
ANNEX D

STATUTORY INSTRUMENTS

2009 No. 0000

ROAD TRAFFIC

**The Motor Cycles Etc. (Replacement of Catalytic Converters)
Regulations 2009**

<i>Made</i> - - - -	**** 2009
<i>Laid before Parliament</i>	**** 2009
<i>Coming into force</i> - -	**** 2009

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

He is designated for purposes of section 2(2) 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.

Citation and commencement

1. These Regulations may be cited as the Motor Cycles Etc. (Replacement of Catalytic Converters) Regulations 2008 and shall come into force on xx 2009.

Interpretation

2. In these Regulations—

“EC certificate of conformity” has the meaning given in regulation 3 of the Motor Cycles Etc (EC Type Approval) Regulations 1999.

“enforcement authority” means the Secretary of State;

“original replacement catalytic converter” has the meaning given by section 1.6 of Annex I to the Vehicle Emissions Chapter;

“replacement catalytic converter” has the meaning given in section 1.5 of Annex I to the Vehicle Emissions Chapter;

“relevant vehicle” means a vehicle which is subject to an EC certificate of conformity where that certificate was issued in consequence of the vehicle satisfying the requirements of the Vehicle Emissions Chapter;

“supply” includes offering to supply, agreeing to supply, exposing for supply and possessing for supply; and

“the Vehicle Emissions Chapter” means Chapter 5 of Directive 97/24/EC of the European Parliament and of the Council.

Application to previously used catalytic converters

3. These Regulations do not apply in respect of—

- (a) a catalytic converter; or
- (b) an assembly of catalytic converters,

which has previously been used as a replacement part on a vehicle.

Prohibition on the supply of certain catalytic converters

4.—(1) No person shall supply for installation on a relevant vehicle—

- (a) a catalytic converter; or
- (b) an assembly of catalytic converters,

intended to be used as a replacement part unless it complies with paragraph (2) or (3).

(2) The requirements of this paragraph are that the catalytic converter or assembly of catalytic converters is an original replacement catalytic converter which—

- (a) has been clearly and indelibly marked in accordance with section 5.2.1 of Annex I to the Vehicle Emissions Chapter; and
- (b) is accompanied by the information which is specified in section 5.2.2 in the format specified in section 5.2.2.5 of that Annex.

(3) The requirements of this paragraph are that the catalytic converter or assembly of catalytic converters is a replacement catalytic converter which—

- (a) has been clearly and indelibly marked in accordance with section 4 of Annex VII to the Vehicle Emissions Chapter; and
- (b) is accompanied by the information which is specified in section 7 in the format specified in section 7.2 of that Annex.

Prohibition on the installation of certain catalytic converters

5.—(1) No person shall install on a relevant vehicle—

- (a) a catalytic converter; or
- (b) an assembly of catalytic converters,

intended to be used as a replacement part unless it complies with paragraph (2) or (3).

(2) The requirements of this paragraph are that the catalytic converter or assembly of catalytic converters is an original replacement catalytic converter which—

- (a) has been clearly and indelibly marked in accordance with section 5.2.1 of Annex I to the Vehicle Emissions Chapter; and
- (b) is covered by section 4a of the component type-approval certificate (referred to in Annex VI to the Vehicle Emissions Chapter) issued in respect of the type of vehicle on which it is being installed.

(3) The requirements of this paragraph are that the catalytic converter or assembly of catalytic converters is a replacement catalytic converter which—

- (a) has been clearly and indelibly marked in accordance with section 4 of Annex VII to the Vehicle Emissions Chapter; and
- (b) is being installed on a vehicle of a type covered by point 5 of the type-approval certificate (referred to in Appendix 2 to Annex VII to the Vehicle Emissions Chapter) issued in respect of that replacement catalytic converter.

Offences and Enforcement

6.—(1) It shall be the duty of the enforcement authority to enforce these Regulations.

(2) The Schedule to these Regulations shall have effect with regard to offences, enforcement of these Regulations and other matters.

(3) A reference in the Schedule to “O” is to any officer authorised by the enforcement authority to assist it in enforcing these Regulations.

