EXPLANATORY MEMORANDUM TO

THE ROAD VEHICLES (DEFEAT DEVICES, FUEL ECONOMY AND TYPE-APPROVAL) (AMENDMENT) REGULATIONS 2018

2018 No. 673

1. Introduction

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

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

2. Purpose of the instrument

2.1 The purpose of this instrument is to amend various regulations relating to motor vehicles. First of all, it amends one set of regulations covering the type approval[1] of road vehicles: cars, trucks, buses and their trailers, in order to introduce new European rules on safety and environmental protection for vehicles built in low volume and to correct four minor errors (Parts 3 to 5). Second, it amends the same set of regulations (Part 6), and in addition two other sets covering the type approval of motorcycles and of agricultural vehicles (Parts 7 and 8), to make the supply of vehicles of the relevant categories that are fitted with defeat devices[2] an offence, strengthening an existing provision in UK law[3]. Third, it amends regulations governing the provision of standardised car fuel economy figures to the public (Part 2), by requiring measurement of fuel economy to be carried out using a new and improved European laboratory test cycle.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument includes amendments in consequence of the matters raised by the Joint Committee on Statutory Instruments in its Nineteenth Report of Session 2017-19 in relation to S.I. 2018/235 and 236. As a consequence, this instrument is being issued free of charge to all known recipients of those Statutory Instruments. This instrument also includes correction of errors in S.I. 2009/717. These errors do not constitute a significant part of the provisions in relation to those Regulations, nor are they substantive in the context of the other amendments being made. Therefore we are not proposing to issue copies free of charge to all known recipients of that Statutory Instrument. The Department has consulted the SI Registrar in accordance with paragraph 4.7.6 of Statutory Instrument Practice (SIP).

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[1] Type approval is the process whereby manufacturers of a new model of vehicle are required to test it against a number of EU or international safety and environmental standards and obtain approval from a government body prior to placing it on sale.

[2] A defeat device (or defeat strategy) is designed to circumvent or defeat the intention of regulatory testing. It can take the form of hardware or software, normally the latte r in modern vehicles.

[3] The Road Vehicles (Approval) Regulations 2009 included the required provisions from Directive 2007/46/EC on defeat devices. These are strengthened by this instrument.

Other matters of special interest to the House of Commons

3.2 As this instrument is subject to negative resolution and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Road Vehicles (Approval) Regulations 2009 (SI 2009/717) ("RVAR") implemented Directive 2007/46/EC on vehicle type approval, providing for compulsory harmonisation of type approval for road vehicles via a European type approval scheme, and setting up domestic approval schemes, which provide waivers from the full European type approval scheme for specialist vehicles produced in low volume.

4.2 Part 4 of this instrument implements the technical requirements of a number of recent EU type approval regulations into domestic approval schemes, amending Schedules 4 and 5 to the RVAR. These recent EU regulations include the latest amendments to the regulations governing exhaust emissions: Regulation (EU) No. 2017/1151 amending Regulation (EU) No. 715/2007 (Light vehicle emissions) and Regulation (EU) 595/2009 (Heavy vehicle emissions); and the latest amendments to the regulations covering safety: Regulations (EU) Nos. 347/2012 and 351/2012 amending Regulation (EU) No. 661/2009 (the General Safety Regulation), and Regulation (EU) No. 79/2009 (Hydrogen fuel system safety).

4.3 When introducing these EU requirements into national schemes, we have some discretion to set alternative (less stringent) requirements, which aim to achieve an outcome which is equivalent to the greatest extent practicable to that which would be obtained were the full EU requirements to be imposed.

4.4 Part 4 (Regulation 10 and Regulation 11(3)b) also corrects errors in sub-paragraph lettering and numbering in Schedule 4 of the RVAR.

4.5 Part 3 of this instrument provides an ambulatory reference to Directive 2007/46/EC, to ensure that the latest version of this is referred to in relation to approvals granted by the British type approval authority, the Vehicle Certification Agency (VCA), bearing in mind that in any case amendments to this Directive are normally made by EU Regulations. This Part also removes elements of the RVAR which are no longer applicable due to the passage of time.

