
STATUTORY INSTRUMENTS

2018 No. 764

ENVIRONMENTAL PROTECTION

The Non-Road Mobile Machinery (Type-Approval and Emission of Gaseous and Particulate Pollutants) Regulations 2018

Made - - - - *25th June 2018*
Laid before Parliament *28th June 2018*
Coming into force - - *21st September 2018*

The Secretary of State for Transport makes the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 (“the 1972 Act”)(1).

The Secretary of State is designated for the purposes of section 2(2) of the 1972 Act in relation to the regulation of the type, description, construction or equipment of vehicles, and of components of vehicles, and in particular any vehicle type-approval scheme(2) and in relation to the environment(3).

These Regulations make provision for a purpose mentioned in that section and it appears to the Secretary of State that it is expedient for references in these Regulations (and in the consequential amendments made by these Regulations) to Regulation (EU) 2016/1628 of the European Parliament and of the Council on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery(4) to be construed as references to a version of that Regulation as it may be amended from time to time.

Citation, commencement and effect

1. These Regulations—

- (a) may be cited as the Non-Road Mobile Machinery (Type-Approval and Emission of Gaseous and Particulate Pollutants) Regulations 2018;
- (b) come into force on 21st September 2018; and

(1) 1972 c.68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 and S.I. 2007/1388.

(2) See S.I. 1972/1811.

(3) See S.I. 2008/301.

(4) OJ No L 252, 16.9.2016, p. 53.

- (c) are of no effect in relation to any matter to which paragraphs 3 to 11 of article 58 of the NRMM Regulation applies.

Interpretation

2.—(1) In these Regulations—

“enforcement authority” means the Secretary of State;

“the NRMM Regulation” means Regulation (EU) 2016/1628 of the European Parliament and of the Council on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, as it may be amended from time to time;

“relevant products” means—

- (a) engines;
- (b) components or assemblies of components that go to make up engines;
- (c) devices which are capable of forming part of emission control systems; or
- (d) non-road mobile machinery.

(2) Unless otherwise provided, any word or expression used in these Regulations which is defined in article 3 of the NRMM Regulation has the meaning given in that article.

Appointment of approval authority

3. The Secretary of State is the approval authority for the purposes of these Regulations and the NRMM Regulation.

Market surveillance authority

4. The Secretary of State is the market surveillance authority for the purposes of—

- (a) these Regulations and the NRMM Regulation; and
- (b) where applied by the NRMM Regulation, Regulation (EC) No 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93⁽⁵⁾.

Requests for information: failure to comply

5. Where a manufacturer who makes an application for type-approval fails to comply with a request for additional information made under paragraph 1(c) of article 21 of the NRMM Regulation, the approval authority may treat the application as having been withdrawn by the manufacturer.

Refusal of EU type-approval application

6.—(1) The approval authority must refuse an EU type-approval application if the requirements of—

- (a) articles 22 and 24 to 26; or
- (b) article 35,

of the NRMM Regulation have not been complied with.

(5) OJ No L 218, 13.8.2008, p.30.

(2) The requirements of article 24 of the NRMM Regulation are not complied with if the tests required by that article demonstrate that there is non-compliance with the technical prescriptions mentioned in paragraph 1 of that article.

(3) The requirements of article 26 of the NRMM Regulation are not complied with if the approval authority is not satisfied that the applicant has made or will make adequate arrangements to ensure that—

- (a) production will conform to the approved type; or
- (b) where applicable, the data in the statements of conformity are correct.

Conformity of production: record keeping

7. The holder of an EU type-approval mentioned in article 26 of the NRMM Regulation must compile and retain for inspection by the approval authority for a period of five years commencing with the date of compilation, such records of tests and checks undertaken that are sufficient to demonstrate—

- (a) conformity of production to the approved type;
- (b) compliance of statements of conformity to article 31 of the NRMM Regulation; and
- (c) that, where applicable, the data in statements of conformity issued by the holder are correct.

Review of decisions

8.—(1) A decision to which article 41 of the NRMM Regulation applies must be given by notice in writing (“a relevant notice”).

(2) Where the approval authority has given a person a relevant notice, that person may apply to the approval authority for a reconsideration of the decision given in that notice.

(3) An application under paragraph (2) must—

- (a) be made within the period of 28 days beginning on the date when the relevant notice is received; and
- (b) state the reasons for making the application and be accompanied by such further evidence as the person believes supports those reasons.