(4) Proceedings for an offence under these Regulations shall not be instituted—

(a) in England and Wales, except by or on behalf of the enforcement authority; and

(b) in Northern Ireland, except by or on behalf of the enforcement authority or the Director of Public Prosecutions for Northern Ireland.

(5) Nothing in these Regulations shall authorise the enforcement authority to bring proceedings in Scotland for an offence instead of the Procurator Fiscal.

Signed by authority of the Secretary of State

Date

Name
Minister of State
Department for Transport

SCHEDULE

Regulation 6(2)

OFFENCES, ENFORCEMENT AND OTHER MATTERS

PART I

PROVISIONS AS TO OFFENCES

Offences and Penalties

1.—(1) If a person, in the course of his or her business, contravenes or fails to comply with a regulation or paragraph specified in sub-paragraph (2), that person commits an offence.

(2) The regulations and paragraphs are—

- (a) regulation 4(1);
- (b) regulation 5(1);
- (c) paragraph 4 of this Schedule; and
- (d) paragraph 5(8) of this Schedule.

(3) A person guilty of an offence shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Defence

2.—(1) In proceedings against any person for any offence under these Regulations it shall be a defence for that person to show that he or she took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against any person for such an offence the defence provided by sub-paragraph (1) involves an allegation that the commission of the offence was due—

- (a) to the act or default of another; or
- (b) to reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, not less than seven clear days before the hearing of the proceedings (or, in Scotland the trial diet), he or she has served a notice under sub-paragraph (3) on the person bringing the proceedings.

(3) A notice under this sub-paragraph shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person who is the subject of the proceedings.

(4) A person shall not be entitled to rely on the defence provided by sub-paragraph (1) by reason of reliance on information supplied by another, unless he or she shows that it was reasonable in all the circumstances to have relied on the information, having regard in particular to—

- (a) the steps which he or she took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) whether the person had any reason to disbelieve the information.

Liability of persons other than principal offender

3.—(1) Where the commission by any person of an offence under these Regulations is due to an act or default committed by some other person in the course of that other person's business, the

other person shall be guilty of the offence and may be proceeded against and punished by virtue of this sub-paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of sub-paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he or she, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

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

(4) Where a Scottish partnership is guilty of an offence under these Regulations (including where it is so guilty by virtue of sub-paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner in the partnership, both the partner and the partnership, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

PART II

PROVISIONS AS TO ENFORCEMENT

Obstruction of authorised officers and false statements

4.—(1) No person shall—

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

(2) No person shall, in giving any information which is required of him or her by virtue of sub-paragraph (1)(c)—

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

Powers of search etc.

5.—(1) O may, at all reasonable hours and on—

- (a) identifying him or herself and producing authority in writing from the enforcement authority for the exercise by O of powers conferred on the authority by these Regulations, and
- (b) stating the purpose of his or her actions and the grounds for undertaking them,

exercise any of the powers set out in sub-paragraph (2).

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

- (a) O may, for the purpose of ascertaining whether an offence under these Regulations has been committed, inspect any catalytic converter, assembly of catalytic converters, pollution control device or assembly of pollution control devices and enter any premises other than premises used only as a dwelling;
- (b) if O has reasonable cause to suspect that an offence under these Regulations has been committed, O 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 catalytic converter, assembly of catalytic converters, pollution control device or assembly of pollution control devices in question and O may take copies of those records or any part of them;

- (c) if O has reasonable cause to suspect that an offence under these Regulations has been committed, O may seize and detain any catalytic converter, assembly of catalytic converters, pollution control device or assembly of pollution control devices for the purpose of ascertaining whether the offence has been committed;
- (d) O may seize and detain any catalytic converter, assembly of catalytic converters, pollution control device or assembly of pollution control devices or records which O has reason to believe may be required as evidence in proceedings for an offence under these Regulations;
- (e) O may, for the purpose of exercising his or her powers of seizure under this sub-paragraph, but only if and to the extent that it is reasonably necessary in order to secure that the provisions of these Regulations are duly observed, require any person having authority to do so to break 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, O may break open the container.

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

(4) If a justice of the peace is satisfied by any written information on oath—

- (a) that there are reasonable grounds for believing either—
 - (i) that any catalytic converter, assembly of catalytic converters, pollution control device or assembly of pollution control devices or records, which O has power under this paragraph to inspect, copy, seize or require to be produced, are on any premises and that their inspection, copying, seizure or production 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 his or her hand, which shall continue in force for a period of one month, authorise O to enter the premises, if need be by force.

