



Department
for Transport

Improving air quality: reducing emissions from Non-Road Mobile Machinery

March 2018

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Foreword

This consultation seeks your views on the implementation of an EU Regulation (2016/1628) governing the European type-approval rules for gaseous and particulate emissions from engines for non-road mobile machinery. This Regulation introduced improved emissions standards for the engines used in a wide variety of mobile machines, from chainsaws through construction machinery to railway locomotives, ensuring that this sector continues to make an important contribution to vital improvements in air quality.

Many aspects of machinery emissions approval 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 with the requirements, 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. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

Executive summary

- 1.1 The first European Directive on emissions standards for non-road mobile machinery was published in 1997, providing EU harmonisation in this field for the first time. The regime has developed since then, leading to the latest EU Regulation 2016/1628 which introduces a more stringent new emissions standard (Stage V) and brings new categories of engine into the scope of compulsory emissions testing for the first time. This should lead to improvements in air quality across Europe.
- 1.2 Regulation (EU) 2016/1628 also made a number of improvements to the type approval regime for machinery engines, including more consistent emissions requirements across engine categories as well providing clear provisions where there was a degree of ambiguity; such as the field testing of unapproved prototype engines and separate shipment of the engine and its exhaust after-treatment.
- 1.3 The European regulations include a requirement on Member States including the UK to enact, and impose where applicable, penalties on manufacturers who use defeat strategies (often referred to as defeat devices), in other words, a system that enables 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 strategy is used to circumvent type approval obligations and where machinery using defeat strategies is supplied into the market.
- 1.4 We would like to hear comments on our proposals and have included a small number of questions for consultees to answer.

- 1.5 We plan to introduce the draft Statutory Instrument shown at Annex B, with any necessary changes following consultation, in early summer 2018.
- 1.6 The various dates from when the Stage V requirements are compulsory are shown in Annex A, more detail is laid out in Annex III of the EU Regulation.

How to respond

The consultation period began on 20 Mar 2018 and will run until 10 April March 2018. 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:

Department for Transport
FAO: 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 D. 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 non-road engine emissions approval

- 1.1 Directive 97/68/EC was published in 1997 and was the first European Directive on gaseous and particulate pollutant emissions standards for Non-Road Mobile Machinery (NRMM). This brought about emissions harmonisation for all in-scope diesel engines, which were those intended for use in mobile (as opposed to stationary or fixed) machinery, such as construction machinery like diggers, bulldozers and tarmac laying machines.
- 1.2 The Directive was revised on several occasions to bring in more stringent emissions levels, known as Stages II, IIIA, IIIB, and IV. Small petrol engines (e.g. for lawnmowers and chainsaws) and secondary engines on road vehicles (e.g. generator on a refrigerated lorry) were brought into scope in 2004. Engines used in rail cars, locomotives and inland waterway vessels were brought into scope in 2006.
- 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 engines against prescribed standards and where 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 engine 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 non-road mobile machinery engine approval is available at <http://www.dft.gov.uk/vca/other/non-road-mobile-mach.asp>

Other legal requirements for machinery

- 1.5 Manufacturers and importers of machinery should be aware that as well as emissions standards, other rules are in place. For example, the Machinery Directive 2006/42/EC has been implemented in the

UK and more information on the obligations placed on manufacturers to ensure that machines are safe and correctly marked (“CE mark”) is online here:

<https://www.gov.uk/guidance/machinery-manufacturers-and-their-responsibilities>

- 1.6 In addition to ensuring that machinery is designed to be used safely in general, there are specific requirements around the characteristics (such as braking, lighting, weight) of wheeled or tracked machinery used on the public road, sometimes known as “roading rules”. The UK has what is in effect an informal self-certification requirement for the road use of diggers and other construction machinery. The machinery needs to be registered with DVLA and 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.
- 1.7 Unavoidably large or heavy construction machinery is eligible for various exemptions from the above regulations, which are outlined in the Road Vehicles (Authorisation of Special Types) (General) Order 2003, SI No. 2003/1998, as long as they meet the definition of *engineering plant* contained in the latter and obey certain other restrictions. This Order is available online:
<http://www.legislation.gov.uk/ukxi/2003/1998/contents/made>

