

2020 No. 1509

EXITING THE EUROPEAN UNION

ROAD TRAFFIC

**The Motor Vehicle Tyres (Labelling) (Enforcement)
(Amendment) (EU Exit) Regulations 2020**

<i>Sift requirements satisfied</i>	<i>8th December 2020</i>
<i>Made - - - -</i>	<i>9th December 2020</i>
<i>Laid before Parliament</i>	<i>10th December 2020</i>
<i>Coming into force in accordance with regulation 1(2) and 1(3)</i>	

The Secretary of State for Transport, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (“the 1972 Act”)(a) and by sections 8(1) and 8C of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018(b), makes the following Regulations.

The requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 (relating to the appropriate Parliamentary procedure for these Regulations) have been satisfied.

The Secretary of State is designated(c) for the purposes of section 2(2) of the 1972 Act in relation to the regulation of the type, description, construction or equipment of vehicles, and of components of vehicles.

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Motor Vehicle Tyres (Labelling) (Enforcement) (Amendment) (EU Exit) Regulations 2020.

(a) 1972 c. 68. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1)). Section 2(2) of the European Communities Act 1972 was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(b) 2018 c. 16. Section 8C was inserted by section 21 of the European Union (Withdrawal Agreement) Act 2020 (c. 1).

(c) S.I. 1972/1811.

(2) Regulations 1 to 17 come into force on 31st December 2020.

(3) Regulation 18 comes into force on IP completion day.

PART 2

Enforcement Provisions

Interpretation

2. In Part 2 of these Regulations—

“the 2009 EU Regulation” means Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters, as it has effect in EU law^(a);

“the 2009 Regulation” means Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters;

“the 2020 Regulation” means Regulation (EU) 2020/740 of the European Parliament and of the Council of 25 May 2020 on the labelling of tyres with respect to fuel efficiency and other parameters, amending Regulation (EU) 2017/1369 and repealing Regulation (EC) No 1222/2009^(b), as it has effect in EU law as amended from time to time;

“enforcement authority” means the Secretary of State;

“officer” means, except in relation to the expression “Officer of Revenue and Customs”, a person authorised by the enforcement authority to assist the authority in enforcing Part 2 of these Regulations, the 2009 Regulation, the 2009 EU Regulation or the 2020 Regulation;

“relevant requirement” means—

- (a) in respect of England and Wales or Scotland, the requirements and obligations in Articles 4 to 7 of the 2009 Regulation;
- (b) in respect of Northern Ireland in the period up to and including 30th April 2021, the requirements and obligations in Articles 4 to 7 of the 2009 EU Regulation; and
- (c) in respect of Northern Ireland on or after 1st May 2021, the requirements and obligations in Articles 4 to 9 of the 2020 Regulation;

“relevant tyre” means a tyre to which the enforcement authority, an officer or an Officer of Revenue and Customs considers the 2009 Regulation, the 2009 EU Regulation or the 2020 Regulation applies.

Duty to enforce

3. The enforcement authority must enforce the relevant requirements.

Compliance notice

4.—(1) Where the enforcement authority considers that there has been a breach of a relevant requirement, the enforcement authority may serve a compliance notice on the person considered to be in breach.

(2) A compliance notice must—

- (a) be in writing;
- (b) set out the reasons why the enforcement authority considers that there has been a breach of a relevant requirement;

(a) OJ No L 342, 22.12.2009, p. 46.

(b) OJ No L 177, 5.6.2020, p. 1.

- (c) describe the steps required to remedy the breach;
- (d) specify the date by which the breach must be remedied; and
- (e) specify the likely amount of the civil penalty to be imposed if there is a failure to rectify the breach and the basis on which it is calculated.

Civil penalties

5.—(1) Where a person does not comply with a compliance notice served under regulation 4, the enforcement authority may require that person to pay a civil penalty.

(2) Where the enforcement authority considers that there has been a breach of—

- (a) a relevant requirement; or
- (b) an enforcement obligation,

the enforcement authority may require the person in breach to pay a civil penalty.

(3) The enforcement authority may not require a person to pay a civil penalty pursuant to paragraph (1) or (2) if the person shows that there was a reasonable excuse for the non-compliance or the breach.

