanding regulation 4(1) and (2), a person may distribute premium 95 grade petrol which, except for the required minimum ethanol content, complies with specified requirements, to a filling station mentioned in paragraph (19)(a) or (b).

(19) Notwithstanding regulation 5(1) and (2), a person may sell premium 95 grade petrol which, except for the required minimum ethanol content, complies with specified requirements, from a filling station which—

- (a) is in an area specified in Schedule 1 to the Hydrocarbon Oils and Biofuels (Road Fuels in Defined Areas) (Reliefs) Regulations 2011(a),
- (b) in the previous calendar year sold less than a total amount of 1 million litres of petrol and diesel fuel,
- (c) receives petrol distributed by virtue of paragraph (7), or
- (d) receives petrol distributed by virtue of paragraph (14).

(20) In this regulation—

“relevant period” means a period of 10 working days beginning with the date on which the issue causing the shortage of premium 95 grade petrol that has the required minimum ethanol content first occurred;

“required minimum ethanol content” means the minimum ethanol content specified in regulation 3(8);

“working day” means a day other than a Saturday or Sunday, Good Friday, Christmas Day or a day which is a bank holiday in any part of the United Kingdom under section 1 of the Banking and Financial Dealings Act 1971(b).”.

(a) S.I. 2011/2935. Schedule 1 was inserted by S.I. 2015/550.

(b) 1971 c. 80.

Amendment to regulation 7

8. In regulation 7(a), in paragraph (1), omit “but only in accordance with the provisions of article 7 of the Directive”.

Amendment to regulation 17

9. In regulation 17, in paragraph (2), for “Annexes I to IV of the Directive”, substitute “Schedule AA1”.

Insertion of Schedule AA1

10. Immediately before Schedule A1 insert the following Schedule—

“SCHEDULE AA1

Regulation 3

Environmental Specifications for Petrol and for Diesel Fuel

Table 1
Petrol

<i>Parameter⁽¹⁾</i>	<i>Unit</i>	<i>Limits⁽²⁾</i>	
		<i>Minimum</i>	<i>Maximum</i>
Research octane number		95	—
Motor octane number		85	—
Vapour pressure, summer period ⁽³⁾	kPa	—	70.0
Distillation:			
— percentage evaporated at 100°C	% v/v	46.0	—
— percentage evaporated at 150°C	% v/v	75.0	—
Hydrocarbon analysis:			
— olefins	% v/v	—	18.0
— aromatics	% v/v	—	35.0
— benzene	% v/v	—	1.0
Oxygen content	% m/m	—	3.7
Oxygenates			
— Methanol	% v/v	—	3.0
— Ethanol (stabilising agents may be necessary)	% v/v	—	10.0
— Iso-propyl alcohol	% v/v	—	12.0
— Tert-butyl alcohol	% v/v	—	15.0
— Iso-butyl alcohol	% v/v	—	15.0
— Ethers containing five or more carbon atoms per molecule	% v/v	—	22.0
— Other oxygenates ⁽⁴⁾	% v/v	—	15.0
Sulphur content	mg/kg	—	10.0
Lead content	g/l	—	0.005

(a) Regulation 7 was amended by S.I. 2003/3078 and S.I. 2010/3035.

(1) Test methods must be those specified in BS EN 228:2012. An analytical method specified in a replacement to BS EN 228:2012 can be used if it can be shown to give at least the same accuracy and at least the same level of precision as the analytical method it replaces.

(2) The values quoted in the specification are ‘true values’. In the establishment of their limit values, the terms of BS EN ISO 4259:2017 have been applied and in fixing a minimum value, a minimum difference of 2R above zero has been taken into account (R= reproducibility). The results of individual measurements must be interpreted on the basis of the criteria described in BS EN ISO 4259:2017.

(3) The summer period is the period specified in regulation 5(2).

(4) Other mono-alcohols and ethers with a final boiling point no higher than that stated in BS EN 228:2012.

Table 2
Diesel fuel

<i>Parameter⁽¹⁾</i>	<i>Unit</i>	<i>Limits⁽²⁾</i>	
		<i>Minimum</i>	<i>Maximum</i>
Cetane number		51.0	—
Density at 15°C	kg/m	—	845.0
Distillation:			
— 95% v/v	°C	—	360.0
recovered at:			
Polycyclic aromatic hydrocarbons	% m/m	—	8.0
Sulphur content	mg/kg	—	10.0
FAME content – EN 14078	% v/v	—	7.0 ⁽³⁾

(1) Test methods must be those specified in BS EN 590:2013. An analytical method specified in a replacement to BS EN 590:2013 can be used if it can be shown to give at least the same accuracy and at least the same level of precision as the analytical method it replaces.

(2) The values quoted in the specification are ‘true values’. In the establishment of their limit values, the terms of BS EN ISO 4259:2017 have been applied and in fixing a minimum value, a minimum difference of 2R above zero has been taken into account (R= reproducibility). The results of individual measurements must be interpreted on the basis of the criteria described in BS EN ISO 4259:2017.

(3) FAME must comply with BS EN 14214:2012.”.

PART 3

Amendments to the Biofuel (Labelling) Regulations 2004

11. The Biofuel (Labelling) Regulations 2004(a) are amended as follows.

12. In regulation 3(b)—

- (a) in paragraph (1)(c), for “5%” substitute “10%”;
- (b) after paragraph (3), insert—

“(4) A person must not sell, or offer for sale, to the ultimate consumer any blend containing more than 5% but not more than 10% by volume of bioethanol, unless the words “Suitable for most petrol vehicles: check before use” are displayed prominently on any dispenser from which such blend is sold or offered for sale to the ultimate consumer.”.

