

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

**COMMISSION DELEGATED REGULATION (EU) .../... of 20.6.2022 amending  
Annexes I, II, IV and V to Regulation (EU) 2018/858 of the European Parliament  
and of the Council as regards the technical requirements for vehicles  
produced in unlimited series, vehicles produced in small series, fully  
automated vehicles produced in small series and special purpose vehicles,  
and as regards software update**

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Submitted by Department for Transport

20 July 2022

**SUBJECT MATTER**

1. This Explanatory Memorandum sets out the implications to Northern Ireland of a proposed EU delegated regulation which supplements the existing 'framework' legislation Regulation (EU) 2018/858. The framework regulation sets the type-approval requirements for road vehicles, and sets the process by which type-approvals are issued and the obligations for manufacturers, member states and the Commission to ensure ongoing compliance.
2. In summary, the delegated act makes a series of changes to detailed specifications in the framework regulation, including:
  - updating the table of applicable technical regulations to make them consistent with those in the EU's General Safety Regulation (GSR) which came into force in the EU on 6<sup>th</sup> July 2022,
  - applying the recently agreed UN Regulation 156 on vehicle software updates, including measures to ensure ongoing vehicle compliance,

- setting the technical requirements and annual production limits for fully automated vehicles approved under the EU small series scheme, which aims to allow for the introduction of such vehicles produced in limited volumes, and
  - introducing new definitions of semi-trailers to include trailers designed to tow a second trailer.
3. Article one of the delegated regulation amends Annexes I, II, IV, and V of the framework regulation.
  4. The amendment to Annex I of the framework is to introduce two new definitions of types of trailer bodywork. These are 'link semi-trailers' and 'link drawbar trailers' that can tow another trailer using a fifth wheel coupling to create longer articulated lorries.
  5. There are several amendments to Annex II of the framework. These are to take account of changes made to Regulation (EU) 2019/2144, the 'General Safety Regulation' (GSR), which sets the technical requirements for a range of safety technologies for vehicles and components approved under the framework. The updates are to the list of applicable regulations for:
    - vehicles produced in unlimited quantities,
    - vehicles produced in limited quantities under the EU small series scheme, including fully automated vehicles (vehicles without a driver's seating position) and dual-mode vehicles (those which can be driven in 'manual mode' or in 'full automation mode'), and
    - vehicles produced as special purpose vehicles (such as wheelchair accessible vehicles),
    - updates to the table of UN regulations recognised as equivalent to EU Regulations, removing references to UN Regulations that are now the sole applicable regulatory act following the repeal of some EU Regulations by the GSR. The repealed EU Regulations are those for pedestrian protection (EU Reg 78/2009), advanced emergency braking (EU Reg 347/2012) and lane departure warning (EU Reg 351/2012).
  6. In addition to these updates the delegated regulation also adds recently agreed UN Regulations to the table of those considered as equivalent to EU ones. These are for acoustic vehicle alerting systems (UN Regulation 138 as equivalent to EU Regulation 540/2014), sound level (UN Regulations 51 & 59 as equivalent to EU Regulation 540/2014) and recyclability (UN Regulation 133 as equivalent to Directive 2005/64/EC).

7. It also makes UN Regulation 156, which sets the technical requirements for vehicle software updates, mandatory for approval under the EU scheme, and the amendment to Annex IV of the framework regulation updates the ongoing compliance obligations for manufacturers to ensure products continue to remain compliant once in production to include software update requirements as set by UN Regulation 156. The aim of this is to ensure any software update does not render the vehicle non-compliant with its approval.
8. The amendment to Annex V updates the annual production limits for the EU small series scheme to set limits of 1,500 vehicles per annum for fully automated buses (category M2, M3) and heavy goods vehicles of more than 3.5 tonnes (category N2, N3). This supplements the change to Annex IV that sets the regulatory requirements for fully automated vehicles approved through the EU small series scheme.
9. Article 2 sets the transitional dates for the granting of type-approvals and registration of vehicles in relation to the requirement for software updates and vehicles approved under the EU small series scheme and as special purpose vehicles.
10. From 6<sup>th</sup> July 2022, the approval of new types of vehicle which are capable of having software updated by the manufacturer to affect the vehicle's type approved characteristics after the vehicle has been registered is not permitted unless the vehicle is approved to Regulation 156. From 7<sup>th</sup> July 2024, the registration of such vehicles will be prohibited for the same reasons.
11. In addition, from 6<sup>th</sup> July 2022 Member States must extend an approval if a software update does not affect the vehicle's type-approved characteristics and does not render the vehicle non-compliant with its approval after its registration.
12. From 7<sup>th</sup> July 2024 new type-approvals of mass-produced vehicles must meet the software update requirements.
13. From 7<sup>th</sup> July 2024 new types of manually driven vehicles approved under the EU small series scheme and special purpose vehicles will have to meet the updates to the regulatory requirements made by this regulation, and from 7<sup>th</sup> July 2026 they will apply to new registrations of such vehicles.
14. From 7<sup>th</sup> July 2026 existing types of mass-produced vehicles must meet the software update requirements to continue to be registered. Additional time is given for base vehicles that undergo conversion, e.g. a chassis cab for conversion into a supermarket delivery van, and they will have until 7<sup>th</sup> July 2029 to meet the requirements in order to be registered.

