
STATUTORY INSTRUMENTS

1999 No. 1053

The Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999

PART I

Citation and commencement

1. —These Regulations may be cited as the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999, and shall come into force on 26th April 1999.

Interpretation

2.—(1) In these Regulations—

- (a) “Directive 97/68/EC” means the European Parliament and Council Directive [97/68/EC](#) on the approximation of laws of the member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery⁽¹⁾;
- (b) “the 1987 Act” means the Consumer Protection Act 1987⁽²⁾;
- (c) “non-road mobile machinery” means any mobile machine, transportable industrial equipment or vehicle with or without body work, not intended for the use of passenger- or goods-transport on the road, in which an internal combustion engine as specified in regulation 3(1) is installed;
- (d) “type approval” means the procedure whereby the approval authority certifies that an internal combustion engine type or engine family satisfies the relevant technical requirements of these Regulations with regard to the level of emissions of gaseous and particulate pollutants by the engine;
- (e) “engine type” means a category of engines which are similar in such essential engine characteristics as specified in Schedule 2, Appendix 1;
- (f) “parent engine” means an engine selected from an engine family in such a way that it complies with the requirements set out in paragraphs 6 and 7 of Schedule 1;
- (g) “engine family” means a manufacturer’s grouping of engines which, through their design, are expected to have similar exhaust emission characteristics as specified in Schedule 2 and which comply with the requirements of these Regulations;
- (h) “engine power output” means net power output of the engine;
- (i) “engine production date” means the date when the engine has passed the final check after it has left the production line and being the stage at which the engine is ready to be delivered or to be put in stock;

(1) OJ L No. 59, 27.2.98, p.1.

(2) 1987 c. 43.

- (j) “placing on the market” means the action of making available on the Community market, for payment or free of charge, a product to which these Regulations apply with a view to distribution or use or both in the Community;
- (k) “manufacturer” means the person responsible for the construction of an engine and responsible to the approval authority for all aspects of the type approval process and for ensuring conformity of production.
- (l) “technical service body” means the approval authority or the person that has been appointed as a testing laboratory to carry out tests or inspections;
- (m) “information document” means the document set out in the format specified by Schedule 2 containing the information prescribed by that Schedule;
- (n) “information folder” means the total folder or file of data, drawings, photographs and any other material supplied by the applicant to the approval authority or the technical service body as prescribed in the information document;
- (o) “information package” means the information folder plus any test results or other documents that the approval authority or the technical service body has added to the information folder in the course of carrying out its functions;
- (p) “index to the information package” means the document in which the contents of the information package, suitably numbered or otherwise marked to clearly identify all the pages, are listed;
- (q) “competent approval authorities” means the bodies appointed as the approval authority in a member State other than the United Kingdom in accordance with Directive 97/68/EC.

(2) For the purposes of these Regulations, the terms, symbols and abbreviations set out in paragraph 2 of Schedule 1 shall be interpreted in accordance with that paragraph.

(3) For the purposes of these Regulations, Annexes, I, II, III, IV, V, VI, and VII to Directive 97/68/EC are respectively set out in Schedules 1, 2, 3, 4, 5, 6, and 7, and a reference in a regulation to a paragraph of a Schedule is a reference to a section in the Annex as set out in the relevant Schedule.

(4) For the purposes of these Regulations, the Secretary of State is the approval authority.

PART II

Scope and Exclusions

3.—(1) Subject to paragraphs (3), (4) and (5) and regulation 15, these Regulations apply to new engines to be installed in non-road mobile machinery intended and suited to move, or to be moved on the ground, whether or not on the road, with a C.I. engine having net power that is equal to or higher than 18 kW but not more than 560 kW and operated under intermittent speed rather than a single constant speed.

(2) The expression “machinery” includes the following:

- industrial drilling rigs and compressors,
- construction equipment including wheel loaders, bulldozers, crawler tractors, crawler loaders, truck-type loaders, off-highway trucks and hydraulic excavators,
- agricultural equipment and rotary tillers,
- forestry equipment,
- self propelled agricultural vehicles,
- material handling equipment,
- fork-lift trucks,

- road maintenance equipment (motor graders, road rollers and asphalt finishers),
- snow plough equipment,
- ground support equipment in airports,
- aerial lifts,
- mobile cranes.

(3) These Regulations do not apply to engines to be installed in:—

- (a) ships,
- (b) railway locomotives,
- (c) aircraft, or
- (d) generating sets.

