EXPLANATORY MEMORANDUM TO

THE ROAD VEHICLES AND NON-ROAD MOBILE MACHINERY (TYPE-APPROVAL) (AMENDMENT AND TRANSITIONAL PROVISIONS) (EU EXIT) REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport ("the Department") and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument addresses EU-Exit related deficiencies in the retained EU and domestic law that regulates the type approval[1] of various categories of motor vehicle, including their trailers and parts, and of machinery engines. The EU type approval scheme for road vehicles (with four or more wheels) is being converted to an independent Great Britain ("GB") type approval scheme. Interim ("provisional") GB type approval schemes covering motorcycles and agricultural vehicles, and machinery engines, will remain aligned with EU type approval requirements until the end of 2027, by which time we intend to have created an independent GB type approval scheme for these products.

2.2 This instrument also gives effect to the United Kingdom's obligations under the Protocol on Ireland/Northern Ireland to the EU withdrawal agreement ("the Northern Ireland Protocol") in relation to the type approval of vehicles and machinery engines, and facilitates market access in Great Britain for vehicles and machinery engines approved or produced in Northern Ireland to EU standards.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The instrument amends legislation made under s.2(2) of the European Communities Act 1972, but we consider that the enhanced scrutiny procedure does not apply to it because those amendments are being made pursuant to powers contained in the European Union (Withdrawal) Act 2018.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom, with the exception of regulations 4, 5, 62(6), 72(2)(a)(ii) and (iii), (b)(i), (c)(ii) and (iii), and (d)(ii), (iii) and (iv) which extend only to England and Wales, and Scotland.

[1] Type approval is the process whereby manufacturers of a new model of vehicle or engine are required to test it against international and domestic safety and environmental standards and obtain approval from a government body prior to placing it on sale

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is in principle identical to the extent. However, other than the changes to s.2(2) instruments (regulations 6 to 21), the provisions (from regulation 22 onwards) are disapplied in Northern Ireland by the Protocol.

5. European Convention on Human Rights

5.1 The Minister of Transport, Katherine Fletcher, has made the following statement regarding Human Rights:

"In my view the provisions of the Road Vehicles and Non-Road Mobile Machinery (Type- Approval) (Amendment and Transitional Provisions) (EU Exit) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 The purpose of type approval legislation is to ensure that various types of motor vehicles and machinery engines meet prescribed safety and environmental standards. The obligations are placed chiefly on manufacturers, but also on importers and distributors. Prototype examples of vehicles and engines which are intended to be placed on the market must first be tested by a third-party testing body, known as a *technical service*. Following successful completion of testing, a type approval certificate is issued by an *approval authority*. The Vehicle Certification Agency ("VCA"), an executive agency of the Department, is the approval authority for the United Kingdom and in addition has the technical expertise to act as a technical service.

6.2 Given the volume of retained EU law (~4500 pages) in the fields of motor vehicle and machinery engine type approval, it was not feasible to correct all deficiencies in time for EU withdrawal and therefore an interim approach for automotive products to be placed on the market in Great Britain during 2021 and 2022 was introduced by the Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment) (EU Exit) Regulations 2019 (SI 2019/648) ("the Interim SI").

6.3 For motor vehicles, a scheme known as Provisional GB approval was introduced in the Interim SI by amending on a temporary basis the Road Traffic Act 1988 (c.52) and the Vehicle Excise and Registration Act 1994 (c.22). Manufacturers were required to submit evidence that they held an EU type approval to VCA, and in return received a Provisional GB approval valid for two years, which was needed in order for vehicles to be registered with the Driver and Vehicle Licensing Agency ("DVLA").

6.4 For non-motorised vehicles (trailers), machinery engines and vehicle parts (sold separately to vehicles), the Interim SI permitted manufacturers to continue to place these products on the market on the basis that they held a valid EU type approval issued by an EU Member State.

6.5 The interim regime was amended shortly before introduction by the Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment) (EU Exit) Regulations 2020 (SI 2020/1393), ("the Protocol SI") which made changes to implement the Northern Ireland Protocol, narrowing the scope of the interim regime to vehicles and engines intended to be sold in Great Britain, given that under the Protocol the UK has agreed to continue to require EU type approval for vehicles and engines intended to be sold in Northern Ireland. The phrase "EU type approval" for

these purposes includes the option of an approval issued by VCA against the standards currently applicable in the EU, known as "UK(NI) approval".