(4) The enforcement authority may require a person to pay a civil penalty pursuant to paragraph (2)(a) without first serving a compliance notice under regulation 4 if it considers it appropriate to do so.

(5) The amount of a civil penalty imposed under Part 2 of these Regulations may not exceed £1,000 for each breach of a relevant requirement or of an enforcement obligation.

(6) The civil penalty is payable to the enforcement authority.

(7) In this regulation 5, “enforcement obligation” means the requirements and obligations in regulations 10 and 11(6).

Notification of penalty decision

6.—(1) If the enforcement authority decides to require a person to pay a civil penalty under Part 2 of these Regulations, the enforcement authority must serve a penalty notice on that person.

(2) A penalty notice must—

- (a) be in writing;
- (b) state the enforcement authority’s reasons for deciding to require the person to pay a civil penalty;
- (c) state the amount of the civil penalty;
- (d) specify the date on which it is served;
- (e) specify the date, at least 28 days after the date specified in the notice as the date on which it is served, before which the civil penalty must be paid;
- (f) specify how the civil penalty must be paid;
- (g) include an explanation of the steps that the person may take if the person objects to the civil penalty (including specifying the manner and form in which any notice of objection must be served on the enforcement authority); and
- (h) include an explanation of the steps the enforcement authority may take to recover any unpaid civil penalty.

Objection to penalty decision

7.—(1) The recipient of a penalty notice (“the recipient”) may object to the penalty notice by serving a notice of objection on the enforcement authority.

(2) A notice of objection must—

- (a) give the reasons for the objection;

- (b) be served on the enforcement authority in the manner and form specified in the penalty notice;
 - (c) be served before the end of the period of 28 days beginning with the date specified in the penalty notice as the date on which it is served.
- (3) Where the enforcement authority receives a notice of objection, the enforcement authority must consider it and—
- (a) cancel the civil penalty;
 - (b) reduce the civil penalty;
 - (c) increase the civil penalty; or
 - (d) determine not to alter the civil penalty.
- (4) After reaching a decision as to how to proceed under paragraph (3), the enforcement authority must serve on the recipient a written notification of the decision.
- (5) A notification under paragraph (4) must be served before the end of the period of 70 days beginning with the date specified in the penalty notice as the date on which it is served, or such longer period as the enforcement authority may agree with the recipient.
- (6) A notification under paragraph (4), other than one notifying the recipient that the enforcement authority has decided to cancel the civil penalty, must—
- (a) state the amount of the civil penalty following the enforcement authority’s consideration of the notice of objection;
 - (b) state the enforcement authority’s reasons for the decision under paragraph (3);
 - (c) specify the date, at least 28 days after the date on which the notification is served, before which the civil penalty must be paid;
 - (d) specify how the civil penalty must be paid;
 - (e) include an explanation of the recipient’s rights of appeal; and
 - (f) include an explanation of the steps the enforcement authority may take to recover any unpaid civil penalty.
- (7) A notification under paragraph (4) notifying the recipient that the enforcement authority has decided to cancel the civil penalty must state the enforcement authority’s reasons for the decision under paragraph (3).

Appeals

8.—(1) A person (“the appellant”) may appeal to the court against a decision to require the person to pay a civil penalty under Part 2 of these Regulations.

(2) An appeal may be brought only if the appellant has served a notice of objection and the enforcement authority has—

- (a) reduced the civil penalty under regulation 7(3)(b);
- (b) increased the civil penalty under regulation 7(3)(c); or
- (c) determined not to alter the civil penalty under regulation 7(3)(d).

(3) An appeal must be brought within the period of 28 days beginning with the date on which the enforcement authority’s decision on the notice of objection under regulation 7(4) is served on the person.

(4) On appeal, the court may—

- (a) allow the appeal and cancel the civil penalty;
- (b) allow the appeal and reduce the civil penalty; or
- (c) dismiss the appeal.

(5) An appeal—

- (a) is to be a re-hearing of the enforcement authority’s decision to impose a civil penalty; and

- (b) may be determined having regard to matters of which the enforcement authority was unaware.
- (6) Paragraph (5)(a) has effect despite any provision of rules of court.
- (7) In this regulation, a reference to “the court” is a reference—
 - (a) in England and Wales, to the county court;
 - (b) in Scotland, to the sheriff; and
 - (c) in Northern Ireland, to the county court.
- (8) But—
 - (a) the county court in England and Wales, or a county court in Northern Ireland, may transfer proceedings under this regulation to the High Court; and
 - (b) the sheriff may transfer proceedings under this regulation to the Court of Session.