(4) These Regulations do not apply to engines for the propulsion of vehicles as defined by Council Directive [70/156/EEC](#)(3) as amended by Council Directive [92/53/EEC](#)(4) and by Council Directive [92/61/EEC](#)(5) or agricultural tractors as defined by Council Directive [74/150/EEC](#)(6) as amended by Council Directive [82/890/EEC](#)(7).

(5) These Regulations do not apply to engines granted type approval in accordance with the provisions of Council Directive [88/77/EEC](#)(8) as amended by Council Directives [91/542/EEC](#)(9) and [96/1/EEC](#)(10) provided that—

- (a) the type approval has been granted for an engine with a category set out in the first column of regulation 6(2) on or before the dates specified in the second column of regulation 6(2), and
- (b) the engine is placed on the market before the final date specified in regulation 7 for that category of engine.

General duty relating to placing on the market

4.—(1) Subject to regulations 7 and 15, no person shall place on the market any new engine, whether or not already installed in machinery, unless the requirements of paragraph (2) have been complied with in relation to it.

(2) The requirements in respect of any engine are that—

- (a) the approval authority has issued a type approval certificate,
- (b) the engine conforms to the requirements of the type approval, and
- (c) the engine has affixed to it markings in accordance with regulation 11(1), including the type approval number.

Categories of engines

5.—(1) This regulation defines the engine categories for the purposes of regulations 6 and 7.

(2) An engine is within the category in the first column of the table in this paragraph if it has a power output within the range set out in the second column thereof:

(3) OJ L No. 42, 23.2.1970, p.1.
(4) OJ L No. 225, 10.8.1992, p.1.
(5) OJ L No. 225, 10.8.1992, p.72.
(6) OJ L No. 84, 28.3.1974, p.10.
(7) OJ L No. 378, 31.12.82, p.45.
(8) OJ L No. 36, 9.2.1988, p.33.
(9) OJ L No. 295, 25.10.1991, p.1.
(10) OJ L No. 40, 17.2.1996, p.1.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Category A	$130\text{kW} \leq P \leq 560 \text{ kW}$
Category B	$75\text{kW} \leq P < 130 \text{ kW}$
Category C	$37\text{kW} \leq P < 75 \text{ kW}$
Category D	$18\text{kW} \leq P < 37 \text{ kW}$
Category E	$130\text{kW} \leq P \leq 560 \text{ kW}$
Category F	$75\text{kW} \leq P < 130 \text{ kW}$
Category G	$37\text{kW} \leq P < 75 \text{ kW}$.

Provisions for grant of type approval certificate

6.—(1) After the coming into force of these Regulations, the approval authority shall not issue a type approval certificate under regulation 9(1) for an engine type or engine family, nor any other type approval for non-road mobile machinery in which an engine is installed, where the engine has a power output falling within Category A, Category B or Category C, if the engine does not meet the requirements specified in these Regulations and if the emissions of gaseous and particulate pollutants from the engine do not comply with the limit values set out in the table in paragraph 4.2.1 of Schedule 1.

(2) After the date specified in the second column of the table in this regulation, the approval authority shall not grant a type approval certificate under regulation 9(1) for an engine type or engine family, nor any other type approval for non-road mobile machinery in which an engine is installed, in respect of an engine within the category set out in the first column of the table if the engine does not meet the requirements specified in these Regulations and if the emissions of gaseous and particulate pollutants from the engine do not comply with the limit values set out in the table in paragraph 4.2.3 of Schedule 1:

<i>Category</i>	<i>Date</i>
Category D	31 December 1999
Category E	31 December 2000
Category F	31 December 2001
Category G	31 December 2002.

Transitional provisions in respect of placing on the market

7. Notwithstanding the provisions of regulation 4, a manufacturer may place on the market, before the date specified in the third column of the table in this regulation, an engine within a category specified in the first column of the table with a production date prior to the date specified in the second column in respect of that category:

<i>Category</i>	<i>Producton date</i>	<i>Final date</i>
Category A	31 December 1998	31 December 2000
Category B	31 December 1998	31 December 2000
Category C	31 March 1999	31 March 2001
Category D	31 December 2000	31 December 2002
Category E	31 December 2001	31 December 2003

<i>Category</i>	<i>Producton date</i>	<i>Final date</i>
Category F	31 December 2002	31 December 2004
Category G	31 December 2003	31 December 2005.

Application for type approval

8.—(1) An application for engine type or engine family approval shall be submitted to the approval authority by or on behalf of a manufacturer (“the applicant”), together with—

- (a) the fee payable pursuant to regulation 14 to the approval authority,
- (b) the information folder, and
- (c) a declaration by the applicant that no application in respect of an engine type or engine family has been submitted in respect of that engine type or engine family to a competent approval authority in any other member State.