6.6 The Protocol SI also made provision for "qualifying Northern Ireland goods" (goods that are produced or modified in Northern Ireland), being vehicles, vehicle parts or machinery engines with an EU type approval issued by an EU Member State, to obtain market access in Great Britain, as well as in Northern Ireland and the EU. It is possible that small and medium sized enterprises in Northern Ireland and indeed Great Britain, may wish to limit their markets to the UK rather than the EU, in which case they could opt for UK(NI) approval from VCA as described in the paragraph above instead of obtaining EU type approval in a Member State. Therefore, the Protocol SI made provision for automotive products with UK(NI) approval to obtain market access in Great Britain. Separate regulations made under section 8C(6) of the European Union (Withdrawal) Act 2018 define "qualifying Northern Ireland goods" for the purposes of that Act.

6.7 This instrument introduces a permanent GB type approval scheme for road vehicles, and their trailers and parts, and continues the interim (Provisional approval) regimes for agricultural and forestry vehicles, motorcycles and machinery engines until 31 December 2027, all to take effect following the expiration of the Interim SI on 31 December 2022 due to its sunset clause (which is a type of clause that sets a date on which all or part of specified legislation expires).

6.8 This instrument also remakes the provisions of the Interim SI which implemented the Northern Ireland Protocol and made arrangements for market access in Great Britain for vehicles and engines produced in, or approved for, Northern Ireland, given that the current provisions expire due to the sunset clause.

Road vehicles

6.9 Regulation (EU) 2018/858 ("the Framework Regulation") set out the EU type approval scheme for road vehicles and was implemented in UK by the Road Vehicles (Approval) Regulations 2020, SI 2020/818 ("RVAR"). Beneath the Framework Regulation sit seven other retained direct principal EU Regulations and 21 retained direct minor EU Regulations, together specifying the detailed safety and environmental technical standards applicable to cars, buses, goods vehicles and their trailers.

6.10 This instrument sets up a GB type approval scheme by correcting numerous deficiencies in the body of retained EU law relating to road vehicle type approval, arising as a result of the UK's withdrawal from the EU. The deficiencies generally take the form of references to EU, the Union, member states and the EU Commission, but also relate to the impossibility for manufacturers and VCA to switch "overnight" from the EU to the GB approval schemes, hence appropriate transitional periods are provided, as described in paragraphs 7.18 to 7.21 of this Explanatory Memorandum.

6.11 The Framework Regulation and the seven retained direct principal EU regulations give the Commission powers to draft delegated legislation. These powers are being appropriated to the Secretary of State, as is a Commission power to authorise approvals for vehicles fitted with new technology that is considered safe but incompatible with current regulations. More information on the delegated powers is provided at paragraphs 7.12 and 7.13 of this Explanatory Memorandum.

6.12 The RVAR is also being amended, using powers in section 8C of the European Union (Withdrawal) Act 2018, to clarify that in line with the Northern Ireland Protocol, the Secretary of State is able to issue approvals to the current EU legislation for vehicles intended for sale in Northern Ireland, known as UK(NI) approval.

6.13 In addition, Schedule 5 of RVAR which sets out a list of EU law against which the criminal and civil penalties specified in paragraphs 3 and 4 of Schedule 4 of RVAR can be applied, is being amended with respect solely to its application in Northern Ireland, to refer to two new EU regulations, Regulation (EU) 2015/758 on Emergency Call and Regulation (EU) 2019/2144 on General Safety and Protection of Vehicle Occupants and Vulnerable Road Users. This clarifies that enforcement of these regulations in Northern Ireland can take place, in line with our obligations under the Northern Ireland Protocol.

6.14 The provisions in the Protocol SI to implement the Northern Ireland Protocol (described in paragraph 6.5 above) and arrangements for market access made alongside (paragraph 6.6), are being re-introduced in modified form, including a revision of regulation 21 of RVAR to specify the (differing) approval requirements for motor vehicle registration in Great Britain and in Northern Ireland, and likewise revision of regulations 23 to 25 of RVAR to cover the approval requirements for the entry into service of trailers.

6.15 Powers from the Road Traffic Act 1988 are being used in this instrument to amend two pieces of retained direct minor EU law which are part of the type approval system: Regulation (EU) 1230/2012 on maximum weights and dimensions of vehicles, and Regulation (EU) 19/2011 regulating a manufacturer's identification plate ("statutory plate"), as follows.

6.16 The Protocol SI amended Regulation (EU) 1230/2012 in order to remove a vehicle height limit (of 4 metres) that applies in EU type approval. This limit is not present in domestic law regulating the height of vehicles in-service (Road Vehicles (Construction and Use) Regulations 1986), so is unnecessary for new vehicles applying for GB type approval. We are remaking the relevant provision given that it was subject to the same sunset clause as the rest of the Protocol SI so will expire at the end of 2022.

