
STATUTORY INSTRUMENTS

2018 No. 764

The Non-Road Mobile Machinery (Type-Approval and Emission of Gaseous and Particulate Pollutants) Regulations 2018

Citation, commencement and effect

1. These Regulations—
 - (a) may be cited as the Non-Road Mobile Machinery (Type-Approval and Emission of Gaseous and Particulate Pollutants) Regulations 2018;
 - (b) come into force on 21st September 2018; and
 - (c) are of no effect in relation to any matter to which paragraphs 3 to 11 of article 58 of the NRMM Regulation applies.

Interpretation

- 2.—(1) In these Regulations—

“enforcement authority” means the Secretary of State;

[^{F1}“EU NRMM Regulation” means the NRMM Regulation as that Regulation has effect in EU law;]

“the NRMM Regulation” means Regulation (EU) 2016/1628 of the European Parliament and of the Council on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, as it may be amended from time to time;

“relevant products” means—

 - (a) engines;
 - (b) components or assemblies of components that go to make up engines;
 - (c) devices which are capable of forming part of emission control systems; or
 - (d) non-road mobile machinery.

(2) Unless otherwise provided, any word or expression used in these Regulations which is defined in article 3 of the NRMM Regulation has the meaning given in that article.

Textual Amendments

- F1** Words in [reg. 2\(1\)](#) inserted (31.12.2022 at 11.00 p.m.) by [The Road Vehicles and Non-Road Mobile Machinery \(Type-Approval\) \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2022](#) (S.I. 2022/1273), regs. 1(2), **10(2)**

Appointment of approval authority

3. The Secretary of State is the approval authority for the purposes of these Regulations and the NRMM Regulation.

Market surveillance authority

4. The Secretary of State is the market surveillance authority for the purposes of—
- (a) these Regulations and the NRMM Regulation; and
 - (b) where applied by the NRMM Regulation, Regulation (EC) No 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93^{M1}.

Marginal Citations

M1 OJ No L 218, 13.8.2008, p.30.

Requests for information: failure to comply

5. Where a manufacturer who makes an application for type-approval fails to comply with a request for additional information made under paragraph 1(c) of article 21 of the NRMM Regulation, the approval authority may treat the application as having been withdrawn by the manufacturer.

Refusal of EU type-approval application

6.—(1) The approval authority must refuse an EU type-approval application if the requirements of—

- (a) articles 22 and 24 to 26; or
- (b) article 35,

of the NRMM Regulation have not been complied with.

(2) The requirements of article 24 of the NRMM Regulation are not complied with if the tests required by that article demonstrate that there is non-compliance with the technical prescriptions mentioned in paragraph 1 of that article.

(3) The requirements of article 26 of the NRMM Regulation are not complied with if the approval authority is not satisfied that the applicant has made or will make adequate arrangements to ensure that—

- (a) production will conform to the approved type; or
- (b) where applicable, the data in the statements of conformity are correct.

Conformity of production: record keeping

7. The holder of an EU type-approval mentioned in article 26 of the NRMM Regulation must compile and retain for inspection by the approval authority for a period of five years commencing with the date of compilation, such records of tests and checks undertaken that are sufficient to demonstrate—

- (a) conformity of production to the approved type;
- (b) compliance of statements of conformity to article 31 of the NRMM Regulation; and
- (c) that, where applicable, the data in statements of conformity issued by the holder are correct.

Review of decisions

8.—(1) A decision to which article 41 of the NRMM Regulation applies must be given by notice in writing (“a relevant notice”).

(2) Where the approval authority has given a person a relevant notice, that person may apply to the approval authority for a reconsideration of the decision given in that notice.

(3) An application under paragraph (2) must—

- (a) be made within the period of 28 days beginning on the date when the relevant notice is received; and
- (b) state the reasons for making the application and be accompanied by such further evidence as the person believes supports those reasons.