The new EU Regulation

- 1.8 EU Regulation 2016/1628 stipulates compulsory type approval of engines of various categories, in line with Stage V requirements, from various dates depending on the category of engine. For new type-approvals this comes into play from January 2018 and for engines being placed on the market it starts to take effect from January 2019.
- 1.9 A number of provisions have also been introduced to improve the application of the Regulation. These were to address incompatible circumstances that were presented by the previous legislation but unavoidable for operational reasons. For instance, it is now clearly possible to ship the engine separately from its exhaust after-treatment. There is also provisions for approving engines of new technology that do not fit within the bounds of the Regulation and clear procedures for field testing unapproved prototype engines.

1.10 Some of the new requirements introduced by 2016/1628 include:

- compression ignition (diesel) engines below 19kW and spark ignition (petrol) engines above 56kW in power are brought within scope of the Regulation;
- manufacturers of engines for ATVs and Side-by-sides as well as snowmobiles are required to be type-approved;
- manufacturers are required to make available to the machinery manufacturer information and instructions regarding the safe and proper installation and operation of the engine;
- importers and distributors are required to ensure the legality of engines they sell and keep certain records;
- stipulated requirements for Member States to carry out market surveillance, ensuring engines on sale are correctly approved;
- procedures defined for taking a decision to withdraw the type approval of an engine that presents a risk to the environment or public health.

Existing requirements and procedures retained

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

- detailed type approval procedures prior to placing an engine on the market;
- type approval testing of engines that are representative of production intent;
- conformity of production – ensuring that subsequent engines are built to the same standard and specification as the engine that was tested;
- conditions of appointment for technical services (independent bodies performing confirmatory testing on behalf of an Approval Authority);
- remedies available in national law when applicants disagree with decisions of the approval authority.

New domestic regulations

1.12 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 2016/1628 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 engine approval arena - civil penalties rather than criminal penalties;
- the penalties applicable in cases of contravention of the regulations: the maximum penalty is £50,000 per offence;
- amendments to other domestic regulations to ensure references to 2016/1628 are correctly updated;

Options under the EU Regulation

1.13 Under the EU Regulation, Member States are required to take all measures necessary to ensure that any penalty imposed for a breach of the legislation is effective, proportionate and dissuasive. Member States have discretion to decide the penalties applicable under national law. Domestic legislation is therefore needed in order to give the Department and other enforcers the powers to issue penalties to companies or persons found to be contravening the regulations.

1.14 The draft Statutory Instrument contains provisions for civil penalties to apply where the requirements of the EU Regulation or the domestic regulations are infringed. Examples of such infringements include supplying an engine without the requisite type approval or making a false declaration during the process of obtaining type approval from the UK approval authority VCA.

- 1.15 The Department would attempt to achieve compliance through encouragement and education. Where this is ineffective, civil penalties would be employed, with the level of fines likely to escalate for persistent or repeat offenders.
- 1.16 The EU Regulation is clear that using a “defeat strategy” to circumvent the provisions of the Regulation is prohibited. This term includes a system that senses that an engine is undergoing a regulatory test and modifies its behaviour accordingly, or a system that allows uncontrolled operation outside of the parameters that are known to be used during regulatory testing.
- 1.17 We are considering creating an offence of placing on the market an engine using a defeat strategy, 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 potentially applicable to any, and all, elements of the supply chain - the engine or machine manufacturer, importer or dealer/ distributor. Comments are requested as to whether this is appropriate.
- 1.18 We are requesting comments on this proposal and in due course intend to modify these regulations or draft other regulations, to create this offence and appropriate penalties.

Other issues

- 1.19 We would also welcome comments on any other matters relating to emissions from non-road mobile machinery that consultees may wish to raise.

