

EXPLANATORY MEMORANDUM TO

THE NON-ROAD MOBILE MACHINERY (TYPE-APPROVAL AND EMISSION OF GASEOUS AND PARTICULATE POLLUTANTS) REGULATIONS 2018

2018 No. 764

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to implement a revised European type approval¹ testing regime for engines to be fitted in Non-Road Mobile Machinery (NRMM)², and in particular to create penalties for non-compliance with the requirements or for misconduct during the type approval process. This includes making the supply of machinery fitted with defeat strategies³ an offence.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

Matters of special interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 These Regulations provide the regulatory framework for implementing Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery⁴.
- 4.2 All the detailed type approval requirements for these engines are set out in that Regulation. This instrument is required to set out the domestic regulatory framework that will be needed to give effect to those requirements. In particular, this instrument identifies the Secretary of State as both the approval authority and the market surveillance authority for the UK: in practice these roles are carried out by the Vehicle Certification Agency (VCA) and the Driver and Vehicle Standards Agency (DVSA) respectively, on behalf of the Secretary of State. The domestic regulations set out the processes for type-approval applications to be refused, review of decisions,

¹ Type approval is the process whereby manufacturers of a new engine are required to test it against EU environmental standards and obtain approval from a government body prior to placing it on sale.

² Non-Road Mobile Machinery comprises portable or self-propelled machines ranging from hand-held equipment such as chain-saws, through diggers and mobile cranes to railway locomotives and inland barges.

³ A defeat strategy (also known as a defeat device) is designed to circumvent or defeat the intention of regulatory testing. It can take the form of hardware or software, normally the latter in modern vehicles.

⁴ OJ L 252, 16.9.2016, p. 53–117

withdrawal or suspension of approval, and service of documents. They also specify the offences, their enforcement and penalties along with consequential amendments to other legislation. In particular the instrument implements the penalties required under Article 57 of Regulation (EU) 2016/1628 for manufacturers who use a defeat strategy in their engines to circumvent regulation.

- 4.3 A brief scrutiny history of the Regulations is as follows: The proposal that resulted in Regulation (EU) 2016/1628 was the subject of EM 13690/14. This was considered by the House of Commons European Scrutiny Committee on 29 October 2014. The Committee recommended that the document was legally and politically important and did not clear it (Report 16, Session 2014-15, 36367). The House of Lords Select Committee on the European Union referred the EM to Sub-Committee B at the 1560th sift on 21 October 2014. The Chairman wrote to the Minister on 2 December 2014 holding the document under scrutiny and requesting further information.
- 4.4 Following Ministerial letters to both Committees, the House of Commons European Scrutiny Committee cleared the proposal from scrutiny on 7 June 2016 (Report 4, Session 2016-17). The House of Lords Select Committee on the European Union cleared the proposal from scrutiny on 10 February 2015.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 5.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.
- 7.2 The objective of the new EU Regulation is to implement more stringent emissions type-approval requirements for engines for mobile machinery, in order to improve the environmental performance of such engines in response to technological developments and air quality concerns. Alongside this, harmonisation with other relevant standards is being introduced for certain categories⁵ of engine, to avoid increasing burden on industry.
- 7.3 The major change is the introduction of new more stringent “Stage V” limits on gaseous emissions (including nitrogen oxides or NOx) and particulate matter, which will be phased in and take effect from 1 January 2019 for some categories of engine. Alongside this, the scope has been widened in order to cover very small diesel

⁵ Engines are classified into categories, largely based on application (rail, waterway, etc.) but also on engine power. Different emission limits and introduction dates apply, depending on category.

engines (below 19kW, approx. 700cc) and medium and large petrol engines (over 19kW), as although such engines sell in limited volumes, they have become more prominent emitters as emissions levels have become progressively more stringent in the more common categories. Engines intended for fitment to all-terrain vehicles (ATVs), Side-by-side utility vehicles and snowmobiles have been brought into scope of compulsory type-approval for the first time, the standards for these are based on American standards. There are a number of improvements to the legislation, covering anti-tampering, obligations on manufacturers and governments aimed at improving market surveillance and simplifying the application of the legislation.

