EXPLANATORY MEMORANDUM TO THE

MOTOR VEHICLES (EC TYPE APPROVAL) (AMENDMENT) REGULATIONS 2005

2005 No. 2454

1. This explanatory memorandum has been prepared by the Vehicle Certification Agency, an Executive Agency of the Department for Transport, and is laid before Parliament by Command of Her Majesty.

2. Description

These Regulations amend the Motor Vehicles (EC Type-Approval) Regulations 1998 ("the 1998 Regulations"), in order to implement:

(a) Directive 2004/104/EC, amending Council Directive 72/245/EEC, on the radio interference (electromagnetic compatibility) of vehicles.
(b) Directive 2005/11/EC, amending the European Parliament and Council Directive 92/23/EC, on tyres.
(c) Directive 2005/21/EC, amending Council Directive 72/306/EEC, on smoke emissions.
(d) Directive 2005/27/EC, amending the European Parliament and Council Directive 2003/76/EC, on mirrors and other devices for indirect vision.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Background

4.1 This legislation implements the four EC Directives mentioned in paragraph 2 above.

4.2 Directive 70/156/EEC provides for a system of vehicle type approval. Light passenger vehicles (i.e. passenger vehicles with no more than 8 seats, referred to in Directive 70/156/EEC as Category M1) must be of a type approved under this Directive before being registered, sold or entered into service for the first time. In order to be so approved, a vehicle must comply with technical requirements specified in other Directives, called the "Separate Directives", listed in an Annex to Directive 70/156/EEC.

4.3 The four Directives listed in paragraph 2 amend some of the Separate Directives in order to update the technical requirements.

4.4 It is a requirement of the EC type approval system that transposition of these Directives must be carried out, and by a specified date, the earliest of which will be 19 October 2005. There is no option.

4.5 The 1998 Regulations implement Directive 70/156/EEC in respect of light passenger vehicles, and the related Separate Directives.

4.6 Like the 1998 Regulations, these Regulations, are made under the powers conferred by section 2(2) of the European Communities Act 1972.

5. Extent

This instrument extends to all of the United Kingdom.

6. European Convention on Human Rights

This instrument is subject to negative procedure and does not amend primary legislation. Therefore no statement as to compatibility has been made.

7. Policy background

7.1 Member States are required to transpose the type approval requirements as specified by Directive 70/156/EEC and the Separate Directives. These requirements are constantly being refreshed with amending Directives.

7.2 Directive 2004/104/EC simplifies the regulatory regime for electronic devices and radio transmitters fitted to vehicle, so as to abolish the need to test devices to two different sets of European requirements, and so that the responsibilities of the motor industry and the radio communications industry are clear. It also adapts the existing regulatory regime (dating back to 1995) to reflect technical developments.

7.3 Directive 2005/11/EC makes a minor amendment to clarify the use of test facilities for the approval of tyres.

7.4 Directive 2005/21/EC makes minor amendments to allow the use of an alternative light source in the meter used for testing of smoke emissions, to impose a new requirement on the light source, and to change the requirement concerning the fuel used for some of the tests.

7.5 Directive 2005/27/EC, which deals with indirect vision devices, makes a minor amendment to the requirements in respect of the seating angle to be used for certain field of view tests relating to mirrors and other indirect vision devices.

7.6 Although implementation of these Directives is mandatory, and there is no alternative option, it has become usual to advise the United Kingdom's automotive industry of the necessary changes and ask their opinions. Representatives of the Industry participate actively in the origination and development of European legislation, and close contact has been maintained during the decision-making process that led to the adoption of the Directives (especially Directive 2004/104/EC). As a continuance of this liaison, a consultation letter was circulated by the Vehicle Certification Agency on 5th July 2005 to various involved bodies in order to advise of the imminent transposition and to invite any comment. Only two responses have been received. The first suggests that the requirements of 2004/104/EC should have been applied to goods vehicles as well to light passenger vehicles. The UK Policy is to apply European legislation with the lightest possible touch. This Directive is mandatory only for M1 category vehicles, and the 1998 Regulations apply only to it. It did not seem appropriate to depart from the policy on this occasion. The second response discusses the interpretation of parts of the test procedure of this same

Directive, but does not offer any comment on the implementation of the Directive itself.

8. Impact

8.1 A Regulatory Impact Assessment (RIA) is attached for the implementation of 2004/104/EC. Since the impacts of Directives 2005/11/EC, 2005/21/EC and 2005/27/EC will be negligible, it has not been considered necessary to conduct an RIA in respect of their implementation.