(5) On entering any premises by authority of a warrant granted under sub-paragraph (4), O shall, 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 appropriate part of the premises a notice in writing—

- (a) summarising O's powers of seizure and detention of any catalytic converter, assembly of catalytic converters, pollution control device or assembly of pollution control devices or records under this paragraph;
- (b) explaining that compensation may be payable for damage caused in entering premises and seizing and removing any catalytic converter, assembly of catalytic converters, pollution control device or assembly of pollution control devices 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.

- (6) When entering any premises by virtue of this paragraph, O—
- (a) may take with him or her such other persons and such equipment as may appear necessary; and
 - (b) on leaving any premises shall, if the premises are unoccupied or the occupier is temporarily absent, leave them in as secure a state as they were found.
- (7) When exercising any power of seizure and detention under this paragraph, O shall, as soon as practicable, give to the person against whom the power has been exercised, a written notice—
- (a) stating precisely what has been so seized and detained; and
 - (b) explaining where, within what period and on what grounds an appeal against such detention may be brought under paragraph 6 (appeals against detention of a catalytic converter, assembly of catalytic converters, pollution control device or assembly of pollution control devices or records) and whether the things detained would be released while an appeal was pending.
- (8) A person who is not a duly authorised officer of an enforcement authority shall not purport to act as such under this paragraph.
- (9) In the application of this paragraph to Scotland, the reference in sub-paragraph (4) to a justice of the peace shall include a reference to a sheriff and the references to written information on oath shall be construed as references to evidence on oath.
- (10) In the application of this paragraph to Northern Ireland, the references in sub-paragraph (4) to any information on oath shall be construed as references to any complaint on oath.

Appeals against detention of a catalytic converter, assembly of catalytic converters, pollution control device or assembly of pollution control devices or records

6.—(1) Any person having an interest in any catalytic converter, assembly of catalytic converters, pollution control device or assembly of pollution control devices or records which are for the time being detained under paragraph 5 (powers of search etc.) by an enforcement authority or by O may apply for an order requiring the catalytic converter, assembly of catalytic converters, pollution control device or assembly of pollution control devices or records 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 relation to the catalytic converter, assembly of catalytic converters, pollution control device or assembly of pollution control devices or records;
 - (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 shall not make an order under sub-paragraph (1) unless the court or sheriff is satisfied—
- (a) that proceedings have not been brought for an offence in respect of a contravention of any provision of these Regulations in relation to the catalytic converter, assembly of catalytic converters, pollution control device or assembly of pollution control devices or records; or having been brought, have been concluded; and
 - (b) where no such proceedings have been brought, that 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 principal; or

(c) in Northern Ireland, to the 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 or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (statement of case)).

Compensation for seizure and detention

7.—(1) Where O exercises any power under paragraph 5 (powers of search etc.) to seize and detain any catalytic converter, assembly of catalytic converters, pollution control device or assembly of pollution control devices or records, the enforcement authority shall be liable to pay compensation to any person having an interest in the catalytic converter, assembly of catalytic converters, pollution control device or assembly of pollution control devices or records 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 in relation to the catalytic converter, assembly of catalytic converters, pollution control device or assembly of pollution control devices or records; 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 shall be determined—

- (a) in England and Wales or Northern Ireland, by arbitration; or
- (b) in Scotland, by a single arbiter appointed by the parties, or in the event that the parties fail to agree, by the sheriff.

Recovery of the expenses of enforcement

8.—(1) This paragraph shall apply where a court convicts a person of an offence in respect of a contravention of any provision of these Regulations in relation to any catalytic converter, assembly of catalytic converters, pollution control device or assembly of pollution control devices 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 an 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 catalytic converter, assembly of catalytic converters, pollution control device or assembly of pollution control devices or records.

Savings for certain privileges

9. Nothing in these Regulations shall 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

10. A contract for the supply of a catalytic converter, assembly of catalytic converters, pollution control device or assembly of pollution control devices shall not be void or unenforceable by reason only of a contravention of any provision of these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)