

EXPLANATORY MEMORANDUM TO
THE ROAD VEHICLES AND NON-ROAD MOBILE MACHINERY (TYPE-APPROVAL) (AMENDMENT) (EU EXIT) (NO. 3) REGULATIONS 2019

2019 No. 1156

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument is being made to revoke a retained EU Regulation and enact two minor enhancements to the *Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment) (EU Exit) Regulations 2019*, SI 2019/648, (the “principal EU Exit instrument”), in order to assist British SMEs with the transition that will be experienced during a No Deal EU Exit.

Explanations

What did any relevant EU law do before exit day?

- 2.2 This instrument amends the principal EU Exit instrument for vehicle type approval. Further information on that instrument can be found in the Explanatory Memorandum accompanying that instrument on legislation.gov.uk.

Why is it being changed?

- 2.3 Regulation (EU) 2019/26, which was adopted and published by the EU too late to be considered during preparation of the principal EU Exit instrument, has been found to potentially have a negative side-effect for some British SMEs. Additionally, the change to the date of EU Exit means that one transitional measure in that instrument which applies until 31 December 2019 will now be of little use, so needs to be extended in duration and enhanced.

What will it now do?

- 2.4 This instrument will revoke the retained EU Regulation mentioned above and preserve the continuity of the type approval system in UK for SMEs who have limited or no exports to Europe, in the event of No Deal exit.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument was presented to the Sifting Committees on 1 July. Sifting finished on 17 July and both Sifting Committees agreed that the instrument should proceed by way of the negative procedure.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
4.2 The territorial application of this instrument is United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 This instrument amends the principal EU Exit instrument. That instrument limited itself to addressing critical inoperabilities and deficiencies in retained EU law arising from the withdrawal of the United Kingdom from the EU and in EU-derived domestic type approval law, to enable a functioning type approval system post Exit.
- 6.2 The principal EU Exit instrument is programmed to last no longer than two years, pending the introduction of a more complex instrument to correct inoperabilities and deficiencies in over 4000 pages of EU retained legislation on vehicle type approval, and enable future amendments using powers for secondary legislation under the Road Traffic Act 1988.
- 6.3 The main purpose of this instrument is to revoke the retained version of Regulation (EU) 2019/26 with effect from Exit day. This regulation was designed to assist the EU side with the EU Exit process in a *No Deal* outcome, but potentially invalidates certain type approvals on Exit day, which may lead to a transition risk for British SMEs.
- 6.4 Revoking this Regulation in the UK will ensure that UK-issued type approvals valid immediately before exit day will remain valid on and after exit. This will remove the potential transition risk for British SMEs while not affecting the conversion to EU approvals: this revocation will not nullify the desirable aspects of this Regulation as it remains effective in the EU.
- 6.5 In addition, the opportunity has been taken to make two changes which ultimately amend the Road Vehicles (Approval) Regulations 2009, SI 2009/717, governing the type approval of road vehicles (in other words cars, goods vehicles, buses and their trailers).
- 6.6 The first extends the lifetime of a transitional measure to preserve continuity for British SMEs, which was programmed to end on 31 December 2019. Given the delay to EU Exit until 31 October 2019, the instrument extends the transitional measure until the end of 2020, or until the end of 2021 if Exit occurs after July 2020.
- 6.7 The second change further enhances and expands this transitional measure for two categories of vehicle, for the same temporary period, following representations from industry.

7. Policy background

What is being done and why?

- 7.1 While Government's focus is on achieving a deal with the EU, the government must continue to plan for all eventualities, including a "no deal" scenario. The Department for Transport is using powers in the European Union (Withdrawal) Act 2018 ("EUWA") to ensure that the UK continues to have a functioning vehicle type approval regime in all scenarios.
- 7.2 The EUWA repeals the European Communities Act 1972 and converts into UK domestic law the existing body of directly applicable EU law. It also preserves UK laws relating to EU membership – e.g. legislation implementing EU Directives. This body of law is referred to as "retained EU law". The EUWA also gives Ministers a power to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, through SIs. These SIs are not intended to make policy changes, other than to reflect the UK's new position outside the EU, and to smooth the transition to this situation.
- 7.3 Wherever practicable, the approach is that the same vehicle safety and environmental type approval standards that are currently in place in the UK would continue to apply at the point of exit, providing continuity and certainty for manufacturers and consumers about the vehicles on sale in the UK as we leave the EU.
- 7.4 Manufacturers will be obliged to apply to the British authority, the Vehicle Certification Agency (VCA), for a UK approval, but testing done for EU authorities will be accepted. Where the UK's market surveillance authorities find a non-compliance, ensuring the rectification of this should prove swifter than at present, given that every manufacturer will have to maintain an ongoing relationship with the VCA to continue to sell vehicles here.
- 7.5 If the UK were to leave the EU without a deal, the UK would be outside the EU's frameworks for vehicle type approval. The UK's position would be the same as any third country, in that its manufacturers would be required to apply to approval authorities of the Member States for type approval for their products if they wish to sell in the EU.
- 7.6 Regulation (EU) 2019/26 was designed to assist with the transition in the case of an EU Exit without a deal, by permitting manufacturers (including many non-British manufacturers) holding EU approvals issued by the VCA, to transfer them to EU-27 type approval authorities without penalty and thus maintain continuity. The UK fully supported this measure.
- 7.7 One provision in this EU regulation provides that where a manufacturer applies to transfer his VCA approvals to an EU-27 authority, those VCA approvals automatically become invalid on Exit day. Given that this regulation will be retained in UK law after Exit day, it leads to a risk that where UK companies are in the process of transferring their VCA approval to an EU-27 authority, any delay at that receiving authority in the days immediately after Exit would mean the manufacturer would be unable to sell any vehicles in the UK, due to the underlying VCA approval having been rendered invalid.
- 7.8 Therefore, this instrument will revoke the retained version of Regulation (EU) 2019/26, which will eliminate the potential risk. Any transfer of approvals still in

