

2004 No. 2034

ENVIRONMENTAL PROTECTION

**The Non-Road Mobile Machinery (Emission of Gaseous and
Particulate Pollutants) (Amendment) Regulations 2004**

<i>Made</i>	- - - -	<i>28th July 2004</i>
<i>Laid before Parliament</i>		<i>12th August 2004</i>
<i>Coming into force</i>	- -	<i>6th September 2004</i>

The Secretary of State for Transport, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the reduction of emissions of pollutants from internal combustion engines, in exercise of the powers conferred upon him by that subsection, hereby makes the following Regulations:

Citation and Commencement

1. These Regulations may be cited as the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2004 and shall come into force on 6th September 2004.

Amendment of Regulations

2. The Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999(c) shall have effect with the following amendments.

Interpretation

3.—(1) Regulation 2(1) shall be amended as follows.

(2) In sub-paragraph (a), for the words “amended by Commission Directive 2001/63/EC”, there shall be substituted the words “amended by Commission Directive 2001/63/EC(d) and last amended by European Parliament and Council Directive 2002/88/EC(e)”.

(3) For sub-paragraph (j), there shall be substituted the following sub-paragraph—

“(j) “placing on the market” means the action of making an engine available for the first time on the market, for payment or free of charge, with a view to distribution or use in the Community;”

(4) After sub-paragraph (q), there shall be inserted the following definitions—

(a) S.I. 1998/745.
(b) 1972 c. 68.
(c) S.I. 1999/1053, as amended by 2002/1649.
(d) O.J. L227. 23.8.2001, p.41.
(e) O.J. L35. 11.2.2003, p.28.

- “(r) “replacement engine” means a newly built engine to replace an engine in a machine, and which has been supplied only for this purpose;
- (s) “hand-held engine” means an engine that meets at least one of the following requirements—
 - (i) the engine can only be used in a piece of equipment that is carried by the operator throughout the performance of its intended function;
 - (ii) the engine can only be used in a piece of equipment that must operate multilaterally, such as upside down or sideways, to complete its intended function;
 - (iii) the engine can only be used in a piece of equipment for which the combined engine and equipment dry weight is under 20 kilograms and at least one of the following attributes is also present—
 - (aa) the operator must alternatively provide support or carry the equipment throughout the performance of its intended function;
 - (bb) the operator must provide support or attitudinal control for the equipment throughout the performance of its intended function;
 - (cc) the engine must be used in a generator or pump;
- (t) “non-hand held engine” means an engine which does not fall within the definition of hand-held engine;
- (u) “small volume engine family” means an SI engine family with a total yearly production of less than 5, 000 spark ignition engines;
- (v) “small volume engine manufacturer of SI engines” means a manufacturer with a total yearly production of less than 25, 000 spark ignition engines;
- (w) “intermittent speed CI engine” means a CI engine having a net power that is higher than 18 kW but not more than 560 kW and that is operated under intermittent speed rather than a single constant speed;
- (x) “constant speed CI engine” means a CI engine having a net power that is higher than 18 kW but not more than 560 kW and that is operated under constant speed;
- (y) “CI engine” means an engine which works on the compression ignition principle;
- (z) “SI engine” means a petrol-fuelled engine having a net power of not more than 19kW and which works on the spark-ignition principle.”.

Scope and Exclusions

4.—(1) Regulation 3 shall be amended as follows.

(2) For paragraph (1), there shall be substituted the following paragraph—

“(1) Subject to paragraphs (3) and (4), these Regulations apply to—

- (a) engines to be installed in non-road mobile machinery intended and suited to move, or be moved, on the ground, whether or not on the road, and
- (b) to secondary engines fitted into vehicles intended for passenger or goods transport on the road,

where the engine is—

- (i) an intermittent speed CI engine;
- (ii) a constant speed CI engine; or
- (iii) a SI engine”.

(3) Paragraph (2) shall be deleted.

(4) For sub-paragraph (d) of regulation 3(3), there shall be substituted the following sub-paragraph—

“(d) recreational vehicles including—

- (i) snow mobiles;
- (ii) off road motorcycles;
- (iii) all-terrain vehicles.”.