4.6 Part 5 of this instrument corrects two errors in Regulations 31 and 32 of the RVAR. Regulation 14 amends regulation 31 to clarify that the VCA can issue end-of-series derogations covering sale in the UK of vehicles type approved by any EU approval authority, not just by the UK authority. Regulation 15 corrects a simple typographical error.

4.7 The RVAR include the provisions required by Directive 2007/46/EC prohibiting the use of defeat devices in a vehicle presented to the VCA for approval. These are strengthened by Part 6 of this instrument by making the supply of a vehicle containing a prohibited defeat device a punishable offence.

4.8 An equivalent offence is also being introduced into the Motorcycles (Type-Approval) Regulations 2018 (SI 2018/235) ("the Motorcycles Regulations") and the Agricultural and Forestry Vehicles (Type-Approval) Regulations 2018 (SI 2018/236) (the "AFV Regulations"), which govern the type approval of these categories of vehicle. This is

being done by Part 7 and Part 8 respectively of this instrument. Minor changes are being made to each of these Statutory Instruments following identification of defects by the JCSI, by regulations 20 and 22, which also correct a wrong cross-reference. In addition, an omitted consequential amendment is inserted by Regulation 23.

4.9 The Passenger Car (Fuel Consumption and CO2 Emissions Information) Regulations 2001 (SI 2001/3523) implemented Directive 1999/94/EC relating to the availability of consumer information on fuel economy and CO2 emissions, in respect of the marketing of new passenger cars.

4.10 The EU Commission have published a Recommendation of 31 May 2017 on "the use of fuel consumption and CO2 emission values type-approved and measured in accordance with the World harmonised Light vehicles Test Procedure (WLTP) when making information available for consumers". This makes a number of recommendations, one of which (relating to using the results of this test for published fuel consumption figures) is being implemented in Part 2 of the instrument.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales, Scotland and Northern Ireland.

5.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

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 overall objective of the amendments is to improve the safety and environmental performance of vehicles, responding to technological developments and changing market needs.

7.2 Part 4 of the instrument will amend the parts of the RVAR that affect national approval schemes applicable to road vehicles (cars, trucks, buses and their trailers) by introducing a number of recent EU Regulations that are already applicable to mass production vehicles under the harmonised EU type approval scheme.

7.3 In particular the EU requirements being brought into national schemes for heavy vehicles (trucks and buses) include the latest "Euro VI" heavy vehicle exhaust emissions, Advanced Emergency Braking Systems (AEBS), Lane Departure Warning systems (LDWS) and improved passenger side mirrors (for goods vehicles only). Certain exemptions from the requirement to fit AEBS and LDWS are being included, taking into account common practice for bodies and chassis to be built by separate companies, and the difficulties for small companies in designing and fitting such advanced systems.

7.4 The EU requirements being brought into national schemes for light vehicles (cars and vans) include a new more representative laboratory test cycle for light vehicle emissions and fuel consumption (the World Light vehicle Test Procedure or WLTP).

7.5 Given the increasing market share of electric vehicles and hydrogen vehicles, safety standards for such vehicles are being introduced into national schemes for the first time. In 2009 such standards either did not exist or were not compulsory at EU level.

7.6 The new standards mentioned at paragraphs 7.3 to 7.5 above are already applicable to mass produced vehicles by virtue of the EU Regulations being directly applicable, so the main purpose of this instrument is to apply them to vehicles produced in low volumes or modified for specialist use before registration: for example conversions of standard cars to enable wheelchair users to ride in them whilst remaining in their wheelchairs and conversions of vans to motor caravans.

7.7 For convenience, the numbering of the items in the Schedules (e.g. 69. Electric safety) follows the numbering given in Annex IV of Directive 2007/46/EC for the same subjects. Some subjects do not affect all vehicle categories and there are some subjects where we waive the requirements as they are inappropriate for vehicles produced in low volumes. As a result of this there are gaps in the numbering.

7.8 Parts 3 and 5 of the instrument essentially "tidy up" the regulations and will help ensure the correct functioning of the EU and national type approval schemes.

