

**EXPLANATORY MEMORANDUM TO**  
**THE ROAD VEHICLES (APPROVAL) REGULATIONS 2020**  
**2020 No. 818**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 This instrument is made to provide for enforcement in the United Kingdom of Regulation (EU) 2018/858 on road vehicle type approval<sup>1</sup> (which replaces Directive 2007/46/EC from 1 September 2020), principally to re-enact and enhance the domestic penalties for non-compliance with the requirements or for misconduct during the type approval process. The type approval regime ensures that new cars, buses and goods vehicles comply with high standards of safety and environmental protection. It was enhanced in 2018, with improved powers of oversight and new requirements to ensure more thorough testing.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument includes provision for a person’s last known address to be the “proper address” for the purposes of section 7 of the Interpretation Act 1978, which was the subject of the Committee's First Special Report of Session 2019–21, on 7 February 2020 (HL18 / HC77).

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

---

<sup>1</sup> Type approval is the process whereby manufacturers of a new model of vehicle are required to test it against an extensive list of EU and international (United Nations Economic Commission for Europe or “UNECE”) safety and environmental standards and obtain approval from a government body prior to placing it on sale.

## **5. European Convention on Human Rights**

- 5.1 The Minister of State for Transport, Chris Heaton-Harris MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Road Vehicles (Approval) Regulations 2020 are compatible with the Convention rights.”

## **6. Legislative Context**

- 6.1 This instrument provides the domestic regulatory framework implementing Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC (“the Type Approval Regulation”).
- 6.2 All the detailed type approval requirements for the vehicles covered by the Type Approval Regulation are set out in directly applicable subsidiary EU Regulations, covering over 60 requirements such as exhaust emissions, sound levels, safety (braking, lighting, tyres) and so on. This instrument sets out the domestic regulatory framework that gives effect to those requirements.
- 6.3 The instrument will identify the Secretary of State as both the approval authority and the market surveillance authority for the United Kingdom, although in practice these roles are carried out on their behalf by the Vehicle Certification Agency (“VCA”) and the Drivers and Vehicle Standards Agency (“DVSA”) respectively. The domestic Regulations also set out the processes for: type approval applications to be refused; review of decisions; withdrawal or suspension of approval; service of documents; and the offences, their enforcement and penalties, as well as consequential amendments to other legislation.
- 6.4 The previous regime is set out in the Road Vehicles (Approval) Regulations 2009, (SI 2009/717: “the 2009 Regulations”), which extend to the whole of the United Kingdom. Currently criminal penalties are available to enforce all type approval offences, while civil penalties are only available to enforce infringements of the rules on defeat devices<sup>2</sup>. The potential for use of civil penalties is being widened to cover the whole range of infringements relating to the legislation on road vehicle type approval, to provide for a more flexible application of justice where appropriate.
- 6.5 There are eight statutory instruments applicable in Great Britain or Northern Ireland relating to vehicle approval that have effectively been obsolete since 2014, which was the end of the transition period following the introduction of the previous EU type approval regime by the 2009 Regulations, implementing Directive 2007/46/EC (the predecessor to the Type Approval Regulation). These eight instruments and the 2009 Regulations are being revoked by this instrument as they no longer serve any purpose. (In addition, all redundant amending instruments for these instruments are revoked, meaning that over 60 instruments in total are being revoked).
- 6.6 The instruments being revoked are as follows: The Motor Vehicles (Type Approval for Goods Vehicles) (Great Britain) Regulations 1982, (SI 1982/1271); The Motor

---

<sup>2</sup> A defeat device (or defeat strategy) is designed to circumvent or defeat the intention of regulatory testing. It can take the form of hardware or software, normally the latter in modern vehicles.

Vehicles (Type Approval) (Great Britain) Regulations 1984, (SI 1984/981); The Motor Vehicles (Type Approval and Approval Marks) (Fees) Regulations (Northern Ireland) 1992, (SR 1992 No. 227); The Motor Vehicles (Approval) Regulations 2001, (SI 2001/25); The Motor Vehicles (Approval) Regulations (Northern Ireland) 2001, (SR 2001 No. 172); The Motor Vehicles (Approval) (Fees) Regulations 2001, SI (2001/2486); The Motor Vehicles (Approval) (Fees) Regulations (Northern Ireland) 2004, (SR 2004 No. 65); and The Motor Vehicles (Type Approval) Regulations (Northern Ireland) 2007, (SR 2007 No. 240).