(4) The approval authority may—

- (a) request evidence in support of the application;
- (b) after giving reasonable notice to the applicant, carry out a re-examination of one or more engines for the purpose of determining the issues raised by the application.

(5) The approval authority must as soon as reasonably practicable—

- (a) give written notification to the applicant stating whether the decision is confirmed, amended or reversed; and
- (b) if the decision is reversed or amended, take the appropriate action in respect of the revised decision.

(6) An applicant aggrieved by the approval authority's notification under paragraph (5) may by notice request the approval authority to appoint an independent assessor to review the decision to which the relevant notice relates.

(7) A request under paragraph (6) must—

- (a) be made not later than 28 days after receipt of the approval authority's notification under paragraph (5); and
- (b) state the reasons for the request.

(8) As soon as reasonably practicable after the date of receipt of the request under paragraph (6), the approval authority must—

- (a) appoint a person to act as assessor or, at the authority's discretion, not more than three persons to act as an assessment panel; and
- (b) notify the applicant of the appointment.

(9) The independent assessor or assessment panel may—

- (a) request further evidence in support of the request for review;
- (b) after giving reasonable notice to the applicant, carry out a re-examination of one or more engines for the purpose of determining the issues raised by the request for review.

Withdrawal of approvals: mistake or error

9.—(1) Subject to the provisions of this regulation, the approval authority may decide to withdraw any approval given by it by reason of mistake or error on the part of that authority.

(2) A decision to withdraw an approval must be given by notice in writing (“a relevant notice”) and specify—

- (a) the nature of the mistake or error; and
- (b) the date from which the approval is to be withdrawn, which must be not less than 28 days nor more than six months after the date on which the relevant notice is given.

- (3) Regulation 8(2) to (9) applies to the review of a decision under this regulation.
- (4) Any review of a decision under this regulation may, subject to the requirement in paragraph (2) (b), vary the date from which the approval is to be withdrawn.

Withdrawal and suspension of approvals: effect

10.—(1) If the holder of an approval which has been withdrawn or suspended pursuant to the NRMM Regulation or these Regulations purports by virtue of that approval to—

- (a) issue a statement of conformity with respect to an engine; or
- (b) affix a statutory marking pursuant to article 32 of the NRMM Regulation,

the statement or marking is invalid.

(2) The approval authority may, by notice given to the holder, exempt from paragraph (1) one or more engine types within an engine family specified in the notice.

[^{F2}Products approved in member States or in Northern Ireland

10A.—(1) Paragraphs (2) to (4) apply notwithstanding anything in these Regulations or the NRMM Regulation.

(2) A manufacturer or an importer may place a qualifying relevant product on the market in Great Britain.

(3) A distributor may make a qualifying relevant product available on the market in Great Britain.

(4) In this regulation—

“qualifying relevant product” means a relevant product—

- (a) in respect of which the manufacturer of the product holds a relevant approval, or
- (b) which is an engine falling within the scope of Article 58(10) or (11) of the EU NRMM Regulation,
- (c) which is an engine falling within the scope of Article 34(7) of the EU NRMM Regulation, provided the approval authority has examined the machine in which the replacement engine is proposed to be installed and concluded that the installation of an engine that complies with the applicable emission limits set out in Tables II-7 and II-8 of Annex II of that Regulation would involve significant technical difficulties, or
- (d) which is a transition engine within the meaning of Article 3(32) of the EU NRMM Regulation, or a mobile machine in which a transition engine is installed, but only where that transition engine is placed or made available on the market in Great Britain in the same circumstances as are provided for in paragraphs 5, 6, 7 and 8 of Article 58 of that Regulation;

“relevant approval” means—

- (a) a valid type-approval issued in accordance with the EU NRMM Regulation, provided that the product to which it relates was in the United Kingdom before 1st January 2023,
- (b) a valid type-approval issued in accordance with regulation 10B,
- (c) a valid type-approval issued in relation to a qualifying Northern Ireland good, within the meaning of section 47 of the United Kingdom Internal Market Act 2020, in accordance with the EU NRMM Regulation,
- (d) a valid type approval issued on or after IP completion day by the Secretary of State in accordance with the EU NRMM Regulation as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement,

and includes any such approval which is revised or extended.;