6.17 Regulation (EU) 19/2011 is being amended to provide flexibility around the format of statutory plates, including the temporary use of the format required in the EU, following requests from manufacturers. More details are provided below at paragraphs 7.22 to 7.25.

Agricultural and Forestry Vehicles, and Motorcycles

6.18 Retained direct principal EU law, Regulations (EU) 167/2013 and 168/2013 set out the type approval schemes for agricultural and forestry vehicles ("tractors") and two- and three-wheeled vehicles, and lightweight four-wheeled vehicles (collectively, "motorcycles") respectively, and were implemented in the UK by the Agricultural and Forestry Vehicles (Type-Approval) Regulations 2018, SI 2018/236, and the Motorcycles (Type-Approval) Regulations 2018, SI 2018/235 respectively.

6.19 Provisional GB approval schemes for motor vehicles in these categories were set up by the Interim SI and are scheduled to lapse at the end of 2022 due to the sunset clause. The relevant provisions are being remade and extended until the end of 2027. By then, it is expected that new powers will be in place to enable the creation and

operation of independent GB approval schemes based on the retained law. The deficiency powers in the European Union (Withdrawal) Act 2018 will lapse at the end of this year and it has not proven possible to bring forward legislation fixing all the deficiencies in the retained EU law for these vehicle categories in the time available.

Machinery engines

6.20 Retained Regulation (EU) 2016/1628 sets out type approval rules that limit the pollutant emissions from engines intended to be fitted in non-road mobile machinery, and was implemented by the Non-Road Mobile Machinery (Type-Approval and Emission of Gaseous and Particulate Pollutants) Regulations 2018 (SI 2018/764) ("the NRMM Regulations").

6.21 The expiry (by a sunset clause) of the Interim SI means that we will cease to accept EU approvals for machinery engines on 31 December 2022, although engines with EU approval that are already in the UK on this date still can be placed on the market in 2023. This instrument will amend the NRMM Regulations to set up a Provisional GB approval scheme for machinery engines, like those that exist for vehicles, which will be available until the end of 2027. Before that date, we plan to create a GB approval scheme, probably using powers in the Environment Act 1995 (c.25). The deficiency powers in the EU (Withdrawal) Act 2018 will lapse at the end of this year and it has not proven possible to bring forward legislation fixing all the deficiencies in retained EU law for machinery engines in the time available.

Consequential changes to Primary and other legislation

6.22 Three enactments are being amended to correct terminology resulting from the introduction of a GB approval scheme. The Public Passenger Vehicles Act 1981 (c.14) sets out conditions for vehicles with more than nine seats (i.e. minibuses, buses and coaches) to operate as public service vehicles in Great Britain, in other words to carry paying passengers. This includes stipulations around type approval certificates, which are being updated to correct deficiencies, ensuring GB type approval certificates are permitted and EU certificates are no longer accepted.

6.23 The maximum fees that VCA can charge across the UK for carrying out type approval testing are set out in the Type Approval and Approval Marks (Fees) Regulations 1999, SI 1999/2149. The fees that the Driver and Vehicle Services Agency (DVSA), and Driver and Vehicle Agency (DVA) in Northern Ireland, charge for individual vehicle approval, which is an alternative to type approval for vehicles produced or imported in very small quantities, are set out in the Individual Vehicle Approval (Fees) Regulations 2009, SI 2009/718. Both these Regulations are being amended to align with the terminology of GB approval and to cater for approvals issued by VCA or DVSA/DVA under the Northern Ireland Protocol, known as UK(NI) approvals. There are no policy changes or changes to fees.

7. Policy background

What is being done and why?

7.1 The Interim SI has kept vehicle and engine type approval in Great Britain functioning since EU withdrawal but is subject to expiry (due to the sunset clause) at the end of 2022. Action is needed to avoid ambiguity in the legislation, to move towards independent GB type approval schemes and to ensure that vehicles, their trailers and parts, and machinery engines continue to be subject to approval before entering into

service, to maintain government oversight over their safety and environmental performance.

7.2 The retained EU legislation is extensive. Road vehicles, which comprises cars, buses, goods vehicles and their trailers, are by far the most numerous of the three groups of vehicle that exist, and thus the road vehicle type approval regime was prioritised for correction of deficiencies and creation of an independent GB type approval scheme.

7.3 The powers in the European Union (Withdrawal) Act 2018 to correct deficiencies will lapse at the end of 2022 and therefore other solutions were sought to deal with the large body of retained EU law covering the two remaining groups of vehicles (tractors and motorcycles) and covering machinery engines.

