

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION
WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND
WINDSOR FRAMEWORK**

7992/23

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**Proposal for a Regulation of the European Parliament and of the Council on
the approval and market surveillance of non-road mobile machinery circulating
on public roads and amending Regulation (EU) 2019/1020**

Submitted by the Department for Transport

28 June 2023

SUBJECT MATTER

1. This Explanatory Memorandum sets out the implications to Northern Ireland of an EU proposed framework regulation to create a type-approval regime for machinery that may circulate on the road. The proposal is still in draft form and does not include technical requirements that will apply to such machinery, which are likely to be developed after the proposal becomes a Regulation.
2. Articles 1, 2 and 3 set out the subject matter, scope of application, and definitions used for the regime. It will apply to self-propelled machinery with a maximum design speed of up to 40 km/h (25 mph), with up to three seating positions, including the driver's seat. It will not apply to products approved under the other type-approval frameworks for road and agricultural vehicles and trailers. Machinery approved before a date, yet to be determined, or under existing national schemes for individual and small series approvals will also be exempt.
3. Articles 4 to 14 set the obligations for member states, manufacturers and their representatives, importers and distributors.
4. Article 15 sets out the areas the Commission will be empowered to adopt delegated acts setting the technical and testing requirements for machinery in scope of the Framework. These include braking, steering, and lighting.
5. Article 16 makes compliance with the Framework a condition of making available on the market, registration or entry into service of machinery in scope of it.
6. Articles 17 to 18 set out the procedure for applying for type approval and the information folder that must be provided at the point of application.
7. Articles 19 to 22 set out the operational obligations of the type-approval authorities. These include requirements to verify compliance with the technical

requirements and post approval measures to ensure production continues to conform to the original approval.

8. Articles 23 to 25 concern amendments to existing approvals, and places obligations on approval holders and approval authorities to repeat testing where required and update the approval documentation.
9. Article 26 sets out the conditions under which an approval becomes invalid, these include where production is discontinued or when it is not possible to meet new mandatory technical requirements.
10. Articles 27 and 28 make it a requirement to provide a certificate of conformity and mark the product to prove the product has been approved.
11. Articles 29 and 30 cover the approval of new technologies that are not regulated by the Framework. This enables manufacturers to seek an exemption from the Commission to include the new technology within the existing product rather than invalidate the approval. It also requires the Commission to amend the existing requirements to bring them into line with the exemption.
12. Articles 31 to 33 set out the obligations for national market surveillance and corrective action to address non-compliance with the Framework, and potential corrective measures at Union level.
13. Article 34 requires manufacturers to provide end users with all relevant information and necessary instructions describing any conditions or restrictions linked to the use of the machinery. This must be in the form of an operator's manual and must be in the official languages of the Member State it is to be sold or used in.
14. Articles 35 to 45 concern the designation and notification of technical services that carry out testing on behalf of the type-approval authorities. These include the requirements a technical service must meet in order to be designated by an approval authority, and enable the Commission to investigate where it has doubts about the competence of a technical service.
15. Articles 46 and 47 set out the process by which the Commission will exercise its powers to make delegated and implementing acts.
16. Article 48 makes a consequential amendment to EU market surveillance legislation, Regulation (EU) 2019/1020, to refer to the proposed Framework.
17. Article 49 establishes an advisory forum consisting of representatives from the Member States to support the interpretation and implementation of the Framework's requirements.
18. Article 50 obliges Member States to implement penalties for infringements of the Framework, including making false declarations during the approval process and falsifying test results.
19. Article 51 sets out the deadlines by which the Commission must present a report on the implementation of the Framework to the European Parliament and Council, and for Member States to inform the Commission of the application of their approval and market surveillance procedures.

20. Article 52 sets out the transitional provisions for the application of the Framework. These allow additional time for Member States with existing national approval schemes for machinery in scope of the Framework.
21. Article 53 sets the entry into force date as the twentieth day from its publication in the Official Journal of the European Union, and its application date as three years from that date.

SCRUTINY HISTORY

22. This proposal is for a new Regulation, there has been no previous scrutiny of this measure.

MINISTERIAL RESPONSIBILITY

23. The Secretary of State for Transport.

INTEREST OF THE DEVOLVED ADMINISTRATIONS.

24. The topic of type approval is a reserved matter. The use of machinery on roads is reserved in GB and devolved in NI. The devolved administrations, particularly in Northern Ireland, have an interest and have been consulted in the preparation of this EM
25. The devolved administrations were consulted during the development of this EM. Discussions were held with officials in the Northern Ireland Executive, they expressed concern about the potential impact of this proposal in terms of possible disruption to the supply of machinery between GB and Northern Ireland. Based on the information currently available there is the potential that manufacturers will need to take into account two different approaches to regulating machinery used on roads for both GB and the EU. This could create an additional burden for manufacturers and thus hinder their desire to trade with NI. However, as the proposal is still in draft it is not possible to be certain until more detailed technical requirements are developed. We will continue to work with NIE to assess the details .