Enforcement of penalty decision

9.—(1) This regulation applies where a sum is payable to the enforcement authority as a civil penalty under Part 2 of these Regulations.

(2) In England and Wales, the civil penalty is recoverable as if it were payable under an order of the county court in England and Wales.

(3) In Scotland, the civil penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant of execution issued by the sheriff court of any sheriffdom in Scotland.

(4) In Northern Ireland, the civil penalty is recoverable as if it were payable under an order of a county court in Northern Ireland.

(5) Where action is taken under this regulation for the recovery of a sum payable as a civil penalty under Part 2 of these Regulations, the civil penalty is—

- (a) in relation to England and Wales, to be treated for the purposes of section 98 of the Courts Act 2003^(a) (register of judgments and orders etc.) as if it were a judgement entered in the county court;
- (b) in relation to Northern Ireland, to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981^(b) (register of judgments) as if it were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order.

Obstruction of officers and false statements

10.—(1) A person must not—

- (a) intentionally obstruct an officer when acting in pursuance of any provision of Part 2 of these Regulations;
- (b) intentionally fail to comply with any requirement properly made by an officer under any provision of Part 2 of these Regulations; or
- (c) without reasonable cause, fail to give an officer any other assistance or information which the officer may reasonably require of that person for the purposes of the exercise of the officer’s functions under any provision of Part 2 of these Regulations.

(2) A person must not, in giving any information which is required of that person by virtue of paragraph (1)(c)—

(a) 2003 c. 39; section 98 has been amended by sections 48(1) and 106(2) of, and paragraph 55(1), (2), (3)(a) and (b) of Schedule 8 and paragraph 15 of Schedule 16 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15) and section 17(5) of, and paragraph 40(a) and (c) of Part 2 of Schedule 9 to, the Crime and Courts Act 2013 (c. 22). Further amendments made by the Tribunals, Courts and Enforcement Act 2007 have yet to be brought into force.

(b) S.I. 1981/226 (N.I. 6).

- (a) make any statement which the person knows is false in a material particular; or
- (b) recklessly make a statement which is false in a material particular.

Investigative powers of officers

11.—(1) Officers may exercise any of the powers set out in paragraph (2) at all reasonable hours provided—

- (a) the officers identify themselves and produce authority in writing from the enforcement authority for the exercise by the officers of powers conferred on the enforcement authority by Part 2 of these Regulations; and
- (b) the officers state the purpose of the officers' actions and the grounds for undertaking them.

(2) The powers referred to in paragraph (1) are as follows—

- (a) an officer may for the purpose of ascertaining there has been a breach of a relevant requirement inspect any relevant tyres;
- (b) if an officer has reasonable cause to suspect that there has been a breach of a relevant requirement, the officer may, for the purpose of ascertaining whether there has been a breach, require any person carrying on, or employed in connection with, a business to produce any records relating to relevant tyres and the officer may take copies of those records or any part of them;
- (c) if an officer has reasonable cause to suspect that there has been a breach of a relevant requirement, the officer may seize and detain any relevant tyres for the purpose of ascertaining whether there has been a breach;
- (d) an officer may seize and detain any relevant tyres or records which the officer has reason to believe may be required as evidence in proceedings for a breach of a relevant requirement.

(3) For the purposes of paragraph (2), the officer may require information stored electronically to be made available in printed form.

(4) An officer may, for the purpose of ascertaining whether there has been a breach of a relevant requirement, make a purchase of relevant tyres.

(5) When exercising any power of seizure and detention under this paragraph, an officer must, as soon as practicable, give to the person against whom the power has been exercised, a written notice stating—

- (a) precisely what has been so seized and detained;
- (b) that an application for the release of a detained item may be made in accordance with regulation 13; and
- (c) the procedure for making such an application.

(6) A person who is not an officer of the enforcement authority must not purport to act as such under this Regulation.

Powers of customs officers to detain goods

12.—(1) An Officer of Revenue and Customs may, for the purpose of facilitating the exercise by the enforcement authority or an officer, of any functions conferred on the authority or officer by Part 2 of these Regulations, seize any imported relevant tyres or any records and detain them for not more than two working days.