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, enforcement provisions, penalties, 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. **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 2016/1628 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.
4. **Are you content with the proposal to create penalties around use of *defeat strategies*, both for designing an engine using such a strategy and for supplying an engine or machine using such a strategy?** We intend to create an offence of placing on the market a machine containing an engine using a *defeat strategy*, or other similar functionality, to circumvent regulation. Where such a strategy is used, we are proposing to make it an offence applicable to any and all elements of the supply chain - the engine manufacturer, machinery manufacturer, importer or dealer. Our proposal would be for a fine based on the quantity of engines 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

on emissions from non-road mobile machinery, 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.

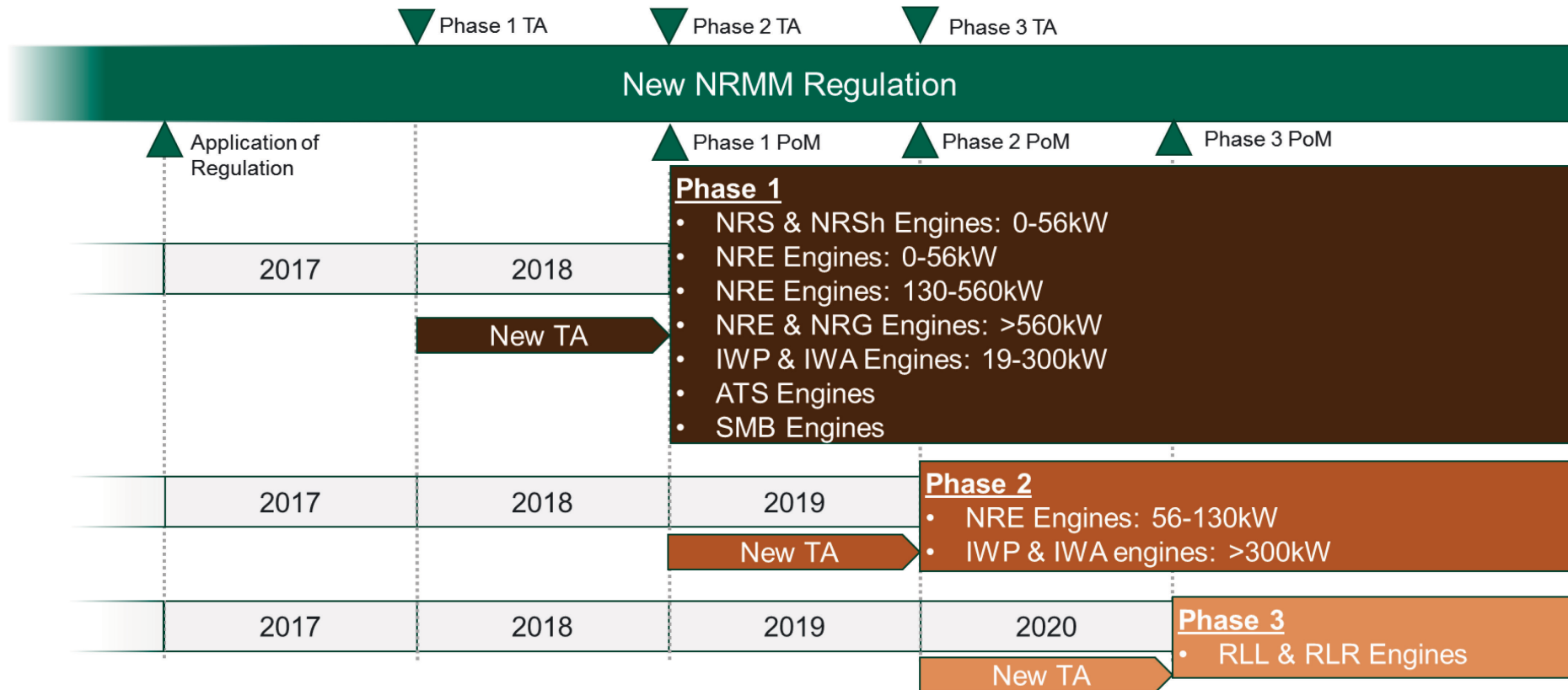
Annex A NRMM engine categories

The following categories exist;

