



Department
for Transport

Implementing EU Regulation 167/2013 on type approval of Agricultural vehicles

July 2017

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Foreword

This consultation seeks your views on the implementation of an EU Regulation (167/2013) governing the European type approval framework for agricultural and forestry vehicles, such as tractors, trailers and towed equipment. This Regulation introduced higher road safety, operator safety and environmental standards for tractors and creates the possibility to obtain EU approval for fast tractors, trailers and towed equipment for the first time.

Many aspects of agricultural vehicle construction 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 for consultees on whether that policy is appropriate in this case.

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 Motorcycle framework regulation. That consultation can be viewed at the following link: www.gov.uk/dft#consultations

Executive summary

- 1.1 The first European agricultural vehicle framework Directive was published in 1974, providing a partial harmonisation of technical standards for agricultural tractors. The regime has developed since then, leading to the latest EU Regulation 167/2013 which introduces harmonisation of technical standards for fast tractors for the first time, which should lead to higher standards across Europe and lower costs for manufacturers.
- 1.2 Agricultural trailers and towed equipment can now obtain optional EU approval, as can tracked tractors and some special purpose (e.g. narrow) tractors, which again should lead to higher standards and will assist manufacturers exporting these products.
- 1.3 Agricultural trailers and towed equipment, as well as tractors exempt from EU approval, in the UK are not subject to approval prior to sale but must meet domestic standards, contained largely in the Road Vehicle (Construction and Use) Regulations 1986 and the Road Vehicles Lighting Regulations 1989, both as amended. These are not being amended at the present time.
- 1.4 Regulation (EU) 167/2013 made a number of improvements to the type approval regime for agricultural vehicles, including compulsory approval for fast tractors (those that can exceed 25mph by design) and these are outlined in the Consultation document.
- 1.5 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.

- 1.6 We would like to hear comments on our proposals and have included a small number of questions for consultees to answer.
- 1.7 We plan to introduce the draft Statutory Instrument shown at Annex B, with any necessary changes following consultation, before the end of 2017.
- 1.8 For those registering fast tractors, the requirement for type approval will take effect from 1 January 2018. It will also apply for tractors entering into service after this date that are not registered for road use.

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:

Robert Lloyd-Smith
Zone 1/33
Great Minster House 33 Horseferry Road
LONDON SW1P 4DR

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 agricultural vehicle approval

- 1.1 The first European agricultural vehicle framework Directive was published in 1974 and permitted a partial harmonisation of standards for new agricultural tractors. Manufacturers were still required to obtain national approval or comply with national rules prior to selling their tractors. Agricultural machines (e.g. Combine harvester), agricultural trailers (those towed by a tractor), and towed equipment (also known as agricultural trailed appliances or towed machinery) were not covered at this stage.
- 1.2 In 2003, Directive 2003/37/EC brought in full harmonisation for most categories of agricultural tractor, and a compulsory requirement for type approval, although not for fast tractors (then categorised as category T5), which have become increasingly prevalent since 2003. Agricultural and forestry trailers and towed equipment remained outside the scope of compulsory or optional EU approval, as did tracked (those with rubber tracks like a tank, sometimes known as “crawler”) tractors and some special purpose tractors, such as narrow tractors for vineyards.
- 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 tractors 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 agricultural vehicle approval is available at <https://www.gov.uk/vehicle-approval> and <http://www.dft.gov.uk/vca/vehicletype/agricultural-forestry-tractors.asp>

1.5 The Health and Safety Executive, and Health and Safety Executive for Northern Ireland, are responsible for workplace safety, so have an important role in investigating farming incidents and injuries that happen off road. Machinery mounted on tractors, such as front loading shovels, must comply with the Essential Health and Safety Requirements (EHSRs) of the Machinery Directive 2006/42/EU, which in the UK are set out in Schedule 3 to the Supply of Machinery (Safety) Regulations 2008. Manufacturers can either refer directly to EHSRs or to a relevant transposed harmonised standard.

The new EU Regulation

1.6 EU Regulation 167/2013 was made on 5 February 2013. This provided for compulsory type approval of fast agricultural and forestry tractors, now re-categorised as Txb (T1b, T2b etc.) rather than T5 (tractor categories are set out in Annex A). It also set (optional) European standards for agricultural and forestry trailers and towed equipment which are towed behind tractors, but not for motorised agricultural machines (such as Combine Harvesters), which are still outside the scope of EU type approval and thus must comply with domestic standards.

