

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION  
WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND  
NORTHERN IRELAND PROTOCOL**

**COMMISSION DELEGATED REGULATION (EU) .../... of 5.5.2022 supplementing  
Regulation (EU) 2018/858 of the European Parliament and of the Council as  
regards the procedure for the imposition of administrative fines and the  
methods for their calculation and collection**

Submitted by Department for Transport

20 June 2022

**SUBJECT MATTER**

1. This Explanatory Memorandum sets out the implications to Northern Ireland of a proposed EU delegated regulation which supplements existing legislation that permits the European Commission to fine businesses placing non-compliant products on the market. It puts in place the detailed process to be used to issue, and calculate, fines to businesses found to have breached the technical requirements for road vehicles.
2. Regulation (EU) 2018/858 sets the pre-market testing requirements that road vehicles (cars, buses, trucks and trailers) must meet before being mass produced, and places obligations on manufacturers and Member States to ensure approved products continue to comply with the relevant technical requirements once they are placed on the market.
3. Article 85 of Regulation (EU) 2018/858 also gives the Commission the power to issue fines at EU level for non-compliance where corrective action taken by a Member State is successfully challenged by another Member State, or deemed insufficient by the Commission, or following tests and inspections carried out by the Commission. The power was included in the Regulation as part of the response to the VW Dieselgate scandal, when concerns were raised about the adequacy of the response by the German approval authority.
4. The delegated act supplements the Regulation by setting out the detailed procedure to be followed by the Commission including the method for calculating any fines it might levy on the economic operator.

5. Article 1 sets out the procedure to be used by the Commission. The Commission must first notify the business and the Member States concerned in writing of its intention to impose a fine and its reasons for doing so. The business and Member States then have 30 days to reply in writing, and the Commission may request further information within 15 days of the request, and may, in exceptional cases, request a meeting once the written procedure is complete.
6. Article 2 covers how confidential information is to be treated. Businesses are required to identify any confidential information as part of their submission to the Commission and, if necessary, provide a non-confidential version of the document submitted.
7. Article 3 sets out the method for calculating administrative fines. In calculating any fine the Commission will estimate the economic advantage gained by the business and the losses to consumers as a result of the non-compliance. Aggravating factors when determining the level of the fine include: the impact on the health and safety of consumers; the impact on the environment; the degree of negligence by the business or any intent to conceal relevant information that would help identify the non-compliance; and any unjustified refusal to provide evidence or information to the Commission. In addition, the past record of the business will also be taken into account, including any repetition, and the frequency or the duration of previous non-compliance during the 10 years preceding the establishment of the non-compliance.
8. There are also mitigating factors when calculating any fine. These are the level of cooperation by the business in the detection of the non-compliance, the extent to which it has attempted to rectify the non-compliance, and other reasonable mitigating factors.
9. Article 4 sets out the method for collecting fines. Any fines issued must be paid within three months from the date of notification of the Commission's decision.
10. The level of the fine is limited under Regulation (EU) 2018/858, Article 85, to no more than 30,000 Euro per non-compliant product.

## **SCRUTINY HISTORY**

11. The proposal that resulted in Regulation (EU) 2018/858 was the subject of Explanatory Memorandum 5712/16 dated 25/2/2016. The Commons European Scrutiny Committee reported on four occasions that the proposal raised issues of political importance, completing scrutiny on 13 December 2017 (Report 5, Session 17/19, 37497). The proposal was sifted for examination by the Lords European Union Committee's Internal Market sub-committee (sift 1613) and completed scrutiny on 27 April 2017.

12. The Department for Transport (DfT) also submitted EMs in 2021 on two Delegated Acts amending 2018/858 as below:

- EM 10165/21 dated 27 July on C(21)4146: COMMISSION DELEGATED REGULATION (EU) .../... of 23.6.2021 amending Annexes II and VII to Regulation (EU) 2018/858 of the European Parliament and of the Council. The Commons ESC completed scrutiny without a substantive report to the House on 22 September 2021 (Report 8, 21/22). The document was sifted for examination to the Lords European Affairs Committee sub-committee on Ireland/Northern Ireland for examination (sift 7). It has been retained under scrutiny pending further information after closure of the Government's consultation on GB type approval and any proposals to adopt Intelligent Speed Adaptation in Great Britain.
- EM 8978/21, C(21)3377: COMMISSION DELEGATED REGULATION (EU)/... of 20.5.2021 amending Annex X to Regulation (EU) 2018/858 of the European Parliament and of the Council as regards the standardised access to vehicle on-board diagnostics information and repair and maintenance information, and the requirements and procedures for access to vehicle security information. DfT submitted an EM dated 29 June 2021. The Commons ESC completed scrutiny without a substantive report to the House on 22 September 2021 (Report 6, Session 21/22). The document was sifted for examination to the Lords European Affairs Committee sub-committee on Ireland/Northern Ireland for examination (sift 5). Scrutiny was completed on 16 September 2021. In closing scrutiny, the Committee asked for an update on the outcome of the consultation on the GB type-approval scheme once this is complete.

13. As noted in paragraph 26 below, the Government has now opened its consultation on GB type approval and will respond to the Lords European Affairs Committee sub-committee on Ireland/Northern Ireland on the outcome as requested.