- 7.4 The new requirements have been directly applicable in all Member States since 1 January 2017 in accordance with provisions in the EU Regulation. The main purpose of this instrument is to specify the national regulatory framework to underpin the effective implementation of the EU legislation.
- 7.5 The instrument sets out the penalty regime. The previous regime consisted only of criminal offences. Civil penalties are being introduced for the first time, whilst criminal penalties will no longer be available, other than for more serious offences relating to defeat strategies. The previous sentencing option of a prison term of up to 3 months was never used and is being removed following discussion with the Ministry of Justice.
- 7.6 Any contravention of the EU Regulation or the requirements of this instrument will be an offence and this covers such matters as failure to hold the correct type-approval for an engine offered for sale and false declarations made during the approval process.
- 7.7 Recently, the penalty regime around defeat devices on road vehicles, agricultural vehicles and motorcycles was enhanced by the Road Vehicles (Defeat Devices, Fuel Economy and Type-Approval) (Amendment) Regulations 2018 (SI 2018/673). This instrument contains similar enhanced provisions, meaning that not only manufacturers using the VCA but those using another European type approval authority can be penalised for using a defeat strategy in their engines.

Consolidation

- 7.8 One set of regulations, plus all amendments thereof, is being repealed: the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999 (SI1999/1053).

8. Consultation outcome

- 8.1 DfT conducted a public consultation on the new regulations, which ran for 3 weeks from 20 March to 10 April 2018.
- 8.2 DfT received a total of 14 responses via email. The responses were from engine and machinery manufacturers and organisations representing them (such as EUROMOT: a European association of engine manufacturers; and CEA: the Construction Equipment Association); organisations representing operators of machinery (such as Rail Delivery Group; and Sustainable Aviation), and public bodies (such as GLA: Greater London Authority).
- 8.3 All respondents responded positively to the measures being proposed, particularly around enforcement. Some respondents proposed that in addition, government set up an NRMM register, in order to provide information which would assist both

enforcement and in developing policy around further improvements to air quality. This will be considered separately.

- 8.4 A more detailed summary of the responses to this consultation is available online at <https://www.gov.uk/government/consultations/improving-air-quality-reducing-emissions-from-machinery>. DfT welcomes the willingness by stakeholders to work with government to continue to reduce emissions from NRMM.

9. Guidance

- 9.1 The EU Regulation was published in 2016 and the detailed test specifications are contained in implementing and delegated acts that were published in 2017 and 2018. Since publication, manufacturers having been working on obtaining approval with approval authorities (such as the VCA). Information is available on the EU Commission's website, on the VCA website and from industry associations such as EUROMOT who issue detailed technical guidance to their members. Due to the complexity of the subject, manufacturers planning to manufacture engines should make an appointment with VCA (or the authorities based in other countries) to discuss how to obtain approval. The Department has no plans to issue any other guidance.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is negligible. Given that the EU Regulation is directly applicable, the only impact associated with this instrument is that of the enforcement regime. Enforcement will be funded centrally by the DfT and market surveillance including the purchase of engines or machinery for testing will be carried out without requiring the involvement of the manufacturer, unless a non-compliance is found.
- 10.2 The impact on the public sector is negligible. As part of routine training, the VCA will ensure relevant staff are familiar with the details of this instrument and the EU Regulation, in order to carry out testing and issue approvals.
- 10.3 An Impact Assessment has not been prepared for this instrument. Given that the EU Regulations are directly applicable, the only impact to consider is of the enforcement regime, and the impact of this has been assessed as being negligible, see 10.1 above.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses. Engine manufacture is capital intensive and cannot be undertaken by small businesses. Small and highly specialist machinery manufacturers that produce in low volumes, although not directly affected, can utilise a derogation that allows them longer to incorporate the new "Stage V" engines.

12. Monitoring & review

- 12.1 The Department for Transport has assessed that the net costs this instrument imposes on business will be less than £5m in any year. The enforcement regime will be operated on the Department's behalf by DVSA. An Annual Report will be published each year which will provide an opportunity to review whether the objectives of enforcing the EU Regulations have been achieved. Conducting a five year review on top of this is considered disproportionate and duplication. Given this, a Review clause has not been included.

13. Contact

- 13.1 Mr Mike Lowe at the Department for Transport telephone: 07769 243345 or email: mike.lowe@dft.gsi.gov.uk can answer any queries regarding the instrument.