LEGAL AND PROCEDURAL ISSUES

- i. Legal Base

Article 114 of the Treaty of the Functioning of the European Union.

- ii. Voting Procedure

Ordinary legislative procedure (Co-decision)

- iii. Timetable for adoption and implementation

The proposal was adopted by the Commission on 30th March 2023. It is currently with the Council of the European Union at first reading stage.

POLICY IMPLICATIONS.

26. This EM has been prepared on the basis of the current proposal. It should be noted that what is proposed is an entirely new approval Framework for a subset of machinery. As such is subject to change as it progresses through the EU's legislative process.
27. The machinery in scope of the Framework is a subset of those regulated by the current Machinery Directive and the type-approval framework for emissions from engines for machinery. This proposal aims to harmonise requirements not included in those existing EU regs, and which are currently subject to different domestic rules.
28. It would enable the Commission to adopt delegated and implementing acts to set safety requirements relating to the use of the machinery on roads, such as braking, lighting and steering. Officials expect the products within its scope to include combine harvesters, ride on mowers, some street sweepers, and diggers.
29. The EU previously notified the UK of its intention to apply this Framework under the old Northern Ireland Protocol. It is still not currently clear at this stage under which sub-article of the Windsor Framework the EU will seek to apply this proposal. Officials are continuing to engage with EU counterparts regarding this matter, and the Department will provide an update when it is available.
30. The proposal is based on existing type-approval frameworks for road vehicles and agricultural tractors, and contains the same general operational and enforcement obligations of those frameworks. As such it is expected to be a functional system with effective administrative and enforcement obligations. There may be benefits for manufacturers from the harmonisation of technical requirements and resulting reduction in the number of product lines required to supply the EU market.
31. There would be divergence between the administrative requirements for the registration or placing on the market of machinery intended for use on the road in GB and NI. Without finalised technical requirements it is not possible to give a definitive view on whether there would be divergence in the technical standards applicable in GB and NI. This effect of divergence would be dependent on whether the technical requirements of the Framework were incompatible with existing domestic requirements.
32. Unfettered access for NI based businesses to the GB market would be unaffected. The Government is not aware of any major NI-based manufacturers that produce vehicles in scope of the Framework, so do not

expect there to be any significant impact on producers in NI, but officials will continue to engage with industry as the proposal develops. The movement of machinery between GB and NI may be affected, though this would be dependent on the final technical requirements and whether they led to divergence with products designed for GB. Again, officials will continue to engage with industry as the proposal develops.

33. Due to the uncertainty regarding divergence of technical standards no decision has been taken regarding the application of a similar approach in GB or any other measures to address potential divergence. Officials will continue to monitor the development of the Framework and make an assessment of the merits of applying equivalent measures in GB to address any divergence that might occur.

Such assessment of the merits of introducing equivalent measures will follow the usual Government analytical process, as well as a consideration of the wider implications and benefits of doing so.

34. We are not aware of any implications from this proposal with regards to Northern Ireland's participation in the UK's Free Trade Agreements or with its participation in UK Common Frameworks. However, as the regulation is still in proposal stage, we will keep it under review.

35. The proposal would apply to Northern Ireland directly, though domestic legislation would be required to apply the obligations regarding market surveillance and penalties for non-compliance with the Framework. Additional legislation might also be required to amend existing domestic requirements governing the registration and use of machinery on the road, depending on the final technical requirements.

36. Officials have held initial discussions with industry bodies representing construction and agricultural machinery manufacturers and dealers. They have been pressing the Commission to introduce an EU wide scheme for at least 20 years and so broadly welcome the principle being proposed. However, while they recognise there may be benefits from harmonisation of the EU market there are still concerns about the details of its implementation, and any additional administrative burdens and the impact of any divergence between NI and GB that might result.

37. There has not been a formal assessment of the proposal's regulatory impact as such assessments are only made when the Government develops and proposes legislation for Parliament's consideration and approval.

CONSULTATION

38. The agricultural and construction machinery industry was consulted by the Commission during the development of this proposal, an impact assessment was prepared by the Commission.

FINANCIAL IMPLICATIONS

39. There are no financial implications for the UK.

MINISTERIAL NAME AND SIGNATURE

A handwritten signature in black ink, reading "Jesse Norman". The signature is written in a cursive, flowing style with a large initial 'J' and a long, sweeping underline.

Jesse Norman
Minister of State
Department for Transport