(4) The approval authority may—

- (a) request evidence in support of the application;
- (b) after giving reasonable notice to the applicant, carry out a re-examination of one or more engines for the purpose of determining the issues raised by the application.

(5) The approval authority must as soon as reasonably practicable—

- (a) give written notification to the applicant stating whether the decision is confirmed, amended or reversed; and
- (b) if the decision is reversed or amended, take the appropriate action in respect of the revised decision.

(6) An applicant aggrieved by the approval authority’s notification under paragraph (5) may by notice request the approval authority to appoint an independent assessor to review the decision to which the relevant notice relates.

(7) A request under paragraph (6) must—

- (a) be made not later than 28 days after receipt of the approval authority’s notification under paragraph (5); and
- (b) state the reasons for the request.

(8) As soon as reasonably practicable after the date of receipt of the request under paragraph (6), the approval authority must—

- (a) appoint a person to act as assessor or, at the authority’s discretion, not more than three persons to act as an assessment panel; and
- (b) notify the applicant of the appointment.

(9) The independent assessor or assessment panel may—

- (a) request further evidence in support of the request for review;
- (b) after giving reasonable notice to the applicant, carry out a re-examination of one or more engines for the purpose of determining the issues raised by the request for review.

Withdrawal of approvals: mistake or error

9.—(1) Subject to the provisions of this regulation, the approval authority may decide to withdraw any approval given by it by reason of mistake or error on the part of that authority.

(2) A decision to withdraw an approval must be given by notice in writing (“a relevant notice”) and specify—

- (a) the nature of the mistake or error; and
- (b) the date from which the approval is to be withdrawn, which must be not less than 28 days nor more than six months after the date on which the relevant notice is given.

(3) Regulation 8(2) to (9) applies to the review of a decision under this regulation.

(4) Any review of a decision under this regulation may, subject to the requirement in paragraph (2) (b), vary the date from which the approval is to be withdrawn.

Withdrawal and suspension of approvals: effect

10.—(1) If the holder of an approval which has been withdrawn or suspended pursuant to the NRMM Regulation or these Regulations purports by virtue of that approval to—

- (a) issue a statement of conformity with respect to an engine; or
- (b) affix a statutory marking pursuant to article 32 of the NRMM Regulation,

the statement or marking is invalid.

(2) The approval authority may, by notice given to the holder, exempt from paragraph (1) one or more engine types within an engine family specified in the notice.

Service

11.—(1) Paragraphs (2) to (4) of this regulation have effect in relation to any notice or other document required or authorised by these Regulations or the NRMM Regulation to be given to or served on any person by the approval authority, market surveillance authority or enforcement authority.

(2) Any such notice or document may be given to or served on the person in question—

- (a) by delivering it to the person;
- (b) by leaving it at that person’s proper address;
- (c) by sending it by post to that person at that address;
- (d) by means of any form of electronic communication agreed with the person to whom it is to be sent.

(3) Any such notice or document may—

- (a) in the case of a body corporate, be given to or served on an officer of that body;
- (b) in the case of a partnership, be given to or served on any partner;
- (c) in the case of an unincorporated association other than a partnership, be given to or served on any member of the governing body of that association.

(4) For the purposes of this regulation and section 7 of the Interpretation Act 1978 (service of documents by post)(6) in its application to this regulation, the proper address of any person is that person's last known address (whether of the person's residence or of a place where the person carries on business or is employed) and also—

- (a) in the case of a body corporate or an officer of that body, the address of the registered or principal office of that body in the United Kingdom;
- (b) in the case of an unincorporated association other than a partnership or a member of its governing body, its principal office in the United Kingdom;
- (c) an address within the United Kingdom other than that person's proper address at which that person, or another acting on that person's behalf, will accept service of any notice or document required or authorised by these Regulations or the NRMM Regulation to be given to or served on any person by the approval authority.

(5) Any notice or other document or information required by these Regulations or the NRMM Regulation to be given to or served by any person on the approval authority, market surveillance authority or enforcement authority must be—

- (a) in writing; or
- (b) in an electronic format accepted by, and sent by means of any form of electronic communication agreed with, the approval authority, market surveillance authority or enforcement authority (as appropriate).

