EXPLANATORY MEMORANDUM TO

THE ROAD VEHICLES AND NON-ROAD MOBILE MACHINERY (TYPE-APPROVAL) (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

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.

2. Purpose of the instrument

2.1 The purpose of this instrument is to give effect to the United Kingdom's obligations under the Protocol on Ireland / Northern Ireland to the EU withdrawal agreement ("the Protocol") in relation to the type approval[1] frameworks covering vehicles[2] and machinery engines[3]. In addition, this instrument amends existing interim arrangements to allow certain EU type approvals and approvals granted in Northern Ireland to be used for the purposes of vehicle registration in Great Britain, and to allow machinery engines and other components produced in Northern Ireland which meet the relevant EU standards to be placed on the market in Great Britain, without the need for further approval. Finally, the instrument will permit the type approval of road vehicles exceeding 4 metres in height and intended for sale in Great Britain.

Explanations

What did any relevant EU law do before exit day?

2.2 EU law requires manufacturers of vehicles and of engines for non-road mobile machinery to obtain type approval before production can begin. It sets out the regimes under which a new vehicle or engine must be tested by an approval authority based in a member state, and specifies detailed requirements covering safety and environmental protection, which are regularly updated.

Why is it being changed?

2.3 The Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/648) ("the 2019 Regulations")[4] made changes to EU Regulations, and various domestic legislation, designed to ensure that the type approval regime remained effective on a UK wide basis after EU withdrawal[5]. The Protocol requires that the legislation listed in its Annex 2 is implemented in Northern Ireland. That legislation includes the EU Regulations dealing with type approval of

[1] Type approval is the assessment by an independent party of a type of vehicle before it starts production, against the safety and environmental regulations that the Government has set.
[2] Vehicles includes *road vehicles* (cars, buses, goods vehicles and their trailers), *motorcycles* (including lightweight low power 3 and 4 wheeled vehicles) and *agricultural vehicles* (tractors and their trailers).
[3] Machinery engines are engines intended for fitment to *non-road mobile machinery*: portable or self-propelled machines, ranging from chainsaws to off-road construction machinery like diggers to railway locomotives.
[4] The 2019 Regulations have been amended by S.I. 2019/691, 2019/1156 and 2020/818.
[5] A detailed explanation of the interim arrangements created by the 2019 Regulations is given in the Explanatory Memorandum which accompanied those Regulations. A copy of that Explanatory Memorandum is available alongside the 2019 Regulations on www.legislation.gov.uk .

vehicles and vehicle components. Changes are needed to the 2019 Regulations, as well as legislation giving effect to the EU Regulations, to deliver the obligations of the Protocol. Changes are also needed to ensure that the type approval regime continues to function in Great Britain, and in Northern Ireland.

What will it now do?

2.4 This instrument amends the 2019 Regulations to give effect to the obligations under the Protocol. It also amends the interim arrangements provided for in those Regulations as they continue to apply in Great Britain: modifications are made to allow acceptance of EU approvals where the relevant vehicles are "qualifying Northern Ireland goods" (within the meaning of Section 8C (6) of the European Union (Withdrawal) Act 2018 (c. 16)). Further modifications are also made to allow certain engines and other vehicle components which comply with the relevant regulatory requirements in Northern Ireland or the EU to be placed on the market in Great Britain without the need for a further approval in Great Britain, and to remove certain vehicle height restrictions from the GB type approval regime.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 The territorial application of this instrument varies between provisions.

3.3 The powers under which this instrument is made cover the entire United Kingdom, as the subject matter of technical standards which were obligatory in the EU before Exit day is reserved under paragraph 38 of Schedule 3 to the Northern Ireland Act 1998 (c.47), Section C8 of Schedule 3 to the Scotland Act (c.460 and Section C7 (paragraph 77) of the Government of Wales Act 2006 (c.32).

4. Extent and Territorial Application

4.1 The territorial extent of regulation 2(2) is England and Wales and Scotland. Regulation 2(4) extends to Northern Ireland only. The remaining provisions of this instrument extend to the whole of the United Kingdom.