progress on Exit day will continue under EU law, with the VCA version of the approval remaining valid for use in UK.

- 7.9 Given the opportunity this revoking instrument presents to make further enhancements to the principal EU Exit instrument, we have consulted industry and they have requested extending a provision in that instrument which increased the limits applying in a calendar year for *National Small Series Type Approval (NSSTA)* to aid the transition for British SMEs.
- 7.10 This provision was designed to have a life of nine months after Exit day, and accordingly is programmed to cease on 31 December 2019, but given the delay to EU Exit this will now be valid for only two months and thus of little use to manufacturers. In the present instrument we are therefore proposing a new end date based on a formulation relating to Exit day, such that any future change to Exit day will not require further amendment to this instrument. The formulation results in an end date for this provision of 31 December 2020, or if EU Exit takes place after July 2020, the end date would be 31 December 2021.
- 7.11 Evidence has emerged that for companies converting mass produced vehicles into certain specialist products, the increased volume limits might not be sufficient for SMEs involved in conversions of cars (e.g. wheelchair accessible vehicles, motor caravans) or light goods vehicles (e.g. supermarket delivery vehicles). Therefore, we are proposing higher limits of 1000 vehicles per model per year for both these categories, in place of respectively 200 and 500 in the principal EU Exit instrument.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 Since this instrument amends an instrument (the principal EU Exit instrument) which expires at the end of the period of two years beginning with Exit, no consolidation is taking place.

10. Consultation outcome

- 10.1 No formal consultation has taken place given the time constraints and the very minor nature of the amendments. Officials have contacted two trade associations, the Society of Motor Manufacturers and Traders (SMMT) and the Wheelchair Accessible Vehicle Constructors Association (WAVCA), and shared the draft SI with them. Several relevant companies were contacted by officials for their views.
- 10.2 Revocation of the retained Regulation (EU) 2019/26 was welcomed, and the extension and widening of the volume limits on NSSTA was satisfactory and sufficient for relevant companies, as far as they could predict.
- 10.3 Northern Ireland's Department for Infrastructure has contributed to the development of this instrument and is content.

11. Guidance

- 11.1 No guidance is being provided. Companies which may be affected will be contacted individually by the Vehicle Certification Agency.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the impact upon business has been assessed by DfT as being less than £5million in any year. This instrument does not impose any cost on business. The level of quantifiable benefit is likely to be low because few businesses will be in a position to benefit - but for a small number of businesses it may be vital.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 This instrument is a deregulating measure specifically to assist small (and medium sized) businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses was conversations through the VCA with businesses involved in vehicle modification and with trade associations representing them.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is for it to be monitored in the course of normal departmental business.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Mike Lowe at the Department for Transport, Telephone: 07769 243345 or email: mike.lowe@dft.gov.uk or Adrian Burrows, telephone 07773 643701 or email adrian.burrows@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Ian Yarnold, Deputy Director for International Vehicle Standards at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Michael Ellis, Minister of Transport at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

- 1.1 The Minister of Transport, Michael Ellis has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment) (EU Exit) (No. 3) Regulations 2019 does no more than is appropriate”.

- 1.2 This is the case because: the SI does not make substantive changes to policy but makes three minor amendments to an SI that is valid for a transitional period, to assist British SMEs that have limited or no exports to Europe in coping with EU Exit.

2. Good reasons

- 2.1 The Minister of Transport, Michael Ellis has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 2.2 These are: the delay to EU Exit, the need to enable SMEs who do not export to maintain continuity and production volumes during the transition, and the need to maintain flexibility for SMEs considered transferring their approvals to EU authorities (see sub-Section 7.7).

3. Equalities

- 3.1 The Minister of Transport, Michael Ellis has made the following statement(s):

“The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

- 3.2 The Minister of Transport, Michael Ellis has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Michael Ellis have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010”.

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.