Provision of testing stations

12. The approval authority may provide and maintain stations where examinations of relevant products may be carried out for the purposes of these Regulations or the NRMM Regulation and may provide and maintain apparatus for carrying out such examinations.

Information and instructions: loss or damage

13.—(1) Where a duty is imposed on a manufacturer by article 43 of the NRMM Regulation (information and instructions intended for OEMs and end-users), any breach of the duty which causes a person to sustain loss or damage is actionable at the suit of that person.

(2) But, in any proceedings brought against a manufacturer in pursuance of this regulation, it is a defence for the manufacturer to show that the manufacturer took all reasonable steps and exercised all due diligence to avoid the breach.

Defeat Devices

14.—(1) For the purposes of articles 18 and 57 of the NRMM Regulation, “use of defeat strategies” or “using defeat strategies” is where an engine manufactured by a person—

- (a) is placed on the market in the United Kingdom; and
- (b) that engine is fitted with a defeat device.

(6) 1978 c.30.

(2) A separate offence under article 18(4) the NRMM Regulation(7) is committed in respect of each such engine placed on the market.

(3) Where, following examination of engines associated with a single engine type approval, the enforcement authority is satisfied that two or more of those engines—

- (a) are engines which have been affixed with a statutory marking under article 32 of the NRMM Regulation in respect of that approval; and
- (b) are fitted with a defeat device,

each engine associated with that single engine type approval is to be taken to be similarly fitted with a defeat device unless proved otherwise by the manufacturer.

(4) In paragraph (3), an engine is associated with an engine type approval if the statutory marking affixed to the engine under article 32 of the NRMM Regulation cites the type approval number for that type approval.

(5) In this regulation—

“auxiliary emission control strategy” has the meaning given in article 1(10) of Commission Delegated Regulation (EU) 2017/654;

“Commission Delegated Regulation (EU) 2017/654” means Commission Delegated Regulation (EU) 2017/654 supplementing Regulation (EU) 2016/1628 of the European Parliament and of the Council on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery(8);

“defeat device” means—

- (a) a defeat strategy; or
- (b) an auxiliary emission control strategy which is prohibited under point 2.3.7 of Annex IV of Commission Delegated Regulation (EU) 2017/654;

“placed on the market” means supplying to a third party or making available for distribution or use in the course of a commercial activity, whether in return for payment or free of charge, and includes exposure for sale to a third party.

Offences, enforcement and civil penalties

15.—(1) Schedule 1 (offences, penalties, enforcement and other matters) has effect.

(2) Except in paragraph 2 of Schedule 1 or in relation to the expression “Officer of Revenue and Customs”, a reference in Schedule 1 to an officer is a reference to any person authorised by the enforcement authority to assist the authority in enforcing these Regulations and the NRMM Regulation.

Consequential amendments and revocations

16. Schedule 2 (consequential amendments and revocations) has effect.

(7) Article 18(4) of the NRMM Regulation is supplemented by Commission Delegated Regulation (EU) 2017/654 dealing with misuse of an auxiliary emission control strategy.

(8) OJ No. L 102, 13.4.2017, p. 1.

Signed by authority of the Secretary of State for Transport

25th June 2018

Jesse Norman
Parliamentary Under Secretary of State
Department for Transport

SCHEDULES

SCHEDULE 1

Regulation 15

Offences, penalties, enforcement and other matters

PART 1

Offences

Offences and penalties

1. A person who is an economic operator is guilty of an offence if that person—
 - (a) contravenes any prohibition in these Regulations or the NRMM Regulation; or
 - (b) fails to comply with any requirement or obligation in these Regulations or the NRMM Regulation.

Offences by bodies corporate and partnerships

2.—(1) If an offence under these Regulations committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, an officer of the body corporate, or a person purporting to act as an officer of the body corporate, that officer or person (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, sub-paragraph (1) applies in relation to the acts and omissions of a member in connection with the member's functions of management as it applies to an officer of the body corporate.

- (3) If an offence under these Regulations is—
 - (a) committed by a Scottish partnership; and
 - (b) proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a partner of the partnership,

the partner (as well as the partnership) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(4) In this paragraph “officer” in relation to a body corporate means a director, secretary or other similar officer of the body corporate.