4.2 The territorial application of this instrument is the same as the territorial extent.

4.3 The retained law is incorporated into domestic law under section 3 of the European Union (Withdrawal) Act 2018 save insofar as it applies to Northern Ireland for the purposes of the Protocol. Accordingly, regulation 2(7), (8), (9), (10) and (11) will be of no practical application in Northern Ireland as the Protocol instead applies the EU law provisions in Northern Ireland.

5. European Convention on Human Rights

5.1 Rachel Maclean MP, Parliamentary Under Secretary of State at the Department for Transport, 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) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is made under sections 54 and 61 of the Road Traffic Act 1988 (c. 52) and sections 8(1) and 8C of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 ("the 2018 Act").

6.2 The 2019 Regulations corrected several deficiencies in existing legislation relating to type approval arising out of the UK's withdrawal from the EU. These deficiencies were found in both domestic legislation and in directly applicable EU legislation. Those regulations put in place interim arrangements to allow the type approval regime for road vehicles and machinery engines to continue to operate within the United Kingdom for a period of two years, pending a review of all retained legislation on type approval. Three amendments have been made to the 2019 Regulations since they were made, to assist the vehicle manufacturing industry with the transition and to take account of changes in the relevant EU legislation.

6.3 Under Annex 2 of the Protocol, EU Regulations on certain goods (such as vehicles and machinery engines) will remain directly applicable in Northern Ireland. Therefore, to give effect to the Protocol, the 2019 Regulations need to be amended to revoke amendments that affect the type approval regime as it applies in Northern Ireland. Further amendments are required to ensure that the interim arrangements set out in the 2019 Regulations will operate effectively in Great Britain – these include to replace references to "the United Kingdom" with references to "Great Britain" and to replace references to "exit day" with references to "IP completion day".

6.4 In addition, the interim arrangements need to be revised to allow continued access to the market in Great Britain of vehicles which are "qualifying Northern Ireland goods". Further amendments are also now being made to clarify that certain engines and vehicle components can be placed on the market in Great Britain without the need for further approval there (this includes engines and vehicle components which are "qualifying Northern Ireland goods").

6.5 Separate regulations made under section 8C(6) of the 2018 Act will define "qualifying Northern Ireland goods" for the purposes of the 2018 Act.

6.6 Further amendments are also made to ensure that the Road Vehicles (Approval) Regulations 2020 (S.I. 2020/818) operate correctly in both Great Britain and Northern Ireland on and after IP completion day.

6.7 Regulation (EU) 1230/2012 of 12 December 2012, implementing Regulation (EC) No 661/2009 of the European Parliament and of the Council with regard to type-approval requirements for masses and dimensions of motor vehicles and their trailers and amending Directive 2007/46/EC of the European Parliament and of the Council; which sits underneath the latest road vehicle framework regulation, Regulation (EU) 2018/858, specifies the maximum masses (weights) and dimensions that apply to road vehicles submitted for European type approval. The maximum height of such vehicles is currently specified as 4 metres. Therefore, unless Regulation (EU) 1230/2012 is amended, it will not be possible, in Great Britain, for type approval to be granted to vehicles with a height exceeding 4 metres.

6.8 Regulation (EU) 1230/2012 will form part of the retained EU law as it applies in Great Britain, on and after IP completion day, and so is being amended to remove the height limit.

7. Policy background

What is being done and why?

7.1 The Protocol specifies that various EU rules concerning the placing of goods on the market will still apply in Northern Ireland.

7.2 Section 9 (Motor Vehicles) of Annex 2 to the Protocol lists all of the EU vehicle type approval legislation, designed to ensure that road vehicles (namely cars, buses, goods vehicles and their trailers), motorcycles (including lightweight, low power 3 and 4 wheeled vehicles) and agricultural vehicles (tractors and their trailers) are constructed to comply with relevant safety and environmental requirements.

7.3 Section 14 (Construction Products, machinery, cableways, personal protective equipment) of Annex 2 to the Protocol includes the type approval legislation that governs the emissions testing of engines intended for fitment to non-road mobile machinery (portable or self-propelled machinery, ranging from chainsaws through construction machinery to railway locomotives).