(a) S.I. 2004/3349.

(b) Regulation 3 was amended by S.I. 2009/3277.

PART 4

Revocation of the Motor Fuel (Composition and Content) and the Biofuel (Labelling) (Amendment) Regulations 2021

13. The Motor Fuel (Composition and Content) and the Biofuel (Labelling) (Amendment) Regulations 2021(a) are revoked.

PART 5

Review

14.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations, and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before the end of the period of five years beginning with the date on which this regulation comes into force.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015(b) requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate;
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Signed by authority of the Secretary of State

Date

Name
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Motor Fuel (Composition and Content) Regulations 1999 (S.I. 1999/3107) (“the 1999 Regulations”) and the Biofuel (Labelling) Regulations 2004 (S.I. 2004/3349).

Part 2 of these Regulations amends the 1999 Regulations to make provision in relation to the introduction of premium 95 grade petrol that has a minimum ethanol content of 5.5% by volume and to make provision in relation to the United Kingdom’s exit from the European Union.

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- (a) S.I. 2021/199. This instrument was treated as if it were subject to the negative resolution procedure. However, as it amended provision made under section 2(2) of the European Communities Act 1972 (c. 68) (“the 1972 Act”), paragraph 13(1) of Schedule 8 to the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”) applies. This provides that a statutory instrument which amends or revokes any subordinate legislation made under section 2(2) of the 1972 Act using a power conferred before the beginning of the parliamentary session in which the 2018 Act was passed, may not be made unless a draft of the instrument has been laid before, and approved by a resolution of each House of Parliament. To reflect these issues relating to the validity of S.I. 2021/199, this instrument contains a statement that S.I. 2021/199 is revoked.
 - (b) 2015 c. 26.

In relation to the United Kingdom's exit from the European Union, regulation 8 of these Regulations amends regulation 7 of the 1999 Regulations to correct a deficiency in the operation of that regulation. These Regulations also amend the 1999 Regulations to replace references to provisions of the Directive with references to domestic legislation, to make amendments to the definitions of "diesel fuel", "gas oil" and "petrol" and to update the relevant CN codes (see regulations 3(2)(a) to (c) and (e) to (g) and (3), 4(a), (b), (c) and (e), 6 and 9). Regulation 7(a) removes an obsolete provision in regulation 6 of the 1999 Regulations and regulation 10 inserts Schedule AA1 to the 1999 Regulations, which sets out the environmental specifications for petrol and diesel fuel.

In relation to premium 95 grade petrol, regulation 3(2)(h) amends regulation 2 of the 1999 Regulations to insert a definition of "premium 95 grade petrol" and regulation 4(f) inserts paragraph (8) into regulation 3 of the 1999 Regulations to provide that premium 95 grade petrol will not meet the summer or winter petrol requirement unless it also has a minimum ethanol content of 5.5% by volume ("required minimum ethanol content"). The definition of "distribute" in regulation 2 of the 1999 Regulations is amended by regulation 3(2)(d) to include distribution from a blending facility and regulation 3(2)(a) inserts a definition of "blending facility" into regulation 2 of the 1999 Regulations.

Regulation 5 inserts paragraph (1A) into regulation 5 of the 1999 Regulations to provide that during the period beginning on 1st September 2021 and ending on 1st November 2021, a person can sell premium 95 grade petrol which does not have the required minimum ethanol content but which otherwise satisfies the winter petrol requirement.

Regulation 7(b) amends regulation 6 of the 1999 Regulations to provide exemptions to the requirement that premium 95 grade petrol that is distributed and sold must have a minimum ethanol content of 5.5% by volume.

Regulation 4(d) amends regulation 3(5) of the 1999 Regulations to provide for the supply, from certain filling stations, of super unleaded petrol that has a maximum ethanol content of 5% by volume and a maximum oxygen content of 2.7% by volume.

Part 3 of these Regulations amends regulation 3 of the Biofuel (Labelling) Regulations 2004 to provide for the wording that must be displayed on any dispenser from which petrol containing more than 5% but not more than 10% by volume of bioethanol is sold.

Part 4 of these Regulations contains a statement that the Motor Fuel (Composition and Content) and the Biofuel (Labelling) (Amendment) Regulations 2021 (S.I. 2021/199) are revoked. S.I. 2021/199 was treated as if subject to the negative resolution procedure, however, paragraph 13(1) of Schedule 8 to the European Union (Withdrawal) Act 2018 (c. 16) ("the 2018 Act") provides that regulations which amend or revoke any subordinate legislation made under section 2(2) of the European Communities Act 1972 (c. 68) using a power conferred before the parliamentary session in which the 2018 Act was passed, may not be made unless a draft is laid before, and approved by a resolution of each House of Parliament. Regulation 13 is therefore included to reflect these issues relating to the validity of S.I. 2021/199.

Part 5 of these Regulations provides for the Secretary of State to undertake a review of the regulatory provisions contained in these Regulations on a five yearly basis.

An impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Department for Transport, 33 Horseferry Road, London, SW1P 4DR and is published with an Explanatory Memorandum alongside this instrument on <https://www.legislation.gov.uk/>.

British Standard publications referred to in these Regulations can be purchased from the British Standard Institute either online at <https://www.bsigroup.com/en-GB/> or by writing to BSI Customer Services, 389 Chiswick High Road, London, W4 4AL (Tel: 0345 086 9001). These publications can be inspected free of charge, by appointment, at the Department for Transport at the above address.