1.7 Regulation 167/2013 also made a number of other changes, both to the administrative framework and to the safety and environmental standards which apply, although many of the standards remained unchanged.

1.8 Some of the new requirements introduced by 167/2013 include:

- manufacturers of fast tractors (category Txb) are required to obtain type approval, effective for all new tractors entering into service from 1 Jan 2018
- 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
- clarification that “side-by-side” utility vehicles and all-terrain vehicles (ATV, “quad bikes”) can be approved as tractors. Depending on their construction some of these vehicles may

instead be approved under the new Motorcycle Framework, EU Regulation 2013/168.

- a requirement for new tractors to be approved even where they are never used on public roads
- increased requirements for governments to carry out market surveillance: ensuring vehicles on sale are correctly approved
- technical standards in new areas such as tractor tyres
- optional approval for trailers and towed equipment including standards in areas such as lighting and braking
- an updated braking standard, requiring a high level of stringency, including requiring new tractors to be fitted with twin hydraulic or twin air connectors providing fail-safe braking of compatible agricultural trailers
- 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

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

- detailed type approval procedures prior to placing a tractor 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)
- Member States must set out the remedies available in law when applicants disagree with decisions of the approval authority

- technical standards in areas ranging from braking and steering to roll-over protection and lighting

New domestic regulations

1.10 Domestic implementing regulations (a Statutory Instrument) have been drafted and are attached at Annex B. These will apply throughout the United Kingdom, including Northern Ireland. We do not believe it is necessary to repeat the provisions of Regulation 167/2013 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 and the Road Traffic Act to ensure references to 2003/37/EC are correctly updated and redundant offences are removed

1.11 At present our assumption is that the EU type approval regime is sufficient and that there is no need for a domestic type approval or individual approval regime for agricultural tractors, trailers or towed equipment.

Options under the EU Regulation

1.12 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.

- 1.13 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.
- 1.14 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 allows uncontrolled operation outside of the parameters that are known to be used during regulatory testing.
- 1.15 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.
- 1.16 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.
- 1.17 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.
- 1.18 We are requesting comments on this proposal and in due course intend to modify these regulations or other appropriate regulations, to create these offences and penalties.
- 1.19 The EU Regulation allows Member States to set up national “small series approval” schemes or “individual vehicle approval” schemes for tractors, within constraints laid down in the Regulation. The Regulation also permits us to continue to operate pre-existing schemes, whether type approval or self-certified, for agricultural vehicles.
- 1.20 The UK has what is in effect an informal self-certification requirement for agricultural trailers, towed equipment and self-propelled agricultural machines (such as combine harvesters). Manufacturers need to be content that they comply with the Road

Vehicle (Construction and Use) Regulations 1986 and the Road Vehicle Lighting Regulations 1989 (both as amended) prior to placing a vehicle on the market. This requirement also applies to tractors of categories not subject to EU approval, such as tracked tractors.

- 1.21 This situation will remain unchanged. Manufacturers wishing to export or offer customers proof of the quality of their product may wish to utilise the EU type approval scheme for agricultural trailers and towed equipment, which VCA will offer to customers. There is no EU scheme for agricultural machines built on a bespoke (non-lorry) chassis. Agricultural machinery built onto a lorry chassis before its registration will need to be approved as a road vehicle, like a normal lorry.
- 1.22 The UK does not have national type approval or individual vehicle approval schemes for agricultural vehicles, and we are not aware of any demand for schemes of this nature.

Registration of agricultural tractors

- 1.23 Agricultural motor vehicles are subject to registration with DVLA, like all other motor vehicles used on public roads. Applicants to register vehicles of a category subject to type approval are required to hold evidence of approval, such as an EU Certificate of Conformity, and must supply it when using the V55/4 paper application route.
- 1.24 From 1 January 2018, DVLA will not permit the registration of fast tractors without evidence of type approval.