7.4 The above-mentioned pieces of legislation harmonise the rules for manufacturers across the EU, while improving road safety and reducing harmful pollution resulting from the operation of vehicles and engines.

7.5 The purpose of this instrument is to ensure that the UK meets its obligations under the Protocol by allowing for the continued operation of the various vehicle and engine type approval schemes in Northern Ireland, based on EU rules. They will be operated by the UK approval authority, the Vehicle Certification Agency ("VCA"), along with its operation of the now separate GB type approval schemes.

7.6 The Government has a policy to enable manufacturers based in Northern Ireland to access the market in Great Britain after Exit on the same terms as they access the Northern Ireland market, to avoid two sets of testing. They will be able to access the NI market using either an EU type approval issued by a member state, or a Northern Ireland approval from VCA. Therefore, this instrument will permit those manufacturers to sell and register motor vehicles in Great Britain using either an EU type approval or a Northern Ireland approval.

7.7 Manufacturers based in Great Britain who sell into Northern Ireland as well as Great Britain but who do not export to Europe will need to obtain a Northern Ireland approval from the VCA. Given that on Exit, the technical standards in both territories (GB and NI) will be identical, this instrument will also permit these manufacturers to register motor vehicles in Great Britain using Northern Ireland approvals.

7.8 For machinery engines and vehicle components, the 2019 Regulations established the policy that EU type approvals for these items would initially be accepted in Great Britain after Exit. This is clarified more explicitly, and amended to ensure Northern Ireland approvals are accepted.

7.9 Several European countries limit the heights of vehicles in their territories to 4 metres, due to overhead infrastructure such as 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.

7.10 EU law currently limits the height of vehicles approved via the main EU type approval scheme to 4 metres. This height limit is unnecessary for vehicles destined for the UK and vehicles exceeding 4 metres in height are very common on UK roads. Such vehicles must be approved using domestic low volume approval schemes (with no height restrictions) designed for specialised vehicles: national small series type approval ("NSSTA") or individual vehicle approval ("IVA"). This incurs extra costs for manufacturers of goods-carrying semi-trailers and large lorries who wish to place large quantities of such vehicles on the market. This instrument therefore removes the 4-metre height limit from the new GB type approval scheme, which is available to manufacturers located anywhere who wish to sell into GB.

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

8.1 This instrument is being made using the powers in sections 8 and 8C of the European Union (Withdrawal) Act 2018 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, as well as to give effect to the obligations arising from the Protocol. 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 using powers in sections 54 and 61(2)(k) of the Road Traffic Act 1988 (c.52), which permit the regulation of vehicle construction requirements that apply before a vehicle is used on the road, known as type approval requirements.

9. Consolidation

9.1 There are no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 The Department has not carried out a full public consultation on this instrument, as what is planned follows naturally from the existence of the Protocol and the Government's announcements on how companies in Northern Ireland will access the market in Great Britain. We have carried out informal consultation with the main vehicle manufacturing stakeholders, the Society of Motor Manufacturers and Traders, "SMMT", the Wheelchair Accessible Vehicle Converters Association ("WAVCA"), the MCIA (formerly the Motorcycle Industry Association) and the Agricultural Engineers Association (AEA), to ensure a minimum of burden for stakeholders through the transition, and they are content.

10.2 Regarding the removal of the 4-metre height limit in the main GB type approval scheme, this represents a reversion to the situation which applied for many years prior to 2012. Vehicles in the UK are not restricted to 4 metres by domestic legislation covering vehicles in service and are very common, for example many semi-trailers and all double decker buses exceed this height. The SMMT asked for the removal of the limit from the main GB type approval scheme after EU Exit: the rationale for this limit will no longer exist, as vehicles with GB approval cannot be put forward for registration in EU countries (who might have overhead infrastructure just above 4

metres). The Department announced its intention to legislate on 7 August 2020 in the Government Response to a consultation on the Road Vehicle (Approval) Regulations 2020 (SI 2020/818). https://www.gov.uk/government/consultations/improving-new-vehicle-safety-and-environmental-compliance-plus-passenger-vehicle-digital-radio-requirement/outcome/improving-new-vehicle-safety-and-environmental-compliance-plus-passenger-vehicle-digital-radio-equipment-summary-of-responses-and-outcome#post-transition-changes. No adverse comments have been received. The Road Haulage Association and UK Logistics (formerly the Freight Transport Association) have also been consulted as their members operate lorries over 4 metres in height. Both bodies are completely in favour of removing the limit. We are not aware of any British stakeholder who was in favour of the EU's 4-metre limit when it was put forward in 2012, or that has emerged since then.