Textual Amendments

- F2** Reg. 10A inserted (31.12.2022 at 11.00 p.m.) by [The Road Vehicles and Non-Road Mobile Machinery \(Type-Approval\) \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2022](#) (S.I. 2022/1273), regs. 1(2), **10(3)**

[^{F3}Provisional type-approvals

10B.—(1) Where the approval authority is satisfied on application made to it by the manufacturer of a qualifying relevant product—

- (a) that the manufacturer holds in respect of that qualifying relevant product a relevant European approval; and
- (b) that adequate arrangements have been made to secure that other products conform with that qualifying relevant product in the relevant aspects of design, construction, equipment and marking will so conform in all respects or with such variations as may be permitted,

the approval authority may, where an application has been received before the expiry of the relevant period, grant type-approval for the qualifying relevant product and issue the corresponding type-approval certificate.

(2) The approval authority may approve an application under paragraph (1) where the application was made before 11 p.m. on 31st December 2022.

(3) If the type-approval certificate is issued following approval under paragraph (1), the certificate is to remain in force—

- (a) for a period of two years beginning with the day of issue; or
- (b) (if earlier) until such time as the manufacturer is notified by the approval authority in writing that the authority is no longer satisfied that the products purporting to conform with the qualifying relevant product do so conform.

(4) Where the approval authority gives notice to the manufacturer under paragraph (3)(b), that notice must set out the reasons for the authority’s opinion.

(5) For the purposes of paragraph (1)—

- (a) “relevant European approval” means a valid type-approval issued—
 - (i) before IP completion day in a member State other than in the United Kingdom in accordance with the NRMM Regulation; or
 - (ii) on or after IP completion day in a member State in accordance with the EU NRMM Regulation,

including any such approval which is revised or extended;

- (b) the “relevant period” means the period beginning with the day on which this regulation comes into force, and ending with 31st December 2027;

“qualifying relevant product”, means a relevant product which is intended to be placed on the market, or which is to be entered into service, in Great Britain.

(6) This regulation applies notwithstanding any other provision in these Regulations or the NRMM Regulation.]

Textual Amendments

- F3** Reg. 10B inserted (31.12.2022 at 11.00 p.m.) by [The Road Vehicles and Non-Road Mobile Machinery \(Type-Approval\) \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2022](#) (S.I. 2022/1273), regs. 1(2), **10(4)**

Service

11.—(1) Paragraphs (2) to (4) of this regulation have effect in relation to any notice or other document required or authorised by these Regulations or the NRMM Regulation to be given to or served on any person by the approval authority, market surveillance authority or enforcement authority.

- (2) Any such notice or document may be given to or served on the person in question—
- by delivering it to the person;
 - by leaving it at that person's proper address;
 - by sending it by post to that person at that address;
 - by means of any form of electronic communication agreed with the person to whom it is to be sent.

- (3) Any such notice or document may—
- in the case of a body corporate, be given to or served on an officer of that body;
 - in the case of a partnership, be given to or served on any partner;
 - in the case of an unincorporated association other than a partnership, be given to or served on any member of the governing body of that association.

(4) For the purposes of this regulation and section 7 of the Interpretation Act 1978 (service of documents by post) ^{M2} in its application to this regulation, the proper address of any person is that person's last known address (whether of the person's residence or of a place where the person carries on business or is employed) and also—

- in the case of a body corporate or an officer of that body, the address of the registered or principal office of that body in the United Kingdom;
- in the case of an unincorporated association other than a partnership or a member of its governing body, its principal office in the United Kingdom;
- an address within the United Kingdom other than that person's proper address at which that person, or another acting on that person's behalf, will accept service of any notice or document required or authorised by these Regulations or the NRMM Regulation to be given to or served on any person by the approval authority.

