

STATUTORY INSTRUMENTS.

**S.I. No. 396 of 1999.**

**EUROPEAN COMMUNITIES (CONTROL OF EMISSIONS OF GASEOUS AND PARTICULATE POLLUTANTS FROM NON-ROAD MOBILE MACHINERY) REGULATIONS, 1999.**

In exercise of the powers conferred on the Minister for the Environment and Local Government by Section 3 of the European Communities Act, 1972 (No. 27 of 1972), which said powers are delegated to me by the Environment and Local Government (Delegation of Ministerial Functions) (No. 2) Order, 1997 (S.I. No. 428 of 1997) and for the purposes of giving effect to the provisions of Council Directive 97/68/EC<sup>(1)</sup> on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery, I, DAN WALLACE, Minister of State at the Department of the Environment and Local Government, hereby make the following Regulations:—

<sup>(1)</sup>O.J. No. L 59 of 27 February 1998.

Citation.

1. These Regulations may be cited as the European Communities (Control of Emissions of Gaseous and Particulate Pollutants from Non-Road Mobile Machinery) Regulations, 1999.

Entry into Force.

2. These Regulations shall come into operation on the 15th day of December 1999.

Definitions.

3. (1) In these Regulations—

"Commission" means the Commission of the European Communities;

"Community" means the European Communities;

"Defence Forces" has the meaning assigned by the Defence Act, 1954 to 1998;

"the Directive" means Council Directive 97/68/EC;

"Member State" means a Member State of the Community;

"the National Standards Authority of Ireland" means the authority established by the National Standards Authority of Ireland Act, 1996 (No. 28 of 1996).

(2) In these Regulations—

(a) any reference to an article or sub-article which is not otherwise identified is a reference to an article or sub-article of these Regulations;

(b) any reference to an Annex which is not otherwise identified is a reference to an Annex of the Directive and, for the avoidance of doubt, includes amendments to the Annexes adopted in accordance with the procedures specified in Article 14 of the Directive; and

(c) a letter, word, phrase or symbol which has been assigned a meaning by the Directive, or is used in the Directive, has that meaning where the context requires except where otherwise indicated.

Scope.

4. These Regulations apply to engines to be installed in non-road mobile machinery as specified in Annex I, Section 1 of the Directive.

Designation of Approval Authority.

5. The National Standards Authority of Ireland is hereby designated as an approval authority for the purposes of these Regulations and the Directive.

Application for Type Approval.

6. (1) Where an application for engine or engine family type-approval is submitted to an approval authority, it shall—

(a) be submitted in writing by the manufacturer;

(b) be accompanied by an information folder containing the information specified in Annex II.

(2) An engine conforming to the engine type characteristics described in Annex II, Appendix 1 shall be submitted to the technical service nominated by the approval authority to conduct the approval tests.

(3) (a) Where the approval authority determines, with regard to the parent engine in the case of an application for type-approval of an engine family, that the submitted application does not fully represent the engine family described in Annex II,

Appendix 2, it shall require an alternative and, if necessary, an additional parent engine to be provided for approval in accordance with sub-articles (1) and (2);

(b) the alternative or additional engine provided in accordance with the preceding paragraph of this sub-article shall be determined by the approval authority.

(4) A separate application for type-approval shall be submitted for each engine type or engine family to be approved.

(5) A manufacturer shall not submit an application for type-approval in respect of an engine or engine family to more than one approval authority in the Community.

Type Approval Procedure.

7. (1) The approval authority receiving an application in accordance with article 6 shall—

(a) grant type-approval to all engine types or engine families which conform to the particulars in the information folder and which meet the requirements of these Regulations, and issue a type approval certificate to this effect;

(b) compile or verify the contents of the index to the information package;

(c) complete all applicable sections of the type-approval certificate in the form of the model given in Annex VI for each engine type or engine family which it approves;

(d) number the type-approval certificate in accordance with the method described in Annex VII; and

(e) deliver to the applicant the completed type-approval certificate and its attachments.

