



Department
for Transport

Implementing EU Regulation 168/2013 on type approval of Motorcycles, tricycles and quadricycles

July 2017

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Foreword

This consultation seeks your views on the implementation of a new EU Regulation (2013/168) governing the European type approval framework for motorcycles, tricycles and quadricycles (lightweight low power vehicles with four wheels), which also includes some power assisted pedal cycles. This Regulation introduced higher road safety and environmental standards for such vehicles.

Many issues such as the required safety and environmental standards are set down in the Regulation and we have no discretion to vary them: however there are some areas, such as penalties for not complying, where domestic discretion exists. Government policy is not to impose requirements additional to those in European regulations and directives, but the consultation includes some questions to confirm that consultees agree with that policy in this case. Any proposed changes to policy that might result from these responses would be subject to a further consultation.

On 23 June 2016, the United Kingdom referendum on European Union (EU) membership took place and the people of the UK voted to leave the EU. Until exit negotiations are concluded, the UK remains a full member of the EU and all the rights and obligations of membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

We are also consulting on the implementation of a parallel Agricultural vehicle framework regulation. That consultation can be viewed at the following link www.gov.uk/dft#consultations

Executive summary

- 1.1 The first European motorcycle framework Directive was published in 1992, providing a partial harmonisation of technical standards for motorcycles and similar light vehicles (tricycles and quadricycles). The regime has developed since then, leading to the latest EU Regulation 168/2013 which implements a number of important safety and environmental measures, benefitting both riders and other road users.
- 1.2 Manufacturers of motorcycles are currently required to obtain type approval before first registration. Type approval is issued by a government body such as the UK's Vehicle Certification Agency (VCA), and is designed to ensure that new vehicles on sale comply with government safety and environmental standards.
- 1.3 The UK's Motorcycle Single Vehicle Approval (MSVA) scheme operated by DVSA is largely unaffected by these changes and remains available for self-built custom vehicles and grey imports.
- 1.4 Regulation (EU) 168/2013 made a number of revisions to the previous EU law on motorcycle approval, largely by introducing more stringent environmental and safety standards, with the aims of reducing the effect on air quality of harmful emissions from motorcycles and improving road safety for riders and other road users. New stringent emissions standards (known as Euro 4 and 5) are being implemented, introducing laboratory measurement of fuel consumption and, for the first time, publication of the figures. Requirements for more sophisticated braking systems (such as Anti-lock Braking, ABS) have been introduced. To improve stability, quadricycles intended for road use will be required to be fitted with a rear differential.
- 1.5 There is also a new requirement for certain electrically assisted pedal cycles (EAPC) to obtain type approval, although they remain exempt from other domestic requirements such as licensing and annual MOT test. Type approval only applies to those EAPC which provide power when the rider is not pedalling, sometimes known as "Twist and Go", EAPCs with limited power that supplements the

energy input of the rider remain outside the requirements of type approval.

- 1.6 The European regulations include a requirement on Member States including the UK to enact, and impose where applicable, penalties on manufacturers who use defeat devices, in other words, devices that enable manufacturers to circumvent the intent of regulation. We intend to implement this such that both manufacturers using the UK's Vehicle Certification Agency (VCA), and those using other Approval Authorities, are subject to dissuasive penalties, where a defeat device is used to circumvent type approval obligations and where vehicles using defeat devices are supplied into the market.
- 1.7 We would like to hear comments on our proposals and have included a small number of questions for consultees to answer.
- 1.8 We plan to make the Statutory Instrument attached as Annex A, with any necessary changes following consultation, before the end of 2017.
- 1.9 Depending on the consultation results, we will then consider whether additional work is needed, for example to revise the Motorcycle Single Vehicle Approval (MSVA) scheme.

How to respond

The consultation period began on 26 July 2017 and will run until 6 September 2017. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at www.gov.uk/dft#consultations or you can contact Robert Lloyd-Smith if you would like alternative formats (Braille, audio CD, etc).

Please send consultation responses to

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Or by email to: ivs.consult@dft.gsi.gov.uk

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

A list of the main representative organisations consulted is attached at Annex E. If you have any suggestions of others who may wish to be involved in this process please contact us.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The proposals

History of motorcycle approval

- 1.1 The first European motorcycle framework Directive was published in 1992 and permitted a partial harmonisation of standards across EU countries for new motorcycles (powered two-wheelers) and similar vehicles (tricycles: vehicles with 3 wheels, and quadricycles: lightweight, low power 4 wheeled vehicles). Manufacturers were still required to obtain national approval or comply with national rules prior to selling their motorcycles, but could benefit from obtaining EU approval for subjects like gaseous emissions and braking, to avoid the cost of testing these subjects in each member state.
- 1.2 In 2002, Directive 2002/24 brought in full harmonisation of a wide range of technical standards for all categories of motorcycle, tricycle and quadricycle, together with a mandatory requirement for the type approval of new vehicles.
- 1.3 In the UK, the Vehicle Certification Agency (VCA) is the government agency responsible for granting type approval (although approvals from other national authorities are also valid). They will test pre-production examples of new motorcycles against prescribed standards and where all the tests are passed and the manufacturer provides satisfactory evidence that production will be controlled to a high standard they will grant type approval. Modifications made to the product by the manufacturer have to be notified to the type approval authority who will conduct further testing as appropriate to ensure continued compliance.
- 1.4 More information on motorcycle approval is available at <https://www.gov.uk/vehicle-approval> and <http://www.dft.gov.uk/vca/vehicletype/type-approval-for-mo.asp>

The new Regulation

- 1.5 In 2013, EU Regulation 168/2013 was published. This set out the new Framework for motorcycles and required the EU

Commission to create a number of new or revised technical standards, in particular in the areas of gaseous emissions and braking. The requirement for type approval for all categories of motorcycles, tricycles and quadricycles remained unchanged.

1.6 Trailers that are specifically designed to be towed by motorcycles, tricycles and quadricycles remain outside the scope of compulsory EU approval, but all-purpose trailers capable of being towed by both motorcycles and cars must obtain type approval as a category O vehicle.

