Department for Transport

Agricultural Vehicles

Changing the approval regime for new agricultural tractors and trailers.

Government Response

February 2018

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Foreword

The consultation sought views on the implementation of 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.

Generally the consultation was well-received and our proposals were supported. In particular, respondents were content that it was correctly transposing the EU Regulation. There was one caveat however, which also touched on potential new burdens on business: a substantial campaign centred on concerns that registration of all-terrain vehicles that are not approved as tractors was going to become more difficult. In response, I can confirm that registration procedures for these vehicles will remain unchanged, as they can remain classified as agricultural machinery, which is not subject to compulsory approval under the EU Regulation.

Consultees also raised some issues about the cost of compliance with type approval; and in particular, issues concerning Repair and Maintenance obligations on manufacturers.

There was substantial support for penalties for supplying a vehicle with a defeat device, with some reservations in relation to penalising dealers who would not have the ability to detect such devices. While this aspect is not being taken forward in the new legislation, the topic is under consideration for a wider range of vehicles and may be implemented at a later date.

This consultation provided the opportunity to gather stakeholders' views as to the different models and options for the regime for agricultural vehicles after our Exit from the European Union. These views will inform our continuing work to offer business and other stakeholders as much certainty as possible as we leave the EU.

Jesse Norman MP

Parliamentary Under Secretary of State for Transport

1. Introduction

1.1 The type approval regime for agricultural tractors and towed equipment is regulated under EU Regulation 167/2013. The regulations are vital to ensure high safety and environmental standards, and to minimise costs whilst maintaining market access for manufacturers in the agricultural vehicles, trailers and towed equipment markets.

1.2 The main issue under consideration in the consultation was the introduction of penalties for non-compliance with EU Regulation 167/2013 in domestic law, with both civil and criminal penalties being proposed.

1.3 As well as implementation of EU Regulation 167/2013, the consultation covered our proposal to make the supply of vehicles fitted with defeat devices an offence, and the potential for application of penalties to different parties in the supply chain.

1.4 The scope of the consultation (and the responses detailed in this report) cover both Great Britain and Northern Ireland. The consultation ran for 6 weeks from 26 July 2017 to 6 September 2017.

Responses

1.5 The Department received 121 responses. The responses were from both individuals, businesses and other organisations, split as follows:

Organisation	Number of responses
Individuals	7
Businesses	105
Trade bodies	5
Public bodies	2
Charity/education group	2

1.6 It is noted that a substantial number of responses were received from 'all-terrain vehicle' (ATV) and 'side-by-side' (SbS) vehicle dealerships, submitting a standardised template campaign response - this batch of responses constituted at least 81 of the total count, and should be considered in analysing quantitative responses. Those using the template did not tailor their responses but simply followed that contained within the template for each question, and therefore it could not be confirmed whether the response to each question was fully reflective of the views of all individual respondents using the template.

1.7 The ATV/SbS campaign was based on an assumption or fear that these vehicles would be categorised as tractors and thus become subject to tractor type approval. Currently the manufacturers class them as agricultural machinery and ensure that they conform to the EU Machinery Directive 2006/42/EC.

1.8 In quantifying the responses to questions 1, 2 and 4 (see below) in this document, the total results figures are indicated by respondents whom answered the questions directly. The second set of figures, labelled as 'presumed', are included where the

respondent did not specifically answer the question, but gave a strong indication of opinion in the body of their response.

1.9 Table of questions

Q1	Are you content with the draft regulations (Statutory Instrument) at Annex B?
Q2	Do you agree that the draft regulations would not impose a new burden on business, beyond that imposed by the underlying EU Regulation?
Q3	Are there any areas of the EU Regulation 167/2013 that you are not content with?
Q4	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?
Q5	Do you have any other comments on implementation?
Q6	What would you like to see in this area of regulation following Brexit?

1.10 We also consulted on the implementation of a parallel Motorcycle framework regulation. That consultation and the government response can be viewed at the following link:

https://www.gov.uk/government/consultations/motorcycles-implementing-eu-regulation-1682013

Next steps

1.11 The Agricultural and Forestry Vehicles (EU Type Approval) Regulations 2018 will be laid in Parliament in due course.

EU Referendum

1.12 The government triggered Article 50 of the Treaty on European Union on 29th March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will also continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in the future once the UK has left the EU.

