

2013 No. 1687

ENVIRONMENTAL PROTECTION

The Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2013

<i>Made</i>	- - - -	<i>8th July 2013</i>
<i>Laid before Parliament</i>		<i>9th July 2013</i>
<i>Coming into force</i>	- -	<i>31st July 2013</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a).

The Secretary of State is a Minister designated(b) for the purposes of section 2(2) of the European Communities Act 1972 in relation to the environment.

Citation and commencement

1. These Regulations may be cited as the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2013 and come into force on 31st July 2013.

Amendment of Regulations

2. The Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999(c) are amended in accordance with regulations 3 to 6.

Amendment of regulation 2 (interpretation)

3.—(1) Regulation 2 is amended as follows.

(2) In paragraph (1)(a)(d) for the words “Commission Directive 2010/26/EU” substitute “European Parliament and Council Directive 2011/88/EU”(e).

(a) 1972 c.68; section 2(2) of the European Communities Act 1972 was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3(3) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).

(b) S.I. 2008/301.

(c) S.I. 1999/1053; relevant amending instruments are S.I. 2002/1649, S.I. 2004/2034, S.I. 2006/29, S.I. 2011/1043 and S.I. 2011/2134.

(d) Paragraph 1(a) defines the term “Directive 97/68/EC”. That Directive has been amended by Commission Directive 2001/63/EC (OJ No L 227, 23.08.2001, p41), European Parliament and Council Directive 2002/88/EC (OJ No L 35, 11.02.2003, p28), European Parliament and Council Directive 2004/26/EC (OJ No L 146, 30.04.2004, p1), Council Directive 2006/105/EC (OJ No L 363, 20.12.2006, p368), European Parliament and Council Regulation (EC) No 596/2009 (OJ No L 188, 18.07.2009, p14), Commission Directive 2010/26/EU (OJ No L 86, 01.04.2010, p29), European Parliament and Council Directive 2011/88/EU (OJ No L 305, 23.11.2011, p1), and Commission Directive 2012/46/EU (OJ No L 353, 21.12.2012, p80). Directive 97/68/EC was added to Annex II of the EEA Agreement by Article 1 of the Decision of the EEA Joint Committee No 115/1999 of 24th September 1999 (OJ No L 325, 21.12.2000, p29).

(e) OJ No L 305, 23.11.2011, p1. Directive 97/68/EC was subsequently amended by Directive 2012/46/EU (OJ No L 353, 21.12.2012, p80). The definition of Directive 97/68/EC inserted by this instrument will not include that amendment.

(3) In paragraph (1)(ze) for the words “has the meaning given in paragraph 9 of Schedule 9”, substitute “means a person who manufactures a type of non-road mobile machine”.

Amendment of regulation 3C (provisions for grant of type approval certificate for CI engines)

4. In regulation 3C(4) for “paragraph 19 of Schedule 9” substitute “paragraph 7A or 19 (as the case may be) of Schedule 9”.

Amendment of regulation 7A (replacement engines: CI and SI engines)

5. For paragraph (2)(d) of regulation 7A substitute—

“(d) have affixed to it a label bearing the text “REPLACEMENT ENGINE” together with a unique reference provided by or agreed with the approval authority that identifies the engine as having been placed on the market under the exemption provided by regulation 6A(1)(b) or paragraph 7(1)(a) of Schedule 9.”.

Amendment of Schedule 9 (CI Engines: Exemptions and Transitional Provisions)

6.—(1) Schedule 9 is amended as follows.

(2) In the heading for Part 2, for “Table 1 or Table 2” substitute “Table 1, 2, 4 or 5”.

(3) In paragraph 6 for “Table 1 or 2”, substitute “Table 1, 2, 4 or 5”.

(4) For paragraph 7, substitute—

“7.—(1) The requirements of regulation 3B shall not apply to replacement CI engines which comply with either—

- (a) regulation 7A; or
- (b) paragraph 7A.

(2) An application may be made under regulation 8 for a type approval certificate for an engine type or engine family in any case where a type approval certificate issued under these Regulations is required for the purposes of regulation 7A or paragraph 7A.”.

(5) After paragraph 7, insert—

“7A.—(1) This paragraph applies to a replacement CI engine that—

- (a) meets the Stage IIIA limit values, where it is to replace an engine for a railcar or locomotive that—
 - (i) does not meet the Stage IIIA standard; or
 - (ii) meets the Stage IIIA standard but does not meet the Stage IIIB standard; or
- (b) meets the limit values no lower than the limit values met by engines fitted to existing railcars of the same type, where—
 - (i) it is to replace an engine for a railcar without driving control and not capable of independent movement; and
 - (ii) it does not meet the Stage IIIA standard; and
- (c) is type approved and conforms to the requirements of that type approval.