7.4 For motorcycles and tractors, a temporary solution is being adopted initially, to continue to offer the Provisional GB approval scheme (paragraphs 6.3 and 6.7) for applications until the end of 2027. The Department is seeking to take powers to set up GB approval schemes for these categories based on the EU approval schemes set out in retained EU law, in the same fashion as for road vehicles described below. More details are provided in paragraph 7.28.

7.5 For machinery engines, again a temporary solution is being adopted initially, similar to that for motorcycles and tractors. This instrument will introduce a Provisional GB approval scheme for machinery engines which will be open to new applications until the end of 2027. Manufacturers will be required to show VCA evidence of a relevant EU type approval. There are plans for a permanent scheme to replace the temporary scheme in 2027. More details are provided in paragraph 7.32.

7.6 In respect of the Northern Ireland Protocol, and the arrangements put in place on a temporary basis by the Protocol SI as described in paragraphs 6.5 and 6.6, this instrument is putting these provisions onto a permanent basis for all vehicle categories and for machinery engines.

Road vehicles

7.7 To ensure that vehicles meet prescribed safety and environmental standards, manufacturers are required to submit new designs of road vehicle for type approval, the process of independent testing against international and domestic standards, before they are permitted to be put on sale. These standards set minimum requirements in areas such as braking, steering, lighting, sound level/noise, exhaust emissions, crash testing and pedestrian protection. Previously, an EU approval scheme operated with approval authorities based in each Member State having the powers to oversee testing and issue an approval permitting sale throughout the EU.

7.8 As a first step, the GB type approval scheme will be entirely based on the EU scheme as set out in retained EU law, with the same processes and technical requirements. To achieve this, references to "EU type approval" in the provisions governing the issue and acceptance of type approval are being amended to read "GB type approval". Instead of multiple approval authorities capable of issuing type approval, the sole approval authority will be the Secretary of State, acting through the VCA.

7.9 Manufacturers will be required to appoint a representative based in Great Britain unless they are based here themselves, in a similar way to the former requirement to appoint a representative in the EU. The marking required on certain vehicle parts, known as the "e-marking", with e11 denoting an approval issued by the UK agency

the VCA, is being replaced by a "g-marking", where g11 denotes an approval issued by the VCA for Great Britain.

7.10 Several temporary measures are being included in the instrument following discussion with VCA and industry, to avoid deficiencies given the impossibility of transitioning "overnight", and these are described below.

7.11 Several EU Commission functions relate to the coordination of Member State action and communication between them, including dispute resolution. These functions are being removed as they are no longer necessary.

7.12 The Commission powers to draft and amend detailed technical standards and administrative forms and certificates are being handed to the Secretary of State. Thus, once the GB scheme is in place, the Department will be able to amend the existing detailed technical standards following compulsory consultation and amend the administrative documents.

7.13 More substantial features of the scheme are specified in retained direct principal EU regulations. The Department is seeking an appropriate Bill in which to include drafting, in order to take powers to amend these regulations to make more substantial amendments. To illustrate this, in the area of tailpipe (exhaust) emissions, the overall stringency in terms of the pollutant limits is specified in the retained direct principal EU regulations, but the detailed test procedures are set out in retained direct minor EU regulations, thus permitting the Commission (in the past) and the Secretary of State (in the future) to make enhancements to procedures, in line with developments in testing equipment for example.

7.14 Manufacturers will need to apply to VCA for type approval for around 60 systems or parts which make up a vehicle, as well as the "whole vehicle approval" which is the final step in approving a vehicle and ensures all relevant systems and parts are approved. There should be no need at this stage for re-design or re-testing of vehicles with EU approval that are already on the market.

7.15 The scheme will be phased in to give manufacturers time to prepare. Initially there will be a voluntary phase for manufacturers to become familiar with the scheme, with the first compulsory application of the scheme being to new models of motorised road vehicle (passenger car, bus or goods vehicle) launched on or after 1 February 2024. On the same date, no more applications for Provisional approvals will be accepted. Due to the two-year validity period for Provisional approvals, these will all lapse by 1 February 2026, by which date manufacturers will need to have obtained a GB type approval for all motorised road vehicles still being manufactured for sale in Great Britain. Eligibility for registration is based on holding a valid Provisional approval on the date of manufacture of a vehicle, meaning that manufacturers who continue manufacturing vehicles with Provisional approval up until 1 February 2026, will be able to sell them after that date, but vehicles manufactured after that date will not be permitted registration if they are not covered by a full GB type approval.