PART 2

Penalties

Criminal penalties

3.—(1) A person guilty of an offence under these Regulations in relation to regulation 14 or articles 18 and 57 of the NRMM Regulation is punishable on summary conviction—

- (a) in England and Wales by a fine; or
 - (b) in Scotland or Northern Ireland by a fine not exceeding level 5 on the standard scale.
- (2) But an offence is not punishable under this paragraph if—
- (a) the enforcement authority has required a person to pay a penalty in respect of that offence under paragraph 4; and
 - (b) that penalty has been paid to the enforcement authority.

Civil penalties

4.—(1) The enforcement authority may require a person who is an economic operator to pay a penalty if the enforcement authority is satisfied, on a balance of probabilities, that the person has committed an offence mentioned in paragraph 1.

- (2) But the enforcement authority may not require a person to pay a penalty if—
 - (a) the person shows that there was a reasonable excuse for committing the offence; or
 - (b) criminal proceedings (where applicable) have been instituted against the person in respect of the same offence.
- (3) A penalty imposed under this paragraph may not exceed £50,000 per offence.
- (4) The penalty is payable to the enforcement authority on demand.

Notification of penalty decision

5.—(1) If the enforcement authority decides to require a person to pay a penalty under these Regulations, the enforcement authority must give the person a penalty notice.

- (2) A penalty notice must—
 - (a) be in writing;
 - (b) state the enforcement authority's reasons for deciding to require the person to pay a penalty;
 - (c) state the amount of the penalty;
 - (d) specify the date on which it is given;
 - (e) specify the date, at least 28 days after the date specified in the notice as the date on which it is given, before which the penalty must be paid;
 - (f) specify how a penalty must be paid;
 - (g) include an explanation of the steps that the person may take if the person objects to the penalty (including specifying the manner and form in which any notice of objection must be given to the enforcement authority); and
 - (h) include an explanation of the steps the enforcement authority may take to recover any unpaid penalty.

Objection to penalty decision

6.—(1) The recipient of a penalty notice (the “recipient”) may object to the penalty notice by giving a notice of objection to the enforcement authority.

(2) A notice of objection must—

- (a) give the reasons for the objection;
- (b) be given to the enforcement authority in the manner and form specified in the penalty notice; and
- (c) be given before the end of the period of 28 days beginning with the date specified in the penalty notice as the date on which it is given.

(3) Where the enforcement authority receives a notice of objection, the enforcement authority must consider it and—

- (a) cancel the penalty;
- (b) reduce the penalty;
- (c) increase the penalty; or
- (d) determine not to alter the penalty.

(4) After reaching a decision as to how to proceed under sub-paragraph (3), the enforcement authority must notify the recipient of the decision in writing.

(5) A notification under sub-paragraph (4) must be given before the end of the period of 70 days beginning with the date specified in the penalty notice as the date on which it is given, or such longer period as the enforcement authority may agree with the recipient.

(6) A notification under sub-paragraph (4), other than one notifying the recipient that the enforcement authority has decided to cancel the penalty, must—

- (a) state the amount of the penalty following the enforcement authority’s consideration of the notice of objection;
- (b) state the enforcement authority’s reasons for the decision under sub-paragraph (3);
- (c) specify the date, at least 28 days after the date on which the notification is given, before which the penalty must be paid;
- (d) specify how the penalty must be paid;
- (e) include an explanation of the recipient’s rights of appeal; and
- (f) include an explanation of the steps the enforcement authority may take to recover any unpaid penalty.

(7) A notification under sub-paragraph (4) notifying the recipient that the enforcement authority has decided to cancel the penalty must state the enforcement authority’s reasons for the decision under sub-paragraph (3).

Civil penalties: appeals

7.—(1) A person (the “appellant”) may appeal to the court against a decision to require the person to pay a penalty under these Regulations.

(2) An appeal may be brought only if the appellant has given a notice of objection and the enforcement authority has—

- (a) reduced the penalty under paragraph 6(3)(b);
- (b) increased the penalty under paragraph 6(3)(c); or
- (c) determined not to alter the penalty under paragraph 6(3)(d).