8.2 These Regulations impact on car manufacturers and importers, and it would follow that they would pass on any additional costs of compliance in the price of vehicles if they judge that the market would bear it. There should be no impact on the public sector beyond this.

9. Contact

Gus Gander of the Vehicle Certification Agency of the Department for Transport, 1 Eastgate Office Centre, Eastgate Road, Bristol BS5 6XX (Tel: 01179 524119; e-mail ggander@vca.gov.uk) can answer questions regarding this instrument.

Final Regulatory Impact Assessment (RIA)

1. Title of Proposal

Regulatory impact assessment on the UK implementation of Directive 2004/104/EC, (amending Council Directive 72/245/EEC), on the radio interference (Electromagnetic Compatibility or EMC) of motor vehicles and motor vehicle parts.

2. Purpose and intended effect of measure

(i) The objective

To simplify the regulatory regime for electronic devices and radio transmitters fitted to vehicles so that double testing to two different sets of European requirements is avoided and so that the responsibilities of the motor industry and the radio communications industry are clear. At the same time to review the existing regulatory regime dating from 1995 and adapt it to reflect technical developments. There has been an increase in the number and complexity of electronic devices fitted in vehicles and so there may be new safety concerns arising that need to be addressed, perhaps by revising the existing test methods.
The new Directive has now been agreed and so the task now is to extend the existing UK regulations "The 1998 Motor Vehicles (EC Type Approval) Regulations" to incorporate the latest EMC (Electromagnetic Compatibility) Directive 2004/104/EC and allow approvals to 2004/104/EC to be issued by the UK approval authorities (VCA).

(ii) The background

The existing EMC Directive has two main aims, broadly speaking: to ensure that vehicles and electrical or electronic vehicle parts –
(1) are not emitting excessive electromagnetic waves (that would interfere with radio and television broadcasts), and
(2) are not affected, to a degree that would affect road safety, by radio or TV broadcasts or any other similar electromagnetic waves.

EC Commission and EC Member states since 1995 have received many representations from associations representing manufacturers of electronic equipment who are concerned about "double testing". For certain electronic devices it is necessary to obtain certification to two sets of requirements – e-marking under the Automotive EMC Directive, and CE marking under the General EMC (89/336/EEC) or RTTE (Radio and Telecommunications Terminal Equipment: 99/5/EC) Directives. There is also considerable disagreement between the motor industry on one side and the radio communications and consumer electronics industries on the other side, as to their respective responsibilities to ensure road safety.

Also since 1995 there has been a considerable increase in the number of electronic components in vehicles. Such components control not only comfort, information and entertainment devices but also certain safety relevant functions. At the same time there has been international standardisation of EMC test requirements under the International Standardisation Organisation (ISO) and the International Special Committee on Radio Interference (CISPR).

In light of this it was thought necessary to revise the existing Directive for Automotive EMC. After 2 years of negotiations the Directive was agreed and it is now necessary to implement it in national law.

(iii) Risk assessment

Risk addressed by policy

The main risk is that technical innovation is compromised and there is a cost burden on industry increased by the need to obtain approval to two different regulatory regimes. There is also a risk that the motor industry and the communications/consumer electronics industry are unclear about their responsibilities, leading in the worst case to incidents and accidents on the road.
There is a risk that new electronic technology may adversely affect safety if adequate testing does not take place and if it is not catered for properly during vehicle design.

3. Options

Option 1: Do nothing.
The UK participated fully in discussions leading up to the agreement of the Directive. If it now failed to implement the Directive, the progress made in negotiations to improve the Directive would be lost. In addition, infraction proceedings would be likely as the UK would be in breach of Community law. The UK would also be exposed to potentially significant damages claims by anyone who could show that they had suffered loss as a result of non-compliance with the provisions of the Directive.

Option 2: Implement the Directive to the minimum as required by European law.
The Directive has been voted on so it now falls to the UK to implement the Directive. The UK must amend legislation in order to be able to issue type approvals for newly designed vehicles, and ultimately to require that new passenger cars are type approved to the new Directive. The Directive does allow the UK the option of going beyond the minimum in the Directive and mandating compliance for trucks and buses but general UK policy is not to "gold plate" Directives unless there is a strong case to do so.

4. Benefits

Clearly there are no benefits from Option 1 as it maintains the status quo.