- NRE: (a) engines for non-road mobile machinery that are not included in any other category;
(b) engines having a reference power of less than 560 kW used in the place of Stage V engines of categories IWP, IWA, RLL or RLR;
- NRG: engines having a reference power that is greater than 560 kW, exclusively for use in generating sets; engines for generating sets other than those having those characteristics are included in the categories NRE or NRS, according to their characteristics;
- NRSh: hand-held spark-ignition engines having a reference power that is less than 19 kW, exclusively for use in hand-held machinery;
- NRS: spark-ignition engines having a reference power that is less than 56 kW and not included in category NRSh;
- IWP: (a) engines exclusively for use in inland waterway vessels, for their direct or indirect propulsion, or intended for their direct or indirect propulsion, having a reference power that is greater than or equal to 19 kW;
(b) engines used in place of engines of category IWA;
- IWA: auxiliary engines exclusively for use in inland waterway vessels and having a reference power that is greater than or equal to 19 kW;
- RLL: engines exclusively for use in locomotives, for their propulsion or intended for their propulsion;
- RLR: (a) engines exclusively for use in railcars, for their propulsion or intended for their propulsion;
(b) engines used in the place of Stage V engines of category RLL;
- SMB: spark-ignition engines exclusively for use in snowmobiles; engines for snowmobiles other than spark-ignition engines are included in the category NRE;

ATS: spark-ignition engines exclusively for use in all-terrain vehicles and side-by-side vehicles; engines for all-terrain vehicles and side-by-side vehicles other than spark-ignition engines are included in the category NRE

Implementation dates for new EU Regulation (Stage V)



The mandatory dates for Placing on the Market (PoM) Stage V compliant engines are 1 January 2019 for Phase 1 engines, 1 January 2020 for Phase 2 engines and 1 January 2021 for Phase 3 engines. Starting from a year preceding each placing on the market phase only new Type-Approvals (TA) to the Stage V requirements can be issued for engines of that phase.

Annex B Draft UK Regulations

(draft attached)

Annex C Consultation principles

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

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

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

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

Please do not send consultation responses to this address. They should be sent to ivs.consult@dft.gsi.gov.uk

Annex D 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)

The European Association of Internal Combustion Engine Manufacturers (EUROMOT)

All-Terrain Vehicle Industry European Association (ATVEA)

2018 No. 0000

ENVIRONMENTAL PROTECTION

**The Non-Road Mobile Machinery (Type-Approval and
Emission of Gaseous and Particulate Pollutants) Regulations
2018**

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

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”)(a).

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(b) and in relation to the environment(c).

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) 2016/1628 of the European Parliament and of the Council on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery(d) to be construed as references to a version of that Regulation as it may be amended from time to time.

Citation, commencement and effect

1. These Regulations—

- (a) may be cited as the Non-Road Mobile Machinery (Type-Approval and Emission of Gaseous and Particulate Pollutants) Regulations 2018;
- (b) come into force on [***]; and
- (c) are of no effect in relation to any matter to which paragraphs 3 to 11 of article 58 of the NRMM Regulation applies.

(a) 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.

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

(c) See S.I. 2008/301.

(d) OJ No L 252, 16.9.2016, p. 53.

Interpretation

2.—(1) In these Regulations—

“enforcement authority” means the Secretary of State;

“the NRMM Regulation” means Regulation (EU) 2016/1628 of the European Parliament and of the Council on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, as it may be amended from time to time;

[“relevant products” means—

- (a) engines; or
- (b) non-road mobile machinery.]

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

Appointment of approval authority

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

Market surveillance authority

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

- (a) these Regulations and the NRMM Regulation; and
- (b) where applied by the NRMM Regulation, Regulation (EC) No 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93(a).

Requests for information: failure to comply

5. Where a manufacturer who makes an application for type-approval fails to comply with a request for additional information made under paragraph 1(c) of article 21 of the NRMM Regulation, the approval authority may treat the application as having been withdrawn by the manufacturer.

Refusal of EU type-approval application

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

- (a) articles 22 and 24 to 26; or
- (b) article 35,

of the NRMM Regulation have not been complied with.