## **MINISTERIAL RESPONSIBILITY**

14. The Secretary of State for Transport.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

15. The topic of type approval is a reserved matter. The Devolved Administrations, particularly in Northern Ireland, have an interest.

16. The Devolved Administrations were consulted in the preparation of this EM, Scotland and Wales did not raise any concerns. DfT and NI officials held a meeting about the impact that the legislation might have on enforcement activity. NI officials were content that the current approach would continue, whereby the DVSA conduct market surveillance and take any corrective action

if required. Further discussions will continue as required for future legislative acts that fall within the scope of the NI Protocol.

## **LEGAL AND PROCEDURAL ISSUES**

### **i. Legal Base**

Article 85(2) of Regulation (EU) 2018/858

### **ii. Voting Procedure**

The Council of Ministers and Parliament have two months in which to veto the legislation, through qualified majority in the Council of Ministers or majority of the European Parliament. The period can be extended by up to two months at the direction of either body.

### **iii. Timetable for adoption and implementation**

The proposal in document 8830/22 was adopted and published on 5<sup>th</sup> May 2022, it will enter into force on the twentieth day after publication in the Official Journal of the European Union. These dates are subject to the voting procedure above.

## **POLICY IMPLICATIONS**

17. The proposal does not change the approach to market surveillance in NI or Great Britain with regards to the imposition of fines for businesses that are non-compliant. As before, the UK's Market Surveillance Authority (which is formally the Secretary of State, and in practice part of the Driver and Vehicle Standards Agency, DVSA) will continue to conduct checks on goods across the whole of the UK as well as those intended for the NI market. Where a non-compliance is identified, they will contact the business and work with them, and the relevant approval authority, to rectify the matter.
18. In the majority of cases this will be through a recall process to either remove products from the market or to modify them to bring them into compliance. Fines are unlikely to be used unless the business in question refuses to cooperate with the authorities to bring products back into compliance.
19. The Commission may also conduct checks for products placed on the market throughout the EU and NI. If they find a non-compliance they can take similar steps as the market surveillance authority, namely compelling the business to bring products back into conformity, and if necessary requiring that goods are recalled. They may also impose fines on businesses, and, prior to this draft regulation, it was unclear how they would calculate the size of a fine in such cases. This proposal now clarifies the procedure the Commission must use to calculate a fine.

20. The regulation does not permit the business to be fined twice for the same offence. If the Commission chose to intervene their penalty would take precedence over that of the national authority.
21. Businesses in Northern Ireland have historically demonstrated high levels of compliance with type-approval requirements and cooperation with the Market Surveillance Authority. In addition, given the fact that manufacturers in Northern Ireland are mainly small and medium enterprises with relatively low production volumes any non-compliance is likely to be limited in scale and unlikely to require corrective action at EU-wide level.
22. Moreover, given that most vehicles will be sold in identical form throughout the EU and in Northern Ireland, we believe it is likely that the Commission would in general not choose to take action purely in regard to vehicles sold in Northern Ireland.
23. Regulation (EU) 2018/858 gave the Commission powers to take corrective action at EU level against non-compliant businesses and to issue fines in support of such action. These powers were introduced as part of the EU's response to the VW Dieselgate scandal and we would only expect the Commission to take action against the most serious offences. In the time since these powers were created, 2018, the Commission has not intervened in the enforcement process by national authorities or imposed any fines.
24. In Great Britain, the Market Surveillance Authority continues to have the power to impose penalties on non-compliant businesses through the Road Vehicles (Approval) Regulations 2020 which will be unaffected by this Regulation.
25. There have been no discussions between the Government and the EU about this proposal.
26. Regulation (EU) 2018/858, together with other EU type-approval regulations in force at the time, was retained in domestic law at the end of the transition period. These retained EU regulations will now form the basis of a new national type-approval framework in Great Britain which will be known as the GB type-approval scheme. As anticipated by EM 10165/21 and EM 8978/21 a consultation on a proposed type-approval scheme for Great Britain, to replace the interim scheme launched at the end of the Transition Period, has now been published on 1<sup>st</sup> June 2022. It can be found at the following location on the Government's website - <https://www.gov.uk/government/consultations/vehicle-type-approval-establishing-a-gb-road-vehicle-approval-scheme> – and will close on 29 June. Subject to responses, we expect to have legislation in place by the 1<sup>st</sup> January 2023.
27. The Government is also conducting an assessment of the safety technologies (such as Advanced Emergency Braking and Intelligent Speed Assistance) introduced in the EU under its General Safety Regulation. Once this is complete, consultation on the adoption of any of those safety technologies under the GB scheme will be held.
28. It should also be noted that the Government intends to address the issues being faced by businesses when engaging with the Northern Ireland market through

the introduction of legislation. The Bill will restore the balance inherent in the objectives of the Northern Ireland Protocol; protecting the integrity of the UK, avoiding a hard border and safeguarding the EU Single Market.

## **CONSULTATION**

29. The motor vehicle manufacturing industry was consulted by the Commission during the development of this proposal, no impact assessment was prepared.

## **FINANCIAL IMPLICATIONS**

30. There are no financial implications for the UK.

*Vere of Norwich*

**Baroness Vere**  
**Parliamentary Under-Secretary of State**  
**Department for Transport**