

2021 No. 0000

EXITING THE EUROPEAN UNION

HIGHWAYS

TUNNELS

The Road Tunnel Safety (Amendment) Regulations 2021

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| <i>Sift requirements satisfied</i> | 2021 |
| <i>Made</i> - - - - | 2021 |
| <i>Laid before Parliament</i> | 2021 |
| <i>Coming into force in accordance with regulation 1</i> | |

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(a).

The requirements of paragraph 3(2) of Schedule 7 to that Act (relating to the appropriate Parliamentary procedure for these Regulations) have been satisfied.

Citation and commencement

1. These Regulations may be cited as the Road Tunnel Safety (Amendment) Regulations 2021 and come into force on the 22nd day after the day on which they are laid.

Amendment of the Road Tunnel Safety Regulations 2007

2. The Road Tunnel Safety Regulations 2007(b) are amended as follows.

3. In regulation 2 (interpretation etc.), in paragraph (2), after “as set out in the Road Tunnel Directive” insert “and modified by regulation 2A”.

4. In regulation 2 (interpretation etc.), in paragraph (3)—

- (a) after the definition of “modification” insert—
- “national authority” means in relation to—
- (i) England, the Secretary of State;
 - (ii) Wales, the Welsh Ministers;
 - (iii) Scotland, the Scottish Ministers;

(a) 2018 c.16; section 8 was amended by section 27 of the European Union (Withdrawal Agreement) Act 2020 (c. 1).
(b) S.I. 2007/1520, amended by S.I. 2009/64.

- (iv) Northern Ireland, the Department for Infrastructure established by article 3(1) of the Departments (Northern Ireland) Order 1999 and renamed by section 1(6) of the Departments Act (Northern Ireland) 2016(a);” and
- (b) after the definition of “technical approval authority” insert—
 - ““traffic authority” in relation to England, Wales and Scotland has the meaning given in section 121A of the Road Traffic Regulation Act 1984(b).”.

5. After regulation 2 (interpretation etc.), insert—

“Modification of the Road Tunnel Directive

2A.—(1) For the purposes of these Regulations, references to Annex I and Annex II of the Road Tunnel Directive must be read with the following modifications.

(2) In Annex I—

- (a) in paragraph 1.1.3. for “Article 13” substitute “regulation 18 of the Road Tunnel Safety Regulations 2007”;
- (b) in paragraph 1.2.1. —
 - (i) in the first sub-paragraph, for “Member States” substitute “The Tunnel Manager”;
 - (ii) in each place where it occurs for “Commission” substitute “national authority”;
 - (iii) omit the second sub-paragraph (beginning “The Commission shall transmit”);
 - (iv) for the third paragraph, substitute—

“If, following a period of three months after receipt of the request by the national authority, no recommendation is made and notified to the Administrative authority, the limited derogation request shall be deemed refused. During the three month period, the national authority may make a recommendation to grant or refuse the request and notify it to the Administrative authority, setting out its reasons. Where the recommendation is positive, the request is deemed to have been granted. Where the recommendation is negative the Administrative authority must decide whether to grant or refuse the request within one month of the recommendation, taking into account the recommendation of the national authority.”;

- (c) in paragraph 2.9.3. for “Article 13” substitute “regulation 18 of the Road Tunnel Safety Regulations 2007”;
- (d) in paragraph 3.2. omit the second sentence;
- (e) in paragraph 3.4. for “Article 13” substitute “regulation 18 of the Road Tunnel Safety Regulations 2007”;
- (f) in paragraph 3.5. omit “, including those starting and finishing in different Member States.”;
- (g) in paragraph 3.6. omit the last sub-paragraph;
- (h) in paragraph 3.7. for “Article 13” substitute “regulation 18 of the Road Tunnel Safety Regulations 2007”.

(3) In Annex II —

(a) 2016 c. 5 (N.I.). The Department for Infrastructure was originally established as the Department for Regional Development by article 3(1) of the Departments (Northern Ireland) Order 1999 (S.I. 1999/283) and subsequently renamed by subsection 1(6) of the Departments Act (Northern Ireland) 2016 (c. 5).

(b) 1984 c. 27; section 121A(1) was inserted by the New Roads and Street Works Act 1991 (c. 22), s.168(1) and Schedule 8, paragraph 70; it was amended by the Local Government etc. (Scotland) Act 1994 (c. 39), s.180(1) and Schedule 13, paragraph 134(9), the Greater London Authority Act 1999 (c. 29), s.271(2) and Schedule 12, paragraph 9(1) and the Infrastructure Act 2015 (c. 7), s.57(1) and Schedule 1, paragraph 95(2) and (3); it was also amended by S.I. 1999/1820, 2000/801 and 2001/1400.