(2) The requirements of article 24 of the NRMM Regulation are not complied with if the tests required by that article demonstrate that there is non-compliance with the technical prescriptions mentioned in paragraph 1 of that article.

(3) The requirements of article 26 of the NRMM Regulation are not complied with if the approval authority is not satisfied that the applicant has made or will make adequate arrangements to ensure that—

- (a) production will conform to the approved type; or

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

- (b) where applicable, the data in the statements of conformity are correct.

Conformity of production: record keeping

7. The holder of an EU type-approval mentioned in article 26 of the NRMM Regulation must compile and retain for inspection by the approval authority for a period of five years commencing with the date of compilation such records of tests and checks undertaken that are sufficient to demonstrate—

- (a) conformity of production to the approved type;
- (b) compliance of statements of conformity to article 31 of the NRMM Regulation; and
- (c) that, where applicable, the data in statements of conformity issued by the holder are correct.

Review of decisions

8.—(1) A decision to which article 41 of the NRMM Regulation applies must be given by notice in writing (“a relevant notice”).

(2) Where the approval authority has given a person a relevant notice, that person may apply to the approval authority for a reconsideration of the decision given in that notice.

(3) An application under paragraph (2) must—

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

(4) The approval authority may—

- (a) request evidence in support of the application;
- (b) after giving reasonable notice to the applicant, carry out a re-examination of one or more vehicles for the purpose of determining the issues raised by the application.

(5) The approval authority must as soon as reasonably practicable—

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

(6) An applicant aggrieved by the approval authority’s notification under paragraph (5) may by notice request the approval authority to appoint an independent assessor to review the decision to which the relevant notice relates.

(7) A request under paragraph (6) must—

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

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

- (a) appoint a person to act as assessor or, at the authority’s discretion, not more than three persons to act as an assessment panel; and
- (b) notify the applicant of the appointment.

(9) The independent assessor or assessment panel may—

- (a) request further evidence in support of the request for review;
- (b) after giving reasonable notice to the applicant, carry out a re-examination of one or more vehicles for the purpose of determining the issues raised by the request for review.

Withdrawal of approvals: mistake or error

9.—(1) Subject to the provisions of this regulation, the approval authority may decide to withdraw any approval given by it by reason of mistake or error on the part of that authority.

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

- (a) the nature of the mistake or error; and
- (b) the date from which the approval is to be withdrawn, which must be not less than 28 days nor more than six months after the date on which the relevant notice is given.

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

(4) Any review of a decision under this regulation may, subject to the requirement in paragraph (2)(b), vary the date from which the approval is to be withdrawn.

Withdrawal and suspension of approvals: effect

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

- (a) issue a statement of conformity with respect to a vehicle; or
- (b) affix a statutory marking pursuant to article 32 of the NRMM Regulation,

the statement or marking is invalid.

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

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

Service

11.—(1) Paragraphs (2) to (4) of this regulation have effect in relation to any notice or other document required or authorised by these Regulations or the NRMM Regulation to be given to or served on any person by the approval authority, market surveillance authority or enforcement authority.

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

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

(3) Any such document may—

- (a) in the case of a body corporate, be given to or served on an officer of that body;
- (b) in the case of a partnership, be given to or served on any partner;
- (c) in the case of an unincorporated association other than a partnership, be given to or served on any member of the governing body of that association.

(4) For the purposes of this regulation and section 7 of the Interpretation Act 1978 (service of documents by post)(a) in its application to this regulation, the proper address of any person is that person’s last known address (whether of the person’s residence or of a place where the person carries on business or is employed) and also—

(a) 1978 c.30.

- (a) in the case of a body corporate or an officer of that body, the address of the registered or principal office of that body in the United Kingdom;
- (b) in the case of an unincorporated association other than a partnership or a member of its governing body, its principal office in the United Kingdom;
- (c) an address within the United Kingdom other than that person's proper address at which that person, or another acting on that person's behalf, will accept service of any notice or document required or authorised by these Regulations or the NRMM Regulation to be given to or served on any person by the approval authority.