1.7 Some of the new requirements introduced by 168/2013 include:

- New Euro 4 and Euro 5 gaseous emissions standards; compulsory from 2017 and 2020 respectively
- a requirement to publish fuel consumption figures, following a standardised laboratory test (on-road testing of other vehicles is coming forward but the equipment is not yet suitable for use on motorcycles)
- new noise standards (work to establish appropriate limits is ongoing)
- a requirement for compulsory Anti-lock Braking Systems (ABS) on motorcycles over 125cc engine capacity, and Combined Braking Systems (CBS) on all other motorcycles over 50cc, registered after 1 January 2017
- enhanced requirements for anti-tampering, to avoid performance enhancing modifications of motorcycles that are specifically limited in speed and/or power for reasons related to driving licence restrictions
- technical standards in new areas such as structural integrity
- Enduro and Trials motorcycles used on the road included in the type approval structure (Enduro and Trials machines manufactured for use exclusively in competition remain exempt)
- Electrically assisted pedal cycles that provide propulsion without mechanical input from the rider ('Twist and go') are included in the type approval structure

- manufacturers are required to make repair and maintenance information available to both franchised dealers and independent repairers in a non-discriminatory way
- importers and distributors are required to ensure the legality of vehicles they sell and keep certain records
- increased requirements for governments to carry out market surveillance: ensuring vehicles on sale are correctly approved
- safety recalls by the manufacturer must be notified to the approval authority that approved those vehicles
- procedures defined for taking a decision to withdraw the type approval of a vehicle that presents a risk to safety

Existing requirements and procedures retained

1.8 Many existing requirements and procedures are retained in the new regime:

- detailed type approval procedures prior to placing a vehicle on the market
- type approval testing of vehicles that are representative of production intent
- conformity of production – ensuring that subsequent vehicles are built to the same standard and specification as the vehicle that was tested
- conditions of appointment for *technical services* (independent bodies performing confirmatory testing on behalf of an Approval Authority)
- technical standards in areas ranging from steering to passenger hand holds and lighting

New Domestic regulations

1.9 Domestic implementing regulations (a Statutory Instrument) have been drafted and are attached at Annex A. These will apply

throughout the United Kingdom. We do not believe it is necessary to repeat the provisions of Regulation 168/2013 in UK legislation, as this is directly applicable in the UK. The main issues covered in the domestic regulations are therefore as follows:

- the processes in cases where applicants disagree with the decision of the UK type approval authority (the Vehicle Certification Agency), for example a requirement that the Agency provides 28 days' notice prior to withdrawing an approval in order that reasoned objections may be made by the affected manufacturer
- detailed enforcement duties and powers: for example powers of entry, including - for the first time in the vehicle approval arena - civil penalties for less serious offences
- the penalties applicable in cases of contravention of the regulations: for offences pursued as civil offences the maximum penalty is £50,000 per offence, and for serious offences criminal sanctions are available including an unlimited fine
- amendments to other domestic regulations, the Road Traffic Act 1988 (in GB) and the Road Traffic Order 1981 (in Northern Ireland) to ensure references to the previous EU framework 2002/24/EC are correctly updated and redundant offences are removed

Options under the EU Regulation

- 1.10 Under the EU Regulation, Member States are required to take all measures necessary to ensure that any penalty imposed for a breach of the Regulations is effective, proportionate and dissuasive. Member States have discretion to decide the penalties applicable under national law.
- 1.11 The draft regulations contain provisions for civil and criminal penalties to apply where the requirements of the EU Regulation are infringed, for example, in circumstances where a vehicle is supplied without the requisite type approval.
- 1.12 The EU Regulation is clear that using a “defeat device” to circumvent the provisions of the regulation is an offence. This term includes a device that senses that a vehicle is undergoing a regulatory test and modifies its behaviour accordingly, or a device that allow uncontrolled operation outside of the parameters that are known to be used during regulatory testing.

- 1.13 Although each case would be considered on its own facts, our intention is to fine the supplier of a vehicle that is supplied in the UK and which uses a defeat device or similar functionality. The fine would be calculated on a per vehicle basis.
- 1.14 The draft Statutory Instrument specifies the penalties that can be imposed on a manufacturer who infringes the EU Regulation during the process of obtaining type approval from the UK approval authority VCA.
- 1.15 We also intend to create an offence of registering or placing on the market a vehicle using a defeat device, or other similar functionality, to deliberately circumvent EU Regulation, irrespective of which national authority is used to obtain type approval. Our intention is to make such an offence applicable to any, and all, elements of the supply chain - the manufacturer, importer or dealer/ distributor.
- 1.16 We are requesting comments on this proposal and in due course intend to modify these regulations or other appropriate regulations to enact these offences and penalties.
- 1.17 The Regulation allows member states to set up national “small series” approval schemes, within constraints laid down in the Regulation. The Regulation also permits member states to continue to operate individual vehicle approval schemes.
- 1.18 The UK has an individual vehicle approval scheme for motorcycles; the Motorcycle Single Vehicle Approval scheme or MSVA. This is operated by the Driver and Vehicle Standards Agency (DVSA) in Great Britain and the Driver and Vehicle Agency (DVA) in Northern Ireland. Between them they inspect around 1200 vehicles per year, mainly self-built custom motorcycles or trikes and personal (‘grey’) imports from outside the EU.
- 1.19 At present our assumption is that the EU type approval regime, combined with the existing Motorcycle Single Vehicle Approval (MSVA) scheme satisfies market needs and that there is no need for a domestic type approval regime for motorcycles.

Electrically assisted pedal cycles

- 1.20 Certain pedal propelled vehicles with electric power assistance are classed as electrically assisted pedal cycles (EAPC) under domestic law in Great Britain: those with a power output not exceeding 250W which cuts out as the vehicle exceeds a speed of 15.5mph. These are not treated as motor vehicles in domestic law, instead they are treated as pedal cycles. For an overview see <https://www.gov.uk/electric-bike-rules> or for more detail see <https://www.gov.uk/government/publications/electrically-assisted-pedal-cycles-eapcs>
- 1.21 More powerful or faster electric cycles are treated as motor vehicles in Great Britain, essentially as either moped or motorcycle depending on the power and speed. This is relevant for such matters as registration, driver licensing, compulsory motor insurance and compulsory helmet wearing.
- 1.22 For EAPC that are now subject to EU type approval, in other words those that can provide power without mechanical input from the rider, sometimes known as “Twist and go”, the Regulation does not specify how such vehicles should be classed under domestic law. Great Britain will therefore continue our existing policy that these vehicles are not classed as motor vehicles under domestic law. For more information on type approval for certain EAPC, see <https://www.gov.uk/government/publications/european-type-approval-for-certain-electrically-assisted-pedal-cycles-eapc>
- 1.23 In Northern Ireland, the EAPC classification and exemption does not currently exist and therefore any power assisted cycle is treated as a motor vehicle and has to be registered and so on. The Department for Infrastructure in NI is currently developing legislation to align EAPC classification and exemption with the rest of the UK.