(2) For the purposes of sub-paragraph (1), “standard” means the conditions for type approval to be granted for an engine of Stage IIIA or Stage IIIB (as the case may be) as specified in regulation 9 (approval of engines).

(3) A replacement CI engine to which this paragraph applies may be placed on the market where—

- (a) the approval authority has granted an authorisation in accordance with sub-paragraph (4); and

- (b) the replacement engine has affixed to it a label bearing the text “REPLACEMENT ENGINE” together with a unique reference provided by or agreed with the approval authority identifying the engine as having been authorised to be placed on the market under the exemption provided by this paragraph.
- (4) The approval authority may grant an authorisation to place on the market in accordance with sub-paragraph (3) where the authority is satisfied that—
- (a) sub-paragraph (1) applies to the engine; and
 - (b) the use of a replacement engine that meets the requirements of the latest applicable emissions stage in the railcar or locomotive in question will involve significant technical difficulties.”.
- (6) For paragraphs 9 to 12, substitute—
- “9.—(1)** A flexibility scheme is a scheme for the placing on the market of—
- (a) eligible CI engines with a view to their use in a particular type of non-road mobile machinery as provided for in paragraphs 10 to 12 and 12D; or
 - (b) eligible locomotive engines with a view to their use in the propulsion of locomotives as provided for in paragraphs 12A to 12D.
- (2) In this Part of this Schedule—
- (a) “eligible CI engine” means a CI engine falling within any of categories—
 - (i) K to R in Table 1 of Schedule 8; and
 - (ii) H to K in Table 2 of Schedule 8;
 - (b) “eligible locomotive engine” means a CI engine falling within category RB in Table 4 of Schedule 8.

Eligible CI engines

10.—(1) An eligible CI engine may be placed on the market under a flexibility scheme, where approval has been given under paragraph 11(5)(a) and, notwithstanding that regulation 3B(2)(d) is not satisfied, the requirements of sub-paragraph (2) are complied with.

- (2) The requirements are that the eligible CI engine must—
- (a) be placed on the market by the OEM’s engine manufacturers;
 - (b) not exceed, as to the number to be placed on the market, the maximum number determined in accordance with paragraph 12;
 - (c) be intended for the exclusive use of the OEM;
 - (d) meet the emissions standard that applied prior to the period during which it will be placed on the market; and
 - (e) have affixed to it the labels provided for in paragraphs 12D and 13(1)(a).

11.—(1) An OEM may apply to the approval authority for approval under a flexibility scheme for eligible CI engines referred to in paragraph 9(1)(a).

(2) An application under sub-paragraph (1) must provide information to show that the engine complies or will comply with the requirements in paragraph 10(2), including—

- (a) specifying the date or period intended for placing on the market in relation to paragraph 12(4)(a) or (b);
- (b) specifying which maximum number is to apply in—
 - (i) paragraph 12(2)(a) or (b); or
 - (ii) paragraph 12(3)(a) or (b).

(3) An application under sub-paragraph (1) must include a sample of the labels referred to in paragraphs 12D and 13(1)(a).

(4) The applicant shall supply such other information as the approval authority may request in order to enable it to determine whether or not to approve the application.

(5) The approval authority—

- (a) may grant approval where satisfied that the requirements of paragraph 10(2) are or will be complied with; and
- (b) must notify the OEM of its decision whether or not to approve the application.

12.—(1) The number of eligible CI engines falling within each category that may be placed on the market under a flexibility scheme must not exceed the maximum number determined in accordance with this paragraph.

(2) Where the engine is to be placed on the market on or after a date specified in sub-paragraph (4)(a) as applicable to the category of engine, the maximum number is—

- (a) 20% of the relevant average of annual sales of the non-road mobile machinery in which engines falling within the category are installed; or
- (b) the number specified in column 2 of Table 1 applicable to the corresponding power output in column 1.

Table 1

<i>Column 1</i>	<i>Column 2</i>
<i>Power output (P) of engine category</i>	<i>Maximum number of engines</i>
$19 \text{ kW} \leq P < 37 \text{ kW}$	200
$37 \text{ kW} \leq P < 75 \text{ kW}$	150
$75 \text{ kW} \leq P < 130 \text{ kW}$	100
$130 \text{ kW} \leq P \leq 560 \text{ kW}$	50

(3) Where the engine comes within a category in sub-paragraph (4)(b) and is to be placed on the market during a period specified in that sub-paragraph as applicable to the relevant category, the maximum number is—

- (a) 37.5% of the relevant average of annual sales of the non-road mobile machinery in which engines falling within the category are installed; or
- (b) the number specified in column 2 of Table 2 applicable to the corresponding power output in column 1.