(5) For paragraph (5), there shall be substituted the following paragraph—

“(5) In this regulation “secondary engine” means an engine installed in or on a motor vehicle, but not providing motive power to the vehicle.”.

General duty relating to placing on the market

5.—(1) Regulation 4 shall be amended as follows.

(2) In paragraph (1), for the words “and 15”, there shall be substituted the words “15, 15A and 15B”.

(3) In paragraph (1), the word “new” shall be deleted.

(4) In sub-paragraph (b) of regulation 4(2), the word “and” shall be deleted.

(5) After sub-paragraph (c) of regulation 4(2), there shall be inserted the following sub-paragraphs—

- “(d) where the engine is an intermittent speed CI engine, it complies with the limit values set out in the table in section 4.1.2.3 of Annex 1;
- (e) where the engine is a constant speed CI engine and it is placed on the market on or after the 31st December 2006, it complies with the limit values set out in the table in section 4.1.2.3 of Annex 1;
- (f) subject to sub-paragraphs (g) and (h), where the engine is a SI engine and is placed on the market after the 11th February 2005, it complies with the limit values set out in the table in section 4.2.2.1 of Annex 1;
- (g) where the engine is a SI engine of a class specified in the first column of the table to this regulation, is not manufactured by a small volume engine manufacturer and is placed on the market after the dates set out in the second column of the table, it complies with the limit values set out in the table in section 4.2.2.2 of Annex 1; and
- (h) where the engine is a SI engine of a class specified in the first column of the table to this regulation, is manufactured by a small volume engine manufacturer and is placed on the market after the dates set out in the third column of the table, it complies with the limit values set out in the table in section 4.2.2.2 of Annex 1.

<i>Class</i>	<i>Date</i>	<i>Date for small volume engine manufacturers</i>
Classes SN:1 and SN:2	1st February 2005	1st February 2008
Class SN:4	1st February 2007	1st February 2010
Classes SH:1, SH:2 and SN:3	1st February 2008	1st February 2011
Class SH:3	1st February 2009	1st February 2012”

Category of Engines

6.—(1) Regulation 5 shall be amended as follows.

(2) In paragraph (2), for the words “An engine” there shall be substituted the words “A CI engine”.

(3) After paragraph (2), the following paragraphs shall be inserted—

“(3) Subject to paragraph (4), a SI engine is within a class in the first column of the table to this regulation if it has a displacement within the range specified for that class in the second column.

<i>Class</i>	<i>Displacement (cubic cm)</i>
Hand-held engines	
Class SH:1	< 20
Class SH:2	≥ 20 < 50
Class SH:3	≥ 50
Non-hand-held engines	
Class SN:1	< 66
Class SN:2	≥ 66 < 100
Class SN:3	≥ 100 < 225
Class SN:4	≥ 225

(4) For the purpose of paragraph (3), a two-stroke engine used to power a snow thrower shall be deemed to be a hand-held engine.”.

Provisions for grant of type approval certificate

7. For regulation 6 there shall be substituted the following regulation—

“Provisions for grant of type approval certificate

6.—(1) Where the engine is—

- (a) an intermittent speed CI engine; and
- (b) has an engine power output falling within category D, E, F or G;

the approval authority shall not, after the 1st September 2004, issue a type approval certificate pursuant to regulation 9(1) for an engine type or an engine family if—

- (i) the engine does not meet the requirements specified in these Regulations; and
- (ii) the emissions of gaseous and particulate pollutants from the engine do not comply with the limit values set out in the table in section 4.1.2.3 of Annex 1.

(2) Where the engine is—

- (a) a constant speed CI engine; and
- (b) has an engine power output falling within category D, E, F or G;

the approval authority shall not, on or after the 31st December 2006, issue a type approval certificate pursuant to regulation 9(1) for an engine type or an engine family if—

- (i) the engine does not meet the requirements specified in these Regulations; and
- (ii) the emissions of gaseous and particulate pollutants from the engine do not comply with the limit values set out in the table in paragraph 4.1.2.3 of Annex 1.