(2) Anything seized and detained under this regulation must be dealt with during the period of its detention in such manner as the Commissioners for Her Majesty's Revenue and Customs may direct.

(3) An Officer of Revenue and Customs seizing any relevant tyres or records under this Regulation must inform the person from whom they are seized that such relevant tyres or records have been seized.

(4) In paragraph (1), the reference to two working days is a reference to a period of forty-eight hours calculated from the time when the goods in question are seized, but disregarding so much of any period as falls on a Saturday or Sunday or on Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(a) in the part of the United Kingdom where the goods are seized.

Applications for the release of detained items

13.—(1) Any person having an interest in any relevant tyres or records detained for the time being under regulation 11 may apply for an order requiring any item so detained to be released to the applicant or another person.

(2) An application under this regulation may be made—

- (a) in England and Wales or Northern Ireland, by way of complaint to a magistrates' court; or
- (b) in Scotland, by summary application to the sheriff.

(3) A magistrates' court or the sheriff must not make an order under paragraph (1) unless the court or sheriff is satisfied that—

- (a) no civil penalty has been imposed under regulation 5 for a breach of a relevant requirement in connection with the detained item and more than six months have elapsed since the seizure was carried out, or
- (b) a civil penalty has been imposed under regulation 5 for a breach of a relevant requirement in connection with the detained item and all rights of objection or appeal in respect of such civil penalty have been extinguished.

(4) Any person aggrieved by an order made under this regulation by a magistrates' court or sheriff, or by a decision of such a court or sheriff not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the Crown Court;
- (b) in Scotland, to the Sheriff Appeal Court as though it were an appeal under section 110(1) of the Courts Reform (Scotland) Act 2014(b); or
- (c) in Northern Ireland, to a county court.

(5) In England and Wales or in Northern Ireland, an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates Courts Act 1980(c) or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981(d) (statement of case)).

Compensation for seizure and detention

14.—(1) Where an officer exercises any power under regulation 11 to seize and detain any relevant tyres or records, the enforcement authority is liable to pay compensation to any person having an interest in the item seized and detained in respect of any loss or damage caused by the exercise of the power if—

- (a) there has been no breach of a relevant requirement; and
- (b) the exercise of the power is not attributable to any neglect or default by that person.

(2) Any disputed question as to the right to, or the amount of, any compensation payable under this paragraph must be determined by arbitration—

(a) 1971 c. 80.

(b) 2014 asp.18.

(c) 1980 c. 43.

(d) S.I. 1981/1675 (N.I. 26).

- (a) in England and Wales or Northern Ireland, in accordance with the Arbitration Act 1996(a); or
- (b) in Scotland, in accordance with the Arbitration (Scotland) Act 2010(b).

Power of the Commissioners for Her Majesty’s Revenue and Customs to disclose information

15.—(1) If they think it appropriate to do so for the purpose of facilitating the exercise by any person to whom paragraph (2) applies of any functions conferred on that person by any provisions of Part 2 of these Regulations, the Commissioners for Her Majesty’s Revenue and Customs may authorise the disclosure to that person of any information obtained for the purposes of the exercise by the Commissioners of their functions in relation to imported goods.

(2) This paragraph applies to the enforcement authority and to any officer authorised by the enforcement authority.

(3) A disclosure of information made to any person under paragraph (1) must be made in such manner as may be directed by the Commissioners for Her Majesty’s Revenue and Customs and may be made through such persons acting on behalf of that person as may be so directed.

(4) Information may be disclosed to a person under paragraph (1) whether or not the disclosure of the information has been requested by or on behalf of that person.

Savings for certain privileges

16. Nothing in Part 2 of these Regulations is to be taken as requiring any person—

- (a) to produce any records if that person would be entitled to refuse to produce those records in any proceedings in any court on the grounds that they are the subject of legal professional privilege or, in Scotland, a claim of confidential communications, or as authorising any person to take possession of any records which are in the possession of a person who would be so entitled; or
- (b) to answer any question or give any information if to do so would incriminate that person or that person’s spouse or civil partner.

Savings for civil rights

17. A contract for the supply of tyres is not void or unenforceable by reason only of a contravention of a relevant requirement.