Other issues

- 1.25 We would also welcome comments on any other matters consultees may wish to raise, for example the need to mandate the EU requirements for braking or for sideguards on agricultural trailers.
- 1.26 The Department recently consulted on a new requirement affecting certain fast tractors in use, rather than new fast tractors: this is an annual roadworthiness testing scheme for fast tractors (capable of exceeding 25mph) used for commercial haulage and other non-agricultural purposes, as part of implementing new EU rules on

annual roadworthiness testing. For more details of this please see:
<https://www.gov.uk/government/consultations/roadworthiness-testing-for-fast-tractors-and-other-technical-changes-to-vehicle-testing>

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 legislation.
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 167/2013 that you are not content with?** We cannot guarantee that amendments will be made but there may be opportunities to ask the European Commission for changes to this EU Regulation, particularly to the delegated and implementing acts, which are revised from time to time, although we understand that the main EU 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 introducing the EU requirements for braking or

sideguards onto new agricultural trailers, 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 Tractor, trailer and towed equipment categories

For the purpose of this consultation the following categories have been considered. These are the same as the categories specified in Article 4 of 167/2013. Trailers and trailed equipment are considered *agricultural* if they are mainly designed to be towed by a tractor. (A trailer designed to be towed by a Land Rover, for example, is not categorised as an agricultural trailer in this context).

- (1) 'category T' comprises all wheeled tractors; each wheeled tractor category described in points 2 to 8 is supplemented at the end of an 'a' or 'b' index according to its design speed:
 - a. 'a' for wheeled tractors with a maximum design speed below or equal to 40 km/h;
 - b. 'b' for wheeled tractors with a maximum design speed above 40 km/h;
- (2) 'category T1' comprises wheeled tractors, with the closest axle to the driver having a minimum track width of not less than 1150 mm, with an unladen mass, in running order, of more than 600 kg, and with a ground clearance of not more than 1000 mm;
- (3) 'category T2' comprises wheeled tractors with a minimum track width of less than 1150 mm, with an unladen mass, in running order, of more than 600 kg, with a ground clearance of not more than 600 mm; if the height of the centre of gravity of the tractor (measured in relation to the ground) divided by the average minimum track for each axle exceeds 0.90, the maximum design speed shall be restricted to 30 km/h;
- (4) 'category T3' comprises wheeled tractors with an unladen mass, in running order, of not more than 600 kg;
- (5) 'category T4' comprises special purpose wheeled tractors;

- (6) 'category T4.1' (high-clearance tractors) comprises tractors designed for working with high-growing crops, such as vines. They feature a raised chassis or section of chassis, enabling them to advance in parallel with the crop with left and right wheels on either side of one or more rows of the crop. They are intended for carrying or operating tools which may be fitted at the front, between the axles, at the rear or on a platform. When the tractor is in working position the ground clearance perpendicular to the crop rows exceeds 1000 mm. Where the height of the centre of gravity of the tractor, measured in relation to the ground, using the tyres normally fitted, divided by the average minimum track of all of the axles exceeds 0.90, the maximum design speed shall not exceed 30 km/h;
- (7) 'category T4.2' (extra-wide tractors) comprises tractors characterised by their large dimensions, primarily intended for working large areas of farmland;
- (8) 'category T4.3' (low-clearance tractors) comprises four-wheel drive tractors whose interchangeable equipment is intended for agricultural or forestry use and which are characterised by a supporting frame, equipped with one or more power take-offs, having a technically permissible mass no greater than 10 tonnes, for which the ratio of this mass to the maximum unladen mass in running order is less than 2.5 and having the centre of gravity, measured in relation to the ground using the tyres normally fitted, of less than 850 mm;
- (9) 'category C' comprises track-laying tractors propelled by endless tracks or by a combination of wheels and endless tracks with subcategories defined by analogy with category T;
- (10) 'category R' comprises trailers intended mainly to carry loads, or to process materials which do not qualify for category S; each trailer category described in points 11 to 14 is supplemented at the end by an 'a' or 'b' index, according to its design speed:
 - a. 'a' for trailers with a maximum design speed below or equal to 40 km/h;