2. Responses in detail

New domestic regulations

Q1: Are you content with the draft regulations (Statutory Instrument) at Annex B?

Q1	No. Respondents
Yes	89 (+1 presumed)
No	2 (+14 presumed)
No answer	15

2.1 The large majority of respondents to this question - 85% (including presumed answers) - were content in principle with the draft regulations for agricultural vehicles.

2.2 Positive responses generally indicated that the current EU type approval scheme and associated regulations are sufficiently developed and fit-for-purpose. The value to be found in maintaining the regime was attributed to the moderate size of the UK market, with responses advising of potential costs if manufacturers and supply chains were required to adapt to a potentially separate regime.

2.3 The generally positive response to the draft regulations was however in most cases under the proviso that the obligation for type approval was not being extended to All-Terrain Vehicles (ATV) and Side-by-Side (SbS) vehicles. Most manufacturers produce ATV and SbS which conform to the Machinery Directive, but which are not type approved as a tractor. This view was reflected by a range of respondents, including businesses, individuals and trade bodies.

2.4 It should be noted that at least 81 of the positive responses were received via the ATV/SbS campaign. These respondents answered positively using a standardised template response, in line with point 2.3 above in respect of the proviso of no impact on the Machinery Directive conformity route to market.

A new burden?

Q2: Do you agree that the draft regulations would not impose a new burden on business, beyond that imposed by the underlying EU Regulation?

Q2	No. Respondents
Yes	5 (+2 presumed)
No	83 (+14 presumed)
No answer	17

2.5 A significant majority of respondents to this question - 93% including presumed answers - indicated that the draft regulations would create a significant burden on business over and above that imposed by the EU regulation. This was primarily based on the assumption that DVLA would no longer accept ATV and SbS unless they were type approved, with respondents claiming that this would increase burden.

2.6 At least 81 of the negative responses were received via the ATV/SbS campaign. These respondents - primarily ATV dealerships - answered negatively using a standardised template response.

2.7 Responses from a number of ATV and SbS manufacturers not using the campaign template indicated similar concerns regarding the Machinery Directive conformity route.

2.8 Issues highlighted by respondents in the case that type approval for ATV/SbS was required included the difficulty of accessing DVSA Motorcycle Single Vehicle Approval (MSVA) test centres that many suppliers may be forced to use for single-vehicle approval. There were claims of additional financial burdens, particularly given the rural/semi-rural location of many ATV dealerships and distance from MSVA test centres. The additional burdens were noted as the MSVA fee and transport/staff costs in moving the vehicles to and from an MSVA test centre.

2.9 There were also concerns raised around SbS vehicles accessing the market, given they are not currently eligible for MSVA due to weight restrictions (maximum unladen weight 350/400kg, dependent on vehicle classification).

2.10 In the short term, the potential for compulsory fitting of road-legal kits to all ATV/SbS vehicles in order to pass MSVA, and the longer-term likelihood of manufacturers having to accommodate road legality requirements 'by design' was raised as a potential burden for manufacturers (with the associated risk of costs being passed downstream to the consumer), particularly given the relatively small size of the UK marketplace.

2.11 Several comments raised the potential of a transition period, in order to allow vehicle manufacturers and dealerships to respond to any regulatory changes. This was proposed largely due to lead-in times for design or process changes in the manufacture of vehicles, and for dealerships, the sale of existing vehicle stock.

2.12 A number of respondents indicated that there would be an expectation of increased costs associated with getting a product to market if the Machinery Directive-compliance route ceased to exist. It was further suggested that this may result in decreased sales, affecting manufacturers, including their UK offices, and in particular affecting the viability of SME dealerships who sell these products.

Q3: Are there any areas of the EU Regulation 167/2013 that you are not content with?

2.13 Many of the responses to Q3 of the consultation crossed over with the potential burdens raised by respondents, as detailed above for Q2. This had a particular focus on those respondents concerned about the closure of the Machinery Directive conformity route to market in the UK.

2.14 Respondents indicated some concern with the financial costs of compliance with the EU type approval regime for ATV/SbS (in a scenario where this was to be the mandatory route to market), and it was also suggested that the EU requirements did not adequately reflect the customer requirements of the UK market.