11. Guidance

11.1 Guidance on the UK's approach to the protocol was published on May 2020 on the GOV.UK website. More detailed guidance can be found on the VCA website and this will be updated further with more detailed information relating to the Northern Ireland Protocol before 31 December 2020: https://www.vehicle-certification-agency.gov.uk/contact-us/united-kingdom/transitionperiod/

12. Impact

12.1 The impact on business, charities or voluntary bodies is as follows: regarding the Northern Ireland Protocol, there are no impacts because the current baseline of vehicles and machinery engines produced or sold in Northern Ireland being required to meet EU rules is being maintained. Regarding the removal of the 4-metre height limit, there will be a benefit from the elimination of administrative burden associated with obtaining approval for lorries and trailers exceeding this height using NSSTA and IVA. This has been estimated by the Department at £5.9m over ten years.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because the impact upon business has been assessed as being less than £5m in any year.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses (employing up to 50 people). There are already simpler type approval schemes (NSSTA and IVA) designed for the producers of low volume vehicles, which are often small businesses. Users of these schemes need take no extra action to retain access to the markets of Northern Ireland and Great Britain after IP completion day. The instrument does not impose any costs on small businesses located in Northern Ireland, as it maintains the status quo for them. The 4m height change is deregulation so adds no burden.

13.3 The basis for the final decision on what action to take to assist small businesses was informal conversations with SMMT and WAVCA, the latter being an association of small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this instrument is for it to be monitored in the normal course of departmental business.

14.2 For the parts of this instrument made under the European Union (Withdrawal) Act 2018, no review clause is required. For the remaining part, made under the Road Traffic Act 1988 and concerning the removal of the 4-metre height limit in type approval, it is not considered appropriate to insert a review clause. This is because the impact has been assessed at less than £5m in any year, there are no costs associated with this measure, only benefits, and this is a return to the longstanding status quo that existed prior to 2012 when the EU introduced the height limit in type approval for the benefit of certain countries with significant overhead infrastructure such as tram wires.

15. Contact

15.1 Mike Lowe or Adrian Burrows at the Department for Transport, Telephone: 07769 243345 or 07773 643701; or email: mike.lowe@dft.gov.uk or 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 Rachel Maclean MP, Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

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), 9 and 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), 9 and 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), 9 and 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), 9 and 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), 9 and 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 exit 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 offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and 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 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit 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 exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 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.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 Rachel Maclean, Parliamentary Under Secretary of State at the Department for Transport, 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) (EU Exit) Regulations 2020 does no more than is appropriate".

1.2 This is the case because: the instrument will ensure that EU vehicle and engine type approval law continues to apply in Northern Ireland, in line with the Protocol, and it will permit companies in Northern Ireland to access the market in Great Britain on the basis of the approval that they use in Northern Ireland.

2. Good reasons

2.1 Rachel Maclean, Parliamentary Under Secretary of State at the Department for Transport 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 Government's commitment to implement the Protocol, and the Government's commitment to ensuring that companies located in Northern Ireland can continue to access the market in Great Britain without undergoing additional testing of their vehicles or engines.

3. Equalities

3.1 Rachel Maclean, Parliamentary Under Secretary of State at the Department for Transport, 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 Rachel Maclean, Parliamentary Under Secretary of State at the Department for Transport, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Rachel Maclean, 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 2 of the main body of this explanatory memorandum.

5. Criminal offences

5.1 There are no criminal offences created by this instrument.

6. Legislative sub-delegation

6.1 This instrument does not sub-delegate any powers to make legislation.

7. Urgency

7.1 The scrutiny procedure for urgent cases does not apply to this instrument.