- (a) in paragraph 2.2. for “Article 2 of the Directive” substitute “regulation 2(3) of the Road Tunnel Safety Regulations 2007”;
- (b) in paragraph 2.3. for “risk analysis requested by point 3.7. of Annex I” substitute “risk analysis required by regulation 18 of the Road Tunnel Safety Regulations 2007”;
- (c) in paragraph 2.5. for “the entry into force of this Directive,” substitute “30th April 2004”.

6. For regulation 3 (application of the Regulations), substitute—

“Application of the Regulations

3.—(1) These Regulations apply in relation to—

- (a) the following road tunnels—
 - (i) A282 Dartford Tunnel, Essex and Kent;
 - (ii) A1(M) Hatfield Tunnel, Hertfordshire;
 - (iii) M25 Bell Common Tunnel, Essex;
 - (iv) M25 Holmesdale Tunnel, Hertfordshire;
 - (v) A299 Ramsgate Tunnel, Kent;
 - (vi) A55 Conwy Tunnel, Conwy;
 - (vii) A55 Pen-y-Clip Tunnel, Conwy;
 - (viii) A55 Penmaenbach Tunnel, Conwy; and
- (b) any proposed road tunnel in the United Kingdom that immediately before IP completion day—
 - (i) formed part of the trans-European road network;
 - (ii) was at the construction stage or the design stage; and
 - (iii) would be over 500 metres in length.

(2) For the purpose of paragraph (1)(b), a road tunnel would be over 500 metres in length if the longest traffic lane on the fully enclosed part of that tunnel would be over 500 metres in length.”.

7. In regulation 4 (designation of administrative authority) omit paragraph (5).

8. In regulation 6 (administrative authority – duty to compile accident and fire reports), in paragraph (3) for “Secretary of State” substitute “national authority”.

9. In regulation 17 (risk reduction measures), in paragraph (4)(b) for “Secretary of State” substitute “national authority”.

10. In regulation 19 (derogations for innovative techniques)—

- (a) for paragraph (7) substitute—

“(7) If the administrative authority considers that a derogation should, subject to the view of the national authority, be granted it shall—

 - (a) forward the request made and information sent under paragraphs (1), (2) and (4) to the national authority within one month after the date of receipt of that information; and
 - (b) notify the Tunnel Manager in writing.”;
- (b) omit paragraph (8);
- (c) omit paragraph (9);
- (d) for paragraph (10) substitute—

“(10) The administrative authority must notify the Tunnel Manager in writing whether the request made under paragraph (1) has been granted or refused—

- (a) where there has been a deemed refusal pursuant to paragraph 1.2.1 of Annex I, within two weeks after the date of expiry of the three month period;
- (b) where there has been a deemed approval pursuant to paragraph 1.2.1 of Annex I, within two weeks after the date of receipt of the recommendation of the national authority;
- (c) where the national authority’s recommendation pursuant to paragraph 1.2.1 of Annex I was negative, within two weeks after the date of the decision of the administrative authority.”;

(e) for paragraph (11) substitute—

“(11) For the purpose of this regulation “innovative” in relation to safety equipment and safety procedures means safety equipment or safety procedures that are not provided for in these Regulations.”.

11. In regulation 20 (application of Regulations where the same person undertakes functions of different authorities), for paragraph (2) substitute—

“(2) Those authorities are—

- (a) an administrative authority;
- (b) a Tunnel Manager; and
- (c) a national authority.”.

12. Omit regulation 21 (notification to the Commission).

Signed by authority of the Secretary of State for Transport

Date

Name
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a) to (e) and (g)) arising from the withdrawal of the UK from the European Union.

These Regulations make amendments to legislation in the field of road tunnel safety and, in particular, amend legislation relating to derogations for innovative techniques.

Part 2 amends domestic subordinate legislation. It makes amendments to the Road Tunnel Safety Regulations 2007 (S.I. 2007/1520, as amended by S.I. 2009/64), which implemented the European Parliament and Council Directive 2004/54/EC on minimum safety requirements for tunnels in the trans-European road network (OJ No L 167, 30.4.24, p 39). A corrigendum to the Directive can be found in O.J. L.201, 7.6.2004, p. 56.

The amendments in these Regulations adjust language and references to recognise that the United Kingdom is no longer a member State of the European Union.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the business or voluntary sector is foreseen.

An Explanatory Memorandum has been prepared and is available alongside this instrument at www.legislation.gov.uk.