Consultation questions

- 1. Are you content with the draft regulations (Statutory Instrument) at Annex B?** Please comment, setting out your reasoning for any areas where you object. As a reminder the main topics covered are: remedies and appeals, penalties, enforcement provisions, consequential amendments to other domestic regulations.
- 2. Current guidance states that an Impact Assessment is not required where implementation does not impose any new burdens, other than those already imposed by the directly applicable EU regulations. Instead a Regulatory Triage Assessment is attached at Annex C. Do you agree that the draft regulations would not impose a new burden on business, beyond that imposed by the underlying EU Regulation?**
- 3. Are there any areas of the EU Regulation 168/2013 that you are not content with?** We cannot guarantee that amendments will be made but there may be opportunities to ask the EU Commission for changes to this Regulation, particularly to the delegated and implementing acts, which are revised from time to time, although we understand that the main Regulation may be amended in 2018.
- 4. Are you content with the proposal to create penalties around use of *defeat devices*, both for designing a vehicle using such a device and for supplying a vehicle using such a device?** We intend to create an offence of registering or placing on the market a vehicle using a *defeat device*, or other similar functionality, to circumvent regulation. Where such a device is used, we are proposing to make it an offence applicable to any and all elements of the supply chain - the manufacturer, importer or dealer. Our intention is to specify a maximum fine per vehicle supplied.
- 5. Do you have any other comments on implementation?** Government policy to avoid additional requirements (“gold-plating”) on top of those imposed at EU level has been followed in this case. However, if you are in favour of other changes to regulation,

for example to the Motorcycle SVA (MSVA) scheme, then please explain and provide justification.

6. **What would you like to see in this area of regulation following Brexit?** Do you have any views on whether the UK should continue to follow this approval scheme after Brexit?

What will happen next

A summary of responses, including the next steps, will be published within three months of the consultation closing on www.gov.uk/dft#consultations

Paper copies will be available on request

Annex A Draft UK Regulations

STATUTORY INSTRUMENTS

2017 No. 0000

ROAD TRAFFIC

The Motorcycles (EU Type-Approval) Regulations 2017

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - ***

The Secretary of State for Transport makes the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 (“the 1972 Act”)(1).

The Secretary of State is designated for the purposes of section 2(2) of the 1972 Act in relation to the regulation of the type, description, construction or equipment of vehicles, and of components of vehicles, and in particular any vehicle type-approval scheme(2).

These Regulations make provision for a purpose mentioned in that section and it appears to the Secretary of State that it is expedient for references in these Regulations (and in the consequential amendments made by these Regulations) to Regulation (EU) No 168/2013 of the European Parliament and of the Council on the approval and market surveillance of two- or three-wheel vehicles and quadricycles(3) to be construed as references to a version of that Regulation as it may be amended from time to time.

Citation, commencement and effect

1. These Regulations—

- (a) may be cited as the Motorcycles (EU Type-Approval) Regulations 2017;
- (b) come into force on [***]; and
- (c) are of no effect in relation to any matter to which paragraphs 3 to 5 of article 77 of the Motorcycles Regulation applies.

(1) 1972 c.68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 and S.I. 2007/1388.

(2) See S.I. 1972/1811.

(3) OJ No L 60, 2.3.2013, p.52.

Interpretation

2.—(1) In these Regulations—

“enforcement authority” means the Secretary of State;

“the Motorcycles Regulation” means Regulation (EU) No 168/2013 of the European Parliament and of the Council on the approval and market surveillance of two- or three-wheel vehicles and quadricycles⁽⁴⁾ as it may be amended from time to time;

“relevant products” means—

- (a) vehicles;
- (b) systems;
- (c) components;
- (d) separate technical units;
- (e) parts; or
- (f) equipment.

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

Appointment of approval authority

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

Market surveillance authority

4. The Secretary of State is the market surveillance authority for the purposes of—

- (a) these Regulations and the Motorcycles Regulation; and
- (b) where applied by the Motorcycles Regulation or otherwise applicable to relevant products, 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⁽⁵⁾.

Requests for information: failure to comply

5. Where a manufacturer who makes an application for type-approval fails to comply with a reasoned request for additional information made under paragraph 5 of article 28 of the Motorcycles 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 29 and 31 to 33; or
- (b) article 40,

of the Motorcycles Regulation have not been complied with.

(2) The requirements of article 32 of the Motorcycles 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 33 of the Motorcycles 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

(4) OJ No L 60, 2.3.2013, p.52.

(5) OJ No L 218, 13.8.2008, p.30.

- (b) the data in the certificates of conformity are correct.

Conformity of production: record keeping

7. The holder of an EU type-approval or whole-vehicle type-approval mentioned in article 33 of the Motorcycles 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 certificates of conformity to article 38 of the Motorcycles Regulation; and
- (c) that the data in certificates of conformity issued by the holder are correct.

Making available on the market or entry into service: derogations

8. The derogations permitted by paragraphs 3 and 4 of article 45 of the Motorcycles Regulation apply.

Review of decisions

9.—(1) A decision to which article 53 of the Motorcycles 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 vehicles 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 vehicles for the purpose of determining the issues raised by the request for review.

Withdrawal of approvals: mistake or error

10.—(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 9(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

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

- (a) issue a certificate of conformity with respect to a vehicle; or
- (b) affix a statutory plate or mark pursuant to article 39 of the Motorcycles Regulation,

the certificate, plate or mark is invalid.

(2) The approval authority may, by notice given to the holder, exempt from paragraph (1) certificates of conformity or classes of certificates of conformity specified in the notice.

(3) A suspension does not affect the validity of any certificate of conformity issued before the approval under which it was issued was suspended.

Service

12.—(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 Motorcycles 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—

- (a) by delivering it to the person;
- (b) by leaving it at that person’s proper address;
- (c) by sending it by post to that person at that address;
- (d) by means of any form of electronic communication agreed with the person to whom it is to be sent.

(3) Any such document may—

- (a) in the case of a body corporate, be given to or served on an officer of that body;
- (b) in the case of a partnership, be given to or served on any partner;
- (c) 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)(6) in its application to this section, 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—

- (a) 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;

(6) 1978 c.30.

- (b) 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;
- (c) 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 Motorcycles 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 Motorcycles Regulation to be given to or served by any person on the approval authority, market surveillance authority or enforcement authority must be—

- (a) in writing; or
- (b) 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).

Provision of testing stations

13. 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 Motorcycles Regulation and may provide and maintain apparatus for carrying out such examinations.

Provision of technical information: loss or damage

14.—(1) Where a duty is imposed on a manufacturer by Chapter XIV of the Motorcycles Regulation (provision of technical information), 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.

