EXPLANATORY MEMORANDUM TO

THE ROAD VEHICLES AND NON-ROAD MOBILE MACHINERY (TYPE-APPROVAL) (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 648

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport (DfT) and is laid before Parliament by Act.

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

2. Purpose of the instrument

2.1 The European Union (Withdrawal) Act 2018 will convert the text of directly applicable EU legislation into domestic instruments. This instrument ensures that both converted EU legislation relating to the type approval of road vehicles and machinery engines and existing primary and secondary legislation will remain legally operable when the United Kingdom (UK) has withdrawn from the EU by correcting, for a period of two years, a number of deficiencies which will arise as a result of EU withdrawal. This instrument also ensures that the law in Northern Ireland correctly transposes a definition from a European Directive before that definition is amended by this instrument.

Explanations

What did any relevant EU law do before exit day?

2.2 EU law requires manufacturers of road vehicles and engines for non-road mobile machinery to be type approved 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 harmonised standards covering safety and environmental protection, which are regularly updated.

Why is it being changed?

2.3 The proposed changes are designed to ensure that the type approval regime is effective after EU withdrawal. If these changes are not made the legislation will not be operable after EU withdrawal because the UK would be required to continue to accept motor vehicles entering the UK market which have a type approval granted by one of the EU-27 approval authorities, and would have no formal way to challenge the validity of the approval, for example if there was an allegation of non-compliance. After Exit day there would also be uncertainty over: 1) whether the Vehicle Certification Agency (VCA) has a legal basis to continue to issue approvals for vehicles or engines; 2) the requirements for registration of vehicles; and 3) the requirements for placing machinery engines on the market.

What will it now do?

2.4 The UK will no longer accept EU-27 approvals when motor vehicles are registered, other than for motor vehicles that are in the UK prior to Exit day. A process will be

established to issue UK approvals for holders of EU-27 approvals. Existing EU approvals issued by the UK's VCA will remain valid. All of this is an interim arrangement valid for a maximum of two years, pending a comprehensive review and re-working of the UK's type approval arrangements (with legislation planned for mid-2019).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument was laid in draft for sifting before the House of Commons European Statutory Instruments Committee (the ESIC) and the House of Lords Secondary Legislation Scrutiny Committee (the SLSC) (together, the Committees) on 11th December 2018. The Committees reported on 10th January 2019 and recommended that the instrument be upgraded to the affirmative procedure. The Department has accepted the recommendation.

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 topic 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 1998 (c.46) and Section C7 (paragraph 77) of Schedule 7A of the Government of Wales Act 2006 (c.32). The territorial application of certain parts of this instrument is limited by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of regulation 2 is England, Wales and Scotland. Regulation 3 and Parts 5 and 6 extend to the United Kingdom. Parts 3 and 4 extend only to Northern Ireland. Parts 1 and 7 are statements of citation, commencement and expiry which apply to all Parts.

4.2 The territorial application of this instrument is identical to the extent of the instrument.

5. European Convention on Human Rights

5.1 Jesse Norman, Minister 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 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 These Regulations are made in exercise of powers in section 2(2) of the European Communities Act 1972 (ECA) and section 8 of the European Union (Withdrawal) Act 2018.

6.2 The European Union (Withdrawal) Act 2018 (the Act), makes provision for repealing the ECA and will preserve EU law as it stands at the moment of withdrawal, converting this into UK law. It enables the creation of a new body of domestic

legislation by converting the text of directly applicable EU legislation into domestic instruments, as well as saving EU-derived domestic legislation which was made to implement the UK's obligations as an EU Member State.

6.3 The Act also contains powers to make secondary legislation to enable Ministers and the devolved administrations to fix deficiencies in retained EU law, to ensure that the UK's legal system continues to function properly outside of the EU.

6.4 This instrument corrects a number of deficiencies in existing legislation relating to type approval arising as a result of the UK's withdrawal from the EU. These deficiencies are found both in domestic legislation and in directly applicable EU legislation. This instrument also makes a correction which is independent of EU Exit. It corrects the definition of EC Certificate of Conformity in the law in Northern Ireland, correctly transposing Directive 2007/46/EC and Regulation (EU) 167/2013 and thus harmonising it with corresponding law in Great Britain before Exit Day.

6.5 The current EU type approval frameworks are laid down in Directive 2007/46/EC (passenger and goods vehicles); Regulation (EU) 168/2013 (motorcycles); Regulation (EU) 167/2013 (agricultural and forestry vehicles); and Regulation (EU) 2016/1628 (engines for non-road mobile machinery, NRMM).