- b. 'b' for trailers with a maximum design speed above 40 km/h;
- (11) 'category R1' comprises trailers, the sum of the technically permissible masses per axle of which does not exceed 1500 kg;
 - (12) 'category R2' comprises trailers, the sum of the technically permissible masses per axle of which exceeds 1500 kg but does not exceed 3500 kg;
 - (13) 'category R3' comprises trailers, the sum of the technically permissible masses per axle of which exceeds 3500 kg but does not exceed 21000 kg;
 - (14) 'category R4' comprises trailers, the sum of the technically permissible masses per axle of which exceeds 21000 kg;
 - (15) 'category S' comprises interchangeable towed equipment, where the ratio of maximum mass to unladen weight is less than 3 (in other words, any payload is less than twice the unladen weight). Each category of interchangeable towed equipment is supplemented at the end by an 'a' or 'b' index, according to its design speed:
 - a. 'a' for interchangeable towed equipment with a maximum design speed below or equal to 40 km/h;
 - b. 'b' for interchangeable towed equipment with a maximum design speed above 40 km/h;
 - (16) 'category S1' comprises interchangeable towed equipment, the sum of the technically permissible masses per axle of which does not exceed 3 500 kg;
 - (17) 'category S2' comprises interchangeable towed equipment, the sum of the technically permissible masses per axle of which exceeds 3500 kg.

Annex B Draft UK Regulations

(draft attached below)

2017 No. 0000

ROAD TRAFFIC

**The Agricultural and Forestry Vehicles (EU Type-Approval)
Regulations 2017**

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

1. 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**).

2. 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**).

3. 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 167/2013 of the European Parliament and of the Council on the approval and market surveillance of agricultural and forestry vehicles(**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

These Regulations—

may be cited as the Agricultural and Forestry Vehicles (EU Type-Approval) Regulations 2017;

come into force on [***]; and

are of no effect in relation to any matter to which paragraph 2 or 3 of article 73 of the AFV Regulation applies.

Interpretation

—(1) In these Regulations—

“the AFV Regulation” means Regulation (EU) No 167/2013 of the European Parliament and of the Council on the approval and market surveillance of agricultural and forestry vehicles(**4**) as it may be amended from time to time;

(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.1.

(4) OJ No L 60, 2.3.2013, p.1.

“enforcement authority” means the Secretary of State;

“relevant products” means—

vehicles;

systems;

components;

separate technical units;

parts; or

equipment.

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

Appointment of approval authority

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

Market surveillance authority

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

these Regulations and the AFV Regulation; and

where applied by the AFV Regulation or otherwise applicable to relevant products, Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 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

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 23 of the AFV Regulation, the approval authority may treat the application as having been withdrawn by the manufacturer.

Refusal of EU type-approval application

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

articles 24 and 26 to 28; or

article 35,

of the AFV Regulation have not been complied with.

The requirements of article 27 of the AFV 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.

The requirements of article 28 of the AFV 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—

production will conform to the approved type; or

the data in the certificates of conformity are correct.

Conformity of production: record keeping

The holder of an EU type-approval or whole-vehicle type-approval mentioned in article 28 of the AFV Regulation must compile and retain for inspection by the approval authority for a period of five years

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

commencing with the date of compilation such records of tests and checks undertaken that are sufficient to demonstrate—

- conformity of production to the approved type;
- compliance of certificates of conformity to article 33 of the AFV Regulation; and
- that the data in certificates of conformity issued by the holder are correct.

Making available on the market or entry into service: derogations

The derogations permitted by paragraphs 3 and 4 of article 40 of the AFV Regulation apply.

Review of decisions

—(3) A decision to which article 48 of the AFV Regulation applies must be given by notice in writing (“a relevant notice”).

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.

An application under paragraph (2) must—

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

The approval authority may—

- request evidence in support of the application;
- 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.

The approval authority must as soon as reasonably practicable—

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

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.

A request under paragraph (6) must—

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

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

- 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
- notify the applicant of the appointment.

The independent assessor or assessment panel may—

- request further evidence in support of the request for review;
- 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

—(4) 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.

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

the nature of the mistake or error; and

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.

Regulation 9(2) to (9) applies to the review of a decision under this regulation.

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

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

issue a certificate of conformity with respect to a vehicle; or

affix a statutory plate or mark pursuant to article 34 of the AFV Regulation,

the certificate, plate or mark is invalid.

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.

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

Service

—(6) 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 AFV Regulation to be given to or served on any person by the approval authority, market surveillance authority or enforcement authority.