- (3) An appeal must be brought within the period of 28 days beginning with the date on which the person is notified of the enforcement authority's decision on the notice of objection under paragraph 6(4).
- (4) On appeal, the court may—
- (a) allow the appeal and cancel the penalty;
 - (b) allow the appeal and reduce the penalty; or
 - (c) dismiss the appeal.
- (5) An appeal—
- (a) is to be a re-hearing of the enforcement authority's decision to impose a penalty; and
 - (b) may be determined having regard to matters of which the enforcement authority was unaware.
- (6) Sub-paragraph (5)(a) has effect despite any provision of rules of court.
- (7) In this paragraph, a reference to “the court” is a reference—
- (a) in England and Wales, to the county court;
 - (b) in Scotland, to the sheriff; and
 - (c) in Northern Ireland, to a county court.
- (8) But—
- (a) the county court in England and Wales, or a county court in Northern Ireland, may transfer proceedings under this regulation to the High Court; and
 - (b) the sheriff may transfer proceedings under this regulation to the Court of Session.

PART 3

Enforcement and other matters

Enforcement of penalty decision

- 8.—**(1) This paragraph applies where a sum is payable to the enforcement authority as a penalty under these Regulations.
- (2) In England and Wales the penalty is recoverable as if it were payable under an order of the county court in England and Wales.
- (3) In Scotland the penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (4) In Northern Ireland the penalty is recoverable as if it were payable under an order of a county court in Northern Ireland.
- (5) Where action is taken under this paragraph for the recovery of a sum payable as a penalty under these Regulations, the penalty is—
- (a) in relation to England and Wales, to be treated for the purposes of section 98 of the Courts Act 2003 (register of judgments and orders etc.)(9) as if it were a judgment entered in the county court;

(9) 2003 c.39; section 98 has been amended by sections 48(1) and 106(2) of, and paragraph 55(1), (2), (3)(a) and (b) of Schedule 8 and paragraph 15 of Schedule 16 to, the Tribunals, Courts and Enforcement Act 2007 (c.15) and section 17(5) of, and paragraph 40(a) and (c) of Part 2 of Schedule 9 to, the Crime and Courts Act 2013 (c.22). Further amendments made by the Tribunals, Courts and Enforcement Act 2007 have yet to be brought into force.

- (b) in relation to Northern Ireland, to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981 (register of judgments)⁽¹⁰⁾ as if it were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order.

Obstruction of officers and false statements

9.—(1) A person must not—

- (a) intentionally obstruct an officer when acting in pursuance of any provision of these Regulations;
- (b) intentionally fail to comply with any requirement properly made by an officer under any provision of these Regulations; or
- (c) without reasonable cause, fail to give an officer any other assistance or information which the officer may reasonably require of that person for the purposes of the exercise of the officer's functions under any provision of these Regulations.

(2) A person must not, in giving any information which is required of that person by virtue of sub-paragraph (1)(c)—

- (a) make any statement which the person knows is false in a material particular; or
- (b) recklessly make a statement which is false in a material particular.

Powers of search, etc.

10.—(1) Officers may exercise any of the powers set out in sub-paragraph (2) at all reasonable hours provided—

- (a) the officers identify themselves and produce authority in writing from the enforcement authority for the exercise by the officers of powers conferred on the authority by these Regulations; and
- (b) state the purpose of the officers' actions and the grounds for undertaking them.

(2) The powers referred to in sub-paragraph (1) are as follows—

- (a) an officer may for the purpose of ascertaining whether an offence under these Regulations has been committed—
 - (i) inspect any relevant products; and
 - (ii) enter any premises other than premises used wholly or mainly as a dwelling;
- (b) if an officer has reasonable cause to suspect that an offence under these Regulations has been committed, the officer may, for the purpose of ascertaining whether it has been committed, require any person carrying on, or employed in connection with, a business to produce any records relating to the relevant products and the officer may take copies of those records or any part of them;
- (c) if an officer has reasonable cause to suspect that an offence under these Regulations has been committed, the officer may seize and detain any relevant products for the purpose of ascertaining whether the offence has been committed;
- (d) an officer may seize and detain any relevant products or records which the officer has reason to believe may be required as evidence in proceedings for an offence under these Regulations;
- (e) an officer may, for the purpose of exercising the officer's powers of seizure under this sub-paragraph, but only if and to the extent that it is reasonably necessary in order to secure that

(10) S.I. 1981/226 (N.I. 6).

the provisions of these Regulations are duly observed, require any person having authority to do so to open any container and, if that person does not comply with the requirement or if there is no person present having authority to open it, the officer may break open the container.

