



STATUTORY INSTRUMENTS.

S.I. No. 735 of 2021

EUROPEAN UNION (INTERNAL COMBUSTION ENGINES FOR NON-
ROAD MOBILE MACHINERY) (GASEOUS AND PARTICULATE
POLLUTANT EMISSION LIMITS AND TYPE-APPROVAL)
REGULATIONS 2021

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EUROPEAN UNION (INTERNAL COMBUSTION ENGINES FOR NON-ROAD MOBILE MACHINERY) (GASEOUS AND PARTICULATE POLLUTANT EMISSION LIMITS AND TYPE-APPROVAL) REGULATIONS 2021

I, EAMON RYAN, Minister for the Environment, Climate and Communications, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving full effect to Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016¹, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Internal Combustion Engines for Non-Road Mobile Machinery) (Gaseous and Particulate Pollutant Emission Limits and Type-Approval) Regulations 2021.

Interpretation

2 (1) In these Regulations “EU Regulation” means Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016¹.

(2) A word or expression that is used in these Regulations and is also used in the EU Regulation has, unless the contrary intention appears, the same meaning in these Regulations as it has in the EU Regulation.

Approval and market surveillance authorities

3 (1) The National Standards Authority of Ireland is appointed as the approval authority in the State.

(2) The Environmental Protection Agency is appointed as the market surveillance authority in the State.

Placing engines on the market

4 (1) A person shall not place on the market –

- (a) an engine, regardless of whether it is already installed in non-road mobile machinery, or
- (b) non-road mobile machinery in which an engine as referred to in subparagraph (a) is installed,

unless the engine is covered by a valid EU type-approval granted in accordance with the EU Regulation.

¹ OJ No. L 252, 16.9.2016, p. 53

(2) A person who contravenes paragraph (1) commits an offence and is liable –

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €100,000.

Obligations of manufacturers

5 A manufacturer who fails to comply with Article 8, 9, 24(2), 27(1), 31, 32, 37, 40(1) or 43 of the EU Regulation commits an offence and is liable on summary conviction to a class A fine.

Obligations of manufacturers' representatives

6 A manufacturers' representative who fails to comply with Article 10 of the EU Regulation commits an offence and is liable on summary conviction to a class A fine.

Obligations of importers

7. An importer who fails to comply with Article 11 or 12 or, in the circumstances referred to in Article 16, Article 8 or 9 of the EU Regulation commits an offence and is liable on summary conviction to a class A fine.

Obligations of distributors

8. A distributor who fails to comply with Article 13 or 14 or, in the circumstances referred to in Article 16, Article 8 or 9 of the EU Regulation commits an offence and is liable on summary conviction to a class A fine.

Obligations of OEMs

9. An original equipment manufacturer (OEM) who fails to comply with Article 15 or 17 of the EU Regulation commits an offence and is liable on summary conviction to a class A fine.

Obligations of economic operators

10. An economic operator who fails to comply with Article 17 of the EU Regulation commits an offence and is liable on summary conviction to a class A fine.

Requirements relating to technical services

11. A technical service which fails to comply with Article 45 or 46 of the EU Regulation commits an offence and is liable on summary conviction to a class A fine.

Measures taken by approval authority – representations and appeal

12 (1) Where the approval authority decides to take measures in accordance with Article 39(1) or makes a decision referred to in Article 41(1) of the EU Regulation, the party concerned may, within 14 days after notification of the decision, make representations to the approval authority regarding the decision and the approval authority shall consider them. Where the approval authority confirms the decision (with or without modification) the party concerned may, within 21 days of notification of confirmation of the decision, make an application to the judge of the Circuit Court in whose circuit the person carries on business. The party concerned shall inform the approval authority of any such application. The judge may confirm, with or without variation, the decision or direct the approval authority to withdraw it. The decision of the judge is final, save on a point of law which lies with the High Court.

(2) A decision referred to in paragraph (1) takes effect from the date of the notification of it to the party concerned. However, that party, within the period of time allowed under paragraph (1) to make representations or, where they have been considered and confirmed, to make an appeal, may make an application, to the judge of the Circuit Court in whose circuit the person carries on business, to suspend the decision pending consideration of any representations made or, where the decision is confirmed in the event of an appeal, until the conclusion of the appeal or the withdrawal of proceedings. The party concerned shall inform the approval authority of any such application.