Economic
Option 2. There is expected to be a small economic benefit from implementing the new Directive. However it is impossible to quantify this. The main benefit will be from the reduction in "double testing" due to the simplification of the regulatory regime for EMC components. There may also be some benefits in the form of lower costs for installation of radio transmitters, for example those used by taxicabs. This would be as a result of the vehicle manufacturer being required to make freely available, information to allow the safe installation of radio transmitters in the aftermarket.

Environmental
There is expected to be nil environmental benefits from implementing the new Directive.

Social
The social benefits from implementing the Directive should be an increase in road safety. However it is impossible to quantify this. There are very few road accidents that are caused by EMC or interference problems, but if the existing Directive was not upgraded and clarified it is possible that the risk of accidents would increase.

5. Costs

The costs from Option 1 are likely to be fines against the UK Government if the Commission of the EC asks for infraction proceedings, and potentially significant damages claims.

Economic
Option 2. There are expected to be limited economic costs from implementing the new Directive. However it is impossible to quantify this. There will be some small cost from compelling new products to meet the slightly higher standards of the new Directive. However the Directive is being phased in over a number of years and initially only newly designed products will be required to meet the new Directive. Existing products can continue to be sold until 2009. Also, in many cases, products in the market place (particularly from the larger manufacturers) already meet the slightly higher standards in the new Directive so the products will not need to be re-engineered to carry on being sold beyond 2009. Moreover, industry has been fully involved at all stages of the drafting of the new Directive and overall are content for it to be introduced.

Environmental
There are expected to be nil environmental costs from implementing the new Directive.

Social

There are expected to be nil social costs from implementing the new Directive.

6. Equity and Fairness

The requirements apply to all in-scope vehicles and components throughout the EU. The proposed measures will impact equally across the whole of the industry.
The policy has been examined for Race relevance and a Race Impact Assessment is not necessary.

7. Consultation with small business: the Small Firms' Impact Test

There are no small businesses engaged in the manufacture of vehicles because this activity is so capital intensive. There are some small businesses involved in the manufacture of electronic components. The simplification of the regulatory regime for EMC and the new information to be provided by vehicle manufacturers will be of particular benefit to small business and so the new Directive represents a positive benefit for them.

8. Competition Assessment

The affected markets are that for vehicles and that for electronic components. Both markets are highly competitive and the introduction of the Directive will not negatively affect this in any way. The new Directive in fact should improve competition in one area. Requiring manufacturers to make available information on mounting transmitters safely in vehicles in the aftermarket, will improve competition by allowing companies other than the vehicle manufacturer to mount transmitters in the vehicle.

9. Enforcement and Sanctions

How will the proposal be enforced?
As regards vehicles, the new Directive is self-enforcing. A passenger car cannot be licensed and registered without a European type approval certificate. When the manufacturer applies for the type approval, the vehicle will be required by the approval authority to undergo testing to the new Directive. If the vehicle does not comply to the Directive the certificate will not be issued and the vehicle cannot be licensed, registered or sold.

Who will enforce this legislation?
The DVLA inspect type approval certificates when a vehicle is registered so effectively they will enforce it on vehicles.

Will the legislation impose criminal sanctions for non-compliance?
No new offence will be created by implementing this Directive. The legislation is, to a large extent, self-enforcing. If someone were to obtain a vehicle without the correct EMC type approval they would not be able to license or register it. If such a vehicle were used or kept on the road, then under s29 of

the Vehicle Excise and Registration Act 1994, the driver or owner would be committing a criminal offence.

10. Monitoring and Review

There will be no formal monitoring or review of the Directive in the UK, although on an informal basis the Department will of course listen to comments from stakeholders and feed them back to the European Commission where relevant. The European Commission will be reviewing the new Directive after a transition period of 4 years.

11. Consultation

i) Within Government

Within Government, the DTI, the Home Office, ODPM Fire Inspectorate and the Radiocommunications Agency (now OFCOM) were consulted. The DTI/RA and the DfT were not always in agreement as to the shape that the Directive should take, but the final Directive was a compromise acceptable to both sides.

ii) Public Consultation

During the European negotiations, the Department set up a working group of stakeholders, who were informed of the progress of meetings in Brussels. Regular meetings of this group were held and the Department aimed to forge a consensus UK view. The group included representatives of UK EMC test houses (e.g. MIRA), vehicle and component manufacturers (SMMT, Ford/Land Rover, Visteon), representatives of electronics manufacturers (EICTA, Intellect, Nokia, Motorola), and representatives of the Radiocommunications Agency (now OFCOM). All major consultees accept the new Directive as a fair compromise and are comfortable with it, although inevitably - because it is a compromise - many parties are not completely content and some parties would have preferred their own views to have been followed, at the expense of another party's.