(3) For the purposes of sub-paragraph (2), the officer may require information stored electronically to be made available in printed form.

(4) An officer may, for the purpose of ascertaining whether an offence has been committed under these Regulations, make a purchase of relevant products.

(5) If a justice is satisfied by any written information on oath—

(a) that there are reasonable grounds for believing either—

(i) that any relevant products or records, which an officer has power under this paragraph to inspect, copy, seize or require to be produced, is or are on any premises and that the inspection, copying, seizure or production of that item is likely to disclose evidence of the commission of an offence under these Regulations; or

(ii) that any offence under these Regulations has been, is being, or is about to be committed on any premises; and

(b) either—

(i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this sub-paragraph has been given to the occupier; or

(ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await the occupier's return,

the justice may by warrant under the justice's hand, which continues in force for a period of one month, authorise an officer to enter the premises, if need be by force.

(6) On entering any premises by authority of a warrant granted under sub-paragraph (5), an officer must, if the occupier is present, give to the occupier or, if the occupier is temporarily absent, leave in a prominent place on the premises, or an appropriate part of the premises, a notice in writing—

(a) summarising an officer's powers of seizure and detention of any relevant products or records under this paragraph;

(b) explaining that compensation may be payable for damage caused in entering premises and seizing and removing any relevant products or records and giving the address to which an application for compensation should be directed; and

(c) indicating at which office of the enforcement authority and within which hours a copy of these Regulations is available to be consulted.

(7) An officer, when entering any premises by virtue of this paragraph, may be accompanied by such persons and take such equipment as appear to the officer to be necessary.

(8) An officer, when leaving any premises which the officer entered by virtue of a warrant, must, if the premises are unoccupied or the occupier is temporarily absent, leave them in as secure a state as that in which they were found.

(9) When exercising any power of seizure and detention under this paragraph, an officer must, as soon as practicable, give to the person against whom the power has been exercised, a written notice stating—

(a) precisely what has been so seized and detained;

- (b) that an application for the release of a detained item may be made in accordance with paragraph 12 of this Schedule; and
- (c) the procedure for making such an application.

(10) A person who is not an officer of the enforcement authority must not purport to act as such under this paragraph.

(11) In sub-paragraph (5), the reference to “any written information on oath” is to be construed, in the application of this paragraph to—

- (a) Scotland, as a reference to any evidence on oath;
- (b) Northern Ireland, as a reference to any complaint on oath.

(12) In this paragraph, “justice” means—

- (a) in England and Wales, a justice of the peace;
- (b) in Scotland, a sheriff or summary sheriff; and
- (c) in Northern Ireland, a lay magistrate.

Powers of customs officers to detain goods

11.—(1) An Officer of Revenue and Customs may, for the purpose of facilitating the exercise by the enforcement authority, or duly authorised officer of the authority, of any powers conferred on the authority or officer by these Regulations seize any imported relevant products or any records, and detain them for not more than two working days.

(2) Anything seized and detained under this paragraph must be dealt with during the period of its detention in such manner as the Commissioners for Her Majesty’s Revenue and Customs may direct.

(3) An Officer of Revenue and Customs seizing any relevant products or records under this paragraph must inform the person from whom they are seized that such relevant products or records have been seized.

(4) In sub-paragraph (1) the reference to two working days is a reference to a period of forty-eight hours calculated from the time when the goods in question are seized, but disregarding so much of any period as falls on a Saturday or Sunday or on Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971⁽¹¹⁾ in the part of the United Kingdom where the goods are seized.

Applications for the release of detained items

12.—(1) Any person having an interest in any relevant products or records detained for the time being under paragraph 10 may apply for an order requiring any item so detained to be released to the applicant or another person.

(2) An application under this paragraph may be made—

- (a) to any magistrates’ court in which proceedings have been brought in England and Wales or Northern Ireland for an offence in respect of a contravention of any provision of these Regulations in connection with the detained item;
- (b) where no such proceedings have been so brought, by way of complaint to a magistrates’ court; or
- (c) in Scotland, by summary application to the sheriff.

(3) A magistrates’ court or the sheriff must not make an order under sub-paragraph (1) unless the court or sheriff is satisfied that—

(11) 1971 c.80.