PART 3

Amendment of Regulation (EC) No 1222/2009

18.—(1) Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters is amended as follows.

(2) In Article 3—

- (a) in paragraph 7—
 - (i) for “the Community” the first time it appears substitute “Great Britain”,
 - (ii) for “Community” the second time it appears substitute “Great Britain”,
- (b) in paragraph 8, for “the Community” substitute “Great Britain”,
- (c) in paragraph 9, for “the Community” substitute “Great Britain”,

(a) 1996 c. 23.
(b) 2010 asp. 1.

- (d) in paragraph 11, for “Community” substitute “Great Britain”,
- (e) after paragraph 13, insert—
 - “14. ‘Union flag’ means the Union flag of the United Kingdom.”.
- (3) In Article 4—
 - (a) in paragraph 2, after “shall” insert “, subject to paragraph 2a,”,
 - (b) after paragraph 2, insert—
 - “2a. The label referred to in paragraph 1 may incorporate the Union flag in place of the EU logo. Where a label incorporates the Union flag, the Union flag must be in the same location as that specified for the EU logo in point 1.2 of Annex II and of the same dimensions as those specified for the EU logo in point 1.4 of Annex II.”,
 - (c) in paragraph 4—
 - (i) in the first sentence, for “authorities of Member States” substitute “Secretary of State”,
 - (ii) in the second sentence, for “authorities” substitute “Secretary of State”.
- (4) In Article 8, for “Member States” substitute “The Secretary of State”.
- (5) In Article 9—
 - (a) in paragraph 1, for “Member States” substitute “the Secretary of State”,
 - (b) in paragraph 2—
 - (i) for “they have” substitute “the Secretary of State has”,
 - (ii) for “Member States” substitute “the Secretary of State”,
 - (iii) in the second sentence, for “They” substitute “The Secretary of State”.
- (6) In Article 10, for “Member States” substitute “The Secretary of State”.
- (7) Omit Articles 11, 12a and 14.
- (8) After Article 16, omit the sentence beginning “This Regulation shall be binding in its entirety”.
- (9) In Annex III, in subparagraph (i) of paragraph 3, for “Commission” substitute “United Kingdom Government”.
- (10) In Annex IV, for “Member States” substitute “the Secretary of State”.

Signed by authority of the Secretary of State for Transport

9th December 2020

Rachel Maclean
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters will form part of domestic law in Great Britain from 11pm on 31 December 2020 by virtue of section 3 of the European Union (Withdrawal) Act 2018 (c. 16). In Northern Ireland, Regulation 1222/2009 will continue to be directly applicable until it is replaced by Regulation (EU) 2020/740 of the European Parliament and of the Council of 25 May 2020 on the labelling of tyres with respect to fuel efficiency and other parameters, amending Regulation (EU) 2017/1369 and repealing Regulation (EC) No 1222/2009 on 1 May 2021 by virtue of section 7A of the European Union (Withdrawal) Act 2018 and articles 5(4) and 13(3) of, and Annex 2 to, the Protocol on Ireland/Northern Ireland in the agreement between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union which sets out the arrangements for the United Kingdom's withdrawal from the European Union.

Part 2 of these Regulations provides the Secretary of State with powers to enforce obligations under Regulation (EC) No 1222/2009 and Regulation (EU) 2020/740 by service of a compliance notice requiring rectification of a breach and by the imposition of civil penalties.

Part 3 of these Regulations amends Regulation (EC) No 1222/2009 as it applies in Great Britain from 11pm on 31 December 2020. The amendments are made pursuant to the powers conferred by section 8(1) of 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)(b) and (g) and under paragraph 21(b) of Schedule 7) arising from the withdrawal of the UK from the European Union.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, public or voluntary sector is foreseen.

An Explanatory Memorandum is published alongside the instrument on www.legislation.gov.uk.

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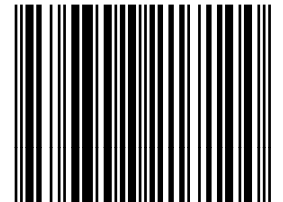
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.90

UK202012101009 12/2020 19585

<http://www.legislation.gov.uk/id/uksi/2020/1509>

ISBN 978-0-34-821710-0



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