Table 2

<i>Column 1</i>	<i>Column 2</i>
<i>Power output (P) of engine category</i>	<i>Maximum number of engines</i>
$37 \text{ kW} \leq P < 56 \text{ kW}$	200
$56 \text{ kW} \leq P < 75 \text{ kW}$	175
$75 \text{ kW} \leq P < 130 \text{ kW}$	250
$130 \text{ kW} \leq P \leq 560 \text{ kW}$	125

(4) The dates or periods specified are—

- (a) for sub-paragraph (2), in relation to engines in category—
 - (i) K in Table 1 of Schedule 8, or H, I, J or K in Table 2 of Schedule 8, on or after 31st July 2013;
 - (ii) P in Table 1 of Schedule 8, on or after 1st January 2016;
 - (iii) Q in Table 1 of Schedule 8, on or after 1st January 2014;
 - (iv) R in Table 1 of Schedule 8, on or after 1st October 2014;
- (b) for sub-paragraph (3), in relation to engines in category L, M, N or P in Table 1 of Schedule 8, a period within Stage IIIB beginning on 31st July 2013 and ending on—

- (i) for category L, 31st December 2013;
 - (ii) for category M or N, 30th September 2014;
 - (iii) for category P, 31st December 2015.
- (5) The relevant average is to be calculated—
- (a) as the arithmetic mean of the OEM's annual sales on the European Economic Area market over the preceding 5 years; or
 - (b) if equipment of the OEM has been marketed in the European Economic Area for a period of less than 5 years, on the basis of the period for which the OEM has marketed equipment in the European Economic Area.

Eligible locomotive engines

12A.—(1) An eligible locomotive engine may be placed on the market, where approval has been given under paragraph 12B(4)(a) and, notwithstanding that regulation 3B(2)(d) is not satisfied, the requirements of sub-paragraph (2) are complied with.

- (2) The requirements are that an eligible locomotive engine must—
- (a) be placed on the market by the OEM's engine manufacturers during the period beginning on 31st July 2013 and ending on 31st December 2014;
 - (b) not exceed, as to the number to be placed on the market, the maximum number determined in accordance with paragraph 12C;
 - (c) be intended for the exclusive use of the OEM;
 - (d) meet the emissions standard that applied prior to the period during which it will be placed on the market; and
 - (e) have affixed to it the labels provided for in paragraphs 12D and 13(1)(a).

12B.—(1) An OEM of the locomotives into which an eligible locomotive engine is, or is to be, installed may apply to the approval authority for approval under a flexibility scheme for eligible locomotive engines referred to in paragraph 9(1)(b) for placing on the market in accordance with paragraph 12A(2).

(2) An application under sub-paragraph (1) must provide information to show that the engine meets the requirements in paragraph 12A(2) including—

- (a) specifying the maximum number which is to apply for the purposes of paragraph 12C, namely the number in—
 - (i) paragraph 12C(a) or (b); or
 - (ii) paragraph 12C(a) and (b);
- (b) where the maximum number in paragraph 12C(b) applies, providing information to show that the requirements of paragraph 12C(b) are or will be complied with;
- (c) providing a sample of the labels referred to in paragraphs 12D and 13(1)(a); and
- (d) providing an explanation of the technical grounds for not being able to comply with the Stage IIIB limit values.

(3) The applicant shall supply such other information as the approval authority may request in order to enable it to determine whether or not to approve the application.

(4) The approval authority—

- (a) may grant approval where satisfied that—
 - (i) the requirements of paragraph 12A(2) are or will be complied with; and
 - (ii) there are technical grounds for not being able to comply with the Stage IIIB limit values; and
- (b) must notify the OEM of its decision whether or not to approve the application.

12C. For the purposes of paragraph 12A(2)(b) the maximum number is—

- (a) 16 engines; and
- (b) 10 additional engines where such engines—
 - (i) have a rated power greater than 1800kW; and
 - (ii) are to be installed in locomotives that are designed exclusively for use on the United Kingdom network, such that they have, or are able to be issued with, a safety certificate for operation on the United Kingdom network.

General provisions applying to both eligible CI engines and eligible locomotive engines

12D. In relation to an eligible CI engine or an eligible locomotive engine placed on the market under a flexibility scheme, the text “ENGINE PLACED ON MARKET UNDER THE FLEXIBILITY SCHEME” must appear on a label attached to the engine.”.

