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STATUTORY INSTRUMENTS

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**2018 No. 764**

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

**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 21st September 2018; 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.

**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;
  - (b) components or assemblies of components that go to make up engines;
  - (c) devices which are capable of forming part of emission control systems; or
  - (d) non-road mobile machinery.

(2) 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(1).

#### **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paragraph 1(c) of article 21 of the NRMM Regulation, the approval authority may treat the application as having been withdrawn by the manufacturer.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
- (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.

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

- (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 engines 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 engines 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 8(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 an engine; 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) one or more engine types within an engine family specified in the notice.

### **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 notice or 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)(2) 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) 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.

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(2) 1978 c.30.

### **Information and instructions: loss or damage**

**13.**—(1) Where a duty is imposed on a manufacturer by article 43 of the NRMM Regulation (information and instructions intended for OEMs and end-users), 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.

### **Defeat Devices**

**14.**—(1) For the purposes of articles 18 and 57 of the NRMM Regulation, “use of defeat strategies” or “using defeat strategies” is where an engine manufactured by a person—

- (a) is placed on the market in the United Kingdom; and
- (b) that engine is fitted with a defeat device.

(2) A separate offence under article 18(4) the NRMM Regulation<sup>(3)</sup> is committed in respect of each such engine placed on the market.

(3) Where, following examination of engines associated with a single engine type approval, the enforcement authority is satisfied that two or more of those engines—

- (a) are engines which have been affixed with a statutory marking under article 32 of the NRMM Regulation in respect of that approval; and
- (b) are fitted with a defeat device,

each engine associated with that single engine type approval is to be taken to be similarly fitted with a defeat device unless proved otherwise by the manufacturer.

(4) In paragraph (3), an engine is associated with an engine type approval if the statutory marking affixed to the engine under article 32 of the NRMM Regulation cites the type approval number for that type approval.

(5) In this regulation—

“auxiliary emission control strategy” has the meaning given in article 1(10) of Commission Delegated Regulation (EU) 2017/654;

“Commission Delegated Regulation (EU) 2017/654” means Commission Delegated Regulation (EU) 2017/654 supplementing 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<sup>(4)</sup>;

“defeat device” means—

- (a) a defeat strategy; or
- (b) an auxiliary emission control strategy which is prohibited under point 2.3.7 of Annex IV of Commission Delegated Regulation (EU) 2017/654;

“placed on the market” means supplying to a third party or making available for distribution or use in the course of a commercial activity, whether in return for payment or free of charge, and includes exposure for sale to a third party.

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<sup>(3)</sup> Article 18(4) of the NRMM Regulation is supplemented by Commission Delegated Regulation (EU) 2017/654 dealing with misuse of an auxiliary emission control strategy.

<sup>(4)</sup> OJ No. L 102, 13.4.2017, p. 1.

**Offences, enforcement and civil penalties**

15.—(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**

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

Signed by authority of the Secretary of State for Transport

25th June 2018

*Jesse Norman*  
Parliamentary Under Secretary of State  
Department for Transport