7.16 Trailers towed by road vehicles, and components for sale in the aftermarket for fitment to road vehicles and their trailers (such as tyres), will join the scheme on a compulsory basis a year later than motor vehicles, given that Provisional approval only becomes compulsory for them on 1 January 2023 (two years later than for motor vehicles), and to help smooth demand at VCA. For the waivers described below, the relevant dates for trailers (and components where applicable) are a year later than for motor vehicles, unless otherwise stated.

7.17 Approvals to around 70 United Nations Economic Commission for Europe ("UNECE") Regulations are accepted in the EU scheme, depending on vehicle category, and this will remain the case in the GB scheme, as the UK has signed the relevant UNECE Regulations. This covers at least 75% of the approvals required for GB approval. Currently the EU Commission has powers to amend the type approval scheme to accept or require compliance with new UNECE Regulations and these powers will be handed to the Secretary of State, alongside those described in paragraph 7.12.

7.18 There are around 15 remaining requirements, depending on vehicle category, which are unique to the EU and not covered by UNECE. Given that the GB technical standards for these will initially be the identical to those that applied in the EU, VCA are being granted permission, where satisfied with the quality, to accept test reports issued by EU technical services (not currently appointed by VCA) before the end of 2026. This will avoid double-testing. It is anticipated that before the end of this period, VCA will have appointed more technical services, including those appointed by EU authorities. Manufacturers who choose to use technical services appointed both by VCA and an EU authority will be able to use a single test programme to obtain approval in both markets, wherever the standards remain the same.

7.19 There is a similar temporary waiver to permit VCA to accept the documentation used to apply for EU approval, with a cover sheet specifying any information that is specific to the GB scheme. Recreating in slightly modified form the entirety of documentation used to apply for EU type approval for all vehicles already on the market would be extremely onerous.

7.20 Following comments from small- to medium-sized conversion companies engaged in "multi-stage build", in other words taking a chassis cab (or a finished vehicle) from a major manufacturer and adding a load-carrying body or carrying out a specialised conversion (such as to carry a wheelchair user), we have granted a waiver whereby it will be permitted to obtain GB approval for a conversion where the chassis cab has EU type approval. This will last until 31 July 2026 and will ensure that converters will not be left holding stocks of EU-approved vehicles that cannot then be converted for the GB market.

7.21 Manufacturers have advised that changing their IT systems to cater for the GB Certificate of Conformity ("CoC"), which will have some differences to the CoC required in the EU, will take up to two years to accomplish, resulting in a deficiency if manufacturers were forced to comply straight away. Currently manufacturers must supply a paper copy of the CoC but from July 2026 the EU and retained law require the CoC to be made available by manufacturers in electronic form. With that in mind, it is deemed appropriate to provide a waiver from issuing the CoC in the GB format where a manufacturer makes a paper copy available in the EU format, for vehicles manufactured before July 2026. Thus, avoiding the expense of manufacturers creating bespoke systems to issue paper GB CoCs that might only be produced for a short period before the switch to electronic CoC. Over 95% of new vehicles are registered with DVLA using an electronic system independent of the CoC, so this will not cause issues in that regard. It will also assist manufacturers by ensuring their vehicles, if dual-approved to GB and EU rules, can be supplied to both Northern Ireland and Great Britain without having to supply two copies of the CoC (one EU format, one GB) with a new car. This will maintain the current flexibility enjoyed by dealer

groups operating in both territories of moving vehicles between the two markets according to demand.

7.22 The main physical difference between vehicles with EU approval and those with GB approval will initially be the statutory plate. This displays the name of the manufacturer, the (unique) vehicle identification number ("VIN"), the type approval number and the maximum permitted weights for the vehicle, combination, and axles. Additional information is permitted outside a clearly marked rectangle.

7.23 Manufacturers and importers have asked for more time to modify their internal systems to produce a GB plate, and for us to provide alternatives that mean that they do not have to provide two near-identical plates side-by-side on the vehicle.

7.24 We consulted on whether to permit new vehicles manufactured before the mandatory date for new models (now fixed at 1 February 2024) to be fitted with the EU statutory plate, to avoid disincentives for "early adopters" obtaining GB approval in the voluntary phase. We also consulted on permitting two permanent alternatives for vehicles sold in both Great Britain and EU/Northern Ireland. These are either to put the GB approval number on the EU plate in the area where additional information is permitted (see paragraph 7.22 above) or to supply a smaller GB plate without the information on maximum permitted weights – if that information is identical in GB and EU.