(2) The application shall contain the information set out in Schedule 2, and contain an information document.

(3) An engine conforming to the information provided pursuant to Schedule 2, Appendix 1 shall accompany the application or the applicant shall provide particulars of where the engine may be examined and tested by the approval authority.

(4) In the case of an application for engine family approval, if the approval authority determines that the engine submitted with the application does not fully represent the engine family described in the information folder, the applicant shall provide an alternative and, if considered necessary by the approval authority, an additional parent engine conforming to the information provided pursuant to Schedule 2 Appendix 1.

Approval of engines

9.—(1) The approval authority shall on payment of the fee pursuant to regulation 14 issue a type approval certificate for an engine type or engine family in the form set out in Schedule 6, where the approval authority is satisfied, after examination and testing of the engine by the technical service body, that—

- (a) the engine or engine family meets the specifications and has passed all the test procedures and requirements of Schedules 1, 3, 4 and 5, and
- (b) the engine or engine family is of a type which conforms with the information given in the information folder which accompanied the application, and
- (c) that adequate arrangements ensuring effective control of the conformity of production are in place with regard to the specifications as set out in paragraph 5 of Schedule 1.

(2) Where the approval authority issues a type approval certificate for an engine type or engine family, it shall, within a period of one month, confirm the date on which the certificate was issued, give notice of that approval certificate and the date it was issued to the competent approval authorities of every other member State, and include with that notice a copy of the type approval certificate issued and particulars of the engine and engine type approved.

(3) Where the approval authority decides that the engine to be approved fulfils its function or offers a specific feature only in conjunction with other parts of the non-road mobile machinery, and for this reason compliance with one or more requirements can be verified only when the engine to be approved operates in conjunction with other machinery parts, whether real or simulated, the approval authority shall restrict the scope of the type approval of the engine type or engine family accordingly.

(4) Where the approval authority restricts the scope of the type approval in accordance with paragraph (3), it shall include in the type approval certificate any restrictions on the use of the engine and shall indicate any conditions for fitting it.

(5) The type approval certificate shall contain the letters, numbers and information set out in Schedule 7.

(6) The approval authority shall keep a register of the engine types or engine families which have been granted type approval by it.

Amendments to approvals

10.—(1) Where the approval authority has issued a type approval certificate to a manufacturer under regulation 9, that manufacturer shall immediately give notice in writing to the approval authority of any change in the particulars appearing in the information folder or information package, if appropriate, and make application to the approval authority to amend or extend the type approval.

(2) An application for the amendment or extension of a type approval shall be submitted to the approval authority which granted the original type approval, together with a fee pursuant to regulation 14 or an undertaking to pay the fee to the approval authority.

(3) Where the particulars appearing in the information package have changed, the approval authority shall, subject to paragraph (4) and on payment of a fee pursuant to regulation 14—

- (a) issue revised pages of the information package as necessary, marking each revised page to show clearly the nature of the change and the date of re-issue, and
- (b) issue a revised approval certificate (denoted by an extension number) if any information on the type approval certificate (excluding its attachments) has changed or if the standards of Directive 97/68/EC have changed since the date of the type approval certificate.

(4) If the approval authority finds that an amendment to an information package warrants fresh tests or checks it shall inform the manufacturer thereof and issue the documents referred to in paragraph (3) only after the conduct of successful fresh tests or checks to ensure compliance with these Regulations.

(5) Where the approval authority issues revised pages pursuant to paragraph (3) it shall amend the index to the information package (which is attached to the approval certificate) to show the date the pages were revised.

(6) Where the approval authority issues a revised approval certificate pursuant to paragraph (3), the revised certificate shall show clearly the reason for the revision and the date of issue of the revised certificate.

Conformity

11.—(1) Where a type approval certificate has been issued pursuant to regulation 9, the manufacturer shall affix to each unit manufactured in accordance with the approved type the markings as defined in paragraph 3 of Schedule 1 including the type approval number.

(2) Where the type approval certificate, in accordance with the provisions of regulation 9(4), includes restrictions on the use of the engine—

- (a) the manufacturer shall deliver with each unit manufactured a document containing detailed information on those restrictions and indicating any conditions for fitting, but
- (b) where a series of engine types is delivered to one single producer of machinery, the manufacturer may provide only one such document, which shall, in addition to the information required by paragraph (a), list the engine identification numbers to be delivered to that producer and which shall be provided not later than the date of delivery to him of the first engine.