(2) Where an engine submitted for type-approval fulfils its function or offers a specific feature only in conjunction with other parts of non-road mobile machinery, and where compliance with one or more requirements may only be verified when the engine to be approved operates in conjunction with other machinery parts, whether real or simulated, the approval authority shall—

(a) restrict the scope of the type-approval of the engine type or engine family accordingly; and

(b) include in the type-approval certificate for the engine type or engine family any restrictions on use, and indicate any conditions for fitting the engine type or engine family.

(3) The approval authority shall send monthly to other approval authorities in the Community a list, containing the particulars shown in Annex VIII, of the engine and engine family type-approvals it has granted, refused to grant or withdrawn during that month.

(4) On receipt of a request from an approval authority in the Community, the approval authority shall send forthwith, as appropriate in accordance with the request made—

(a) a copy of the type-approval certificate for the engine or engine family with or without the information package for each engine type or engine family which the approval authority has approved or refused to approve or withdrawn;

(b) the list of engines produced according to type-approvals granted, as described in Article 12, containing the particulars shown in Annex IX;

(c) a copy of the declaration described in sub-article (5) of article 12.

(5) The approval authority shall send to the Commission—

(a) each year a copy of the data sheet as shown in Annex X related to the engines and engine families approved since the last notification was made to the Commission; and

(b) the information provided for in sub-article (4) upon receipt of an application in that regard from the Commission.

Amendments to Type Approvals.

8. (1) The manufacturer in receipt of a type approval certificate under these Regulations shall inform the approval authority which granted the certificate of any change in the particulars appearing in the information package.

(2) An application for the amendment or extension of a type-approval shall be submitted exclusively to the approval authority which granted the original type-approval.

(3) Where the particulars appearing in the information package have changed from those applicable at the time of the issue of the type-approval certificate, the approval authority shall—

(a) issue a revised page or revised pages of the information package as necessary, marking each revised page to show clearly the nature of the change and the date of re-issue;

(b) amend the index to the information package which is attached to the type-approval certificate to show the latest dates of revised pages wherever revised pages are issued; and

(c) issue a revised type-approval certificate, denoted by an extension number, if any information on it, excluding its attachments, has changed or if the standards of the Directive change subsequent to the date of issue of the type approval certificate, showing clearly the reason for the revision and the date of re-issue.

(4) If the approval authority finds that an amendment to an information package warrants new tests or checks, it shall inform the manufacturer thereof, and issue the documents mentioned in sub-article 3 of this article only after the conduct of new tests or checks that indicate that the engine or engine-family is in conformity with the requirements of these Regulations.

Grant of Type-Approval.

9. (1) Where the engine or engine family, as appropriate, meets the requirements specified in these Regulations as regards the emission of gaseous and particulate pollutants, an approval authority may not refuse to grant type-approval for an engine type or engine family or to issue the documents described in Annex VI, and may not impose any other type-approval requirements with regard to air-polluting emissions for non-road mobile machinery in which an engine is installed.

(2) An approval authority shall refuse to grant type-approval for an engine type or engine family and to issue the documents described in Annex VI, and shall refuse to grant any other type-approval for non-road mobile machinery in which an engine is installed—

(a) after the date of coming into operation of these Regulations in respect of engines of a power output in the following categories:

Category A:  $130\text{kW} \leq P \leq 560\text{kW}$ ;

Category B:  $75\text{kW} \leq P < 130\text{kW}$ ; and

Category C:  $37\text{kW} \leq P < 75\text{kW}$

if the engine or engine family, as appropriate, fails to meet the requirements specified in these Regulations and where the emissions of gaseous and particulate pollutants from the engine do not comply with the limit values set out in the table in section 4.2.1 of Annex I;

(b) (i) after 31 December 1999 in respect of engines of a power output in the following category:

Category D:  $18\text{kW} \leq P < 37\text{kW}$ ;

(ii) after 31 December 2000 in respect of engines of a power output in the following category:

Category E:  $130\text{kW} \leq P \leq 560\text{kW}$ ;

(iii) after 31 December 2001 in respect of engines of a power output in the following category:

Category F:  $75\text{kW} \leq P < 130\text{kW}$ ;

(iv) after 31 December 2002 in respect of engines of a power output in the following category:

Category G:  $37\text{kW} \leq P \ll 75\text{kW}$ ;

if the engine or engine family, as appropriate, fails to meet the requirements specified in these Regulations and where the emissions of gaseous and particulate pollutants from the engine do not comply with the limit values set out in the table in section 4.2.3 of Annex I.