6.6 Beneath Directive 2007/46/EC there are two EU Directives and seven EU Regulations of the Council and Parliament setting out requirements, with around 21 Commission Regulations providing detailed standards. The other framework Regulations each have between three and five Commission Regulations setting out the detailed standards.

6.7 Directive 2007/46/EC was transposed by the Road Vehicles (Approval) Regulations 2009 (SI 2009/717). The three other framework Regulations are directly applicable, but the respective enforcement regimes are provided by the Motorcycles (Type Approval) Regulations 2018 (SI 2018/235); the Agricultural and Forestry Vehicles (Type Approval) Regulations 2018 (SI 2018/236), and the Non-Road Mobile Machinery (Type Approval and Emission of Gaseous and Particulate Pollutants) Regulations 2018 (SI 2018/764).

6.8 In addition, Sections 54-65 of the Road Traffic Act 1988 (c.16) in Great Britain and Articles 31A to 31E of the Road Traffic Order 1981 (1981 No. 154 (N.I.1)) in Northern Ireland provide powers to create domestic vehicle type approval schemes not related to EU obligations. Under paragraph 38 of Schedule 3 of the Northern Ireland Act 1998 (c.47), as amended by the Act, provisions relating to technical standards which were EU obligations and which had effect immediately before Exit day are Reserved. Therefore the Department is able to amend both GB and NI legislation when enacting provisions related to technical standards (i.e. type approval) which were EU obligations.

6.9 Before a motor vehicle can be used on the road, it must be licensed and registered under the Vehicle Excise and Registration Act 1994 (c.22). In order to register a vehicle of a category subject to compulsory type approval, a certificate of conformity issued by the manufacturer on the basis of an EU type approval (issued by UK or EU-27 authorities) must be in effect.

6.10 The Vehicle Excise and Registration Act is being amended to provide that when a motor vehicle is registered in UK after Exit day, a certificate of conformity issued by the manufacturer with respect to an EU type approval issued by an EU-27 type approval authority is not valid for registration unless the motor vehicle in question was in the UK on Exit day.

6.11 Amendments are being made to the Road Traffic Act 1988 (c.16) and the Road Traffic Order 1981 (1981 No. 154 (N.I.1)) to introduce schemes that enable a manufacturer holding an EU type approval issued by an EU-27 type approval authority to obtain a Provisional UK type approval.

6.12 Minor amendments are being made to the Road Vehicles (Approval) Regulations 2009 and to three of the retained direct principal EU Regulations (the three frameworks for motorcycles, agricultural vehicles, and engines for NRMM) so that the legislative regimes continue to function at a basic level. These amendments provide that for the purposes of this legislation, the UK is to be treated as a Member State, enabling issue of "EU" type approval to continue under the three retained direct principal EU framework Regulations, as well as enabling continuation of domestic approval schemes under the Road Vehicles (Approval) Regulations 2009 for passenger and goods vehicles.

6.13 All of this is an interim arrangement valid for a maximum of two years, pending a comprehensive review and re-working of the UK's type approval arrangements (with legislation planned for mid-2019). This review is not intended to make policy changes but will amend the retained EU legislation on type approval (approx. 3700 pages) to eliminate deficiencies, and alongside this streamline the legislation (if possible) to make it more accessible.

7. Policy background

What is being done and why?

7.1 A range of road vehicles: passenger and goods vehicles, motorcycles and agricultural vehicles, as well as engines intended for fitment in non-road mobile machinery (NRMM), are currently subject to obligatory EU type approval, in order to ensure that newly manufactured products conform to high standards of safety and environmental protection.

7.2 This instrument is being made to address the most critical deficiencies in domestic and retained type approval legislation, principally to ensure that after EU Exit, EU approvals issued by EU-27 approval authorities are not accepted in UK without a level of scrutiny (and potential refusal) by UK authorities. Exemptions from this, permitting acceptance of approvals issued by EU-27 approval authorities, apply where the approval relates to (i) a motor vehicle that was manufactured and in the UK before Exit; or (ii) a product that is not a motor vehicle and thus not subject to compulsory registration, comprising trailers for passenger or goods vehicles and machinery engines. Exemption (i) is designed to avoid unnecessary burdens on UK dealers holding quantities of vehicles which were fully compliant when they were manufactured; while for exemption (ii), for those products which are not registered it is considered appropriate to align with the Government's continuity approach for goods.