7.25 This met with approval from consultees so is being implemented, using powers from the Road Traffic Act 1988 (c.52) to amend the relevant retained direct minor regulation (Regulation (EU) 19/2011). Offering alternative plate formats on a permanent basis is not considered a deficiency so the powers from the European Union (Withdrawal) Act 2018 cannot be used.

7.26 Several European countries limit the height of road vehicles to 4 metres, due to old infrastructure such as overhead tram wires. The UK by contrast has no legal height limit, other than for buses which have been limited to 4.57 metres in height for many years. Haulage lorries and their semi-trailers are in practice generally up to around 4.9 metres, below the typical height (5 metres) of motorway bridges.

7.27 The retained EU type approval law on maximum dimensions of road vehicles, Regulation (EU) 1230/2012, in principle limits the height of vehicles approved through the main type approval scheme to 4 metres. This was deemed unnecessary in Great Britain and so the Protocol SI removed the height limit from the retained law, as described in paragraph 6.14 above. The relevant amendment to the retained version of Regulation (EU) 1230/2012 is being re-made because the original amendment was part of the Interim SI, which will lapse at the end of 2022 due to the sunset clause.

Agricultural and forestry vehicles, and motorcycles

7.28 Agricultural and forestry vehicles (agricultural tractors and similar vehicles such as telescopic material handlers) and motorcycles (including 3 wheeled and lightweight 4 wheeled vehicles) are currently subject to EU type approval schemes which function in the same way as for road vehicles. The subjects tested are similar to those for road vehicles but also include requirements tailored for these vehicles and their typical usage and risks. For example, in the case of agricultural and forestry vehicles these include roll-over protection systems, falling object protection systems and systems to ensure safe operation of farming machinery powered directly from a tractor via a rotating shaft, known as a power take-off.

7.29 These vehicle types are currently accepted for registration in Great Britain via the Provisional approval scheme, described in paragraph 6.3. This instrument will continue this scheme in operation, with VCA accepting applications until 31 December 2027. There are also two identical motorcycle single vehicle approval schemes,[2] operating in Great Britain and Northern Ireland respectively, which will continue to operate unchanged, where every example of motorcycles/tricycles that are self-built to custom designs or imported in low volumes is inspected.

7.30 The Department is seeking an appropriate Bill in which to include drafting in order to take new powers to amend retained direct principal EU regulations, in order to set up independent GB approval schemes for these categories of vehicle, in a similar fashion to the scheme being set up for road vehicles. The intention would be to have this operational by the end of 2026, in order to provide suitable lead time for manufacturers before VCA refuse to issue applications for Provisional approval after 31 December 2027 and thus GB approval becomes obligatory for new types.

Machinery engines

7.31 Engines intended for use in self-propelled or portable machinery, known as Non-Road Mobile Machinery, are subject to testing for pollutant emissions. This covers engines intended for fitment to various types of machinery, ranging from hand-held equipment like chainsaws, through industrial diggers and boats used on inland waterways, to rail locomotives. Pollutants are limited according to engine power and application.

7.32 Similarly to the situation for agricultural/forestry vehicles and motorcycles, the Department is seeking to move to an independent GB approval scheme for emissions from machinery engines, the most likely approach being to repeal the retained EU law in its entirety and then create a very similar approval scheme (with initially the same technical standards) using powers under the Environmental Act 1995. The intention would be to have this scheme operational by the end of 2026, in order to provide suitable lead time for manufacturers before VCA refuse to issue applications for Provisional approval after 31 December 2027.

Explanations

What did any law do before the changes to be made by this instrument?

7.33 EU law required manufacturers of various types of motor vehicles and machinery engines to obtain type approval before production and sales could begin. It set out the regimes under which a new vehicle, engine or part was required to be tested by an approval authority based in a Member State and specified the EU and international standards covering safety and environmental protection. The Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment) (EU Exit) Regulations 2019 (SI 2019/648, "the Interim SI" as described in paragraph 6.2 above) introduced an interim Provisional approval regime whereby manufacturers of motor vehicles could submit evidence of an EU type approval to the VCA, to enable such vehicles to be submitted for registration, whilst trailers, machinery engines and replacement parts were permitted to continue to be sold on the basis of an EU type approval issued by a member state, or by VCA prior to Implementation Period ("IP") Completion day (31 December 2020).

[2] The Motor Cycles Etc. (Single Vehicle Approval) Regulations 2003 (SI 2003/1959), and the Motor Cycles Etc. (Single Vehicle Approval) Regulations (Northern Ireland) 2004 (S.R. 2004/484)

Why is it being changed?