(3) Subject to paragraphs (4) and (5), where the engine is a SI engine, the approval authority shall not, after the 1st September 2004, issue a type approval certificate pursuant to regulation 9(1) for an engine type or an engine family if—

- (a) the engine does not meet the requirements specified in these Regulations; and
 - (b) the emissions of gaseous pollutants from the engine do not comply with the limit values set out in the table in section 4.2.2.1 of Annex 1.
- (4) Subject to regulation 15, where the engine is—
- (a) a SI engine which falls within the class set out in the first column of the table to this regulation; and
 - (b) is not manufactured by a small volume engine manufacturer;

the approval authority shall not, after the date specified in the second column of the table, issue a type approval certificate pursuant to regulation 9(1) for an engine type or engine family if—

- (i) the engine does not meet the requirements specified in these Regulations; and
- (ii) the emissions of gaseous pollutants from the engine do not comply with the limit values set out in the table in section 4.2.2.2 of Annex 1.

(5) Subject to regulation 15, where the engine is—

- (a) a SI engine which falls within the class set out in the first column of the table to this regulation; and
- (b) is manufactured by a small volume engine manufacturer;

the approval authority shall not, after the date specified in the third column of the table, issue a type approval certificate pursuant to regulation 9(1) for an engine type or engine family if—

- (i) the engine does not meet the requirements specified in these Regulations; and
- (ii) the emissions of gaseous pollutants from the engine do not comply with the limit values set out in the table in section 4.2.2.2 of Annex 1.

<i>Class</i>	<i>Date</i>	<i>Date for small volume engine manufacturers</i>
Classes SN:1 and SN:2	1st August 2004	1st August 2007
Class SN:4	1st August 2006	1st August 2009
Classes SH:1, SH:2 and SN:3	1st August 2007	1st August 2010
Class SH:3	1st August 2008	1st August 2011”

Transitional provisions in respect of placing engines on the market

8. For regulation 7 there shall be substituted the following regulation—

“Transitional provisions in respect of placing engines on the market

7.—(1) Subject to regulation 15A and notwithstanding the provisions of regulation 4(2)(d), a manufacturer may place on the market—

- (a) on or before the 31st December 2004, an intermittent speed CI engine within Category F with a production date on or before the 31st December 2002, which does not comply with the limit values set out in the table in section 4.1.2.3 of Annex 1;
- (b) on or before the 31st December 2005, an intermittent speed CI engine within Category G with a production date on or before the 31st December 2003, which does not comply with the limit values set out in the table in section 4.1.2.3 of Annex 1;

so long as the engine complies with the limit values set out in the table in section 4.1.2.1 of Annex 1.

(2) Notwithstanding the provisions of regulation 4(2)(f), a manufacturer may place on the market on or before the 11th February 2007, a SI engine with a production date on or before the 11th February 2005 which does not comply with the limit values set out in the table in section 4.2.2.1 of Annex 1.

(3) Notwithstanding the provisions of regulation 4(2)(g), a manufacturer may place on the market the following engines which do not comply with the limit values set out in the table in section 4.2.2.2 of Annex 1—

- (a) on or before the 1st February 2007, a SI engine within Classes SN:1 and SN:2 with a production date on or before the 1st February 2005;
- (b) on or before the 1st February 2009, a SI engine within Class SN:4 with a production date on or before the 1st February 2007;
- (c) on or before the 1st February 2010, a SI engine within Classes SH:1, SH:2 and SN:3 with a production date on or before the 1st February 2008; and
- (d) on or before the 1st February 2011, a SI engine within Class SH:3 with a production date on or before the 1st February 2009. ”.

Replacement Engines

9. After regulation 7 the following regulation shall be inserted—

“ Replacement Engines

7A.—(1) This regulation shall apply to replacement engines.

(2) A replacement engine shall—

- (a) comply with the limit values that the engine to be replaced had to meet when the engine was originally placed on the market;
- (b) be type approved, if the engine to be replaced had type approval, and conform to the requirements of that type approval;
- (c) have affixed to it markings in accordance with regulation 11(1), including the type approval number; and
- (d) have the text “REPLACEMENT ENGINE” attached to a label on the engine or inserted into the owner’s manual.”.