Prohibition on failure to comply with decisions of approval authority

13. The party concerned who has been notified of a decision in respect of measures taken by the approval authority under Article 39(1) or referred to in Article 41(1) of the EU Regulation and who fails to comply with the decision commits an offence and is liable –

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €100,000.

General infringements

14. A person who carries out any of the activities referred to in Article 57(2) of the EU Regulation commits an offence and is liable –

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €100,000.

Authorised officers

15. (1) The approval authority may appoint persons to be authorised officers for the purpose of carrying out its functions under the EU Regulation.

(2) The market surveillance authority may appoint persons to be authorised officers for the purpose of carrying out market surveillance under the EU Regulation.

(3) An authorised officer shall be furnished with a warrant of his or her appointment as an authorised officer.

(4) When exercising a power conferred on him or her under this Regulation, an authorised officer shall, if requested by a person thereby affected, produce the warrant of his or her appointment, or a copy of it, to that person and a form of personal identification.

(5) An appointment under paragraph (1) or (2) may be revoked at any time by the authority which appointed the officer.

(6) An authorised officer may, for the purpose of ensuring that the EU Regulation is being complied with, do any of the following:

- (a) require any economic operator to produce the type-approval certificate or certificate of conformity to the authorised officer in respect of any engine or non-road mobile machinery;
- (b) enter at any reasonable time any premises or place, at which there are reasonable grounds to believe that any engine or non-road mobile machinery to which the EU Regulation applies are or are likely to be found, and search and inspect the premises or place and any such engine or non-road mobile machinery found there and any type-approval certificates, certificates of conformity, books, documents or records relating to the type-approval, placing on the market, making available on the market or entry into service of any such engine or non-road mobile machinery;
- (c) secure for later inspection any premises or place or part of it in which any such engine or non-road mobile machinery or any type-approval certificates, certificates of conformity, books, documents or records relating to the type-approval, placing on the market, making available on the market or entry into service of any such engine or non-road mobile machinery are kept or there are reasonable grounds for believing that such are kept;
- (d) require any person in charge of the premises or place to produce to him or her any books, documents or records relating to the type-approval, placing on the market, making available on the market or entry into service of any such engine or non-road mobile machinery which are in the person's power or control (and in the case of such information in a non-legible form to reproduce it in a legible form) and to give to him or her such information as the authorised officer may reasonably require in relation to any entries in such books, documents or records;
- (e) inspect and take extracts from or make copies of any such books, documents or records (including, in the case of information in a non-legible form, a copy of or extract from such information in a legible form);

- (f) remove and retain such books, documents or records for such period as may be reasonable for further examination;
- (g) require any person in charge of the premises or place to maintain such books, documents or records for such period of time, as may be reasonable, as he or she directs;
- (h) require any person in charge of the premises or place to give him or her any information which he or she may reasonably require relating to the type-approval, placing on the market, making available on the market or entry into service of any such engine or non-road mobile machinery;
- (i) take without payment of compensation any necessary samples of any such engine or non-road mobile machinery;
- (j) carry out or have carried out on the sample so taken such analyses, examinations, tests and inspections as he or she considers necessary or expedient.

(7) Where an authorised officer in exercise of his or her powers under this Regulation is prevented from entering any premises or place, an application may be made under paragraph (9) for a warrant to authorise such entry.

(8) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling, unless he or she has obtained a warrant under paragraph (9) authorising such entry.

(9) If, on the sworn information of an authorised officer, a judge of the District Court is satisfied that there are reasonable grounds for suspecting that information or any item required by an authorised officer for the purpose of the EU Regulation is held at any premises or any place, the judge may issue a warrant authorising an authorised officer, accompanied, if appropriate, by other authorised officers and members of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production of the warrant, if so requested, to enter those premises or that place, if need be by reasonable force, and exercise all or any of the powers conferred on an authorised officer under this Regulation.

(10) A person who -

- (a) without reasonable excuse, fails or refuses to comply with any request or requirement made by an authorised officer under this Regulation,
- (b) obstructs, impedes, interferes with or assaults an authorised officer in the exercise by that authorised officer of a power under this Regulation,
- (c) gives to an authorised officer information that is false or misleading in a material respect, or
- (d) alters, suppresses, or destroys any certificate, book, document or record which the person concerned has been required to produce, or reasonably expected to be required to produce,

commits an offence and is liable on summary conviction to a class A fine.

(11) In this Regulation “authorised officer” means an authorised officer appointed under this Regulation.