(3) Where any type approval certificate has been issued pursuant to regulation 9, the approval authority may by notice in writing require the manufacturer to send it a list which—

- (a) contains identification numbers for each engine type or engine family produced in accordance with the requirements of these Regulations since the list was last supplied to the approval authority in accordance with these Regulations,
- (b) specifies correlations of the identification numbers to the corresponding engine types or engine families and to the type approval numbers, where not clarified by the engine coding system,
- (c) contains information relating to the cessation of production, where the manufacturer has ceased production of an engine type or engine family, including the date production ceased, the number of engines remaining unsold and the place where those engines are being stored or will be stored.

(4) If the approval authority requires the manufacturer to send to it a list pursuant to a notice served pursuant to paragraph (3), the list shall be sent—

- (i) within 45 days after the end of each calendar year, and
- (ii) when the requirements change for each category of engine under regulation 6.

(5) A manufacturer upon whom a notice has been served pursuant to paragraph (3) shall maintain records of the information provided under paragraph (3) for a minimum period of 20 years.

(6) A manufacturer upon whom a notice has been served pursuant to paragraph (3) shall send to the approval authority within 45 days after the end of each calendar year and at each date when the requirements change for each category of engine under regulation 6, a declaration specifying the engine types and engine families together with the relevant engine identification codes for those engines the manufacturer intends to produce from the date of the declaration.

(7) The manufacturer shall send with each list required under paragraph (3) a declaration specifying that each engine bearing a type approval number conforms with the description in the approval certificate.

(8) The manufacture shall permit the approval authority at any time to carry out tests and inspection of any engine bearing a type approval number in order to verify that the engine conforms to the description given on the approval certificate.

(9) The manufacturer shall permit the approval authority at any reasonable time to inspect its production procedures to ensure that the requirements set out in paragraph 5 of Schedule 1 continue to be met.

Provision of Technical Service

12. The approval authority shall notify to the European Commission and the competent approval authorities of the other member States, the names and addresses of the bodies that will be the technical service body for the purposes of these Regulations.

Non-conformity with the approved type or family

13.—(1) If it appears to the approval authority—

- (a) that engines bearing the approval marking in accordance with paragraph 3 of Schedule 1 fail to conform to the type or engine family it has approved, and
- (b) that the manufacturer to whom the relevant type approval certificate was issued is unable or unwilling to effect a sufficient remedy,

the approval authority may withdraw the type approval certificate after giving the manufacturer to whom it was issued the opportunity of making representations within a reasonable period as to why it should not be withdrawn.

(2) Where the approval authority, having considered any representations made under paragraph (1), withdraws a type approval certificate, it shall, in writing—

- (a) inform the manufacturer to whom it was issued of the withdrawal of the certificate and of its reasons for the withdrawal, and
- (b) inform the competent approval authorities of the member States of its withdrawal.

(3) Where the approval authority does not withdraw the type approval certificate, it shall inform the competent approval authorities of the other member States of the measures taken to ensure that the engines in production will conform to the approved type or family.

(4) For the purposes of this regulation, there shall be a failure to conform to the approved type or engine family where the approval authority finds deviations from the particulars in the type-approval certificate or the information package and where those deviations have not been authorised by the approval authority pursuant to regulation 10(3).

(5) If the approval authority believes that an engine bearing a type approval number and markings does not conform to the approved type or family it may request the competent approval authorities in the member State which granted the type approval to verify that engines in production conform to the approved type or engine family.

Fees

14. The fees to be paid will be those payable pursuant to regulations made under section 56 of the Finance Act 1973⁽¹¹⁾.

Exemptions and alternative procedures

15.—(1) The requirements of regulation 4 do not apply to—

- (a) engines produced directly or indirectly on behalf of and for use only by the armed services,
- (b) engines approved by the competent approval authorities in another member State in accordance with Directive 97/68/EC.

(2) The approval authority may, at the request of the manufacturer, exempt end-of-series engines which are still in stock, or stocks of non-road mobile machinery in respect of their engines, from the final date for placing on the market as set out in regulation 7 in accordance with the following conditions—

- (a) the manufacturer must submit an application to the approval authority before the relevant final date in regulation 7,
- (b) the application must include a list of those new engines which remain unsold or have not been placed on the market before the final date and must specify the technical and/or economic reasons on which the application is based,
- (c) the engines must conform to a type or family for which the type approval is no longer valid, or which did not require type approval at the time of production, but which have been produced before the production date set out in regulation 7,
- (d) the engines must have been physically stored within the European Community between the production date and the final date set out in regulation 7 for that particular category,

(11) 1973 c. 51.