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 Motorcycles Regulation.

Consequential amendments and revocations

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

Review

17.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations; and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before the end of the period of five years beginning with the day on which these Regulations come into force for any purpose.

(3) Subsequent reports must be published at intervals not exceeding five years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015⁽⁷⁾ requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the Motorcycles Regulation (certain aspects of which are implemented by means of these Regulations) is implemented in other member States.

(7) 2015 c. 26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c. 12).

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Signed by authority of the Secretary of State for Transport

Date

Name
Parliamentary Under Secretary of State
Department for Transport

SCHEDULES

SCHEDULE 1

Regulation 15

Offences, penalties, enforcement and other matters

PART 1

Offences

Offences and penalties

1. A person who is an economic operator is guilty of an offence if that person—
- (a) contravenes any prohibition in these Regulations or the Motorcycles Regulation; or
 - (b) fails to comply with any requirement or obligation in these Regulations or the Motorcycles Regulation.

Offences by bodies corporate and partnerships

2.—(1) If an offence under these Regulations committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, an officer of the body corporate, or a person purporting to act as an officer of the body corporate, that officer or person (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, sub-paragraph (1) applies in relation to the acts and omissions of a member in connection with the member’s functions of management as it applies to an officer of the body corporate.

- (3) If an offence under these Regulations is—
- (a) committed by a Scottish partnership; and

- (b) proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a partner of the partnership,

the partner (as well as the partnership) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(4) In this paragraph “officer” in relation to a body corporate means a director, secretary or other similar officer of the body corporate.

PART 2

Penalties

Criminal penalties

3.—(1) A person guilty of an offence under these Regulations is punishable—

(a) on summary conviction—

(i) in England and Wales by a fine; or

(ii) in Scotland or Northern Ireland by a fine not exceeding the statutory maximum; or

(b) on conviction on indictment by a fine or (in the case of an individual) by imprisonment for a term not exceeding two years, or to both.

(2) But an offence is not punishable under this paragraph if—

(a) the enforcement authority has required a person to pay a penalty in respect of that offence under paragraph 4; and

(b) that penalty has been paid to the enforcement authority.

Civil penalties

4.—(1) The enforcement authority may require a person who is an economic operator to pay a penalty if the enforcement authority is satisfied, on a balance of probabilities, that the person has committed an offence mentioned in paragraph 1.

(2) But the enforcement authority may not require a person to pay a penalty if—

(a) the person shows that there was a reasonable excuse for committing the offence; or

(b) criminal proceedings have been instituted against the person in respect of the same offence.

(3) A penalty imposed under this paragraph may not exceed £50,000 per offence.

(4) The penalty is payable to the enforcement authority on demand.

Notification of penalty decision

5.—(1) If the enforcement authority decides to require a person to pay a penalty under these Regulations, the enforcement authority must give the person a penalty notice.

(2) A penalty notice must—

(a) be in writing;

(b) state the enforcement authority’s reasons for deciding to require the person to pay a penalty;

(c) state the amount of the penalty;

(d) specify the date on which it is given;

(e) specify the date, at least 28 days after the date specified in the notice as the date on which it is given, before which the penalty must be paid;

(f) specify how a penalty must be paid;

(g) include an explanation of the steps that the person may take if the person objects to the penalty (including specifying the manner and form in which any notice of objection must be given to the enforcement authority); and

- (h) include an explanation of the steps the enforcement authority may take to recover any unpaid penalty.

Objection to penalty decision

6.—(1) The recipient of a penalty notice (the “recipient”) may object to the penalty notice by giving a notice of objection to the enforcement authority.

(2) A notice of objection must—

- (a) give the reasons for the objection;
- (b) be given to the enforcement authority in the manner and form specified in the penalty notice; and
- (c) be given before the end of the period of 28 days beginning with the date specified in the penalty notice as the date on which it is given.

(3) Where the enforcement authority receives a notice of objection, the enforcement authority must consider it and—

- (a) cancel the penalty;
- (b) reduce the penalty;
- (c) increase the penalty; or
- (d) determine not to alter the penalty.

(4) After reaching a decision as to how to proceed under sub-paragraph (3), the enforcement authority must notify the recipient of the decision in writing.

(5) A notification under sub-paragraph (4) must be given before the end of the period of 70 days beginning with the date specified in the penalty notice as the date on which it is given, or such longer period as the enforcement authority may agree with the recipient.

(6) A notification under sub-paragraph (4), other than one notifying the recipient that the enforcement authority has decided to cancel the penalty, must—

- (a) state the amount of the penalty following the enforcement authority’s consideration of the notice of objection;
- (b) state the enforcement authority’s reasons for the decision under sub-paragraph (3);
- (c) specify the date, at least 28 days after the date on which the notification is given, before which the penalty must be paid;
- (d) specify how the penalty must be paid;
- (e) include an explanation of the recipient’s rights of appeal; and
- (f) include an explanation of the steps the enforcement authority may take to recover any unpaid penalty.

Civil penalties: appeals

7.—(1) A person (the “appellant”) may appeal to the court against a decision to require the person to pay a penalty under these Regulations.

(2) An appeal may be brought only if the appellant has given a notice of objection and the enforcement authority has—

- (a) reduced the penalty under paragraph 6(3)(b);
- (b) increased the penalty under paragraph 6(3)(c); or
- (c) determined not to alter the penalty under paragraph 6(3)(d).

(3) An appeal must be brought within the period of 28 days beginning with the date on which the person is notified of the enforcement authority’s decision on the notice of objection under paragraph 7(4).

(4) On appeal, the court may—

- (a) allow the appeal and cancel the penalty;
- (b) allow the appeal and reduce the penalty; or

- (c) dismiss the appeal.
- (5) An appeal—
 - (a) is to be a re-hearing of the enforcement authority’s decision to impose a penalty; and
 - (b) may be determined having regard to matters of which the enforcement authority was unaware.
- (6) Sub-paragraph (5)(a) has effect despite any provision of rules of court.
- (7) In this paragraph, a reference to “the court” is a reference—
 - (a) in England and Wales, to the county court;
 - (b) in Scotland, to the sheriff; and
 - (c) in Northern Ireland, to a county court.
- (8) But—
 - (a) the county court in England and Wales, or a county court in Northern Ireland, may transfer proceedings under this regulation to the High Court; and
 - (b) the sheriff may transfer proceedings under this regulation to the Court of Session.

PART 3

Enforcement and other matters

Enforcement of penalty decision

8.—(1) This paragraph applies where a sum is payable to the enforcement authority as a penalty under these Regulations.