- (a) proceedings have not been brought for an offence in respect of a contravention of any provision of these Regulations in connection with the detained item or, having been brought, have been concluded; and
 - (b) where no such proceedings have been brought, more than six months have elapsed since the seizure was carried out.
- (4) Any person aggrieved by an order made under this paragraph by a magistrates' court or sheriff, or by a decision of such a court or sheriff not to make such an order, may appeal against that order or decision—
- (a) in England and Wales, to the Crown Court;
 - (b) in Scotland, to the Sheriff Appeal Court as though it were an appeal under section 110(1) of the Courts Reform (Scotland) Act 2014(12); or
 - (c) in Northern Ireland, to a county court.
- (5) In England and Wales or in Northern Ireland, an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980(13) or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981(14) (statement of case)).

Compensation for seizure and detention

- 13.**—(1) Where an officer exercises any power under paragraph 10 to seize and detain any relevant products or records, the enforcement authority is liable to pay compensation to any person having an interest in the item seized and detained in respect of any loss or damage caused by the exercise of the power if—
- (a) there has been no contravention of any provision of these Regulations; and
 - (b) the exercise of the power is not attributable to any neglect or default by that person.
- (2) Any disputed question as to the right to, or the amount of, any compensation payable under this paragraph must be determined by arbitration—
- (a) in England and Wales or Northern Ireland, in accordance with the Arbitration Act 1996(15); or
 - (b) in Scotland, in accordance with the Arbitration (Scotland) Act 2010(16).

Recovery of the expenses of enforcement

- 14.**—(1) This paragraph applies where a court convicts a person of an offence in respect of a contravention of any provision of these Regulations in relation to any relevant products or records.
- (2) The court may (in addition to any other order it may make as to costs and expenses) order the person convicted to reimburse the enforcement authority for any expenditure which has been or may be incurred by that authority in connection with any seizure or detention by or on behalf of the authority of the relevant products or records.

(12) 2014 asp 18.

(13) 1980 c.43.

(14) S.I. 1981/1675 (N.I. 26).

(15) 1996 c.23.

(16) 2010 asp 1.

Power of the Commissioners for Her Majesty's Revenue and Customs to disclose information

15.—(1) If they think it appropriate to do so for the purpose of facilitating the exercise by any person to whom sub-paragraph (2) applies of any functions conferred on that person by any provisions of these Regulations, the Commissioners for Her Majesty's Revenue and Customs may authorise the disclosure to that person of any information obtained for the purposes of the exercise by the Commissioners of their functions in relation to imported goods.

(2) This sub-paragraph applies to the enforcement authority and to any officer authorised by the enforcement authority.

(3) A disclosure of information made to any person under sub-paragraph (1) must be made in such manner as may be directed by the Commissioners for Her Majesty's Revenue and Customs and may be made through such persons acting on behalf of that person as may be so directed.

(4) Information may be disclosed to a person under sub-paragraph (1) whether or not the disclosure of the information has been requested by or on behalf of that person.

Savings for certain privileges

16. Nothing in these Regulations is to be taken as requiring any person—

- (a) to produce any records if that person would be entitled to refuse to produce those records in any proceedings in any court on the grounds that they are the subject of legal professional privilege or, in Scotland, a claim of confidential communications, or as authorising any person to take possession of any records which are in the possession of a person who would be so entitled; or
- (b) to answer any question or give any information if to do so would incriminate that person or that person's spouse or civil partner.

Savings for civil rights

17. A contract for the supply of relevant products is not void or unenforceable by reason only of a contravention of any provision of these Regulations.

SCHEDULE 2

Regulation 16

Consequential amendments and revocations

PART 1

Consequential amendments

Non-Road Mobile Machinery (Type Approval) (Fees) Regulations 1999

1.—(1) The Non-Road Mobile Machinery (Type Approval) (Fees) Regulations 1999⁽¹⁷⁾ are amended as follows.

(2) In regulation 2(1)—

- (a) for sub-paragraph (a), substitute—

⁽¹⁷⁾ S.I. 1999/1054.