Any such notice or document may be given to or served on the person in question—

by delivering it to the person;

by leaving it at that person's proper address;

by sending it by post to that person at that address;

by means of any form of electronic communication agreed with the person to whom it is to be sent.

Any such document may—

in the case of a body corporate, be given to or served on an officer of that body;

in the case of a partnership, be given to or served on any partner;

in the case of an unincorporated association other than a partnership, be given to or served on any member of the governing body of that association.

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—

in the case of a body corporate or an officer of that body, the address of the registered or principal office of that body in the United Kingdom;

in the case of an unincorporated association other than a partnership or a member of its governing body, its principal office in the United Kingdom;

an address within the United Kingdom other than that person's proper address at which that person, or another acting on that person's behalf, will accept service of any notice or document required or authorised by these Regulations or the AFV Regulation to be given to or served on any person by the approval authority.

(6) 1978 c.30.

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

in writing; or

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

Provision of testing stations

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

Provision of technical information: loss or damage

—(7) Where a duty is imposed on a manufacturer by Chapter XIV of the AFV 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.

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

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

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 AFV Regulation.

Consequential amendments and revocations

Schedule 2 (consequential amendments and revocations) has effect.

Review

—(9) The Secretary of State must from time to time—

carry out a review of the regulatory provision contained in these Regulations; and

publish a report setting out the conclusions of the review.

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.

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

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 AFV Regulation (certain aspects of which are implemented by means of these Regulations) is implemented in other member States.

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

set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);

assess the extent to which those objectives are achieved;

assess whether those objectives remain appropriate; and

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

if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

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—
contravenes any prohibition in these Regulations or the AFV Regulation; or
fails to comply with any requirement or obligation in these Regulations or the AFV Regulation.

Offences by bodies corporate and partnerships

—(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.

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.

If an offence under these Regulations is—

committed by a Scottish partnership; and

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.

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

—(2) A person guilty of an offence under these Regulations is punishable—
on summary conviction—

in England and Wales by a fine; or

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

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.

But an offence is not punishable under this paragraph if—

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

that penalty has been paid to the enforcement authority.

Civil penalties

—(3) 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.

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

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

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

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

The penalty is payable to the enforcement authority on demand.

Notification of penalty decision

—(4) 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.

A penalty notice must—

be in writing;

state the enforcement authority's reasons for deciding to require the person to pay a penalty;

state the amount of the penalty;

specify the date on which it is given;

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;

specify how a penalty must be paid;

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

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

Objection to penalty decision

—(5) The recipient of a penalty notice (the "recipient") may object to the penalty notice by giving a notice of objection to the enforcement authority.

A notice of objection must—

give the reasons for the objection;
be given to the enforcement authority in the manner and form specified in the penalty notice; and
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.

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

cancel the penalty;
reduce the penalty;
increase the penalty; or
determine not to alter the penalty.

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.

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.

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

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

Civil penalties: appeals

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

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

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

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).

On appeal, the court may—

allow the appeal and cancel the penalty;
allow the appeal and reduce the penalty; or
dismiss the appeal.

An appeal—

is to be a re-hearing of the enforcement authority's decision to impose a penalty; and
may be determined having regard to matters of which the enforcement authority was unaware.

Sub-paragraph (5)(a) has effect despite any provision of rules of court.

In this paragraph, a reference to “the court” is a reference—

in England and Wales, to the county court;

in Scotland, to the sheriff; and
in Northern Ireland, to a county court.

But—

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
the sheriff may transfer proceedings under this regulation to the Court of Session.

PART 3

Enforcement and other matters

Enforcement of penalty decision

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

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

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.

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

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

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;

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

—(8) A person must not—

intentionally obstruct an officer when acting in pursuance of any provision of these Regulations;

intentionally fail to comply with any requirement properly made by an officer under any provision of these Regulations; or

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.

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

make any statement which the person knows is false in a material particular; or

recklessly make a statement which is false in a material particular.

(**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).

Powers of search, etc.

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

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
state the purpose of the officers' actions and the grounds for undertaking them.

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

an officer may for the purpose of ascertaining whether an offence under these Regulations has been committed—

inspect any relevant products; and

enter any premises other than premises used wholly or mainly as a dwelling;

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;

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;

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;

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.