(2) In England and Wales the penalty is recoverable as if it were payable under an order of the county court in England and Wales.

(3) In Scotland the penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

(4) In Northern Ireland the penalty is recoverable as if it were payable under an order of a county court in Northern Ireland.

(5) Where action is taken under this paragraph for the recovery of a sum payable as a penalty under these Regulations, the penalty is—

- (a) in relation to England and Wales, to be treated for the purposes of section 98 of the Courts Act 2003 (register of judgments and orders etc)(**8**) as if it were a judgment entered in the county court;
- (b) in relation to Northern Ireland, to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981 (register of judgments)(**9**) as if it were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order.

Obstruction of officers and false statements

9.—(1) A person must not—

- (a) intentionally obstruct an officer when acting in pursuance of any provision of these Regulations;
- (b) intentionally fail to comply with any requirement properly made by an officer under any provision of these Regulations; or
- (c) without reasonable cause, fail to give an officer any other assistance or information which the officer may reasonably require of that person for the purposes of the exercise of the officer's functions under any provision of these Regulations.

(**8**) 2003 c.39; section 98 has been amended by sections 48(1) and 106(2) of, and paragraph 55(1), (2), (3)(a) and (b) of Schedule 8 and paragraph 15 of Schedule 16 to, the Tribunals, Courts and Enforcement Act 2007 (c.15) and section 17(5) of, and paragraph 40(a) and (c) of Part 2 of Schedule 9 to, the Crime and Courts Act 2013 (c.22). Further amendments made by the Tribunals, Courts and Enforcement Act 2007 have yet to be brought into force.

(**9**) S.I. 1981/226 (N.I. 6).

(2) A person must not, in giving any information which is required of that person by virtue of sub-paragraph (1)(c)—

- (a) make any statement which the person knows is false in a material particular; or
- (b) recklessly make a statement which is false in a material particular.

Powers of search, etc.

10.—(1) Officers may exercise any of the powers set out in sub-paragraph (2) at all reasonable hours provided—

- (a) the officers identify themselves and produce authority in writing from the enforcement authority for the exercise by the officers of powers conferred on the authority by these Regulations; and
- (b) state the purpose of the officers' actions and the grounds for undertaking them.

(2) The powers referred to in sub-paragraph (1) are as follows—

- (a) an officer may for the purpose of ascertaining whether an offence under these Regulations has been committed—
 - (i) inspect any relevant products; and
 - (ii) enter any premises other than premises used wholly or mainly as a dwelling;
- (b) if an officer has reasonable cause to suspect that an offence under these Regulations has been committed, the officer may, for the purpose of ascertaining whether it has been committed, require any person carrying on, or employed in connection with, a business to produce any records relating to the relevant products and the officer may take copies of those records or any part of them;
- (c) if an officer has reasonable cause to suspect that an offence under these Regulations has been committed, the officer may seize and detain any relevant products for the purpose of ascertaining whether the offence has been committed;
- (d) an officer may seize and detain any relevant products or records which the officer has reason to believe may be required as evidence in proceedings for an offence under these Regulations;
- (e) an officer may, for the purpose of exercising the officer's powers of seizure under this sub-paragraph, but only if and to the extent that it is reasonably necessary in order to secure that the provisions of these Regulations are duly observed, require any person having authority to do so to open any container and, if that person does not comply with the requirement or if there is no person present having authority to open it, the officer may break open the container.

(3) For the purposes of sub-paragraph (2), the officer may require information stored electronically to be made available in printed form.

(4) An officer may, for the purpose of ascertaining whether an offence has been committed under these Regulations, make a purchase of relevant products.

(5) If a justice of the peace is satisfied by any written information on oath—

- (a) that there are reasonable grounds for believing either—
 - (i) that any relevant products or records, which an officer has power under this paragraph to inspect, copy, seize or require to be produced, is or are on any premises and that the inspection, copying, seizure or production of that item is likely to disclose evidence of the commission of an offence under these Regulations; or
 - (ii) that any offence under these Regulations has been, is being, or is about to be committed on any premises; and
- (b) either—
 - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this sub-paragraph has been given to the occupier; or
 - (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await the occupier's return,

the justice may by warrant under the justice's hand, which continues in force for a period of one month, authorise an officer to enter the premises, if need be by force.

(6) On entering any premises by authority of a warrant granted under sub-paragraph (5), an officer must, if the occupier is present, give to the occupier or, if the occupier is temporarily absent, leave in a prominent place on the premises, or an appropriate part of the premises, a notice in writing—

- (a) summarising an officer's powers of seizure and detention of any relevant products or records under this paragraph;
- (b) explaining that compensation may be payable for damage caused in entering premises and seizing and removing any relevant products or records and giving the address to which an application for compensation should be directed; and
- (c) indicating at which office of the enforcement authority and within which hours a copy of these Regulations is available to be consulted.

(7) An officer, when entering any premises by virtue of this paragraph, may be accompanied by such persons and take such equipment as appear to the officer to be necessary.

(8) An officer, when leaving any premises which the officer entered by virtue of a warrant, must, if the premises are unoccupied or the occupier is temporarily absent, leave them in as secure a state as that in which they were found.

(9) When exercising any power of seizure and detention under this paragraph, an officer must, as soon as practicable, give to the person against whom the power has been exercised, a written notice stating—

- (a) precisely what has been so seized and detained;
- (b) that an application for the release of a detained item may be made in accordance with paragraph 12 of this Schedule; and
- (c) the procedure for making such an application.

(10) A person who is not an officer of the enforcement authority must not purport to act as such under this paragraph.

(11) In the application of this paragraph to Scotland, the reference in sub-paragraph (5) to a justice of the peace includes a reference to a sheriff and the references to written information on oath are to be construed as references to evidence on oath.

(12) In the application of this paragraph to Northern Ireland, the references in sub-paragraph (5) to any information on oath are to be construed as references to any complaint on oath.

Powers of customs officers to detain goods

11.—(1) An Officer of Revenue and Customs may, for the purpose of facilitating the exercise by the enforcement authority, or duly authorised officer of the authority, of any powers conferred on the authority or officer by these Regulations seize any imported relevant products or any records, and detain them for not more than two working days.

(2) Anything seized and detained under this paragraph must be dealt with during the period of its detention in such manner as the Commissioners for Her Majesty's Revenue and Customs may direct.

(3) An Officer of Revenue and Customs seizing any relevant products or records under this paragraph must inform the person from whom they are seized that such relevant products or records have been seized.