Approval of Engines

10.—(1) Regulation 9 shall be amended as follows.

(2) In paragraph (1), for the words “Annex 6” there shall be substituted the words “Annex 7”.

(3) In sub-paragraph (a) of regulation 9(1), for the words “Annexes 1, 3, 4 and 5” there shall be substituted the words “Annexes 1, 3, 4, 5 and 6”.

(4) In paragraph (5), for the words “Annex 7” there shall be substituted the words “Annex 8”.

Exemptions

11. For regulation 15 there shall be substituted the following regulation—

“Exemptions

15.—(1) The requirements of regulation 4 shall not apply to—

- (a) engines produced directly or indirectly on behalf of and for use only by the armed services; and
- (b) replacement engines which comply with regulation 7A.

(2) The requirements of regulations 4(2)(a),(b) and (c) shall not apply to engines approved by the competent approval authorities in another member State in accordance with Directive 97/68/EC which—

- (a) conform to the requirements of the approval; and
- (b) which have affixed to them the markings as defined in section 3 of Annex 1, including the type approval number.

(3) Subject to paragraph (5), the requirements of regulations 4(2)(g) and 6(4) shall be replaced by the requirements of regulations 4(2)(f) and 6(3) for an engine which—

- (a) falls within a small volume engine family; and
- (b) is not manufactured by a small volume engine manufacturer;

so long as the engine family which is intending to benefit from this exemption has a different cylinder displacement from any engine family which has been manufactured by the same manufacturer and which has already benefited from the exemption.

(4) Subject to paragraph (5), the requirements of regulations 4(2)(h) and 6(5) shall be replaced by the requirements of regulations 4(2)(f) and 6(3) for an engine which—

- (a) falls within a small volume engine family; and
- (b) is manufactured by a small volume engine manufacturer;

so long as the engine family which is intending to benefit from this exemption has a different cylinder displacement from any engine family which has been manufactured by the same manufacturer and which has already benefited from the exemption.

(5) The total number of engines being exempted in accordance with paragraphs (3) and (4) shall not exceed 25,000 per engine family in any one calendar year.

(6) The machinery listed in paragraph 7 of article 9a of Directive 97/68/EC which is not manufactured by a small volume engine manufacturer shall be exempt from the requirements of regulations 4(2)(g) and 6(4) for three years (from the date applicable to the class of engine specified in column 2 of the table to regulation 4) so long as the engine complies with the requirements of regulation 4(2)(f).

(7) The machinery listed in paragraph 7 of article 9a of Directive 97/68/EC which is manufactured by a small volume engine manufacturer shall be exempt from the requirements of regulations 4(2)(h) and 6(5) for three years (from the date applicable to the class of engine specified in column 3 of the table to regulation 4) so long as the engine complies with the requirements of regulation 4(2)(f).”.

12. After regulation 15 there shall be inserted the following regulations—

“End of series engines

15A.—(1) This regulation shall apply to CI engines.

(2) The approval authority may, at the request of the manufacturer, exempt end-of-series CI engines which are still in stock, or stocks of non-road mobile machinery in respect of their CI engines, from the final date for placing on the market (as set out in regulation 7(1)(a) or (b)) in accordance with the following conditions—

- (a) the manufacturer must submit an application to the approval authority before the relevant final date in regulation 7(1)(a) or (b);
- (b) the application must include a list of those new CI engines which remain unsold or have not been placed on the market before the final date and must specify the technical or economic reasons on which the application is based;
- (c) the CI engines must conform to a type or family for which the type approval is no longer valid, or which did not require type approval at the time of production, but which have been produced before the production date set out in regulation 7(1)(a) or (b);

- (d) the CI engines must have been physically stored within the European Community between the production date and the final date set out in regulation 7(1)(a) or (b) for that particular category;
- (e) the maximum number of new CI engines of one or more types placed on the market in the United Kingdom under this exemption must not exceed 10 per cent of the new engines of all types concerned placed on the market in the United Kingdom during the previous calendar year.

