EXPLANATORY MEMORANDUM TO THE NON-ROAD MOBILE MACHINERY (EMISSION OF GASEOUS AND PARTICULATE POLLUTANTS) (AMENDMENT) REGULATIONS 2008

2008 No. 2011

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations implement section B1 of the Annex to European Parliament and Council Directive 2006/105/EC ("Directive 2006/105/EC"). That provision amends European Parliament and Council Directive 97/68/EC ("Directive 97/68/EC) on the approximation of the laws of Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery. "Non Road Mobile Machinery" (NRMM) consists of any mobile machine, transportable industrial equipment or vehicle with or without body work fitted with an internal combustion engine not intended for passenger or goods transport by road. Examples include drilling rigs, bulldozers, forklift trucks, road maintenance equipment, snow ploughs and mobile cranes.

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

3.1 None

4. Legislative Background

4.1 These Regulations amend the Non-Road Mobile Machinery (Emission of Gaseous & Particulate Pollutants) Regulations 1999 (S.I. 1999/1053) ("the 1999 Regulations"), which gave effect to Directive 97/68/EC in the UK. Earlier amendments to the 1999 Regulations were made by the Non-Road Mobile Machinery (Emission of Gaseous & Particulate Pollutants) (Amendment) Regulations 2002 (S.I. 2002/1649), the Non-Road Mobile Machinery (Emission of Gaseous & Particulate Pollutants) (Amendment) Regulations 2004 (S.I. 2004/2034) and the Non-Road Mobile Machinery (Emission of Gaseous & Particulate Pollutants)(Amendment) Regulations 2006 (S.I. 2006/29). These implemented Commission Directive 2001/63/EC, European Parliament, and Council Directive 2002/88/EC and European Parliament and Council Directive 2004/26/EC respectively.

4.2. The 1999 Regulations, as amended, restrict the placing on the market of any engine for use in NRMM unless certain conditions are met. Engines must have been approved by the UK competent approval authority (currently the Vehicle Certification Agency) and emissions must not exceed the applicable limits. The 1999 Regulations set out procedures for type-approval of engines to the Directive 97/68/EC emission standards and make provision for enforcement.

4.3 The amendment is necessary by reason of the accession of Bulgaria and Romania to the EU as the necessary adaptations to Directive 97/68/EC, as amended, were not provided for in the Act of Accession or its Annexes. Section B1 of the Annex to Directive 2006/105/EC references the appropriate type approval numbers for Bulgaria and Romania to be used in type approval documentation. It does this by substituting a revised section I to Annex VIII of Directive 97/68/EC, adding the reference numbers for Bulgaria and Romania which are to be used in granting type approval in those countries. The numbers will be included on the type approval certificate in accordance with article 4 of Directive 97/68/EC and will be used by other Member States for the purposes of recognition of approved standards.

4.4, The Regulations are made under powers conferred by section 2(2) of the European Communities Act 1972. The Secretary of State is a Minister designated in relation to the environment.

5. Territorial Extent and Application

5.1 These Regulations apply to all of the United Kingdom.

6. European Convention on Human Rights

6.1. As the Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1. NRMM is a small but significant source of oxides of nitrogen and particulate emissions, two pollutants for which the UK has continuing air quality problems. Directive 97/68/EC established mandatory standards for emissions from NRMM Successive Directives have tightened these standards and extended standards to other categories of NRMM.

7.2. The type approval requirements for NRMM set out in Directive 97/68/EC, as amended, facilitate the operation of the single European market, by establishing uniform standards. Article 4 of the Directive requires type approval authorities in Member States to provide type approval authorities in other Member States with details of approvals issued or refused. The system allows for mutual recognition of approvals by type approval authorities in Member States.

7.3 Implementation of the type approval requirements for Bulgaria and Romania introduced by Directive 2006/105/EC is mandatory and there is no alternative to amending the 1999 Regulations. The Department has not therefore carried out a consultation, however it has informed the Society of Motor Manufacturers and Traders, the Committee for European Construction Equipment, the Agricultural Engineers Association, the British Agricultural and Garden Machinery Association, the Plant Hire Association and the Association of Plant Generators, being bodies representative of the industry

affected, of the changes proposed by the Regulations. No objections have been received. It has also liaised closely with the Vehicle Certification Agency which has approval and enforcement responsibility in this area. Representatives of the Industry participate actively in the development of European legislation, and close contact will have been maintained during the decision-making process that led to the adoption of the requirements of the Directives.

8. Impact

8.1 These Regulations have no impact on the private or the voluntary sector so an Impact Assessment has not been prepared.

8.2 There are no impacts on the public sector.

9. Contact

Dwight Lobban at the Department for Transport (tel: 020 7944 2097 or e-mail: Dwight.Lobban@dft.gsi.gov.uk) can answer any queries relating to these Regulations.

TRANSPOSITION NOTE

2006/105/EC

The Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2008

These regulations do not go beyond what is necessary to implement the Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

COUNCIL DIRECTIVE 2006/105/EC of 20 November 2006 amending Directive 97/68/EC on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery.			
Article	**Objectives**	**Implementation**	**Responsibility**
Article 1 and Section B1 of the Annex.	Replaces the list of type approval codes for Member States in section 1 of Annex VIII, point 1 of Directive 98/67/EC to take account of the Accession of Bulgaria and Romania to the EU. .	Regulation 2(2) of the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2008 ("the 2008 Regulations") which amends the definition of Directive 97/68/EC to include amendments made up to and including Directive 2006/105/EC.	The Secretary of State.