2.15 Reference was also made to the costs and skill requirements associated with provision of a Repair and Maintenance Information (RMI) database, bearing in mind the moderate size of the UK agricultural vehicle market. The skills shortfall was raised as being particularly burdensome for UK ATV/SbS dealerships, often small independent enterprises in rural locations.

2.16 Respondents also raised the issue of Driver and Vehicle Licensing Agency (DVLA) rules whereby vehicles taxed in a particular class (light agricultural vehicle) are currently only permitted to have one seat and felt this was potentially acting as an unnecessarily restrictive classification in the current market.

Defeat device penalties

Q4: 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?

Q4	No. Respondents
Yes	92
No	1
No answer	28

2.17 28 consultation response submissions did not provide a clear response to this question.

2.18 Of those that did respond, the majority - 99% - were content with the proposal to apply penalties around the use of defeat devices in principal.

2.19 A significant number of these respondents caveated their support for defeat device penalties with the proviso that consumers or end-users should be exempted, as they were unlikely to hold the requisite knowledge to recognise when such devices were fitted to vehicles they were handling.

2.20 A similar issue was raised several times with regard to the application of penalties to dealerships and importers, in that no penalty should be applicable - primarily on the basis that defeat devices should be detected during the type approval process.

2.21 A further proposal made was that where applicable, supply chain companies and dealerships should face lower penalties than those applied to a manufacturer, were a defeat device to be detected. This approach would reflect the relative lack of

knowledge and expertise of these parties in recognising when such devices have been installed.

2.22 Again, it should be noted that at least 81 of the responses to this question were received via the ATV Machinery Directive campaign. These respondents - primarily ATV dealerships - answered using a standardised template response, reflecting the view that ATV/SbS dealers should not be penalised for any defeat device added prior to a vehicle coming into their possession.

2.23 In contrast, a number of respondents expressed the view that actors at all stages of the supply chain should be held responsible, and be liable for penalties, should a defeat device be found.

2.24 Several responses suggested that the proposed defeat device penalties did not go far enough, and that increased market surveillance requirements should be included as a part of this.

2.25 Further to this, several respondents claimed that inclusion of ATV/SbS in the type approval regime would lead to restriction on maximum speed and power of these vehicles. There was concern that such limitations might not be well-received, given the requirements of UK ATV buyers, particularly where this could limit the performance of vehicles in difficult operating conditions.

Other issues

Q5: Do you have any other comments on implementation?

2.26 A substantial number of responses were received concerned about the market access route of ATVs and SbS vehicles through conformity with the Machinery Directive, using this question to answer if they had not already expressed the concern under previous questions. As noted above, approximately 81 responses were identified as being part of a campaign specifically focused on this issue, whilst a further 15 responses raised similar matters.

2.27 Respondent opinion on the matter detailed in 2.26 above indicated that industry was seeking certainty from the government in regard to non-type approved vehicles as soon as possible in order to ensure the market remains stable and to provide ongoing investor certainty.

2.28 If the Machinery Directive route to market were to be closed, respondents wondered whether registration in the 'limited use' tax class would be permitted without type approval. Concerns were raised with the requirements of this tax class, and likely end-user compliance. Respondents were largely not favourable to the 1.5km limit on road journeys, and wondered how this might be enforced, should it become a more common route to registration. There was a proposal to increase the current limit of 1.5km per journey to a higher limit of 25km.

2.29 It was also mentioned that should access to market for unapproved vehicles remain available in the UK, there should be consideration for better enforcement of compliance with road vehicle regulations, ensuring vehicles prepared for road use post-sale have met the relevant standards.

2.30 In the short-term, suggestion was made of a transition period, allowing for manufacturers and dealers to respond to any changing legislative requirements and route to market, including sale and registration, of existing manufactured stock.

2.31 In the longer-term, concern was raised that manufacturers may develop an unfavourable view on the viability of the UK market in a scenario where type approval requirements would be mandatory - given the moderate market size and claimed relatively high costs to access it.

2.32 Several individual respondents proposed side guards on agricultural trailers, there was support both for the mandatory fitting of side and rear guards to new trailers, and for retrofitting to existing trailers. These comments were primarily grounded in safety concerns associated with the on-road use of open-sided trailers potentially coming into contact with vulnerable road users, including pedestrians, cyclists and motorcyclists.