(4) In sub-paragraph (1) the reference to two working days is a reference to a period of forty-eight hours calculated from the time when the goods in question are seized, but disregarding so much of any period as falls on a Saturday or Sunday or on Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(**10**) in the part of the United Kingdom where the goods are seized.

Applications for the release of detained items

12.—(1) Any person having an interest in any relevant products or records detained for the time being under paragraph 5 may apply for an order requiring any item so detained to be released to the applicant or another person.

(2) An application under this paragraph may be made—

(10) 1971 c.80.

- (a) to any magistrates' court in which proceedings have been brought in England and Wales or Northern Ireland for an offence in respect of a contravention of any provision of these Regulations in connection with the detained item;
- (b) where no such proceedings have been so brought, by way of complaint to a magistrates' court; or
- (c) in Scotland, by summary application to the sheriff.

(3) A magistrates' court or the sheriff must not make an order under sub-paragraph (1) unless the court or sheriff is satisfied that—

- (a) proceedings have not been brought for an offence in respect of a contravention of any provision of these Regulations in connection with the detained item or, having been brought, have been concluded; and
- (b) where no such proceedings have been brought, more than six months have elapsed since the seizure was carried out.

(4) Any person aggrieved by an order made under this paragraph by a magistrates' court or sheriff, or by a decision of such a court or sheriff not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the Crown Court;
- (b) in Scotland, to the sheriff principal; or
- (c) in Northern Ireland, to the county court.

(5) In England and Wales or in Northern Ireland, an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980⁽¹¹⁾ or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981⁽¹²⁾ (statement of case)).

Compensation for seizure and detention

13.—(1) Where an officer exercises any power under paragraph 5 to seize and detain any relevant products or records, the enforcement authority is liable to pay compensation to any person having an interest in the item seized and detained in respect of any loss or damage caused by the exercise of the power if—

- (a) there has been no contravention of any provision of these Regulations; and
- (b) the exercise of the power is not attributable to any neglect or default by that person.

(2) Any disputed question as to the right to, or the amount of, any compensation payable under this paragraph must be determined—

- (a) in England and Wales or Northern Ireland, by arbitration; or
- (b) in Scotland, by a single arbiter appointed by the parties, or in the event that the parties fail to agree, by the sheriff.

Recovery of the expenses of enforcement

14.—(1) This paragraph applies where a court convicts a person of an offence in respect of a contravention of any provision of these Regulations in relation to any relevant products or records.

(2) The court may (in addition to any other order it may make as to costs and expenses) order the person convicted to reimburse the enforcement authority for any expenditure which has been or may be incurred by that authority in connection with any seizure or detention by or on behalf of the authority of the relevant products or records.

Power of the Commissioners for Her Majesty's Revenue and Customs to disclose information

15.—(1) If they think it appropriate to do so for the purpose of facilitating the exercise by any person to whom sub-paragraph (2) applies of any functions conferred on that person by any provisions of these Regulations, the Commissioners for Her Majesty's Revenue and Customs may authorise the disclosure to

(11) 1980 c.43.

(12) S.I. 1981/1675 (N.I. 26).

that person of any information obtained for the purposes of the exercise by the Commissioners of their functions in relation to imported goods.

(2) This sub-paragraph applies to the enforcement authority and to any officer authorised by the enforcement authority.

(3) A disclosure of information made to any person under sub-paragraph (1) must be made in such manner as may be directed by the Commissioners for Her Majesty's Revenue and Customs and may be made through such persons acting on behalf of that person as may be so directed.

(4) Information may be disclosed to a person under sub-paragraph (1) whether or not the disclosure of the information has been requested by or on behalf of that person.

Savings for certain privileges

16. Nothing in these Regulations is to be taken as requiring any person—

- (a) to produce any records if that person would be entitled to refuse to produce those records in any proceedings in any court on the grounds that they are the subject of legal professional privilege or, in Scotland, a claim of confidential communications, or as authorising any person to take possession of any records which are in the possession of a person who would be so entitled; or
- (b) to answer any question or give any information if to do so would incriminate that person or that person's spouse or civil partner.

Savings for civil rights

17. A contract for the supply of relevant products is not void or unenforceable by reason only of a contravention of any provision of these Regulations.

SCHEDULE 2

Regulation 16

Consequential amendments and revocations

PART 1

Consequential amendments

Road Traffic Act 1988

1.—(1) The Road Traffic Act 1988(**13**) is amended as follows.

(2) Section 65A (motor cycles not to be sold without EC certificate of conformity)(**14**) is omitted.

(3) In section 85(1) (interpretation of Part 2)—

(a) in the definition of “EC certificate of conformity”(**15**), for paragraph (b), substitute—

“(b) in the case of a vehicle to which the motorcycle type approval Regulation applies, a certificate of conformity issued by a manufacturer under Article 38 of that Regulation;”;

(b) for the definition of “the motorcycle type approval Directive”(**16**), substitute—

““the motorcycle type approval Regulation” means Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15th January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles as it may be amended from time to time;”.

(13) 1988 c.52.

(14) Section 65A was inserted by S.I. 1992/3107.

(15) The definition of “EC certificate of conformity” was originally inserted by S.I. 1992/3107 and substituted by S.I. 2009/818.

(16) The definition of “the motorcycle type approval Directive” was substituted by S.I. 2003/1099.

(4) In section 86 (index to Part 2), for “Motorcycle type approval Directive”(17), substitute “Motorcycle type approval Regulation”.

(5) In section 108(1) (interpretation), in the definition of “light quadricycle”—

(a) for “1(3)(a)”, substitute “4”;

(b) for “Directive”, substitute “Regulation”.

(6) In section 183(2) (application to the Crown), for “sections 65 and 65A”(18), substitute “section 65”.

Road Traffic (Northern Ireland) Order 1981

2.—(1) The Road Traffic (Northern Ireland) Order 1981(19) is amended as follows.

(2) In Article 31A(7) (approval of design, construction, etc., of motor vehicles)(20)—

(a) for “31B to 31G”, substitute “31B to 31E”;

(b) in the definition of “EC certificate of conformity”(21), for paragraph (b), substitute—

“(b) in the case of a vehicle to which the motorcycle type approval Regulation applies, under Article 38 of that Regulation,”;

(c) omit the definition of “the motorcycle type approval Directive”(22);

(d) after the definition of “motor vehicle”, insert—

““the motorcycle type approval Regulation” means Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15th January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles(23) as it may be amended from time to time;”.

(3) Omit articles 31F (failure to hold EC certificate of conformity for unregistered light passenger vehicle or motor cycle) and 31G (light passenger vehicles or vehicle to which the motorcycle type approval Directive applies not to be sold without EC certificate of conformity)(24).