12. Summary and Recommendation

Bearing in mid that non-implementation is not really a practical proposition, would waste all the negotiation work over the last two years and lead to uncertainty and complaints from electronics and vehicle manufacturers, the only reasonable way forward is to implement the Directive to the minimum extent required by European law. This will allow manufacturers to take advantage of the simplification of the regulatory regime and the benefits of reduced double testing for electronic components. Implementation of the requirement for the vehicle manufacturer to provide instructions for the safe installation of radio transmitters should improve the situation for aftermarket radio installers.

Summary costs and benefits table

Options	Total benefit per annum: economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1. Do Nothing	No appreciable benefits	Likely infraction proceedings. Potentially significant damages claims.
2. Implement the Directive	Reduction in costs to industry due to removing "double-testing" and requiring vehicle manufacturers to make installation instructions available. Potential improvement to road safety.	Possibly minor costs to component manufacturers as a result of higher specification.

Recommendation – Option 2. This will ensure we meet our obligations under EU law and implement a Directive which simplifies the requirements, reduces double testing and ensures road safety is maintained. The UK approval authority VCA will be able to issue type approvals to new passenger cars.

13. Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed …S J Ladyman……..

Date 1st September 2005

Minister's name, title, department

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TRANSPOSITION NOTE

To accompany the instrument prepared to implement four Directives to amend the European scheme for vehicle type approval as transposed to UK law in The Motor Vehicles (EC Type Approval) Regulation 1998 ("the 1998 Regulations").

1. Commission Directive 2004/104/EC of 14 October 2004 adapting to technical progress Council Directive 72/245/EEC relating to the radio interference (electromagnetic compatibility) of vehicles and amending Directive 70/156/EEC on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers.

	Objectives	Implementation	Responsibility
Article 1 & 2	Update the requirements in respect of radio suppression and electromagnetic compatibility to align them with technical progress, with effect from 1/1/2009.	Regulation 3 of the instrument amending the 1998 Regulations adds this Directive to the list in Schedule 1 to the 1998 Regulations, which lists requirements to be met for light vehicles to obtain type-approval in the UK.	The Secretary of State.
Article 3	Amends Directive 70/156/EEC so that the information requirement, and the information documents, properly reflect the technical requirements specified above.	Regulation 2 of the instrument amending the 1998 Regulations amends the definition of "the Framework Directive in r3(1) of the 1998 Regulations.	The Secretary of State

2. Commission directive 2005/11/EC of 16 February 2005 amending, for the purposes of its adaptation to technical progress, Council Directive 92/23/EEC relating to tyres for motor vehicles and their trailers and to their fitting.

	Objectives	Implementation	Responsibility
Articles 1 & 2	Allows the use of manufacturers facilities for the purposes of type approval testing, with effect from 1/1/2006.	Regulation 3 of the instrument amending the 1998 Regulations adds this Directive to the list in Schedule 1 to the 1998 Regulations, which lists requirements to be met for light vehicles to obtain type-approval in the UK.	The Secretary of State.

3. Commission Directive 2005/21/EC of 7 March 2005 adapting to technical progress Council Directive 72/306/EEC on the approximation of the laws of the Member States relating to the measures to be taken against the emission of pollutants from diesel engines for use in vehicles.

	Objectives	Implementation	Responsibility
Articles 1, 2	Extend the choice of light	Regulation 3 of the	The Secretary of State .

& 3	sources used for the purposes of type approval testing, imposes a new requirement on the light source, and amends the requirement concerning the fuel used for some of the tests. These amendments must take effect by 9/3/2006.	instrument amending the 1998 Regulations adds this Directive to the list in Schedule 1 to the 1998 Regulations, which lists requirements to be met for light vehicles to obtain type-approval in the UK.	

4. Commission Directive 2005/27/EC of 29 March 2005 amending, for the purposes of its adaptation to technical progress, Directive 2003/97/EC of the European Parliament and of the Council, concerning the approximation of the laws of the Member States relating to the type-approval of devices for indirect vision and of vehicles equipped with these devices.

	Objectives	Implementation	Responsibility
Articles 1 & 2	Requires 'blind-spot' coverage of mirrors to be extended for certain classes of vehicle and amends certain angle requirements to adapt them to technical progress, with effect from 19/10/2005.	Regulation 3 of the instrument amending the 1998 Regulations adds this Directive to the list in Schedule 1 to the 1998 Regulations, which lists requirements to be met for light vehicles to obtain type-approval in the UK.	The Secretary of State