7.3 This instrument will enable the UK's type approval authority, VCA, to issue Provisional UK type approvals to manufacturers producing vehicles (or engines) under an EU vehicle (or engine) type approval issued by EU-27 approval authorities. Additional testing or inspection will not be required unless VCA become aware of evidence (e.g. from market surveillance) that raises doubts over compliance. As part of the application process VCA will confirm, primarily via documentary evidence

already provided to the EU-27 authority but potentially also via factory visits, that vehicles in production continue to conform to the relevant type approval.

7.4 Therefore manufacturers holding an EU approval from an EU-27 approval authority (issued before or after Exit day) and producing motor vehicles on or after Exit day will need to apply for a Provisional UK type approval from the VCA in order to be able to register their motor vehicles in Great Britain or Northern Ireland. This will ensure that the Department has oversight of motor vehicles being produced and registered in the UK on or after Exit day, whilst avoiding double testing for manufacturers. Provisional UK type approval is being made available for trailers for passenger and goods vehicles and machinery engines, to assist manufacturers in preparation for the future when EU-27 approvals will no longer be accepted for these categories of product.

7.5 An EU type approval issued by the VCA before Exit day will remain valid on or after Exit day, so manufacturers can continue to produce and register, or place on the market, vehicles and engines covered by such a type approval.

7.6 It will not be possible for VCA to issue "EU" type approval (other than Provisional UK type approval issued on the basis of a relevant EU approval) for passenger and goods vehicles on the basis of EU standards after EU Exit without the further legislation referred to in paragraph 6.13. This is because to do so on the basis of the current legislative regime would be legally of a higher risk than for the other categories (motorcycles, agricultural tractors, engines for non-road mobile machinery) due to the large number of deficiencies in the extensive EU legislation. This is because the passenger and goods vehicle Framework in domestic regulations is currently set out by reference to the obligations in a Directive (Directive 2007/46), so the situation is more complex than for the other categories of vehicle which are governed by Frameworks laid down in directly applicable EU Regulations which can be retained in a workable fashion with minimal amendments.

7.7 VCA's inability to issue type approvals for new models of passenger or goods vehicles launched on or after Exit day could cause problems for smaller UK manufacturers and converters[1] who are not planning to sell vehicles in the EU-27 and thus have no plans to obtain EU type approval from an EU-27 authority. Such manufacturers and converters would be inconvenienced by being obliged to work with an authority overseas to obtain EU type approval for the sole purpose of then obtaining a Provisional UK type approval.

7.8 The current National Small Series Type Approval (NSSTA) scheme operated by VCA offers relaxations of certain EU standards. It provides a route to the UK market for companies building or converting vehicles in low quantities, that cannot afford the development and test costs necessary to comply with the full array of European standards. Yearly production limits apply to vehicles approved under this scheme, to prevent circumvention of the EU standards by the high volume major manufacturers. This scheme will still be available after Exit day but would be of limited use to most manufacturers using EU type approval due to the limits on production. Therefore, following consultation with industry stakeholders, we will address this by doubling the limits on production for a temporary period (until the end of 2019). This should assist current users of VCA who are selling only in the UK.

[1] Converters are (generally small) companies who make changes to mass produced vehicles, often for special purposes; for example adding bodywork on a truck, or converting a van into a motor caravan

7.9 Feedback from industry is that manufacturers bringing new mass produced vehicles to market on or after Exit day are in most cases likely to apply for EU type approval first (because they will require EU type approval to place vehicles on the EU market in any event), and will then apply for Provisional UK type approval to permit UK sales.

7.10 For the other three regimes, motorcycles, agricultural vehicles and engines for machinery, this instrument will enable new, full type approvals to continue to be issued after Exit day by the VCA, albeit the wording of documentation issued in relation to the approval ("EU type approval") could be misleading in the short term, until the comprehensive SI is in place.

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

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.

8.2 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.

8.3 Alongside the EU (Withdrawal) Act 2018 powers this instrument is also being made under section 2(2) of the European Communities Act 1972 to ensure that references to EU legislation in Northern Ireland's domestic law are up-to-date prior to Exit Day.

9. Consolidation

9.1 Due to the fact that, apart from Part 1 (Introduction) and Part 3 (Amendment of Northern Ireland legislation: European Communities Act 1972), this instrument expires at the end of a period of two years beginning with Exit day, no consolidation is taking place.