Amendment of the Passenger Car (Fuel Consumption and CO2 Emissions Information) Regulations 2001

3. In regulation 4 of the Passenger Car (Fuel Consumption and CO2 Emissions Information) Regulations 2001(25), for “Article 1(3) of Directive 2002/24/EC of 18th March 2002 of the European Parliament and of the Council”, substitute “Article 3 of Regulation (EU) No 168/2013 of the European Parliament and of the Council on the approval and market surveillance of two- or three-wheel vehicles and quadricycles(26) as it may be amended from time to time”.

Amendment of the End-of-Life Vehicles (Producer Responsibility) Regulations 2005

4. In regulation 2 of the End-of-Life Vehicles (Producer Responsibility) Regulations 2005(27), for the definition of “vehicle”, substitute—

““vehicle” means [...];”.

(17) The entry for “Motorcycle type approval Directive” was inserted by S.I. 1992/3107.

(18) The words “sections 65 and 65A” were substituted by paragraph 22(2)(a) of Schedule 23 to the Deregulation Act 2015.

(19) S.I. 1981/154 (N.I. 1).

(20) Article 31A was inserted by S.I. 1985/755 (N.I. 6).

(21) The definition of “EC certificate of conformity” was inserted by S.R. 1993/246; paragraph (b) of that definition was substituted by S.I. 2003/1099.

(22) The definition of “motorcycle type approval Directive” was inserted by S.I. 2003/1099.

(23) OJ No L 60, 2.3.2013, p.52.

(24) Articles 31F and 31G were inserted by S.I. 1985/755 (N.I. 6).

(25) S.I. 2001/3523, as amended by S.I. 2004/1661 and 2013/65.

(26) OJ No L 60, 2.3.2013, p.52.

(27) S.I. 2005/263.

Amendment of the Supply of Machinery (Safety) Regulations 2008

5. For paragraph 1(e)(iii) of Schedule 3 to the Supply of Machinery (Safety) Regulations 2008(**28**), substitute—

“(iii) vehicles covered by Regulation (EU) No 168/2013 of the European Parliament and of the Council on the approval and market surveillance of two- or three-wheel vehicles and quadricycles(**29**) as it may be amended from time to time;”.

Amendment of the Road Vehicles (Approval) Regulations 2009

6. For regulation 5(2)(b) of the Road Vehicles (Approval) Regulations 2009(**30**), substitute—

“(b) quadricycles, as defined in Regulation (EU) No 168/2013 of the European Parliament and of the Council on the approval and market surveillance of two- or three-wheel vehicles and quadricycles(**31**) as it may be amended from time to time;”.

PART 2

Revocations

Revocations

7. The following Regulations are revoked—

- (a) the Motor Cycles Etc (EC Type Approval) Regulations 1999(**32**);
- (b) the Motor Cycles Etc (EC Type Approval) (Amendment) Regulations 2001(**33**);
- (c) the Motor Cycles Etc (EC Type Approval) (Amendment) (No 2) Regulations 2001(**34**);
- (d) the Motor Cycles Etc (EC Type Approval) (Amendment) Regulations 2003(**35**);
- (e) the Motor Cycles Etc (EC Type Approval) (Amendment) Regulations 2004(**36**);
- (f) the Motor Cycles Etc (EC Type Approval) (Amendment) (No 2) Regulations 2004(**37**);
- (g) the Motor Cycles Etc (EC Type Approval) (Amendment) Regulations 2006(**38**);
- (h) the Motor Cycles Etc (EC Type Approval) (Amendment) Regulations 2007(**39**);
- (i) the Motor Cycles Etc (Replacement of Catalytic Converters) Regulations 2009(**40**);
- (j) the Motor Cycles Etc and Tractors Etc (EC Type Approval) (Amendment) Regulations 2009(**41**);
- (k) the Motor Cycles Etc and Tractors Etc (EC Type Approval) (Amendment) Regulations 2010(**42**).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations ...

(28) S.I. 2008/1597.

(29) OJ No L 60, 2.3.2013, p.52.

(30) S.I. 2009/717.

(31) OJ No L 60, 2.3.2013, p.52.

(32) S.I. 1999/2920.

(33) S.I. 2001/368.

(34) S.I. 2001/1547.

(35) S.I. 2003/1099.

(36) S.I. 2004/1948.

(37) S.I. 2004/2539.

(38) S.I. 2006/2935.

(39) S.I. 2007/2656.

(40) S.I. 2009/1896.

(41) S.I. 2009/3266.

(42) S.I. 2010/1114.

Regulation 17 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

Annex B Regulatory Triage Assessment, RTA

When responding to the consultation, please comment on the analysis of costs and benefits, giving supporting evidence wherever possible.

Please also suggest any alternative methods for reaching the objective and highlight any possible unintended consequences of the policy, and practical enforcement or implementation issues.

The policy issue and rationale for Government intervention

Motorcycle safety and environmental standards are harmonised across Europe and applied to new motorcycles through a process known as type approval. A new model of motorcycle can be tested by one government's approval authority (e.g. the UK's Vehicle Certification Agency, VCA) and can then be sold throughout Europe without undergoing further government testing.

Motorcycle emissions standards had remained unchanged since 2006, at a level known as Euro 3. Given the improvements made to other vehicle categories in recent years, it was considered appropriate and technically feasible to require more stringent standards. Motorcycles are over-represented in fatal collisions (for example, in Great Britain, L-category vehicles accounted for just over 1% of road traffic mileage in 2015, but around 21% of road user fatalities (DfT, 2016)) and therefore it was considered necessary to improve safety. A key safety development in cars and trucks has been the development of Anti-lock Braking Systems (ABS), this technology is now available for motorcycles so it was decided to make it compulsory on some categories of motorcycles.

In 2013 Regulation (EU) 168/2013 on the approval and market surveillance of two and three wheeled vehicles and quadricycles (lightweight low power 4 wheeled vehicles) was published. It revised the technical standards applicable to these vehicles, chiefly by introducing new more stringent emissions standards (Euro 4 from 2017 and Euro 5 from 2020), and new braking standards including compulsory Anti-lock Braking Systems (ABS) on motorcycles above 125cc, while permitting a

simpler but improved Combined Braking System on smaller motorcycles between 50cc and 125cc.

This Regulation is directly applicable and applies in the UK without any need to transpose it. The VCA are already testing in accordance with it. Therefore the costs and benefits of this policy will in principle occur without any further government intervention and are not being considered in this RTA.