- 6.7 This instrument also implements Article 113 of EU Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (“EECC”), with effect from 21 December 2020. This relates to the compulsory fitment of digital radio in passenger vehicles, meaning cars and buses (see regulation 22). The Explanatory Note for this instrument incorporates the Transposition Note (for this Article of the Directive) which would otherwise be provided separately. The remainder of that Directive is being transposed separately, by the Department for Digital, Culture, Media and Sport.
- 6.8 Regulation 11(4) includes provision for a person’s last known address to be the “proper address” for the purposes of section 7 of the Interpretation Act 1978, which was the subject of the Joint Committee on Statutory Instruments' First Special Report of Session 2019–21, on 7 February 2020 (HL18 / HC77). For reasons of consistency, the approach taken in this instrument is the same as that used in other instruments made by the Department relating to type approval, including those relating to agricultural and forestry vehicles (SI 2018/236), motorcycles (SI 2018/235) and non-road mobile machinery (SI 2018/764).

## **7. Policy background**

### *What is being done and why?*

- 7.1 This instrument is required to ensure the UK fulfils its obligations under the Withdrawal Agreement to give effect to EU law in domestic law. This obligation will expire at the end of the Transition Period, on 31 December 2020.
- 7.2 The objective of the Type Approval Regulation is to improve the functioning of the type approval regime for road vehicles (namely cars, buses and goods vehicles, and their trailers), which ensures a high level of safety and environmental performance of such vehicles, in response to technological developments and changing market needs.
- 7.3 A prime influence on the Type Approval Regulation was the Volkswagen defeat device scandal in 2015. This led to new powers for testing agencies to scrutinise vehicle control software; tighter controls on the testing agencies who carry out testing; and improved transparency - for example, a requirement for manufacturers to make essential data available to third parties who may wish to carry out emissions testing to verify that a vehicle is compliant.
- 7.4 New and more specific obligations for governments to carry out market surveillance are contained within the Type Approval Regulation. The Department has already set up a Market Surveillance Unit within the DVSA, and in the future, this will have to conduct testing on around 60 road vehicles per year.
- 7.5 The main purpose of this instrument is to specify the domestic framework underpinning the effective enforcement of the Type Approval Regulation. The

instrument sets out the domestic penalty regime, widening the potential for the application of civil penalties, in addition to the previous regime of criminal penalties, which will remain available for more serious or persistent cases of non-compliance.

- 7.6 Any contravention of the Type Approval Regulation or this instrument will be an offence, and these offences cover such matters as failure to hold the correct type approval and false declarations made during the type approval process. A fine of up to £50,000 per offence can be levied as a civil sanction, whilst there is no limit on the fine for criminal offences in England and Wales, which can also attract a penalty of up to 3 months' imprisonment.
- 7.7 The objective of Article 113 of EU Directive 2018/1972 (the EEC) is to ensure access to digital radio stations in all new passenger vehicles. Currently fitment of digital radios is running at around 95% in new cars. Implementing this provision will ensure that even the cheapest new cars provide the consumer with access to digital radio stations.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

- 9.1 This instrument revokes and replaces the 2009 Regulations, which had been amended three times. Revocation of eight obsolete instruments is taking place at the same time, as detailed in paragraph 6.6.

## **10. Consultation outcome**

- 10.1 DfT conducted a public consultation from 1 to 26 June 2020, with information placed on the DfT website and emailed to several stakeholders.
- 10.2 25 responses were received. The main trade associations responding were the Society of Motor Manufacturers and Traders ("SMMT"), Independent Automotive Aftermarket Federation (IAAF), National Caravan Council (NCC) and the Wheelchair Accessible Vehicle Converters Association (WAVCA). Around half those responding were solely concerned with the digital radio aspect of the proposal.
- 10.3 Out of the 25 stakeholders or individuals responding, only three were opposed to the instrument. One of these objectors was an association concerned about lack of jurisdiction over approval data held by manufacturers located in Europe: this will be addressed in the post-Brexit legislation. Another objector was concerned that we would prohibit lamps approved under EU Directives: we are clarifying that we will not. The third objector was an individual concerned about the noise emitted by vehicles, which was not something being considered in the consultation.
- 10.4 A delay to the introduction of the compulsory use of watermarked paper for Certificates of Conformity issued under the national small series type approval ("NSSTA") scheme was requested, on behalf of smaller companies who use this approval scheme. This new EU requirement was only made clear in a Commission Regulation published in June, so considering the COVID-19 pandemic, we are granting a 4-month delay, with the deadline for using watermarked paper being postponed from 1 September 2020 to 1 January 2021.

