

EXPLANATORY MEMORANDUM TO
THE MOTOR VEHICLE TYRES (LABELLING) (ENFORCEMENT)
(AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and Sifting Committees.

2. Purpose of the instrument

- 2.1 This instrument is made for the enforcement in the United Kingdom of Regulation (EC) 1222/2009 on the labelling of tyres, principally to introduce domestic penalties for non-compliance with the requirements. This includes failing to display a label and displaying false information with new replacement tyres at the time of sale.
- 2.2 This instrument will also provide that Regulation (EU) 2020/740, which repeals and replaces Regulation (EC) 1222/2009 on 1st May 2021, is enforceable in Northern Ireland from 1st May 2021.
- 2.3 As the UK has left the EU under the terms of the Withdrawal Agreement, the retention of EU law will take place at the end of the transition period. The provisions in this instrument ensure that the retained EU law will continue to function effectively. They will also disapply the mandatory obligation on manufacturers and distributors to include the EU emblem on tyre labels in Great Britain and enable the display of the Union flag in place of the EU emblem.

Explanations

What did any relevant EU law do before exit day?

- 2.4 Regulation (EC) 1222/2009 is the main EU requirement regulating point of sale information provisions in relation to replacement tyres. The EU Regulation requires tyre suppliers and distributors to provide information about the essential parameters of the tyre in the form of a label, at the point of sale.
- 2.5 The display of a label on tyres at the point of sale, as well as in technical promotional material ensures that distributors and end-users receive consistent information on tyre fuel efficiency, wet grip performance and external rolling noise at the time and place of the purchasing decision. This, in turn, encourages consumers to make cost-effective and environmentally friendly decisions when purchasing tyres.

Why is it being changed

- 2.6 This instrument introduces powers to enforce the requirements of Regulation (EC) 1222/2009 in the United Kingdom and provides that on 1st May 2021, Regulation (EU) 2020/740, which repeals and replaces Regulation (EC) 1222/2009 in Northern Ireland on that date, is enforceable in Northern Ireland, as required by the Northern

Ireland Protocol.

What will it now do?

- 2.7 This instrument ensures that in the UK the requirements of Regulation (EC) 1222/2009 are enforceable in relation to the sale of relevant replacement tyres.
- 2.8 This instrument introduces powers to enforce Regulation (EC) 1222/2009 in the UK and enables the display of the Union flag in place of the EU emblem in Great Britain. The SI also provides that Regulation (EU) 2020/740, which will repeal and replace Regulation (EC) 1222/2009 in Northern Ireland on 1st May 2021, is enforceable from that date in Northern Ireland, as required by the Northern Ireland Protocol.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments and the Sifting Committees

- 3.1 This instrument is being laid for sifting by the Sifting Committees.
- 3.2 The Department regrets that this instrument breaches the rule that statutory instruments subject to the negative procedure should normally be laid, and copies provided to the Committee, 21 days before the instrument comes in to force. The Government is acting promptly to ensure the requirements of the Northern Ireland Protocol are met by the end of the transition period.

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

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

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 This instrument provides a domestic enforcement regime in relation to Regulation (EC) 1222/2009 of the European Parliament and of the Council of 25th November 2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters in the United Kingdom; and Regulation (EU) No. 2020/740 of the European Parliament and of the Council of 25th May 2020 on the labelling of tyres with respect to fuel efficiency and other parameters from 1st May 2021 in Northern Ireland.

- 6.2 Enforcement will be carried out by the Driver and Vehicle Standards Agency (“DVSA”) on behalf of the Secretary of State. The domestic regulations also set out the processes for issuing compliance notices and enforcement in connection with false statements and obstruction of officers.
- 6.3 Currently no penalties are available to enforce the tyre labelling requirements. Use of civil penalties is being introduced to cover the whole range of infringements relating to the legislation on tyre labelling, in order to provide for a more flexible application of justice where appropriate.
- 6.4 The decision to include civil penalties was favoured by industry when consulted on the matter. The department agrees with the use of civil penalties as non-compliance is not a safety issue and has extended the civil regime to cover offences such as obstruction of officers and providing false statements. This is considered proportionate to tyre labelling requirements. It is important to be aware that all replacement tyres placed on the market must still meet applicable approval standards under Regulation (EC) 661/2009 and that an appropriate and proportionate UK enforcement regime is in place under the Road Vehicles (Approval) Regulations 2020.

7. Policy background

What is being done and why?

- 7.1 This instrument is required to ensure the UK fulfils its obligations under current EU law that will become retained in Great Britain at 11pm on 31st December 2020 under the European Union (Withdrawal) Act 2018 and remain directly applicable in Northern Ireland under the Northern Ireland Protocol.
- 7.2 The objective of Regulation (EC) 1222/2009 and Regulation 2020/740 is to improve the functioning of the tyre labelling regime for replacement tyres¹, which ensures end-users have access to consistent information on key environmental and safety related tyre parameters at the time of purchase.
- 7.3 In a recent survey of 68 sites, around 78% of tyre retailers were found to be non-compliant in that they did not offer details of the tyre characteristics as required by the Regulations. Currently, the DVSA monitors compliance and carries out education and awareness activities but does not have the necessary powers to enforce the requirements of Regulation (EC) 1222/2009.
- 7.4 The purpose of this instrument is to specify the domestic framework underpinning the effective enforcement of Regulation (EC) 1222/2009 in the UK and, subsequently, Regulation (EU) 2020/740 in Northern Ireland. The instrument sets out the domestic penalty regime, introducing the application of civil penalties.
- 7.5 A breach of Regulation (EC) 1222/2009, Regulation (EU) 2020/740 or this instrument can be subject to enforcement action. Breaches cover such matters as failure to display information in the form of a label and false declarations made during the purchasing process. A fine of up to £1000 per breach can be levied as a civil sanction.