7.34 The Interim SI was introduced as a temporary measure, with permanent changes to be introduced by the end of 2022. A sunset clause means that the majority of the Interim SI expires at the end of 2022.

What will it now do?

7.35 It will require manufacturers of road vehicles to transition into a GB type approval scheme which mirrors the EU scheme and is based on retained EU law with all deficiencies corrected, no later than 1 February 2026. Manufacturers of trailers and parts for road vehicles will be required to obtain approval from the VCA under the interim Provisional approval regime, by 1 January 2023, and then transition into the GB type approval regime by 1 February 2027. Temporary waivers requested by industry due to deficiencies and developed to enable a smooth transition are provided in this instrument. With respect to the Northern Ireland Protocol, the instrument will continue to exempt goods made in or approved in Northern Ireland from the GB type approval regime. Agricultural tractors and motorcycles will continue to be registered on the basis of a GB approval issued under the interim (Provisional) regime, which recognises an EU approval with oversight from VCA. Machinery engines placed on the market from 1 January 2023 will be required to obtain GB approval under a new interim (Provisional) approval scheme for machinery engines, which recognises an EU approval with oversight from VCA.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under the section 8C powers in that Act. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

8.2 Alongside the EU (Withdrawal) Act 2018 powers the instrument is also being made under sections 54, 61(1) and 61(2)(k) of the Road Traffic Act 1988. The provisions using these powers are policy issues which are not deficiencies.

9. Consolidation

9.1 There are no plans to consolidate the collection of retained EU law (totalling around 2500 pages) or statutory instruments that are being amended.

10. Consultation outcome

10.1 The Department conducted a public consultation from 1 to 29 June 2022, with information placed on the Department's website and a link emailed to a list of around fifteen major stakeholders. This included the proposed changes to retained EU law on statutory plates (Regulation (EU) 19/2011) which is being made using Road Traffic Act 1988 powers and thus consultation is compulsory (under s.165(2)). The other change to be made using these powers relating to removing the 4 metre vehicle height limit in the retained version of Regulation (EU) 1230/2012 was consulted on in 2020 as part of preparations for making the Interim SI, when there was no suggestion that this change would be reversed. It is considered that this satisfies the obligation to

consult, also noting that we have not been made aware of opposition to this measure from any stakeholder during the time it has been in force.

10.2 69 responses were received, of which 43 were on behalf of an organisation. The main trade associations responding included 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").

10.3 No stakeholder was opposed to the measure. The comment supported by the greatest number of stakeholders, noting that comments were made by some organisations representing numerous companies, was a request for a delay to the compulsory application of GB approval to new vehicle types, which we had proposed for 1 July 2023. Such a delay was considered necessary by consultees in order to give industry more time to prepare. SMMT and others asked for a delay until 31 December 2024. We have decided to grant an extension of 7 months, avoiding the year-end holiday period, so the mandatory new types date is now 1 February 2024. Combined with the comparable extensions to the temporary waivers, described in paragraph 10.4, while bearing in mind the need to get the scheme running, we believe that this addresses the concerns that were raised.

10.4 Stakeholders were very supportive of the various transitional waivers that were proposed, and these have been confirmed and generally extended by 7 months in line with the change to the mandatory new types date, with longer extensions to the waiver permitting VCA to accept test reports from EU authorities (12 months) and the waiver from providing a GB Certificate of Conformity (3 years, until July 2026), the latter described in more detail above in paragraph 7.21.

10.5 The full consultation response is on the Gov.uk website: https://www.gov.uk/government/consultations/vehicle-type-approval-establishing-a-gb-road-vehicle-approval-scheme.

10.6 Although vehicle type approval is a reserved matter, we are in regular contact on relevant vehicle-related matters with the Department of Infrastructure in Northern Ireland and have consulted them on the draft instrument. They are content with the general approach.

11. Guidance

11.1 Guidance has been published on the VCA website, covering the various approval schemes for different categories of vehicle. It has been updated to reflect the changes which will be made by this instrument: https:/www.vehicle-certification-agency.gov.uk/vehicle-type-approval/national-type-approval-in-the-uk/.

12. Impact

12.1 The costs to business associated with the introduction of this instrument have been assessed by the Department as less than the De Minimis Assessment threshold of £5m in any year. This covers the impact on UK companies in line with Better Regulation and Regulatory Policy Committee ("RPC") guidance, and does not include the costs for overseas companies, or for UK manufacturers who previously used VCA for their European approvals. The costs imposed by the instrument are the administrative costs of applying for GB type approval for vehicles, which includes the costs for VCA to periodically inspect factories, known as Conformity of Production checks. It is

assumed that manufacturers and importers are familiar with type approval, already hold EU whole vehicle type approval (including approval to UNECE Regulations wherever possible, thus minimising GB-specific paperwork) and have carried out the necessary testing. It is also assumed that application documents used to apply for EU approval can be recycled to apply for GB approval, with a covering letter. We have also assumed that in future, manufacturers will arrange for the use of suitable technical services such that double testing is not required, as described in paragraph 7.18.