7.9 Part 6 of the instrument will strengthen the existing provisions on the use of defeat devices by making it an offence for a manufacturer to supply a vehicle with a prohibited defeat device to the UK market. It provides that if such a prohibited defeat device is found in two or more of the same model of vehicle, it will be presumed to be in place across all examples of that model, unless the manufacturer can prove otherwise. This strengthening is as a result of issues identified with the regulations following the VW scandal.

7.10 Parts 7 and 8 of the instrument will create an equivalent offence to the one described at 7.9 above to cover the supply of motorcycles and agricultural tractors with defeat devices.

7.11 Part 2 of the instrument will update the regulations which require labels in dealers' premises, car adverts in magazines and promotional literature (brochures etc.) to quote the "official" EU standardised fuel consumption figures obtained from laboratory testing, to enable comparison between different vehicles.

7.12 A new more representative laboratory test cycle for measuring car emissions and fuel economy, the World harmonised Light vehicle Test Procedure (WLTP), takes effect from 1 September 2018.

7.13 Regarding statutory fuel consumption figures, the instrument requires manufacturers to switch to using the new WLTP figures in all publicity with effect from 1 January 2019. For the related specific CO2 emissions figures, the changeover is delayed until 6 April 2020, to align with the date upon which the basis for car taxation (first year Vehicle Excise Duty and Benefit-in-Kind Company Car tax) is changing to the WLTP figures.

Consolidation

7.14 This is making only the first amendment to the Motorcycles Regulations and the AFV Regulations, the second amendment to the Road Vehicle (Approval) Regulations 2009 and the fourth amendment to the Passenger Car (Fuel Consumption and CO2 Emissions Information) Regulations 2001. No consolidation is envisaged at this time.

8. Consultation outcome

8.1 DfT conducted a public consultation on the proposals related to road vehicles which ran for 4 weeks from 2 February 2018 to 2 March 2018.

8.2 DfT received 2340 responses. The responses were from organisations of vehicle manufacturers including the Society of Manufacturers and Traders (SMMT), specialist manufacturer/converter organisations such as Wheelchair Accessible Vehicle Converters Association (WAVCA), the National Motor Dealers Association (NMDA), organisations concerned with environmental improvements such as the Low Carbon Vehicle Partnership (LCVP) and TRL Limited, local government (Transport for London), several vehicle manufacturers and vehicle owners clubs, as well as a large number of individuals.

8.3 A very large number of respondents (individuals, kit car manufacturers and owners clubs) objected to the tightening of emissions standards on engines fitted to kit cars and this proposal has been dropped from Part 4.

8.4 The remainder of respondents largely responded positively to the measures being proposed in Parts 3, 4 and 5. Some of the proposed dates of application for new requirements were seen as too stringent and an extra 3 months has therefore been granted in these cases, to assist smaller companies to adapt to the new requirements.

8.5 Consultees were largely in favour of the proposal (now implemented in Part 6) for a new offence of supplying a vehicle with a defeat device. A majority favoured penalising the manufacturer, and although many also supported the option to include dealers and importers, there was recognition that they would not necessarily be aware of a defeat device and would not have been responsible for its inclusion. We are therefore proceeding with an offence that will only be applicable to the manufacturer or its subsidiary.

8.6 A more detailed summary of the responses to this consultation is available online at https://www.gov.uk/government/consultations/road-vehicles-improving-air-quality-and-safety.

8.7 Two consultations in 2017 proposed the introduction of the new defeat device offence for motorcycles and agricultural vehicles (now implemented in Parts 7 and 8.) The outcome of these was similar to that described in 8.5 above. Summaries of the responses to these consultations can be found at https://www.gov.uk/government/consultations/motorcycles-implementing-eu-regulation-1682013 and https://www.gov.uk/government/consultations/agricultural-vehicles-implementing-eu-regulation-1672013

8.8 Regarding the changes to fuel consumption in Part 2, also covered in the February 2018 consultation, the need to change to the new WLTP figures was widely accepted but there were differences of opinion over the dates. There was support for switching to WLTP figures for fuel consumption and CO2 emissions simultaneously to avoid confusion, whether on the first date (January 2019 – proposed for the Fuel consumption changeover) or second date (April 2020 – proposed for the CO2 emissions changeover). We have decided to proceed with the dates as proposed, in order to make the new fuel consumption figures available as soon as reasonably possible whilst delaying the introduction of the new CO2 emissions figures to the date when they are expected to become relevant for taxation and other vehicle classification criteria. For those who are considering purchase of a new vehicle, the

WLTP CO2 emissions figures will be available from manufacturers and VCA at the same time as the WLTP fuel consumption figures.