(3) If the request is accepted by the approval authority it shall, within one month, send to the competent approval authorities of the other member States particulars of, and reasons for, the exemptions granted to the manufacturer.

(4) The approval authority shall issue for each engine exempted under paragraph (2) a certificate of conformity on which a special entry has been made.

(5) The certificate of conformity referred to in paragraph (4) may be included in a consolidated document which contains all the identification numbers of engines exempted under paragraph (2).

(6) The approval authority shall each year send to the European Commission a list of exemptions granted specifying the reasons.

(7) The approval authority may not exempt engines under paragraph (2) if a period of 12 months has elapsed since the date on which the engines were for the first time subject to the time limits for placing on the market.

Equivalent type approvals

15B.—(1) This regulation shall apply to CI engines.

(2) In relation to CI engines which fall within categories A, B or C, the type approvals specified in sections 1.1, 1.2 and 1.3 of Annex 12 shall be regarded as being equivalent to a type approval issued in accordance with these Regulations, so long as the engine has affixed to it any markings that are specified by the relevant type approval.

(3) In relation to CI engines which fall within categories D, E, F or G, the type approvals specified in sections 2.1, 2.2, 2.3 and 2.4 of Annex 12 shall be regarded as being equivalent to a type approval issued in accordance with these Regulations, so long as the engine has affixed to it any markings that are specified by the relevant type approval.”.

Enforcement authorities

13.—(1) Regulation 16 shall be amended as follows.

(2) In sub-paragraph (1)(a), the words “or weights and measures authorities” shall be deleted.

(3) In sub-paragraph (1)(b), for the words “the Department of Economic Development” there shall be substituted the words “the Secretary of State or any District Council”.

Signed by authority of the Secretary of State

28th July 2004

David Jamieson
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutant) Regulations 1999 (S.I. 1999/1053). They implement the provisions of Council Directive 2002/88/EC on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal engines to be installed in non-road mobile machinery.

Regulation 3 amends the definitions of “Council Directive 97/68/EC” (to make reference to Council Directive 2002/88/EC) and “placing on the market”. Various other new definitions are also inserted.

Regulation 4 substitutes a new paragraph 3(1), the effect of which is to bring spark ignition and secondary engines within the scope of the Regulations. Other minor changes to regulation 3 are also made.

Regulation 5 amends regulation 4. New provisions concerning placing engines on the market are inserted, together with a new table containing placing on the market dates for spark ignition engines.

Regulation 6 inserts a new table into the Regulations, the effect of which is to identify which class a spark ignition engine should fall within.

Regulation 7 substitutes a new regulation 6. It sets out the dates that various limit values have to be complied with (by both compression and spark ignition engines) before a type approval certificate can be issued.

Regulation 8 substitutes a new regulation 7. Various transitional provisions that are no longer applicable are removed and new transitional provisions for intermittent speed compression ignition and spark ignition engines are inserted.

Regulation 9 inserts a new regulation 7A into the Regulations. It contains various requirements for replacement engines.

Regulation 10 makes minor consequential changes to regulation 9.

Regulations 11 and 12 amend the exemption provisions in the Regulations. New exemptions for spark ignition engines are inserted and various consequential changes are made. A new regulation 15B is also inserted into the Regulations to recognise equivalent type approval for compression ignition engines.

Regulation 13 amends regulation 16, as a result of a change in enforcement authorities.

A full regulatory impact assessment of the assessment of the effect that this instrument will have on the costs of business is available from the Department for Transport, Zone 4/19, Great Minster House, 76 Marsham Street, London SW1P 4DR (Telephone 020 7944 2087). A copy has been placed in the Library of each House of Parliament.

A transposition note has also been prepared and is available from the Department for Transport, Zone 4/19, Great Minster House, 76 Marsham Street, London SW1P 4DR (Telephone 020 7944 2087). A copy has been placed in the Library of each House of Parliament.

STATUTORY INSTRUMENTS

2004 No. 2034

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