2.33 A response was also received pointing out that such mandatory requirements for side and rear guards on agricultural tractors may not be the most appropriate use of legislative time given the limited gains in safety by comparison to other potential changes to legislation, although details of the latter were not specified.

Q6: 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?

2.34 A substantial number of respondents suggested that they were in favour of maintaining regulatory alignment with the EU following exit, rather than setting bespoke UK standards. This was primarily on the basis of minimising costs for industry, and maintaining consumer choice.

2.35 Increased trailer and combined tractor-trailer weight limits was raised as a potential opportunity post-Brexit by a small number of respondents. The justification for this case was to support the competitiveness of the UK agricultural sector more widely.

2.36 A small number of respondents raised the size of the US market as a potential opportunity warranting further consideration as a post-Exit issue. The potential for the UK to adapt regulations in order to potentially accept ATVs and SbS vehicles designed in line with US type approval requirements was proposed. Opening up the UK market to products designed for the US market, which is significantly larger, could result in lower cost products and wider consumer choice.

3. Conclusion - Government Response

New regulations

3.1 Following publication of this response, the Department for Transport intends to proceed to lay the proposed Statutory Instrument, the Agricultural and Forestry Vehicles (EU Type Approval) Regulations 2018.

3.2 This will implement EU Regulation 167/2013, governing the European type approval framework for agricultural tractors, trailers and towed equipment. The only changes to the regulations following consultation have been amendments to legal terminology and to reflect latest Court procedures, mainly affecting Scotland and Northern Ireland.

Other matters

3.3 The Department remains satisfied that the EU type approval regime is sufficient and that there is no necessity for a domestic type approval or individual approval regime for agricultural tractors, trailers or towed equipment.

3.4 The Department has noted that in many cases the answers provided, in particular to questions 1 and 2, are principally based on the assumption that ATV and SbS will in future be classed as tractors and subject to type approval, rather than accepted on the basis of conformity to the Machinery Directive.

3.5 The Department has carefully considered these issues and concluded that the status quo should continue. ATV and SbS vehicles complying with the Machinery Directive are not to be considered tractors but agricultural machinery, and will continue to be permitted registration in line with the current DVLA procedures. Their engines will in due course become subject to the international rules on emissions from Non-Road Mobile Machinery (NRMM).

3.6 Concerns raised by consultees around the burden of EU compliance (including relating to provision of Repair and Maintenance information) have been noted. Concerns were also raised around the possibility of the EU Commission repealing a requirement for ABS on new tractors which can exceed 40km/h. These will be carefully considered and the Department's views will be fed into European discussions, as well as into discussions on the situation after EU Exit.

3.7 On Defeat devices, there was support for penalties for supplying a vehicle with a defeat device, alongside strong opposition to penalising end-users or dealers, supported by claims that neither have the ability to detect such devices.

3.8 The work on defeat devices continues with consultations continuing on other vehicle categories. The regulations being laid before Parliament on Agricultural vehicles do

not contain any defeat device penalties as the policy is still being developed. It is possible that a new offence could be introduced as a single piece of legislation covering several vehicle categories, for consistency.

3.9 An issue was raised, where a trade association requested increased enforcement and penalties against those who modify vehicles after registration. In particular, those companies who re-map or 'chip' vehicles where this affects exhaust emissions, and those who disable/bypass emissions control devices such as urea (AdBlue) injection. The Department is working with DVSA to improve enforcement on this topic on HGVs and is considering whether more can be done, including in relation to other vehicle categories such as agricultural vehicles.

3.10 In the section for open comments, there was a request for the Department to increase the stringency of the braking requirements for agricultural trailers in the UK, particularly if it was accompanied by an increase in permitted operating weights, possibly along the lines of a scheme in the Republic of Ireland. There was also a request for compulsory sideguards on agricultural trailers, and we were made aware of a petition on this topic. These requests will be evaluated separately and taken forward as appropriate.

3.11 Responses raised as a result of question 6, concerning other suggestions for post EU Exit regulation in the market, will be evaluated separately and taken forward as relevant. Stakeholders were of the view that the technical requirements in the Regulations are appropriate and of a high standard. In general the stakeholder consensus was that the UK should prioritise avoiding placing additional burdens on industry.