12.2 The impact on the public sector is expected to be a substantial increase in workload for VCA, who will be charging applicants, and thus the final impact on the latter is covered in 12.1 above. The increased workload is being mitigated by introduction of a new IT system which is expected to automate many of the tasks involved in applying for and issuing type approval certificates. The VCA receives funding by charging a fee on applications, these fees are set in an SI (see paragraph 6.23 above) and do not automatically adjust for inflation. For the testing and other administrative tasks, the VCA operates a cost-recovery approach, meaning that businesses will be charged an amount equivalent to what the VCA spent completing the approval process, such as an hourly rate for hours worked and travel expenses.

12.3 A full Impact Assessment has not been prepared for this instrument because the Equivalent Annual Net Direct Cost to Business (EANDCB) has been assessed as below the £5m per year De Minimis Assessment threshold.

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 three existing domestic schemes designed for small businesses modifying mass-produced vehicles or building specialised vehicles: GB small series type approval, individual vehicle approval and motorcycle single vehicle approval. In addition, for those small businesses adopting the main GB type approval scheme, a temporary waiver (described in paragraph 7.20) has been included to permit them to modify and obtain approval for conversions of truck and bus chassis with EU (rather than GB) type approval until 30 months after the inception of the GB scheme (31 July 2026), to ensure they are permitted to convert any vehicle chassis that a major manufacturer supplies to them.

13.3 The basis for the final decision on what action to take to assist small businesses was consultation with relevant stakeholders and associations, both formal and informal. The proposed waiver mentioned above was unanimously supported, with the aside that one organisation wished to make this waiver permanent, which is not possible under the powers being used.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the Department, VCA and DVSA will continue their regular liaison meetings with stakeholders about the functioning of vehicle approval schemes, with the aim of continuous improvement. Lessons learned with the new GB approval scheme for road vehicles will inform creation of the GB approval schemes for agricultural and forestry vehicles, and motorcycles. Once the GB scheme is in place for road vehicles, we are likely to run further consultations or calls for evidence around new technical requirements to be

added to the scheme, given that a number of stakeholders have already made suggestions for enhancements or de-regulation. This may involve first engaging professional researchers to assess the potential impact of new requirements.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister of Transport Katherine Fletcher has made the following statement:

"The great majority of the instrument is made under the European Union (Withdrawal) Act 2018 and thus no review clause is required. With regards to the provisions of the instrument made under other (Road Traffic Act 1988) powers, relating to removal of an EU vehicle height limit and alternative statutory plate formats, the impact (in this case a benefit) resulting from these two provisions is expected to be below £5 million per year and therefore no review clause is included."

15. Contact

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

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

15.3 Katherine Fletcher, Parliamentary Under Secretary at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Appropriateness statement

1.1 The Minister of Transport, Katherine Fletcher, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment and Transitional Provisions) (EU Exit) Regulations 2022 does no more than is appropriate".

1.2 This is the case because: the SI does no more than cure deficiencies in retained EU legislation, make incidental and consequential transitional provisions related to the same, further implement the Northern Ireland Protocol and ensure unfettered access to markets in Great Britain for Northern Ireland businesses. It will ensure that we have an effective framework regulating the safety and environmental performance of road vehicles, alongside temporary regimes regulating the same for motorcycles and agricultural tractors, and the environmental performance of machinery engines. It is considered appropriate to provide a staggered phase-in, with transitional arrangements, allowing business more time to prepare and helping VCA by spreading the workload over three years and reducing the administrative burden on them in issuing new type approvals to businesses with current EU type approvals.

2. Good reasons

2.1 The Minister for Transport, Katherine Fletcher has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 These are: the need to maintain a functioning approval process for manufacturers and dealers which enables them to bring their products to market, affecting numerous businesses and their employees; and the need for Government to maintain oversight and scrutiny of this important sector, to prevent potentially grave safety or environmental consequences which might arise from non-compliant motor vehicles or engines entering the UK market.

3. Equalities

3.1 The Minister for Transport, Katherine Fletcher has made the following statement(s):

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

3.2 The Minister for Transport, Katherine Fletcher has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Katherine Fletcher have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

4. Explanations

4.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.