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

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

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

that there are reasonable grounds for believing either—

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

that any offence under these Regulations has been, is being, or is about to be committed on any premises; and

either—

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

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.

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—

summarising an officer's powers of seizure and detention of any relevant products or records under this paragraph;

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

indicating at which office of the enforcement authority and within which hours a copy of these Regulations is available to be consulted.

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.

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.

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—

precisely what has been so seized and detained;

that an application for the release of a detained item may be made in accordance with paragraph 12 of this Schedule; and

the procedure for making such an application.

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

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.

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

—(10) 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.

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.

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.

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

—(11) 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.

An application under this paragraph may be made—

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;

where no such proceedings have been so brought, by way of complaint to a magistrates' court; or in Scotland, by summary application to the sheriff.

⁽¹⁰⁾ 1971 c.80.

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

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

where no such proceedings have been brought, more than six months have elapsed since the seizure was carried out.

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—

in England and Wales, to the Crown Court;

in Scotland, to the sheriff principal; or

in Northern Ireland, to the county court.

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

—(12) 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—

there has been no contravention of any provision of these Regulations; and

the exercise of the power is not attributable to any neglect or default by that person.

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

in England and Wales or Northern Ireland, by arbitration; or

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

—(13) 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.

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

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

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

(11) 1980 c.43.

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

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.

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

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

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

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

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.

In section 67 (testing of condition of vehicles on roads), omit subsection (9A)(**14**).

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

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

“(c) in the case of a vehicle to which the tractor type approval Regulation applies, a certificate of conformity issued by a manufacturer under Article 33 of that Regulation;”;

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

““the tractor type approval Regulation” means Regulation (EU) No 167/2013 of the European Parliament and of the Council of 5th February 2013 on the approval and market surveillance of agricultural and forestry vehicles as it may be amended from time to time.”.

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

(13) 1988 c.52.

(14) Subsection (9A) was inserted by S.I. 2011/996 and substituted by S.I. 2017/[***].

(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 tractor type approval Directive” was inserted by S.I. 2009/818.

(17) The entry for “tractor type approval Directive” was inserted by S.I. 2009/818.

Amendment of the Supply of Machinery (Safety) Regulations 2008

In paragraph 1(e)(i) of Schedule 3 to the Supply of Machinery (Safety) Regulations 2008(**18**), for “Directive 2003/37/EC”, substitute “Regulation (EU) No 167/2013 of the European Parliament and of the Council on the approval and market surveillance of agricultural and forestry vehicles(**19**) as it may be amended from time to time”.

Amendment of the Road Vehicles (Approval) Regulations 2009

For regulation 5(2)(a) of the Road Vehicles (Approval) Regulations 2009(**20**), substitute—

“(a) tractors, trailers or interchangeable towed equipment (including their systems, components and separate technical units), as defined in Regulation (EU) No 167/2013 of the European Parliament and of the Council on the approval and market surveillance of agricultural and forestry vehicles(**21**) as it may be amended from time to time;”.

PART 2

Revocations

Revocations

The following Regulations are revoked—

- the Agricultural or Forestry Tractors (Emission of Gaseous and Particulate Pollutants) Regulations 2002(**22**);
- the Tractor etc (EC Type-Approval) Regulations 2005(**23**);
- the Agricultural or Forestry Tractors (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2006(**24**);
- the Tractor etc (EC Type-Approval) (Amendment) Regulations 2008(**25**);
- the Tractor etc (EC Type-Approval) (Amendment) Regulations 2011(**26**);
- Agricultural or Forestry Tractors (Emission of Gaseous and Particulate Pollutants) and Tractor etc (EC Type-Approval) (Amendment) Regulations 2013(**27**);
- Agricultural or Forestry Tractors (Emission of Gaseous and Particulate Pollutants) and Tractor etc (EC Type-Approval) (Amendment) Regulations 2015(**28**).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations ...

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.

(**18**) S.I. 2008/1597.

(**19**) OJ No L 60, 2.3.2013, p.1.

(**20**) S.I. 2009/717.

(**21**) OJ No L 60, 2.3.2013, p.1.

(**22**) S.I. 2002/1891.

(**23**) S.I. 2005/390.