Signed by authority of the Secretary of State for Transport

Norman Baker
Parliamentary Under Secretary of State
Department for Transport

8th July 2013

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999 (S.I. 1999/1053) (“the 1999 Regulations”) implemented Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997 on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery (OJ No L 59, 27.2.1998, p1). Directive 97/68/EC has been amended by Directive 2011/88/EU of the European Parliament and of the Council of 16 November 2011 (OJ No L 305, 23.11.2011, p1). These Regulations amend the 1999 Regulations so as to implement the amendments made by Directive 2011/88/EU.

Regulation 3 amends the definition of Directive 97/68/EC in the 1999 Regulations to ensure that any reference to that Directive is to the Directive as amended by instruments up to and including Directive 2011/88/EU.

Directive 2011/88/EU amended Article 4, Article 10 and Annex XIII of Directive 97/68/EC. First, these amendments allow a temporary increase in the number of engines which can be placed on the market under an existing flexibility scheme, which permits engines meeting the most recently superseded emissions standard to be placed on the market. (By virtue of Article 4.6 of Directive 97/68/EC, engines for use in the propulsion of railcars remain excluded from the flexibility scheme, as do inland waterway vessels.) Second, they extend the flexibility scheme to cover engines used for the propulsion of locomotives. Third, they make changes regarding the placement on the market of replacement engines. The amendments are transposed by amendments to the 1999 Regulations, in particular to Schedule 9 which covers exemptions and transitional provisions for compression ignition (“CI”) engines.

The amendments for replacement engines are transposed by regulations 5, 6(4) and 6(5).

Regulation 6(5) inserts paragraph 7A in Schedule 9 to the 1999 Regulations. This transposes the exemption for CI replacement engines for locomotives to be placed on the market where current emission standards are not met. The engine can only be placed on the market if authorised by the approval authority on the basis that it meets certain other standards, and will bear a label showing it is a replacement engine exempted under paragraph 7(1)(b) of Schedule 9.

Regulation 6(4) transposes Article 10.1b of Directive 97/68/EC. It amends paragraph 7 of Schedule 9 to provide that the requirement to meet existing emission standards (provided for in regulation 3B) does not apply to the new exemption provided for by paragraph 7A of that Schedule.

Regulation 5 transposes new Article 10.1c of Directive 97/68/EC. It amends regulation 7A of the 1999 Regulations so that replacement SI (spark ignition) and CI engines already benefiting from the exemption contained in regulation 6A(1)(b) or paragraph 7(1)(a) of Schedule 9 to the 1999 Regulations respectively are marked with a unique reference that enables the engine to be associated with the relevant exemption.

In relation to the amendments to the flexibility scheme, *regulation 6(6)* transposes new Article 4(6) and new section 1 of Annex XIII of Directive 97/68/EC. It amends the provisions in Schedule 9 to the 1999 Regulations for the flexibility scheme by amending paragraphs 9 to 12 and by inserting new paragraphs 12A to 12D.

Paragraphs 10 to 12 of Schedule 9 provide for the flexibility scheme and the maximum number of engines that may be placed on the market that meet a pre-existing emissions standard. Paragraph 12 provides for the increased maximum number of engines that can be placed on the market during a specified period. The maximum is expressed either as a percentage of annual sales of engines in a particular category or as a number of engines in a certain range of power outputs (paragraph 12(2)) in relation to the dates specified in paragraph 12(4)(a)). The amendments increase that maximum number (paragraph 12(3)) for a specified period in relation to the category of engine specified in paragraph 12(4)(b). Paragraph 10 provides for the requirements for placing on the market which include authorisation of engines under the flexibility scheme by the approval authority (the Secretary of State) and paragraph 11 provides for the application to that authority. The amendments to those paragraphs enable the application to be made in respect of the increased amount.

The amendments to paragraph 9 and the new paragraphs 12A to 12C of Schedule 9 provide for the extension of the flexibility scheme to engines for the propulsion of locomotives. New paragraph 12C sets out the number of eligible locomotive engines that can benefit from the flexibility scheme during the period specified. New paragraphs 12A and 12B set out the terms under which they may do so, including approval by the Secretary of State of the application for the engines to be placed on the market under the flexibility scheme. New paragraph 12D provides for labels for both eligible CI engines and eligible locomotive engines.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the International Vehicle Standards Division, Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR (telephone 020 7944 2116). The impact assessment is published with the Explanatory Memorandum and Transposition Note alongside this instrument at <http://www.legislation.gov.uk>. The Directives referred to in this Explanatory Note may be viewed on the EUR-lex website at <http://eur-lex.europa.eu>.

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