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## HEALTH AND SAFETY COMMISSION

### Proposals for the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004

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Cleared by Nick Starling, Co-Director, Policy Group, on 17/11/2003**

#### Issue

1. To agree the submission to Ministers of proposals to make the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004. The proposed Regulations will implement Commission Directives 2003/28/EC and 2003/29/EC which adapt to technical progress, for the fourth time, earlier Framework Directives on the transport of dangerous goods by road and by rail, implemented in 1996; and complete the implementation of Council Directive 1999/36/EC on transportable pressure equipment.

#### Timing

2. Routine. The implementation dates for the Directives have passed.

#### Recommendation

3. That the Commission:

a) endorses the draft Regulations, in particular the proposed approach to maintaining existing requirements in relation to emergency placarding arrangements (see paragraphs 8-10): and

b) agrees that the Chair submits the attached draft Regulations at annex 1 to David Jamieson under cover of the letter at annex 2, with a recommendation that he agrees them, signs the printed copy of the Regulations and lays them before Parliament.

#### Background

4. Paper HSC/03/69 provided the background to the publication of the Consultative Document on the proposals on 2 June 2003. In essence, the paper explained the two-yearly cycle of amending Directives that annex international agreements for the safe carriage of dangerous goods by road and rail, known as ADR and RID respectively; and the position regarding completing the implementation of the Transportable Pressure Equipment Directive. It described the role of HSE in transposing the Directives into British

law under the HSW Act on behalf of the Department for Transport (DfT) who lead negotiations at UN and EU level. It summarised the current legal position, that an extensive portfolio of regulations had developed that hindered proper understanding by dutyholders, and the policy decision to consolidate the regulations into one set while directly referencing ADR and RID for technical detail (in line with HSC/E's aim to modernise the regulatory framework).

5. The paper went on to explain the complexities involved in the consolidation and cross-referencing exercise and that the implementation date for the 2001 amending ADR and RID Directives, 31 December 2002, would not be met. Ministerial agreement had to be sought to roll together implementation of the 2001 amending Directives with those of 2003, the implementation date of which was 1 July 2003. This was forthcoming.

6. The CD on the draft Regulations was published in early June with the consultation period ending on 2 September 2003. In the CD, we asked a number of general questions, e.g. on the effect of consolidation and cross-referencing, whether we had identified all the key changes, and on the preferred approach to supporting guidance. We also sought more specific comments such as on emergency placarding, incident reporting arrangements and future inspection regimes for transportable pressure equipment.

## **Argument**

7. Annex 3 contains a summary of the 155 responses to the CD. Here are the headlines:

a) the great majority of respondents supported the consolidation of the existing portfolio of regulations into one set and the approach of cross-referencing ADR/RID for technical detail. However, a significant number criticised the resulting complexity of the Regulations. Most preferred a more holistic approach to referencing the agreements, rather than having to duplicate certain aspects of them. Unfortunately this cannot be done: legal advice is that the Regulations must spell out responsibilities so that they are enforceable; inconsistencies within and between the agreements must be avoided; and the Regulations must adhere to legal drafting conventions;

b) given the perceived complexity of the Regulations, there was a concerted call for them to be supported by clear guidance. This is in hand: we have recently completed an informal consultation exercise on an introductory leaflet on the carriage of dangerous goods by road. We aim to publish this with the Regulations, supplemented by web-based advice on more specific issues. And we are assisting industry prepare their own more sector-specific guidance;

c) a request that the 2005 set of Regulations (implementing the EC Directives annexing the 2005 texts of ADR/RID) replace the existing Regulations, rather than amend them. We will need to assess this nearer the time;

d) concerns surrounding the implications of directly referencing ADR/RID in relation to changing the rules governing the carriage of dangerous goods in limited quantities, the thresholds for loads and packaging requirements. It is the case that certain sectors of industry will be affected, notably those in the parcels sector, but

these changes have been well trailed and, overall, the impact across industry is estimated as cost neutral;

e) representations from those transporting diesel, particularly in bowsers (small tanks), coming newly into scope of the Regulations, for some relaxations;

f) clarification of the scope of, and transposition into the Regulations of UK derogations from the Directives as agreed by the EC;

g) a significant number of co-ordinated comments from the hot air ballooning sector who had gained the impression, wrongly, that the proposed Regulations would be imposing new constraints on the sport. We issued a response to clarify matters;

h) a mixed response as to whether, and when, to defer the phasing out of the competent person inspection regime for tanks (eg road tankers) and pressure receptacles (eg gas cylinders) in favour of inspections by bodies appointed by the competent authority. On balance we judge it best to defer the due date by a year to 1/7/06;

i) some fairly critical comments on the comprehensiveness and accuracy of the pre-consultation RIA. We have taken on board as many of the comments as we can within the time and resources available (see paragraph 14 and annex 4);

j) respondents suggested a number of amendments to the current content of ADR and RID. These have been passed to DfT to consider for future international negotiations on the agreements.