- 10.5 Several requests were raised in the consultation that cannot be included in this instrument because to do so would place the United Kingdom in breach of EU obligations. These requests are being considered for inclusion in an EU Exit SI due to be made in October, to be applicable from the end of the Transition period.
- 10.6 A more detailed summary of the responses to this consultation is available online at <https://www.gov.uk/government/consultations/improving-new-vehicle-safety-and-environmental-compliance-plus-passenger-vehicle-digital-radio-requirement>

## **11. Guidance**

- 11.1 Information on vehicle type approval, including NSSTA and individual vehicle approval (“IVA”), is available on the EU Commission’s website, the United Nations Economic Commission for Europe (“UNECE”) website and on the VCA and gov.uk websites, and can be obtained from trade associations such as the SMMT, who provide a lot of specialised information to their members.

## **12. Impact**

- 12.1 The impact on business, charities or voluntary bodies is as follows: The Type Approval Regulation is directly applicable in UK. This instrument sets up the regulatory framework to support the Type Approval Regulation, creating the necessary enforcement powers and penalties. The new costs to business associated with this (i.e. over and above the costs of the existing Directive-based regime being reproduced by the Type Approval Regulation) have been assessed by the Department as being below £5m in any year, given that enforcement will be funded centrally by the Department and market surveillance, including the purchase of vehicles for testing, will be carried out without the involvement of the manufacturer. There is no significant impact on charities or voluntary bodies as they are rarely involved in vehicle construction.
- 12.2 There is no, or no significant, impact on the public sector. The costs of testing the required number of vehicles are already catered for within the existing budget of the DVSA Market Surveillance Unit.
- 12.3 An Impact Assessment has not been prepared for this instrument because the costs of enforcement will primarily fall on government and not on businesses, as noted in paragraph 12.1. The costs of building vehicles in conformity with the EU regime have not been assessed: they remain the same, as this is effectively a continuation of the technical requirements from the existing Directive 2007/46/EC regime. The only businesses which will incur costs are those which are non-compliant, and this is assessed as being a small minority of businesses.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to maintain unchanged the existing schemes designed for small businesses modifying mass produced vehicles or building specialised vehicles: NSSTA and IVA. Following requests in the consultation, a delay in the requirement to use watermarked paper for NSSTA Certificates of Conformity has been provided in this instrument.

13.3 The basis for the final decision on what action to take to assist small businesses was the high level of contentment with the technical requirements shown during regular liaison meetings with users of these schemes, and the results of the consultation, specifically the request for a delay in the introduction of watermarked paper described above.

#### **14. Monitoring & review**

14.1 The view taken on the monitoring of this instrument is that no special monitoring is likely to be required, but the Department is in regular contact with trade associations and other stakeholders. The Type Approval Regulation includes an obligation for the Secretary of State to carry out and publish reviews of type approval and market surveillance every four years, and the DVSA Market Surveillance Unit publishes an annual report, which will continue.

14.2 The instrument does not include a statutory review provision and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Parliamentary Under Secretary of State for Transport, Rachel Maclean has made the following statement “The impacts of the Road Vehicles (Approval) Regulations 2020 are not expected to exceed £5m and a requirement for reviews every four years is contained in Regulation (EU) 2018/858”.

#### **15. Contact**

15.1 Mike Lowe at the Department for Transport, telephone: 07769 243345, email: mike.lowe@dft.gov.uk or Adrian Burrows, telephone: 07773 643701, email: adrian.burrows@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Ian Yarnold, Deputy Director for International Vehicle Standards, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chris Heaton-Harris MP, Minister of State for Transport can confirm that this Explanatory Memorandum meets the required standard.