Conformity.

10. The manufacturer shall affix to each unit manufactured in conformity with the type-approval certificate the markings, set out in Section 3 of Annex I, including the type-approval number assigned pursuant to articles 7(1)(d) and 8(3)(c).

11. (1) Where the type-approval certificate, in accordance with Article 7(2), includes restrictions on use, the manufacturer shall deliver with each unit manufactured detailed information on these restrictions and shall indicate any conditions for fitting it.

(2) Without prejudice to sub-article (1), where a series of engine types is delivered to one single manufacturer of machinery, it shall be sufficient for the manufacturer to be provided with only one information document as set out in sub-article (1), at the latest on the delivery date of the first engine, provided that the information document lists the relevant engine identification numbers.

Notification to Approval Authority.

12. (1) The manufacturer shall send, on demand to the approval authority which issued a type-approval certificate within 45 days after the end of each calendar year, and without delay after each application date when the requirements of the Annexes change, and immediately following each additional date the approval authority may stipulate, a list which contains the range of identification numbers for each engine type produced in accordance with the requirements of the Regulations since the last reporting was made, or since the requirements of these Regulations were first applicable.

(2) The list specified in sub-article (1) must specify correlations of the identification numbers to the corresponding engine types or engine families and to the type-approval numbers, where not otherwise clarified by the engine coding system.

(3) If the manufacturer ceases to produce an approved engine type or engine family, the list set out in sub-article (1) must contain information to this effect.

(4) Where the approval authority does not require the list specified in sub-article (1) to be regularly sent to it, the manufacturer shall maintain the relevant information for a minimum period of 20 years.

(5) The manufacturer shall send to the approval authority which has issued a type-approval certificate, within 45 days after the end of each calendar year, a

declaration specifying the engine types and engine families together with the relevant engine identification codes for those engines the manufacturer intends to produce from that date on.

Acceptance of Equivalent Approvals.

13. Approval authorities shall accept type-approvals granted in accordance with Directive 88/77/EEC<sup>(2)</sup> which are in compliance with Stages A or B provided for in Articles 2 and Section 6.2.1. of Annex I to Directive 91/542/EEC<sup>(3)</sup>, and, where applicable, the pertaining approval marks, as complying with the type-approval requirements of article 9(2)(a) until the dates specified in article 9(2)(b) for engines with the corresponding power outputs.

<sup>(3)</sup>O.J. No. L 295 of 25 October 1991.

<sup>(2)</sup>O.J. No. L 36 of 9 February 1988, as last amended by Directive 96/EC (O.J. No. L 40 of 17 February 1996).

Placing on the Market of New Engines.

14. (1) From the date of the coming into operation of these Regulations, no person may place on the market a new engine, whether or not already installed in machinery, unless—

(a) an approval authority has issued a type-approval certificate in respect of it;

(b) the engine conforms to the requirements of the type-approval; and

(c) the engine has affixed to it the markings specified in article 10.

(2) The provisions of this article do not apply to engines

(a) for use by the Defence Forces; or

(b) intended for export to countries outside the Community.

Transitional Provisions for Placing on the Market.

15. (1) Notwithstanding the provisions of article 14, a manufacturer may place on the market, before the date specified in the third column of the table in this sub-article, an engine within a category specified in the first column of the table with a production date prior to the date specified in the second column in respect of that category, where the categories correspond to the categories set out in article 9.

Category

Production date

Final date

Category A

31 December 1998

31 December 2000

Category B

31 December 1998

31 December 2000

Category C

31 March 1999

31 March 2001

Category D

31 December 2000

31 December 2002

Category E

31 December 2001

31 December 2003

Category F

31 December 2002



31 December 2004

## Category G

31 December 2003

31 December 2005

(2) The provisions set out in sub-article (1) for an engine in categories E, F or G shall only apply where a type-approval certificate in respect of categories A, B or C respectively has been issued.