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

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

Provision of testing stations

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

Information and instructions: loss or damage

13.—(1) Where a duty is imposed on a manufacturer by article 43 of the NRMM Regulation (provision of technical information), any breach of the duty which causes a person to sustain loss or damage is actionable at the suit of that person.

(2) But, in any proceedings brought against a manufacturer in pursuance of this regulation, it is a defence for the manufacturer to show that the manufacturer took all reasonable steps and exercised all due diligence to avoid the breach.

Offences, enforcement and civil penalties

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

(2) Except in paragraph 2 of Schedule 1 or in relation to the expression “Officer of Revenue and Customs”, a reference in Schedule 1 to an officer is a reference to any person authorised by the enforcement authority to assist the authority in enforcing these Regulations and the NRMM Regulation.

Consequential amendments and revocations

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

Review

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

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

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

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

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

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

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

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

Signed by authority of the Secretary of State for Transport

	<i>Name</i>
	Parliamentary Under Secretary of State
	Department for Transport
Date	

SCHEDULES

SCHEDULE 1

Regulation 14

Offences, penalties, enforcement and other matters

PART 1

Offences

Offences and penalties

1. A person who is an economic operator is guilty of an offence if that person—

- (a) contravenes any prohibition in these Regulations or the NRMM Regulation; or
- (b) fails to comply with any requirement or obligation in these Regulations or the NRMM Regulation.

Offences by bodies corporate and partnerships

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

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

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

(3) If an offence under these Regulations is—

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

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

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

PART 2

Penalties

Criminal penalties

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

- (a) in England and Wales by a fine; or
- (b) in Scotland or Northern Ireland by a fine not exceeding the statutory maximum.

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

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

Civil penalties

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

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

- (a) the person shows that there was a reasonable excuse for committing the offence; or
- (b) criminal proceedings have been instituted against the person in respect of the same offence.

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

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

Notification of penalty decision

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

(2) A penalty notice must—

- (a) be in writing;
- (b) state the enforcement authority's reasons for deciding to require the person to pay a penalty;
- (c) state the amount of the penalty;
- (d) specify the date on which it is given;

- (e) specify the date, at least 28 days after the date specified in the notice as the date on which it is given, before which the penalty must be paid;
- (f) specify how a penalty must be paid;
- (g) include an explanation of the steps that the person may take if the person objects to the penalty (including specifying the manner and form in which any notice of objection must be given to the enforcement authority); and
- (h) include an explanation of the steps the enforcement authority may take to recover any unpaid penalty.

Objection to penalty decision

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

(2) A notice of objection must—

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

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

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

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

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

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

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

Civil penalties: appeals

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

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

- (a) reduced the penalty under paragraph 6(3)(b);

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

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

(4) On appeal, the court may—

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

(5) An appeal—

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

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

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

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

(8) But—

- (a) the county court in England and Wales, or a county court in Northern Ireland, may transfer proceedings under this regulation to the High Court; and
- (b) the sheriff may transfer proceedings under this regulation to the Court of Session.

PART 3

Enforcement and other matters

Enforcement of penalty decision

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

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

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

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

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

- (a) in relation to England and Wales, to be treated for the purposes of section 98 of the Courts Act 2003 (register of judgments and orders etc)(**a**) as if it were a judgment entered in the county court;

(a) 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.

- (b) in relation to Northern Ireland, to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981 (register of judgments)(a) as if it were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order.

Obstruction of officers and false statements

9.—(1) A person must not—

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

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

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

Powers of search, etc.