9. Guidance

9.1 Regarding Parts 3 to 5, the relevant EU Regulations containing the detailed test specifications for new safety and environmental requirements were published at various points over the last few years. Information on vehicle type approval, including National Small Series Type Approval (NSSTA) and Individual Vehicle Approval (IVA), is available on the EU Commission's website and on the gov.uk and VCA websites, and can be obtained from trade associations such as the SMMT, who provide a lot of specialised technical information to their members. Due to the complexity of the subject, new manufacturers considering whether to manufacture vehicles under NSSTA need to make an appointment with VCA to discuss how to obtain it, as early as possible while designing a vehicle. The IVA inspection manuals used by Driver Vehicle Standards Agency (DVSA) examiners are available online and will be updated prior to the new requirements taking effect:

https://www.gov.uk/government/collections/individual-vehicle-approval-iva-forms-and-guidance
When these are updated, DVSA send an email to anyone who has registered an interest in the scheme.

Regarding Parts 6 to 8, the EU Commission have issued guidance over what constitutes a defeat device.

Regarding Part 2, the VCA will issue guidance in due course on the non-statutory elements (mainly relating to taxation) which appear on the Fuel Consumption label beside the statutory information.

DfT has no plans to issue any other guidance.

10. Impact

10.1 The impact on business, charities or voluntary bodies is as follows: DfT has assessed that the costs to business of fitting engines meeting the latest EU standards (where these are not already fitted) and making the other changes required will be below £5m in any year. The impact on charities or voluntary bodies is expected to be nil.

10.2 The impact on the public sector is minimal. The VCA and DVSA will have to familiarise themselves with the details of the new regulations, which will done in the normal course of business through training.

10.3 An Impact Assessment has not been prepared for this instrument. DfT has assessed that the costs to business will fall below the threshold of £5m in any year. The overall impact is assessed as being beneficial, taking into account the benefits resulting from improvements to air quality by quantifying the expected reduction in NOx and PM10[4] emitted due to engines in affected low volume and specialist vehicles being required to meet latest EU standards. Taken over 20 years, the net benefits (Present Value) are assessed as likely to fall between £15m and £61m with a central estimate of £37m.

[4] NOx (oxides of nitrogen, such as nitrogen dioxide) and PM10 (fine particles of soot) are components of exhaust emissions that contribute to poor air quality and for which data on impact (per tonne emitted) is published.

11. Regulating small business

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

11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is as follows: Existing relevant exemptions have been maintained or widened and a number of exemptions have been introduced in order to provide a proportionate regime for small businesses modifying mass produced vehicles or building specialised vehicles. For example, re-testing exhaust emissions is not required by a business modifying a mass produced vehicle if the base vehicle complied, as long as the emission control devices are not removed or disabled.

11.3 The basis for the final decision on what action to take to assist small businesses was the public consultation, involving representative bodies which include small businesses as members, such as the Society of Motor Manufacturers and Traders (SMMT), and the Wheelchair Accessible Vehicle Converters Association (WAVCA).

12. Monitoring & review

12.1 DfT has assessed the net costs this regulation imposes on business and the voluntary sector as being less than £5m in any year. Given this, and the fact that the 2001 and 2009 Regulations are already subject to 5 yearly Review, a Review clause has not been included. No special monitoring is foreseen but the Department is in regular dialogue with industry associations and other stakeholders over the appropriateness of the national approval schemes and the publication of fuel consumption data, bearing in mind the continuous activity at the EU and international levels in developing new vehicle regulations.

13. Contact

13.1 Mr Mike Lowe at DfT telephone: 07769 243345 or email: mike.lowe@dft.gsi.gov.uk can answer any queries regarding the instrument.