- (e) the maximum number of new engines of one or more types placed on the market in the United Kingdom under this exemption must not exceed 10 per cent of the new engines of all types concerned placed on the market in the United Kingdom during the previous year.
- (3) If the request is accepted by the approval authority it shall, within one month, send to the competent approval authorities of the other member States particulars of, and reasons for, the exemptions granted to the manufacturer.
- (4) The approval authority shall issue for each engine exempted under paragraph (2) a certificate of conformity on which a special entry has been made.
- (5) The certificate of conformity referred to in paragraph (4) may be included in a consolidated document which contains all the identification numbers of engines exempted under paragraph (2).
- (6) The approval authority shall each year send to the European Commission a list of exemptions granted specifying the reasons.
- (7) The approval authority may not exempt engines under paragraph (2) if a period of 12 months has elapsed since the date on which the engines were for the first time subject to the time limits for placing on the market.

PART III

Enforcement Authorities

- 16.**—(1) It shall be the duty of the following authorities to enforce these Regulations within their area—
- (a) in Great Britain, the Secretary of State or weights and measures authorities, and
 - (b) in Northern Ireland, the Department of Economic Development.
- (2) An enforcement authority shall, whenever the Secretary of State so directs, make a report to the Secretary of State on the exercise of the functions exercisable by that authority under these Regulations.
- (3) For the purposes of providing for the enforcement of these Regulations—
- (a) sections 14, 15, 28 to 35, 37, 38, 44 and 47 of the 1987 Act shall apply and in respect of proceedings for contravention thereof as if—
 - (i) references to safety provisions were references to these Regulations;
 - (ii) references to goods were references to engines as the context may require;
 - (iii) in section 14, in subsection (6), for “six months” there were substituted “three months”;
 - (iv) in sections 28, 29, 30, 33, 34 and 35, the words “or any provision made by or under Part III of this Act” on each occasion that they occur were omitted;
 - (v) in section 28, subsections (3), (4) and (5) were omitted;
 - (vi) in section 29, subsection (4) was omitted;
 - (vii) in section 30, subsections (7) and (8) were omitted; and
 - (viii) in section 38(1), paragraphs (a) and (b) were omitted;
 - (b) sections 39 and 40 of the 1987 Act shall apply to offences under section 32 of that Act as it is applied to these Regulations by sub-paragraph (a) above; and
 - (c) in England and Wales, a magistrates' court may try an information in respect of an offence committed under these Regulations if the information is laid within twelve months from the time when the offence is committed, and in Scotland summary proceedings for such an

offence may be begun at any time within twelve months from the time when the offence is committed.

(4) Nothing in this regulation shall authorise any enforcement authority to bring proceedings in Scotland for an offence.

Offences

17. Any person who—

- (a) places a new engine on the market in contravention of regulation 4, or
- (b) fails to send a list in contravention of regulation 11(4), or
- (c) fails to maintain records in contravention of regulation 11(5), or
- (d) fails to send a declaration in contravention of regulation 11(6), or
- (e) fails to comply with the requirements of regulation 11(8), or
- (f) in supplying information or producing documents for the purposes of these Regulations—
 - (i) makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular, or
 - (ii) produces, provides, sends or otherwise makes use of a document which he knows to be false in a material particular or recklessly produces, provides, sends or otherwise makes use of a document which is false in a material particular,

shall be guilty of an offence.

Penalty

18.—(1) A person guilty of an offence under regulation 17(a) shall be liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.

(2) A person guilty of an offence under regulation 17(b) to (f) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Defence of due diligence

19.—(1) Subject to the following provisions of this regulation, in proceedings against any person for an offence under regulation 17, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against a person for such an offence the defence provided by paragraph (1) involves an allegation that the commission of the offence was due—

- (a) to the act or default of another, or
- (b) to reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, not later than 7 clear days before the hearing of the proceedings (or, in Scotland, the trial date), he has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) It is hereby declared that a person shall not be entitled to rely on the defence provided by paragraph (1) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—

- (a) to the steps which he took and those which might reasonably have been taken, for the purpose of verifying the information, and
- (b) to whether he had any reason to disbelieve the information.

Liability of persons other than the principal offender

20.—(1) Where the commission by any person of an offence under regulation 17 is due to an act or default committed by some other person in the course of any business of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of any body corporate are managed by its members, paragraph (2) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) In this regulation, references to a “body corporate” include references to a partnership in Scotland and, in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.

28th March 1999

John Battle,
Minister for Energy and Industry,
Department of Trade and Industry