### *Emergency placarding*

8. One particular issue on which we sought views was whether to introduce greater choice into the regulatory provisions governing emergency placarding arrangements. Under current legislation, it is mandatory for those transporting dangerous goods in bulk or in tanks to display placards with information to guide the reaction of the emergency services to an incident. These requirements apply to GB vehicles on GB journeys. Those on international journeys or using non-GB registered vehicles have to placard vehicles according to ADR/RID requirements. We originally proposed to offer carriers the choice of using either system for domestic carriage.

9. This question aroused a considerable response and divergent views. Annex 3 contains a summary. In essence, the fire services, supported by the Police and Environment Agency, argued forcibly that existing arrangements should be maintained as they offered the safest means in responding to incidents; and that any change would impede negotiations at UN/EU level where the UK was arguing for a wider application of the system used in this country. The industry view was split. A number fell in behind the fire services line while others argued that the increased flexibility reduced the potential for confusion, recognised the reality that the fire services had to understand and react to both systems and would reduce costs over time.

10. These arguments are finely balanced. While there is an illogicality in continuing to insist on having two mandatory placarding systems, those defending the status quo offer a

safety argument. We believe there is no compelling case for change and have therefore revised the Regulations so that they maintain existing requirements (with the exception of the MoD whom we are able to treat as a special case) with the situation being kept under review. **The Commission is invited to endorse this approach.**

### *Changes to the draft Regulations arising from consultation*

11. In having to implement EC Directives, there is a limit to the extent of changes that can be made to the Regulations arising from consultation. Where so permitted by exemption and derogation powers allowed by the Directives, we have sought as flexible an implementation as possible, ensuring that safety is not compromised. In addition to the placarding issue, we have amended the Regulations to, among other things, ensure duties are properly assigned to duty holders; clarify their application to transportable pressure equipment placed on the market before the coming into force date of the Regulations; alter the wording of derogations relating to retail distribution and to opening packages. We have agreed some relaxations to the transport of diesel in bowsers; properly reflected the role of Dangerous Goods Safety Advisers; and deferred for one year the date for phasing out the competent person inspection regime. A considerable number of technical points of detail have been reflected in the revised draft.

### **Consultation**

12. 5,000 copies of the CD were printed for issuing directly by HSE and a further 3,300 enquirers accessed the pdf version of the document via the website. DfT and MoD have been consulted throughout. We held four briefing sessions for industry, supported by bilateral discussions with certain sectors, for example agriculture, diving cylinders, freight transport and explosives, and with OGDs.

### **Presentation**

13. We shall issue a press release to announce the coming into force of the Regulations (estimated to be March 2004) and use our and DfT's established networks to publicise the occasion. At the same time, we intend to publish supporting guidance, both a free leaflet and via supplementary web-based advice on particular issues (see paragraph 7(b) above).

### **Costs and Benefits**

14. The post-consultation RIA is at annex 4. A number of changes have been made in the light of comments made during consultation, for example to reflect better management on-costs and to reduce estimated labelling costs. However, overall, the cost/benefit assessment contained in the CD is not much altered with the total costs to industry, estimated to be £340 million over 10 years in present value terms.

### **Financial/Resource Implications for HSE**

15. Following this consolidation exercise, the policy and legal resource devoted to the 2005 implementation will be reduced, possibly by as much as half of the staff currently engaged in this work (about four posts). Enforcement costs will be as before although

some administrative resource has been earmarked to revise Agency Agreements and MoUs with DfT, the Police and VOSA and to update training and enforcement manuals.

#### *Transfer of regulatory development to DfT*

16. Looking further ahead, following Ministerial/HSC agreement to transfer HSE's regulatory development work on the land carriage of dangerous goods to DfT (see HSC/03/104), discussions are being held between the departments over the future allocation of resources devoted to this area, in particular HSE's continued commitment to provide specialist support to DfT and to enforce the Regulations.

17. It is worth reminding the Commission that the transfer will mean that Ministers will use HSWA to make regulations on the carriage of dangerous goods by road and rail and that HSE will no longer lead on this. HSC will still be consulted about future draft regulations but at the same time as other consultees; HSC will not approve draft regulations for consultation. There will be a further paper on this issue in due course.

#### **Environmental Implications**

18. Once familiar with the new layout of the Regulations, we anticipate that duty holders will find the Regulations easier to follow and hence to comply with. We expect the Regulations will have a positive environmental impact.

#### **Other implications**

19. None

#### **Action**

20. As at paragraph 3.