(**24**) S.I. 2006/2533.

(**25**) S.I. 2008/1980.

(**26**) S.I. 2011/1279.

(**27**) S.I. 2013/3171.

(**28**) S.I. 2015/1350.

Annex C Regulatory Triage Assessment

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

Previously only conventional agricultural or forestry tractors (those which are limited by design to a maximum speed of 25mph) were subject to EU type approval. This is a scheme whereby safety and environmental standards applicable to vehicles are harmonised across Europe. A tractor 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.

Fast tractors (capable of exceeding 25mph) were previously unable to obtain EU type approval, leading to administrative and testing costs when exporting tractors, as many countries insisted on carrying out testing to their diverse national rules on safety and the environment. This testing often had to be carried out by a government-appointed certification agency on the territory of the country in question, involving costly transport of tractors. The sort of subjects involved include braking, steering, roll-over protection structures, interior noise and seat comfort. Areas where particular national diversity was observed, often with mutually incompatible standards, included towing couplings, braking systems, lighting devices and reflective warning devices.

Previously there was also no possibility of EU approval for manufacturers of agricultural or forestry trailers and trailed equipment, again making export very difficult given the disparate rules and inspection procedures across the EU.

In 2013, EU Regulation 167/2013 on agricultural vehicle approval was agreed and published. This harmonised vehicle construction standards

throughout Europe for fast tractors, thereby removing trade barriers for manufacturers, whilst ensuring a high level of road safety, workplace safety and environmental protection. It also made EU approval possible on an optional basis for agricultural or forestry trailers and towed equipment, assisting exporters and setting a recognised standard for high quality manufacturers to aspire to.

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 (manufacturers, importers and dealers) of tractors ignoring the rules would obtain an unfair advantage, as they would be able to sell non-compliant tractors 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 tractors 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.

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 tractors on the market and to effectively penalise those who have done this.

Without effective penalties, suppliers 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 tractors

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 to workers on farms and in forests, 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 agricultural vehicles, but we decided that it was more effective and economical with resources to widen the remit of the existing unit. Given that agricultural vehicles make up a small proportion of registrations (~0.3%), 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 manufacturers of vehicles which are approved as agricultural and forestry tractors. As well as conventional tractors, there are other agricultural vehicles which show similar functionality and tend to get approval as a tractor, such as all-terrain vehicles (ATVs) and telescopic material handlers (“telehandlers”).

The type of business ranges from very large multinationals making tractors to small dealerships. The Agricultural Engineers Association (AEA) advise that there are around 25 multi-national companies manufacturing agricultural vehicles and importing them into the UK, two of whom have manufacturing plants in the UK, plus a handful of small companies (potentially up to 10) based in UK importing (in low numbers) either specialist tractors from Europe or tractors from outside Europe. All these companies will have dealer networks in UK of various size which need to have some knowledge of the regulations, to ensure that they are supplying only compliant tractors 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 large manufacturer on average has around 30 dealers whilst the smaller specialists will have no more than 10 dealer outlets, giving a total of around 850 dealers and 35 manufacturers.

This suggests that in total around 885 businesses may be subject to the Regulation and enforcement regime in some way.

UK trailer and towed equipment manufacturers, importers and dealers will largely be unaffected by the new regulation, unless they voluntarily apply for type approval, either as a badge of quality or in order to export their products, which is currently only done by a minority. We expect the demand to be small and therefore enforcement impacts on these companies are minimal, and in a sense voluntary, as only those choosing to apply for type approval will be monitored in this context.

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-tests, internal testing and sharing of “Conformity of Production” test results but this will 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 tractors currently subject to approval, and the data indicates that the proportion of unapproved vehicles is no more than 3%, and is likely to be lower, as lack of data may be due to applicants filling in the registration form quickly rather than non-compliance. 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 D 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 E List of those consulted

Agricultural Engineers Association (AEA)

Construction Equipment Association (CEA)

Construction Plant-hire Association (CPA)

British Association of Garden Machinery (BAGMA)

National Association of Agricultural Contractors (NAAC)

National Farmers Union (NFU)

NFU Scotland

Motorcycle Industry Association (MCIA)

Society of Motor Manufacturers and Traders (SMMT)

BTMA

ATVEA