However, the Regulation requires Member States to ensure compliance with the rules and lay down penalties for infringements that are effective, proportionate and dissuasive. Suppliers of motorcycles ignoring the rules would obtain an unfair advantage, as they would be able to sell non-compliant motorcycles more cheaply than those respecting the rules, which might also be unsafe or harm the environment.

The Regulation is largely enforced in UK via the registration system run by DVLA. There are procedures in place to ensure that applicants only submit approved motorcycles for registration. However, this is unlikely to pick up systematic fraud (submission of false or forged documents) or irregularities in the type approval process, and there is little deterrent effect as the only punishment is refusing to register a vehicle.

New legislation is therefore required to put in place an appropriate enforcement regime to penalise suppliers who are non-compliant and to meet the UK's obligations under the Regulation.

This RTA is to assess whether any costs are imposed on businesses by the proposed domestic enforcement regime.

Policy objectives and intended effects

The objective is to introduce legislation to meet the UK's obligations under the Regulation, to create a level playing field. The legislation and associated enforcement activities will act as a deterrent, to discourage suppliers from placing non-compliant motorcycles on the market and to effectively penalise those who have done this.

Without effective penalties, manufacturers and importers ignoring the rules would obtain an unfair advantage, as without the costs of designing vehicles to meet technical regulations they would be able to develop and/or sell motorcycles more cheaply. Suppliers producing or importing compliant products might be unable to compete on price and see reduced sales. Moreover, non-compliant products are likely to be either

unsafe or harmful to the environment. They could cause danger to other road users, or create pollution harming air quality. The intention is therefore to avoid these problems by providing an enforcement regime that discourages suppliers from selling non-compliant products.

Policy options considered, including alternatives to regulation

A Market Surveillance Unit (MSU) was set up within the Driver and Vehicle Standards Agency (DVSA) in response to the VW scandal to monitor and enforce compliance issues with cars, trucks and buses.

One option considered was to set up a separate market surveillance unit for motorcycles, but we decided that it was more effective and economical with resources to widen the remit of the existing unit. Given that motorcycles make up a small proportion of registrations (~3.5%), setting up a bespoke unit would be disproportionately costly, compared to slightly expanding the existing unit.

Another option, of operating without statutory backing, was considered, but we decided that without this, the unit would not be effective. Although it could publish the results of compliance testing as information for consumers, there would be no mechanism to force suppliers to withdraw non-compliant agricultural vehicles from the market.

The unit will need to examine and test vehicles. The option of requesting suppliers to supply vehicles free of charge for testing was considered, but as well as imposing cost on suppliers this presented a risk that the vehicles supplied would be adjusted or specially tuned. Therefore the plan is to act as a “Mystery Shopper” in purchasing vehicles in the market or hiring nearly-new vehicles, and then inspecting and testing them against the test specified in type approval regulations. Suppliers will be informed of the results in the end of year report, but will not need to take action if their vehicles are found to be compliant. Where vehicles are found to be non-compliant, follow up work will take place with the supplier, potentially involving them paying for further testing.

To conclude, the proposed policy option is to widen the remit of the existing Market Surveillance Unit, and to formalise this on a statutory basis as required by EU law. The MSU will be given the necessary investigatory powers, including powers of entry to premises where alleged non-compliant product is held, and the powers to issue civil

penalties. The MSU will be funded centrally and will purchase and test vehicles without contacting suppliers beforehand.

Expected level of business impact

The businesses subject to the Regulation are primarily the suppliers of motorcycles, tricycles and quadricycles. This ranges from very large multinationals making motorcycles to small local dealerships, and sole traders creating custom motorcycles. Information from the Motor Cycle Industry Association (MCIA) advises that there are around 12 large multi-national companies manufacturing motorcycles and/or quadricycles and importing them into the UK, one of whom has a manufacturing plant in the UK, plus a number of smaller manufacturers in Europe and the Far East whose imports are handled by a total of around 10 UK based importers/wholly owned subsidiaries or sales companies. These companies will have dealer networks in UK of various sizes but generally with around 50 independent outlets, each which need to have some knowledge of the regulations, to ensure that they are supplying only compliant motorcycles and that old stock is sold before new requirements (e.g. emissions) take effect – although manufacturers should issue clear guidance to their dealers on this topic. A smaller number of independent importers will represent other manufacturers from various countries and distribute their vehicles, again through independent dealer networks of various sizes dependent on volume and type of the brand involved. In total we understand there are some 650 franchised dealers representing the first category and potential around 200 in the latter.

This suggests that in total around 850 businesses may be subject to the Regulation and enforcement regime in some way.

The budget for the new MSU is currently provided centrally from general taxation, although it is possible this may change in the future. Therefore at present there is no direct cost to business for this: the costs of purchasing or hiring vehicles and testing them against type approval requirements will not be recouped via a levy on businesses. Any follow up work may require input from a business, including paying for re-testing, internal testing and sharing of “Conformity of Production” test results but this will normally only happen in cases of suspected non-compliance. Therefore, these costs are only incurred by businesses which are already not in compliance with existing law and have not therefore been considered.

We have analysed data from DVLA (2016 registrations) on motorcycles and tricycles currently subject to approval, and the data indicates that the proportion of unapproved vehicles is likely to be no more than 0.15%. As noted above, there may be some systematic non-compliance involving entering ostensibly valid data into the database which would not be picked up by this scan. However our engagement with industry and with authorities in other EU countries indicates that such systematic non-compliance is at a very low level. Overall our expectation is that the level of compliance is high.

As well as conducting test programmes, the MSU will take a risk-based approach to monitoring businesses for ongoing compliance. This could involve visits to shows, examining websites and databases, and telephone enquiries. This is unlikely to lead to additional costs for businesses, as compliance can be monitored with minimal contact with individual businesses.

To conclude, given the approach we are taking and the high level of compliance already, our assessment is that the introduction of an enforcement regime is likely to result in very little impact for businesses, and no impact at all on those which are compliant (which are the vast majority of businesses).

Annex C Consultation principles

The consultation is being conducted in line with the Government's key consultation principles. Further information is available on the Better Regulation Executive website at

<https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

Consultation Co-ordinator
Department for Transport
Zone 1/29 Great Minster House
London SW1P 4DR
Email consultation@dft.gsi.gov.uk

Please do not send consultation responses to this address.

Annex D List of those consulted

Agricultural Engineers Association (AEA)

British Association of Garden Machinery (BAGMA)

National Farmers Union (NFU)

Motorcycle Industry Association (MCIA)

Society of Motor Manufacturers and Traders (SMMT)

BTMA

CLEPA

ATVEA

BAGB

AVERE