EXPLANATORY MEMORANDUM TO

THE NON-ROAD MOBILE MACHINERY (EMISSION OF GASEOUS AND PARTICULATE POLLUTANTS) (AMENDMENT) REGULATIONS 2013

2013 No. 1687

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 These Regulations transpose into United Kingdom law the changes made to Directive 97/68/EC ("the 1997 Directive") by Directive 2011/88/EU ("the 2011 Directive") – which are intended to relieve short-term economic pressures on industry in the light of the global economic downturn. The 1997 Directive relates to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery ("NRMM"). The purpose of these Regulations is to make changes to the conditions under which the placing on the market of engines meeting the most recently superseded emissions standard may be permitted, and to the conditions for the placing on the market of replacement engines for railcars and locomotives.

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

3.1 There are no matters of special interest to the Joint Committee on Statutory Instruments.

4. Legislative Context

4.1 The term NRMM refers to mobile machines, transportable industrial equipment or vehicles which are fitted with an internal combustion engine and not intended for transporting goods or passengers on roads. The term covers machinery powered by compression-ignition ("CI") engines (which are diesel engines), including inland waterway vessels, railway locomotives, road-making machinery, combine harvesters and excavators. It also covers some small machinery powered by spark-ignition ("SI") engines (which are petrol engines), such as lawnmowers, hedge trimmers, chainsaws and portable generators.

4.2 The objective of the 1997 Directive is to harmonise the laws of Member States relating to exhaust emission standards and type approval procedures for engines to be installed in NRMM ("type approval" refers to the process by which engines are certified as meeting legal requirements with respect to minimum safety and technical standards). The Directive is intended to contribute to the smooth running of the internal market, whilst protecting human health and the environment.

4.3 The 1997 Directive sets maximum limits on permissible exhaust pollutant emissions for engines for machinery when they are placed on the market for the first time. It has been amended several times to make the limits more stringent in "stages".

4.4 The 1997 Directive is transposed into United Kingdom law by the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999 (SI 1999/1053) ("the 1999 Regulations"). These Regulations amend the 1999 Regulations so as to give effect to the amendments made to the 1997 Directive by Directive 2011/88/EU. Since the changes made by the 2011 Directive, the 1997 Directive has been further amended by Directive 2012/46/EU; the changes made by this later Directive will be transposed by a separate instrument at a future date.

4.5 A transposition note is supplied with this Memorandum, and indicates how amendments to the relevant provisions of the 1997 Directive have been incorporated into UK legislation.

4.6 The scrutiny history of Directive 2011/88 was as follows. An Explanatory Memorandum 12171/10 was submitted to the Parliamentary Scrutiny committees on the 8th September 2010. The Chairman of the House of Commons European Scrutiny Committee wrote on the 15th September that the Committee would await the Impact Assessment before seeking to take a definitive view on the proposal. The House of Lords Select Committee on the European Union referred the EM to the Sub-Committee on Internal Market, Energy and Transport at the 1400th sift on the 20th September 2010. On the 27th October 2010 the Chairman wrote to the Minister noting that the Committee were holding the document under scrutiny and requesting further information. A reply was sent to the Chairman on the 9th November 2010. On the 7th December 2010 the Chairman wrote to the Minister requesting further information. A reply was sent to the Chairman on the 20th December 2010. On the 1st February 2011 the Chairman wrote to the Minister asking to see the Impact Assessment when it was ready. The Impact Assessment was submitted to the Scrutiny Committees of both Houses under cover of a Supplementary Explanatory Memorandum on the 31st March 2011, and was subsequently cleared by the House of Commons committee on the 27th of April 2011 and by the House of Lords committee on the 23rd of May 2011.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The 1997 Directive allows for a flexibility scheme to operate so that, when moving to a new emissions standard, engines may be placed on the market if they meet a previous standard. The number of engines that can take advantage of this scheme cannot exceed a maximum number. That maximum number is either calculated as a percentage of average annual sales, or is a fixed amount which depends on the power of the engine concerned.

7.2 The 2011 Directive amends the 1997 Directive so as to temporarily increase the number of engines for use in land-based machines which can be placed on the market under the existing flexibility scheme, and to temporarily extend the scope of the flexibility scheme to include engines used for the propulsion of locomotives. The duration of these temporary changes to the flexibility scheme, which are available only for engines for which there is a Stage IIIB standard, depends on the category of engine concerned. In relation to the temporary increase in the number of engines, this is set out in new paragraph 12 of Schedule 9 to the 1999 Regulations (as provided for in regulation 6(6) of these Regulations) by reference to the power output of engines. This is because the engine categories do not necessarily align with the power output for all emission stages, and reflects the tables in amended Annex XIII of the 1997 Directive. The period for the temporary increase is provided for in paragraph 12(4)(b) of Schedule 9 to the 1999 Regulations in relation to the relevant category of engine provided for in that paragraph.