(5) Any notice or other document or information required by these Regulations or the NRMM Regulation to be given to or served by any person on the approval authority, market surveillance authority or enforcement authority must be—

- in writing; or
- in an electronic format accepted by, and sent by means of any form of electronic communication agreed with, the approval authority, market surveillance authority or enforcement authority (as appropriate).

Marginal Citations

M2 1978 c.30.

Provision of testing stations

12. The approval authority may provide and maintain stations where examinations of relevant products may be carried out for the purposes of these Regulations or the NRMM Regulation and may provide and maintain apparatus for carrying out such examinations.

Information and instructions: loss or damage

13.—(1) Where a duty is imposed on a manufacturer by article 43 of the NRMM Regulation (information and instructions intended for OEMs and end-users), any breach of the duty which causes a person to sustain loss or damage is actionable at the suit of that person.

(2) But, in any proceedings brought against a manufacturer in pursuance of this regulation, it is a defence for the manufacturer to show that the manufacturer took all reasonable steps and exercised all due diligence to avoid the breach.

Defeat Devices

14.—(1) For the purposes of articles 18 and 57 of the NRMM Regulation, “use of defeat strategies” or “using defeat strategies” is where an engine manufactured by a person—

- (a) is placed on the market in the United Kingdom; and
- (b) that engine is fitted with a defeat device.

(2) A separate offence under article 18(4) the NRMM Regulation ^{M3} is committed in respect of each such engine placed on the market.

(3) Where, following examination of engines associated with a single engine type approval, the enforcement authority is satisfied that two or more of those engines—

- (a) are engines which have been affixed with a statutory marking under article 32 of the NRMM Regulation in respect of that approval; and
- (b) are fitted with a defeat device,

each engine associated with that single engine type approval is to be taken to be similarly fitted with a defeat device unless proved otherwise by the manufacturer.

(4) In paragraph (3), an engine is associated with an engine type approval if the statutory marking affixed to the engine under article 32 of the NRMM Regulation cites the type approval number for that type approval.

(5) In this regulation—

“auxiliary emission control strategy” has the meaning given in article 1(10) of Commission Delegated Regulation (EU) 2017/654;

“Commission Delegated Regulation (EU) 2017/654” means Commission Delegated Regulation (EU) 2017/654 supplementing Regulation (EU) 2016/1628 of the European Parliament and of the Council on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery ^{M4};

“defeat device” means—

- (a) a defeat strategy; or

(b) an auxiliary emission control strategy which is prohibited under point 2.3.7 of Annex IV of Commission Delegated Regulation (EU) 2017/654;

“placed on the market” means supplying to a third party or making available for distribution or use in the course of a commercial activity, whether in return for payment or free of charge, and includes exposure for sale to a third party.

Marginal Citations

M3 Article 18(4) of the NRMM Regulation is supplemented by Commission Delegated Regulation (EU) 2017/654 dealing with misuse of an auxiliary emission control strategy.

M4 OJ No. L 102, 13.4.2017, p. 1.

Offences, enforcement and civil penalties

15.—(1) Schedule 1 (offences, penalties, enforcement and other matters) has effect.

(2) Except in paragraph 2 of Schedule 1 or in relation to the expression “Officer of Revenue and Customs”, a reference in Schedule 1 to an officer is a reference to any person authorised by the enforcement authority to assist the authority in enforcing these Regulations and the NRMM Regulation.

Consequential amendments and revocations

16. Schedule 2 (consequential amendments and revocations) has effect.

Signed by authority of the Secretary of State for Transport

Department for Transport

Jesse Norman
Parliamentary Under Secretary of State

Changes to legislation:

There are currently no known outstanding effects for the The Non-Road Mobile Machinery (Type-Approval and Emission of Gaseous and Particulate Pollutants) Regulations 2018.