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

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

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

- (a) an officer may for the purpose of ascertaining whether an offence under these Regulations has been committed—
 - (i) inspect any relevant products; and
 - (ii) enter any premises other than premises used wholly or mainly as a dwelling;
- (b) if an officer has reasonable cause to suspect that an offence under these Regulations has been committed, the officer may, for the purpose of ascertaining whether it has been committed, require any person carrying on, or employed in connection with, a business to produce any records relating to the relevant products and the officer may take copies of those records or any part of them;
- (c) if an officer has reasonable cause to suspect that an offence under these Regulations has been committed, the officer may seize and detain any relevant products for the purpose of ascertaining whether the offence has been committed;
- (d) an officer may seize and detain any relevant products or records which the officer has reason to believe may be required as evidence in proceedings for an offence under these Regulations;
- (e) an officer may, for the purpose of exercising the officer's powers of seizure under this sub-paragraph, but only if and to the extent that it is reasonably necessary in order to secure that the provisions of these Regulations are duly observed, require any person having authority to do so to open any container and, if that person does not comply with

(a) S.I. 1981/226 (N.I. 6).

the requirement or if there is no person present having authority to open it, the officer may break open the container.

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

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

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

(a) that there are reasonable grounds for believing either—

(i) that any relevant products or records, which an officer has power under this paragraph to inspect, copy, seize or require to be produced, is or are on any premises and that the inspection, copying, seizure or production of that item is likely to disclose evidence of the commission of an offence under these Regulations; or

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

(b) either—

(i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this sub-paragraph has been given to the occupier; or

(ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await the occupier's return,

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

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

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

(b) explaining that compensation may be payable for damage caused in entering premises and seizing and removing any relevant products or records and giving the address to which an application for compensation should be directed; and

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

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

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

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

(a) precisely what has been so seized and detained;

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

(c) the procedure for making such an application.

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

(11) In sub-paragraph (5), the reference to “any written information on oath” is to be construed, in the application of this paragraph to—

- (a) Scotland, as a reference to any evidence on oath;
- (b) Northern Ireland, as a reference to any complaint on oath.

(12) In this paragraph, “justice” means—

- (a) in England and Wales, a justice of the peace;
- (b) in Scotland, a sheriff or summary sheriff; and
- (c) in Northern Ireland, a lay magistrate.

Powers of customs officers to detain goods

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

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

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

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

Applications for the release of detained items

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

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

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

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

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

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

(a) 1971 c.80.

- (a) in England and Wales, to the Crown Court;
- (b) in Scotland, to the Sheriff Appeal Court as though it were an appeal under section 110(1) of the Courts Reform (Scotland) Act 2014(a); or
- (c) in Northern Ireland, to a county court.

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

Compensation for seizure and detention

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

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

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

- (a) in England and Wales or Northern Ireland, in accordance with the Arbitration Act 1996(d); or
- (b) in Scotland, in accordance with the Arbitration (Scotland) Act 2010(e).

Recovery of the expenses of enforcement

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

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

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

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

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

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

(a) 2014 asp 18.
(b) 1980 c.43.
(c) S.I. 1981/1675 (N.I. 26).
(d) 1996 c.23.
(e) 2010 asp 1.

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

Savings for certain privileges

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

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

Savings for civil rights

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

SCHEDULE 2

Regulation 15

Consequential amendments and revocations

PART 1

Consequential amendments

Non-Road Mobile Machinery (Type Approval) (Fees) Regulations 1999

1.— [DN: will need to work though the regulations in detail and provide instructions on whether to amend or revoke and re-make]

Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004

2.—(1) The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004(a) is amended as follows.

(2) In Schedule 1, for “Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999”, substitute “Non-Road Mobile Machinery (Type-Approval and Emission of Gaseous and Particulate Pollutants) Regulations 2018”. [DQ: is it correct to substitute the reference?]

PART 2

Revocations

Revocations

3. The following Regulations are revoked—

(a) S.I. 2004/693.

- (a) the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999**(a)**;
- (b) the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2002**(b)**;
- (c) the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2004**(c)**;
- (d) the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2006**(d)**;
- (e) the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2008**(e)**;
- (f) the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2011**(f)**;
- (g) the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2013**(g)**;
- (h) the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2014**(h)**;

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations ...

Regulation 16 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.

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- (a)** S.I. 1999/1053.
 - (b)** S.I. 2002/1649.
 - (c)** S.I. 2004/2034.
 - (d)** S.I. 2006/29.
 - (e)** S.I. 2008/2011.
 - (f)** S.I. 2011/2134.
 - (g)** S.I. 2013/1687.
 - (h)** S.I. 2014/1309.