7.3 Amended section 1.2 of Annex XIII of the 1997 Directive effectively sets the duration of the temporary increase in the number of engines which can be placed on the market under the flexibility scheme as being until either the end of Stage IIIB or three years from the beginning of Stage IIIB – whichever is sooner. (The latter time frame is relevant where there is as yet no Stage IV for the category of engine concerned, meaning that Stage IIIB does not yet have an end date.) Amended section 1.3 of Annex XIII makes a similar extension in terms of timing for engines used for the propulsion of locomotives.

7.4 Stage IIIB has already started for all engine categories to which the extended flexibility scheme applies. In relation to eligible CI engines (as defined in new paragraph 9(2)(a) of Schedule 9 to the 1999 Regulations), the extended flexibility applies to engines in category L, M, N or P. (Engines in category H, I, J or K are “constant speed” engines for which there is currently no Stage IIIB; there is no category O; and category Q and R will encompass engines of certain power outputs when those engines are required to meet a more stringent Stage IV emissions standard at a later date.) In relation to eligible locomotive engines (as defined in new paragraph 9(2)(b) of Schedule 9 to the 1999 Regulations), the relevant category is RB.

7.5 The reason for modifying the flexibility scheme in the above-mentioned ways is to mitigate further the costs to manufacturers of the transition from emission Stages IIIA to IIIB, by allowing more time for machines to be re-designed to accommodate Stage IIIB conformant engines, which are bulkier and heavier than their predecessors because the

emissions limits that apply to them require, for the first time in the NRMM sector, the use of exhaust aftertreatment technologies.

7.6 Limited and temporary access to the flexibility scheme is provided for locomotive manufacturers, who have not previously been able to use the scheme. This limited access allows each locomotive manufacturer to be permitted to take delivery of up to 16 engines during Stage IIIB which meet only the superseded Stage IIIA standard. The period is provided for in paragraph 12A(2)(a) of Schedule 9 to the 1999 Regulations (31st July 2013 to 31st December 2014). Each locomotive manufacturer may, in addition, be permitted to take delivery of up to 10 engines (during Stage IIIB which meet only the superseded Stage IIIA standard) with rated powers above 1,800 kW for use in locomotives that are designed exclusively for use on the United Kingdom's network, and defined as such by being eligible for the issue of a safety certificate for the UK network.

7.7 The current requirement that damaged or worn-out engines in railway vehicles should be replaced with engines meeting the latest emissions standard, is amended in order to address the technical difficulty of replacing older engine designs in railway vehicles with engines meeting the latest emissions standard (Stage IIIB). Specifically, damaged or worn-out engines in railway vehicles meeting emissions standards up to and including Stage IIIA are allowed to be replaced with engines meeting the Stage IIIA standard. Furthermore, under some circumstances like-for-like replacement of engines in railcars without driving controls (sometimes referred to as "intermediate" railcars) is permitted. The meaning of a railcar, for this purpose, is a powered passenger carriage.

7.8 The changes to the flexibility scheme (that is, both the increased number of engines permitted to be placed on the market, and the extension of the scheme to cover engines used for the propulsion of locomotives) are to apply for a limited period only, as explained above, whilst those concerning replacement engines are subject to review by the European Commission at the end of 2016.

- Consolidation

7. 9 There is no intention to consolidate the 1999 Regulations at this time.

8. Consultation outcome

8.1 Due to the highly technical subject matter of these Regulations and the limited options regarding transposition of the relevant EU requirements, the Department has not engaged in a full public consultation in relation to these Regulations. Rather than a formal consultation taking place, the Department has maintained contact with trade associations and with individual companies with an interest in the subject throughout the process of policy development and negotiation that led to the adoption of Directive 2011/88/EU – and has continued to engage closely with them on an ongoing basis. The overall view of the amendments has been overwhelmingly positive, and numerous companies have contacted the Department to enquire about the possibility of making use of the additional flexibility that it offers.

9. Guidance

9.1 The manufacturers and importers of NRMM, which are specialised businesses, are generally familiar with the requirements contained in these Regulations. The Vehicle Certification Agency publish regular guidance on legislative matters likely to be of interest to manufacturers of vehicles and NRMM, most recently in May of 2013 when the forthcoming amendment to the UK regulations was one of the topics covered. Additional guidance is considered unnecessary.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil. (Rather than imposing any burden, the changes being made will benefit business.)

10.2 The impact on the public sector is nil (other than the cost of conducting a review in accordance with regulation 22 of the 1999 Regulations).