## **SCRUTINY HISTORY**

15. 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.
16. The proposal that resulted in Regulation (EU) 2019/2144 was the subject of EM 9006/18. EM 9006/18 was considered by the House of Commons European Scrutiny Committee on 17 October 2018. The Committee recommended that the document was politically important and requested further information (Report 40, Session 2017-19, 39712). The House of Lords European Union Committee referred the EM to sub-Committee at the 1699<sup>th</sup> sift on 3 July 2019. Ministerial letters were sent to the Committees on 12 March 2019, 2 May 2019, 16 September 2019 and 21 October 2019. The proposal was cleared from scrutiny by the Lords Committee on 16 January 2020.

## **MINISTERIAL RESPONSIBILITY**

17. The Secretary of State for Transport.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

18. The topic of type approval is a reserved matter. The Devolved Administrations, particularly in Northern Ireland, have an interest and have been consulted in the preparation of this EM.

## **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 was adopted and published on 20<sup>th</sup> June 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

19. The updates to the list of regulatory requirements are to ensure those in the framework regulation match that used in the General Safety Regulation. The Government notes that this makes the two lists consistent and easier to cross reference between them for each approval scheme within the framework, i.e. those mass produced under the unlimited series scheme, those used for low volume producers using the EU small series scheme and special purpose vehicles. These changes do not introduce new technical requirements.
20. The Government is currently assessing the vehicle safety technologies within the EU's General Safety Regulation, and a decision will be taken in due course as to whether to mandate any of those in Great Britain.
21. The inclusion of requirements and production limits for fully automated vehicles and dual-mode vehicles approved under the EU small series scheme introduces divergence between GB and NI. This is a pre-emptive approach by the EU to set the requirements ahead of such vehicles being produced; there is no practical impact from this as the divergence would only occur once such vehicles begin to be produced. The Department for Transport is undertaking a review of the changes required to the GB approval scheme to accommodate automated vehicles.
22. The inclusion of UN Regulation 156 to mandate the requirements for vehicle software update systems will lead to divergence between the EU and proposed GB schemes as it will not initially be mandatory under the GB scheme. As with the divergence caused by the GSR it is not expected to cause real world divergence between the vehicles sold in NI and GB as manufacturers that produce vehicles for the EU are likely to include it in any vehicle produced for the GB market in order to avoid complication and additional cost in their production. As the UK is also a signatory to the UN Regulation, the Vehicle Certification Agency can issue approvals to it for any manufacturer, which will be accepted in all other UNECE contracting parties including the EU. Once the GB type-approval scheme for road vehicles is established, we will consider amending it to include UN Regulation 156 and will consult on its inclusion.
23. The updates to the definitions of semi-trailers are to distinguish conventional single trailers and semi-trailer combinations from those used to tow a second trailer (i.e. link semi-trailers). This is to ensure accurate CO2 emissions can be calculated for each combination. This amendment is to take account of changes by another implementing act to Regulation (EU) 595/2009, that sets the testing requirements and limits for exhaust emissions from heavy duty vehicles and trailers. The difference in definitions is unlikely to cause divergence between NI and GB as restrictions on the speed and weight of such combinations of trailers means they are not currently used on UK roads.
24. 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 NI Protocol 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.

25. There is no impact on Northern Ireland's participation in the UK's free trade agreements as the automotive elements of such agreements are based on the recognition of UN Regulations where available. The recognition of approvals to UN Regulations is not affected by this delegated act, as the UK is signatory to the same UN Regulations as the EU. As a result, manufacturers in NI producing products to UN Regulations will be unaffected.
26. There have been no discussions between the Government and the EU about this proposal.
27. Previously, EM 8830/22 provided details of the consultation on a proposed type-approval scheme for Great Britain. The consultation closed on 29<sup>th</sup> June and responses are currently being reviewed. The official response to the consultation setting out the final proposals for the scheme will be published as soon as possible and we continue to expect it to be in place by 1<sup>st</sup> January 2023.

## **CONSULTATION**

28. The motor vehicle manufacturing industry was consulted by the Commission during the development of this proposal, no impact assessment was prepared.
29. The Devolved Administrations were consulted in the preparation of this EM and no concerns were raised.

## **FINANCIAL IMPLICATIONS**

30. There are no financial implications for the UK.

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