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

¹ i.e. a tyre of a kind to which Regulation (EC) 1222/2009 or Regulation (EU) 2020/740 apply

the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively, or other deficiencies arising from the withdrawal of the United Kingdom from the European Union including provisions to enable the Union flag to be displayed on tyre labels within Great Britain. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

8.2 This instrument is also being made using the power in section 8C of the European Union (Withdrawal) Act 2018 in order to create an enforcement regime in relation to Regulation (EU) No. 2020/740 in Northern Ireland from 1st May 2021.

8.3 Alongside the EU (Withdrawal) Act 2018 powers the instrument is being made under section 2(2) of the European Communities Act 1972 to create an enforcement regime in relation to Regulation (EC) 1222/2009 in the United Kingdom.

9. Consolidation

9.1 This instrument does not revoke or replace any UK Regulations.

10. Consultation outcome

10.1 The Department for Transport conducted a public consultation, with information placed on the Department for Transport website and emailed to several stakeholders.

10.2 15 responses were received. The main trade associations responding were the British Tyre Manufacturing Association, National Tyre Distributors Association, Tyre Industry Federation (“TIF”) and the Retail Motor Industry Federation. All respondents linked to the tyre industry made the point that they would like to see a dedicated suite of civil sanctions.

10.3 Some respondents were concerned that retailers and garages for whom tyre sales are an ancillary service to their main business should not be unduly burdened by enforcement activity. We will take care to employ the right balance between education and sanctions, whilst taking account of the range of different businesses involved in the retail of vehicle tyres.

10.4 The inclusion of a full suite of civil sanctions was requested. As the tyre labelling regulation has a similar aim of educating and raising consumer awareness, and since non-compliance is not a safety issue, we are creating civil penalties only.

10.5 A more detailed summary of the responses to this consultation is available online at <https://www.gov.uk/government/consultations/tyre-labelling-enforcement-regulations>

10.6 Further informal consultation with the main trade associations representing tyre manufacturers and distributors has been conducted in the preparation of the final instrument.

11. Guidance

11.1 Information on tyre labelling requirements is available on the EU Commission’s website and on the Vehicle Certification Agency (VCA) and gov.uk websites. It can also be obtained from trade associations such as the TIF, who provide specialised information to their members.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is as follows: Regulation (EC) 1222/2009 is directly applicable in the UK and has been since 2012. This instrument sets up the regulatory framework to support the Regulation, creating the necessary enforcement powers and penalties. The Department for Transport has assessed that there are no new costs to business associated with this instrument (i.e. over and above the costs of the existing regime set out in Regulation (EC) 1222/2009). Enforcement will be funded centrally by the Department for Transport and market surveillance, including the purchase of tyres for testing, will be carried out without the involvement of the manufacturer. The only businesses which will incur costs are those which are non-compliant. There is no significant impact on charities or voluntary bodies as they are rarely involved in tyre production and distribution.
- 12.2 There is no, or no significant, impact on the public sector. The costs of inspecting labels are already catered for within the existing budget of the DVSA Market Surveillance Unit.
- 12.3 An Impact Assessment has not been prepared for this instrument because the costs of enforcement will primarily fall on Government and not on businesses, as noted in paragraph 12.1. The costs of supplying tyre labels in conformity with the EU regime have not been assessed as they remain the same.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The legislation applies to all businesses selling replacement tyres in order for the benefits of consistent labelling to be realised by the end user. Small businesses will only incur penalties if their product does not comply with the requirements of Regulation (EC) 1222/2009 or Regulation (EU) 2020/740 from 1st May 2021 in Northern Ireland.

14. Monitoring & review

- 14.1 The view taken on the monitoring of this instrument is that no special monitoring is likely to be required, but the Department for Transport is in regular contact with trade associations and other stakeholders.
- 14.2 The Regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Parliamentary Under Secretary of State for Transport, Rachel Maclean MP, has made the following statement:

“Having had regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015, and the statutory guidance under section 31 of that Act, I have decided that it is not appropriate to make provision for review of the provisions of this instrument because it would be disproportionate to do so taking into account the economic impact of those provisions.”

15. Contact

- 15.1 Mike Levet at the Department for Transport, telephone: 07811 828548 or email: mike.levet@dft.gov.uk or David Miles, telephone: 07966 511900 or email: david.miles@dft.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 Ian Yarnold, Deputy Director for International Vehicle Standards, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rachel Maclean MP, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

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

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

offences	of paragraph 28, Schedule 7	exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

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

1. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Motor Vehicle Tyres (Labelling) (Enforcement)(Amendment) (EU Exit) Regulations 2020 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure).”

- 1.2 This is the case because: this legislation does not fall within the categories for which use of the affirmative procedure is required under the Withdrawal Act, i.e., transfer an EU legislative function to a UK body, relate to fees, create or widen the scope of a criminal offence, create or amend a power to legislate. The aim is simply to make the existing legislation operable after the UK withdraws from the EU.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Motor Vehicle Tyres (Labelling) (Enforcement)(Amendment)(EU Exit) Regulations 2020 does no more than is appropriate.”

- 2.2 This is the case because: the instrument ensures that the existing regulations relating to tyre labelling remain operable when the United Kingdom exits from the European Union.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

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

- 3.2 These are: the instrument ensures that the tyre labelling requirements in the UK, after the UK’s withdrawal from the European Union, can be regulated in a manner that is at least as ambitious as current arrangements and that the legislation continues to work as intended.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State, Rachel Maclean MP, has made the following statement(s):

“The draft instrument does not amend, repeal or revoke a provision or provisions in

the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

- 4.2 The Parliamentary Under Secretary of State, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, the Department for Transport has had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

5. Explanations

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