Offence body corporate

16. (1) Where an offence under these Regulations has been committed by a body corporate and it is proved to have been so committed with the consent or connivance of or to be attributable to any wilful neglect on the part of any person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, commits an offence and is liable to be proceeded against and punished as if he or she had committed the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts and defaults of a member in connection with the functions of management as if he or she were a director or manager of the body corporate.

Summary proceedings

17. Proceedings may be brought and prosecuted summarily for an offence under these Regulations by the approval authority or the market surveillance authority, as may be appropriate.

Fixed payment notice

18. (1) Where an authorised officer has reasonable grounds for suspecting that a person is committing or has committed an offence under Regulation 5, 6, 7, 8, 9, 10 or 11, the officer may serve a notice in writing on that person stating that –

- (a) the person is alleged to have committed the offence,
- (b) the person may during the period of 21 days from the date of the notice make a payment of €500 to the appropriate authority and, if required in the notice, accompanied by the notice,
- (c) the person is not obliged to make the payment, and
- (d) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.

(2) Where a notice is given under paragraph (1) –

- (a) a person to whom the notice applies, or a person on his or her behalf, may, during the period specified in the notice, make to the appropriate authority at the address specified in the notice the payment specified in the notice accompanied, if required in the notice, by the notice,

- (b) the appropriate authority may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable by the person who made it, and
- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.

(3) In a prosecution for an offence under these Regulations, the onus of proving that a payment pursuant to a notice under this Regulation has been made lies on the defendant.

(4) In this Regulation “appropriate authority” means the approval authority or the market surveillance authority.

Service of notifications

19. (1) Subject to paragraph (2), any notification or document required or authorised by virtue of the EU Regulation to be given to any person by the approval authority or the market surveillance authority shall be addressed to the person concerned by name and may be given -

- (a) by delivering it to the person,
- (b) by leaving it at the address at which the person carries on business or ordinarily resides or, in the case in which an address for service has been furnished, at that address,
- (c) by sending it by post in a prepaid registered letter to the address at which the person carries on business or ordinarily resides or, in a case in which an address for service has been furnished, to that address, or
- (d) by electronic communication, if the person concerned has agreed to service of notifications by such means, provided that there is a facility for confirming receipt of the electronic communication and that such receipt has been confirmed.

(2) For the purposes of this Regulation, a company within the meaning of the Companies Act 2014 (No. 38 of 2014) shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

(3) Where a notification or document has been sent to a person in accordance with paragraph (1)(c), it is deemed to have been duly served on or given to the person on the third working day after the day on which it was so sent.

Revocation

20. The following are revoked:

- (a) the European Communities (Control of Emissions of Gaseous and Particulate Pollutants from Non-Road Mobile Machinery) Regulations 2007 (S. I. No. 147 of 2007),
- (b) the European Communities (Control of Emissions of Gaseous and Particulate Pollutants from Non-Road Mobile Machinery) (Amendment) Regulations 2011 (S. I. No. 263 of 2011),
- (c) the European Communities (Control of Emissions of Gaseous and Particulate Pollutants from Non-Road Mobile Machinery) (Amendment) Regulations 2012 (S. I. No. 407 of 2012), and
- (d) the European Communities (Control of Emissions of Gaseous and Particulate Pollutants from Non-Road Mobile Machinery) (Amendment) Regulations 2013 (S. I. No. 417 of 2013).

Saver

21. (1) An application for type-approval or individual engine approval made under the Regulations revoked under Regulation 20 before the making of these Regulations but not determined before such making shall have effect as if the application were made under the EU Regulation.

(2) A certificate of conformity, type-approval, individual engine approval, type-approval certificate, individual engine approval certificate or type-approval mark issued under the Regulations revoked under Regulation 20 shall -

- (a) continue to have effect according to its terms, and
- (b) be treated, for the purposes of these Regulations, as if it had been issued under the EU Regulation.



GIVEN under my Official Seal,
16 December 2021.

EAMON RYAN
Minister for the Environment, Climate and
Communications.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations give effect to Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 by appointing type-approval and market surveillance authorities and providing for offences and penalties for breaches of the EU Regulation and enforcement measures to ensure compliance.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
BÓTHAR BHAILE UÍ BHEOLÁIN,
CILL MHAIGHNEANN,
BAILE ÁTHA CLIATH 8,
D08 XAO6

Teil: 046 942 3100
r-phost: publications@opw.ie

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