### Control on Engine Numbers.

16. (1) When issuing a type-approval certificate under these Regulations, the approval authority shall take the necessary measures, in relation to that type-approval, to register and control, if need be in co-operation with other approval authorities in the Community, the identification numbers of those engines produced in conformity with the requirements of the Directive.

(2) The manufacturer or his agents established in the Community shall without delay, upon request by the approval authority which issued the type-approval certificate, give all or any information requested by the authority related to the purchasers of the engines concerned, together with the identification numbers of the engines reported as produced in accordance with article 12.

(3) The approval authority which issued a type-approval certificate may at its discretion withdraw such type-approval in respect of an engine type or engine family if a manufacturer is unable to verify the requirements set out in articles 10, 11 and 12, particularly in conjunction with a failure to provide the information specified in sub-article (2).

### Conformity of Production Arrangements.

17. (1) An approval authority, in granting a type-approval, shall take such measures as it considers necessary to verify, with regard to the specifications laid down in Section 5 of Annex I if need be in co-operation with other approval authorities in the Community, that adequate arrangements have been made to ensure effective control of the conformity of production before it grants type-approval.

(2) An approval authority, having granted a type-approval, shall take such measures as it considers necessary to verify, with regard to the specifications laid down in Section 5 of Annex I, if need be in co-operation with other approval authorities in

the Community, that the arrangements referred to in sub-article (1) continue to be adequate and that each production engine bearing a type-approval number under these Regulations continues to conform to the description as given in the type-approval certificate and its Annexes for the approved engine type or family.

Non-Conformity with the Approved Type or Family.

18. (1) There shall be failure to conform to the type-approval certificate for an engine type or engine family where deviations from the particulars in the certificate and/or the information package are made and where these deviations have not been authorised, in accordance with article 8(3) or article 8(4), as appropriate, by the approval authority which issued the certificate.

(2) Where an approval authority finds that engines for which it has granted type-approval and bearing approval markings specified in Article 10, do not conform to the engine type or engine family approved, it shall—

(a) take the measures it considers necessary, including, but not limited to, withdrawal of the type-approval certificate, to ensure that the engines in production duly conform to the approved engine type or engine family; and

(b) inform other approval authorities in the Community within one month of the measures taken under the preceding paragraph of this sub-article.

19. (1) An approval authority may, where it demonstrates that engines bearing a type-approval number do not conform to the approved engine type or engine family, request the approval authority in the Community which issued the type-approval certificate to verify that engines in production conform to the approved engine type or engine family.

(2) Where an approval authority receives a request corresponding to that provided for in sub-article (1), the authority shall verify that engines in production conform to the approved engine type or engine family within six months of the date of the request.

(3) Where a dispute arises under sub-articles (1) or (2) regarding failure to conform, the approval authority shall—

(a) endeavour to settle the dispute with the other approval authority;

(b) keep the Commission informed of the dispute and the efforts made to settle it; and

(c) cooperate in any consultations specified by the Commission for the purpose of reaching a settlement.

Offences.

20. (1) It shall be an offence to place an engine on the market, whether or not already installed in machinery, other than in compliance with the requirements of these Regulations.

(2) A person convicted of an offence under sub-article (1) shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months, or, at the discretion of the court, to both such fine and such imprisonment.

(3) A person who, after conviction of any provision of these Regulations, continues to contravene that provision shall be guilty of an offence on each day on which the contravention occurs and for each such offence shall be liable on summary conviction to a fine not exceeding £1,500.

(4) An offence under these Regulations may be prosecuted by an approval authority.

DATED this 14th day of December, 1999.

DAN WALLACE,

Minister of State at the Department of the Environment and Local Government.

EXPLANATORY NOTE.

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

These Regulations set out the requirements for the type-approval of certain types of non-road mobile machinery in compliance with the requirements of Directive 97/68/EC on the approximation of the laws of Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery. They also prohibit the placing on the market of machines which are not in compliance with the Directive.

The Regulations come into force on the 15th day December, 1999.