STATUTORY INSTRUMENTS

2018 No. 236

ROAD TRAFFIC

The Agricultural and Forestry Vehicles (Type-Approval) Regulations 2018

Made - - - -	*21st February 2018*
Laid before Parliament	*28th February 2018*
Coming into force - -	*20th May 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") [F1].

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 [F2].

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) No 167/2013 of the European Parliament and of the Council on the approval and market surveillance of agricultural and forestry vehicles [F3] to be construed as references to a version of that Regulation as it may be amended from time to time.

Annotations:

F1 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.

F2 See S.I. 1972/1811.

F3 OJ No L 60, 2.3.2013, p.1.

Citation, commencement and effect

1. These Regulations—

(a) may be cited as the Agricultural and Forestry Vehicles (Type-Approval) Regulations 2018;

(b) come into force on 20th May 2018; and

(c) are of no effect in relation to any matter to which paragraph 2 or 3 of article 73 of the AFV Regulation applies.

Interpretation

2.—(1) In these Regulations—

"the AFV Regulation" means Regulation (EU) No 167/2013 of the European Parliament and of the Council on the approval and market surveillance of agricultural and forestry vehicles as it may be amended from time to time;

"enforcement authority" means the Secretary of State;

"relevant products" means—

(a) vehicles;

(b) systems;

(c) components;

(d) separate technical units;

(e) parts; or

(f) equipment.

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

Market surveillance authority

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

(a) these Regulations and the AFV Regulation; and

(b) where applied by the AFV Regulation or otherwise applicable to relevant products, Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93[F4].

Annotations:
F4 OJ No L 218, 13.8.2008, p.30.

Requests for information: failure to comply

5. Where a manufacturer who makes an application for type-approval fails to comply with a reasoned request for additional information made under paragraph 5 of article 23 of the AFV 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 24 and 26 to 28; or

(b) article 35,

of the AFV Regulation have not been complied with.

(2) The requirements of article 27 of the AFV 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 28 of the AFV 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) the data in the certificates of conformity are correct.

Conformity of production: record keeping

7. The holder of an EU type-approval or whole-vehicle type-approval mentioned in article 28 of the AFV 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 certificates of conformity to article 33 of the AFV Regulation; and

(c) that the data in certificates of conformity issued by the holder are correct.

Making available on the market or entry into service: derogations

8. The derogations permitted by paragraphs 3 and 4 of article 40 of the AFV Regulation apply.

Review of decisions

9.—(1) A decision to which article 48 of the AFV 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 vehicles 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 vehicles for the purpose of determining the issues raised by the request for review.

Withdrawal of approvals: mistake or error

10.—(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 9(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

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

(a) issue a certificate of conformity with respect to a vehicle; or

(b) affix a statutory plate or mark pursuant to article 34 of the AFV Regulation,

the certificate, plate or mark is invalid.

(2) The approval authority may, by notice given to the holder, exempt from paragraph (1) certificates of conformity or classes of certificates of conformity specified in the notice.

(3) The suspension of an approval does not affect the validity of any certificate of conformity issued under it before that suspension.

Service

12.—(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 AFV 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) [F5] 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 AFV 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 AFV 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).

Annotations:
F5 1978 c.30.

Provision of testing stations

13. 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 AFV Regulation and may provide and maintain apparatus for carrying out such examinations.

Provision of technical information: loss or damage

14.—(1) Where a duty is imposed on a manufacturer by Chapter XIV of the AFV Regulation (provision of technical information), any breach of the duty which causes a person to sustain loss or damage is actionable at the suit of that person.