10. Consultation outcome

10.1 No formal consultation has been undertaken, as the intention is to ensure that, as far as possible, the status quo is maintained. Department for Transport Ministers and officials have regular engagement with the motor industry. Through specific meetings and workshops on EU Exit, and at long-established stakeholder forums, a number of issues related to the UK's withdrawal from the EU have been addressed. This includes the DfT setting out its plans for making secondary legislation to ensure that the statute book continues to function irrespective of the outcome of negotiations.

10.2 Information on Type approval in the event of no-deal was published on the 13th September 2018 as part of the Government's wider guidance on no-deal preparedness. The publication of this information coincided with a series of focused meetings with stakeholders such as the Society of Motor Manufacturers and Traders (SMMT), the Motor Cycle Industry Association (MCIA), the Agricultural Engineers Association (AEA) and the European Engine Manufacturers Association (EUROMOT). Numerous smaller trade associations have also been provided with information, and a number of manufacturers have been contacted directly.

10.3 VCA have also contacted the companies who hold approvals with them, to ensure all their customers are aware of the proposals, including smaller manufactures who are not members of industry bodies.

10.4 There was support amongst stakeholders for this instrument. They recognised the need for a UK type approval system and they were pleased that additional testing will not be required for existing vehicle types. Stakeholders raised the potential need for UK Small- and Medium-sized Enterprises (SMEs) to obtain type approval for new models of passenger or goods vehicle launched during the period of operation of this SI (including conversions of mass produced vehicles into specialist products) as described in paragraph 7.7. This was addressed as described in paragraph 7.8 by raising the volume limits on the NSSTA low volume scheme for road vehicles.

10.5 Northern Ireland's Department for Infrastructure has contributed to the development of this instrument and is content.

11. Guidance

11.1 Guidance for manufacturers applying for Provisional UK type approval, setting out the likely process assuming Parliament agrees this instrument, was published by the Vehicle Certification Agency at https://www.vehicle-certification-agency.gov.uk///eu-exit/eu-exit.asp .

12. Impact

12.1 The impact on business, charities or voluntary bodies is minimal. Manufacturers holding an EU-27 approval will be required to obtain a Provisional UK type approval via an administrative process that will not require additional testing.

12.2 The impact on the public sector is the recruitment of a small number of extra staff at VCA to handle the extra administration of issuing Provisional UK type approval

12.3 An Impact Assessment has not been prepared for this instrument because the impact upon business has been assessed by the DfT as being less than £5 million in any year. Provisional UK type approval is being offered free of charge and therefore business will only incur minor familiarisation costs and a small internal administrative cost in providing a list of current EU-27 approvals to the VCA with accompanying conformity documentation. Holders of current VCA approvals will incur no cost.

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 the NSSTA scheme catering for these businesses, with increased production limits, as described in paragraphs 7.7 and 7.8. Small businesses constructing motorcycles can continue to use the Motorcycle Single Vehicle Approval scheme. This is a domestic approval scheme that is designed to permit the approval of individual or very low volume, home built or personally imported motorcycles, for which European type approval is too expensive or simply unsuitable. Each motorcycle submitted is subject to inspection by DfT's Driver and Vehicle Services Agency (DVSA), in a facility similar to that used for annual ("MOT") testing. There are no quantitative limits on production and this scheme is unaffected by EU exit or this instrument.

13.3 The basis for the final decision on what action to take to assist small businesses was informed by discussions that the VCA had with their small business customers and in consultation with trade associations such as SMMT.

14. Monitoring & review

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

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Mike Lowe at the Department for Transport, Telephone: 07769 243345, email: mike.lowe@dft.gov.uk or Adrian Burrows, Telephone 07773 643701, email adrian.burrows@dft.gov.uk can be contacted with any queries regarding the instrument.

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

15.3 Jesse Norman, Minister 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 The Minister of Transport, Jesse Norman 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 2018 does no more than is appropriate".

1.2 This is the case because: the SI does not amend any technical standards but simply creates a scheme to give the Department oversight of motor vehicles entering the UK market on the basis of approvals issued by EU-27 member states, which we would otherwise have had to accept without right of refusal if the amendments were not made. At the same time it keeps the administrative burden on manufacturers and dealers to the absolute minimum.

2. Good reasons

2.1 The Minister of Transport, Jesse Norman 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 entering the UK market.

3. Equalities

3.1 The Minister of Transport, Jesse Norman has made the following statement(s):

"The 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 of Transport, Jesse Norman has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Jesse Norman 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.