- “(a) “the NRMM Regulation” means Regulation (EU) 2016/1628 of the European Parliament and of the Council on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, as it may be amended from time to time;”;
 - (b) in each of sub-paragraphs (b) and (c), for “the Regulations”, substitute “the NRMM Regulation”;
 - (c) in each of sub-paragraphs (d) and (e), for “the Regulations”, substitute “the NRMM Regulation or the Non-Road Mobile Machinery (Type-Approval and Emission of Gaseous and Particulate Pollutants) Regulations 2018”.
- (3) In regulation 3, in each of paragraphs (1) and (2), for “regulation 8(1) or regulation 10(2) of the Regulations”, substitute “Article 20 or Article 27 of the NRMM Regulation”.
- (4) In regulation 4—
- (a) in paragraph (1), for “regulation 9(1) of the Regulations”, substitute “Articles 20 and 23 of the NRMM Regulation”;
 - (b) in paragraph (2), for “regulation 10(3) of the Regulations”, substitute “Articles 27 and 28 of the NRMM Regulation”.

Motor Fuel (Composition and Content) Regulations 1999

2.—(1) The Motor Fuel (Composition and Content) Regulations 1999⁽¹⁸⁾ are amended as follows.

(2) In regulation 5B(7)(b), for “Article 2 of Council [Directive 97/68/EC](#)”, substitute “Article 3 of Regulation (EU) 2016/1628 of the European Parliament and of the Council on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, as it may be amended from time to time”.

Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004

3.—(1) The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004⁽¹⁹⁾ is amended as follows.

(2) In Schedule 1, for “Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999”, substitute “Non-Road Mobile Machinery (Type-Approval and Emission of Gaseous and Particulate Pollutants) Regulations 2018”.

PART 2

Revocations

Revocations

4. The following Regulations are revoked—

- (a) the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999⁽²⁰⁾;

⁽¹⁸⁾ S.I. 1999/3107, as amended by S.I. 2001/3896, 2003/3078, 2007/1608, 2010/3035, 2012/2567, 2013/2897, 2014/3076 and 2015/1630 and 1796.

⁽¹⁹⁾ S.I. 2004/693.

⁽²⁰⁾ S.I. 1999/1053.

- (b) the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2002(21);
- (c) the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2004(22);
- (d) the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2006(23);
- (e) the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2008(24);
- (f) the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2011(25);
- (g) the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2013(26);
- (h) the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2014(27).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with Regulation (EU) 2016/1628 of the European Parliament and of the Council on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery (OJ No L 252, 16.9.2016, p. 53) “the NRMM Regulation”. In particular, they—

- appoint the Secretary of State as the approval authority and the market surveillance authority for the purposes of the NRMM Regulation (regulations 3 and 4)
- specify when the Secretary of State may treat any application as having been withdrawn by the manufacturer (regulation 5) or when it must be refused (regulation 6)
- require the holder of a type-approval to retain certain records (regulation 7)
- provide for a review procedure in respect of decision notices given under article 53 of the NRMM Regulation (regulation 8)
- specify when an approval may be withdrawn (regulation 9) and the effect of such a withdrawal or a suspension (regulation 10)
- set out how any notice or other document is to be served on the approval authority, market surveillance authority or enforcement authority (regulation 11)
- authorise the approval authority to provide and maintain testing stations and apparatus to use for examination of products for the purposes of the NRMM Regulation (regulation 12)

(21) [S.I. 2002/1649](#).

(22) [S.I. 2004/2034](#).

(23) [S.I. 2006/29](#).

(24) [S.I. 2008/2011](#).

(25) [S.I. 2011/2134](#).

(26) [S.I. 2013/1687](#).

(27) [S.I. 2014/1309](#).

- provide that breach of the duty to provide certain technical information which causes a person to sustain loss or damage is actionable at the suit of that person, and a defence available to the manufacturer where they have exercised all due diligence (regulation 13)
- make provision in connection with the offence of use of defeat strategies to clarify that it includes the placing on the market of an engine that is fitted with a defeat device (regulation 14)
- provide for breach of the Regulations or the NRMM Regulation to be an offence, and for offences to be punishable either by criminal or civil penalties (in the case of use of defeat devices) or civil penalties only (in the case of all other offences) (parts 1 and 2 of Schedule 1)
- make provision for enforcement of the Regulations, including in connection with false statements and obstruction of officers, powers of search, detention of goods by customs officers and recovery of expenses of enforcement (part 3 of Schedule 1)
- makes consequential amendments to various enactments, and revokes instruments replaced by the NRMM Regulation (Schedule 2).

The net costs imposed on business, the voluntary sector and the public sector by these Regulations have been assessed as being less than £5m in any year and therefore a full impact assessment has not been prepared, and a Review provision not included.