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business. No engine manufacturers, and few builders of NRMM, are small businesses. Many owners and operators of non-road machines, however, are small businesses. Owners and operators of non-road machines are not directly affected by the legislation, but they will draw some benefit from it. This is because the reduction in burden upon manufacturers that the legislation brings about will assist both in ensuring the supply of a full range of machines and that manufacturers are not obliged to raise prices in order to fund unusually rapid programmes of re-design and development. The provisions allowing manufacturers to supply fixed numbers of NRMM engines which are being transposed by this instrument (and which are of particular use to small businesses making limited numbers of machines) are contained in section 1.2.2 of Annex XIII of the 1997 Directive (as amended by Directive 2011/88/EU).

12. Monitoring & review

12.1 The 1999 Regulations include a statutory requirement in regulation 22 for a review to be held no later than five years from 30th September 2011 (the review clause was introduced by a previous amending instrument). In light of the review clause, the amendments made by these Regulations will be reviewed by the Secretary of State before 30th September 2016, and the conclusions will be published in a report. In addition the Vehicle Certification Agency will monitor and review the effect of these Regulations as part of their enforcement duties (in relation to Great Britain).

13. Contact

Simon Davies at the Department for Transport (Tel: 0207 944 2116 or email: simon.davies@dft.gsi.gov.uk), can answer any queries regarding the instrument.

Transposition note for

Articles 4 and 10 and Annex XIII of Directive 97/68/EC (as amended by Directive 2011/88/EU)

as transposed by

The Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2013

1. For the purposes of this note:

   "The 1997 Directive" means Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997 relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery (including changes made by Directive 2011/88/EU of the European Parliament and of the Council of 16 November 2011).

   "The 1999 Regulations" means the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999 (SI 1999/1053).

2. These Regulations transpose into UK law the changes to Articles 4 and 10 and Annex XIII of Directive 97/68/EC which were made by Directive 2011/88/EU. Specifically, these Regulations make changes to the conditions under which the placing on the market of engines meeting the most recently superseded emissions standard may be permitted, and to the conditions for the placing on the market of replacement engines for railcars and locomotives.

3. The table below provides detail about how the amended provisions of Directive 97/68/EC have been implemented through these Regulations.

Amended provision in the 1997 Directive	**Objective**	**Transposition by these Regulations**
Article 4.6 and section 1 of Annex XIII	Article 4.6 amends the existing flexibility scheme so as to temporarily increase the number of engines which may be placed on the market under its terms, and so as to temporarily extend its scope to cover engines for the propulsion of locomotives, subject to type approval requirements being met.	Regulation 6(6)

Article 10.1b and 10.1c	Article 10.1b(a) permits, by way of derogation from usual requirements and where a technical case is made, the placing on the market of engines meeting the Stage IIIA standard as replacement engines for engines in railcars and locomotives that meet the Stage IIIA standard or which fall below this. Article 10.1b(b) permits, by way of derogation from usual requirements and where a technical case is made, the placing on the market of replacement engines for railcars without driving controls and not capable of independent movement, which meet only the emission standard of the engines that they are to replace. A technical case means satisfying the approval authority that there are technical reasons for not complying with the latest emissions limits. Article 10.1c modifies the requirement with respect to the labelling of replacement engines so that, in addition to bearing the text "Replacement engine", the labels should carry a unique reference to the derogation under which the replacement engine has been placed on the market.	Regulations 5, 6(4) and 6(5)
Article 10.1d		Article 10.1d does not need to be transposed because it places an obligation on the Commission.
Article 10.7	Article 10.7 requires Member States to permit the placing on the market of certain engines under the flexibility scheme. This has the effect of requiring approval authorities to permit the placing on the market of the additional engines which satisfy the criteria for the flexibility	Regulation 6(6) – new paragraphs 9 to 11 of Schedule 9 to the 1999 Regulations.

	scheme for which provision is made by way of the amendments to section 1 of Annex XIII.	
Annex XIII, section 1	Section 1 of Annex XIII permits the placing on the market under a flexibility scheme of the following, during Stage IIIB (for a maximum period of 3 years from the beginning of that stage): • a number of engines up to a maximum number, to be based on either a higher percentage of average annual sales (temporarily increased from 20% to 37.5%) or drawn from a table with higher maximum numbers than the scheme usually permits; • in relation to engines which are for an OEM's exclusive use and where an OEM has satisfied the approval authority that there are technical reasons why the latest emissions limits cannot be complied with - ➢ up to 16 locomotive engines for the original equipment manufacturer's exclusive use; and ➢ up to 10 locomotive engines with rated powers above 1,800kW to use in locomotives designed exclusively for use on the United Kingdom network.	Regulation 6(6) – new paragraphs 12, 12A, 12B, 12C and 12D of Schedule 9 to the 1999 Regulations.