17 July 2003

Dear Consultee,

PROPOSALS FOR THE CARRIAGE OF DANGEROUS GOODS AND USE OF TRANSPORTABLE PRESSURE EQUIPMENT REGULATIONS 200[x]

I am writing to you to seek your views on two issues which have developed since the Consultative Document setting out the above proposals was published and which involve changes to these proposals.

Deferral of TPED

Included in the Consultative Document (CD) setting out the Health and Safety Commission's proposals for the above Regulations was a letter from Eddie Bailey which drew your attention to the possibility that the European Commission was considering deferring the implementation of the Transportable Pressure Equipment Directive (TPED – Directive 1999/36/EC) as it relates to tanks, pressure drums and bundles of cylinders.

Since then, a European Commission decision has been made to defer the implementation of TPED in relation to this equipment to 1st July 2005 with a two-year transition period until 30th June 2007. This decision was made on the basis that there are currently no sufficiently detailed technical specifications or relevant European standards relating to the construction of this equipment set out in the current text of RID and ADR, but that there will be by 1st July 2005. As promised, this letter therefore explains how the deferral affects the proposals contained in CD and asks for your views on this in the context of consultation on the proposals as a whole.

The decision is to defer TPED **only**. There is no deferral of the implementation of the provisions in the RID and ADR Framework Directives as they relate to the construction, inspection, testing, marking and use of pressure drums, bundles of cylinders and tanks. This has a number of implications for the proposed Regulations as they impose requirements on these types of equipment which depend on the date of construction of the equipment (see Annex 1 for more details). To reflect these in the Regulations, the main changes will be to regulations 5 and 38(1) in the consultation draft (a copy of these regulations as amended is at Annex 2). I should be grateful if you would take account of these changes in making your comments on the draft Regulations as a whole. We believe the impact of these changes on the Regulatory Impact Assessment in the main CD is small but we would also welcome any comments you have on this.

RID 2004

At their meeting in November 2002, the RID Committee of Experts adopted texts that amended the 2003 version of RID and were to come into force on 1 January 2004. The changes made were mainly to align RID 2003 text with ADR 2003 – principally

to allow for the carriage of Vacuum Operated Waste (VOW) tanks by rail – although there are other minor changes. A copy of these changes is attached (Annex 3). These changes were not taken account of in the CD (which refers directly to the published version of RID 2003) because it was unclear that Commission Directive 2003/29/EC provided the basis for their implementation into domestic law. However, we are anticipating confirmation by the European Commission that it is content to accept these changes as part of 2003 text for the purpose of implementing Directive 2003/29/EC.

The changes needed to the Regulations to reflect these amendments to RID should be minor and have limited impact on GB (there are no VOW tanks carried by rail in this country as far as we are aware). As such, the purpose of this letter is to let you know that we intend amending the Regulations to extend the draft provisions relating to VOW tanks (which currently apply only to carriage by road) to carriage by rail by reference to the relevant requirements in RID. We will also make any other changes that are necessary to implement these 2004 changes.

It is unfortunate that these developments, not of our making, further complicate consultation on an already complex set of proposals. We should nevertheless be grateful for any views you may have on the changes and the affect they might have on both the draft Regulations as a whole and on the Regulatory Impact Assessment contained in the CD. Please include any comments on these changes in the comments you intend making on the CD as a whole and send them to the address in the CD by 2nd September 2003. If you have any queries about this letter you should direct them to:

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Yours sincerely

Mark Dempsey
Commission Secretary

Annex 1

Detailed implications of deferral of TPED

The implications of deferral mean that where the equipment is constructed:

a) on or after the coming into force of the new Regulations, they will, until 1st July 2005, need to comply with the relevant requirements of Chapters 4.1-4, 6.2, and 6.7-6.9 of RID/ADR (see regulations 17,18, 20 and 21 of the Regulations);

b) on or after 1st July 2005, there will be a choice until 30th June 2007, between continuing to comply either with (a) above, or with the requirements of Part IV and Schedules 4-8 of the Regulations which implement TPED. The latter option will benefit those wishing to take advantage of the free movement advantages that pi-marking the equipment should bring;

c) on or after 1st July 2007, they will need to comply fully with the requirements of TPED;

d) before 1st July 2005, there will be a choice until 30th June 2007 either to reassess the equipment in accordance with TPED (see regulations 5(10) and 38 plus Schedule 6) so that the equipment can take advantage of the free movement benefits that the Directive brings, or to continue to comply with the requirements it currently complies with. For equipment:

- built on or after the coming into force of the Regulations (see (a) above), its reassessment should be straightforward since they will have been built to the construction requirements of RID/ADR. But such equipment could still continue to comply with the periodic inspection and use requirements of RID/ADR as opposed to Part IV (see regulations 17,18, 20 and 21) if dutyholders choose to do so (see regulation 5(10)).
- For equipment built before the coming into force of the Regulations, reassessment may be less straightforward since the equipment is less likely to have been built to standards which meet the requirements of RID/ADR (which TPED requires compliance with). Where such equipment cannot meet these requirements (or if dutyholders choose not to reassess), it can continue in use in GB only, provided it meets the requirements of Schedules 1 or 2 (as appropriate).

(b) 17;

(c) 19(3), to the extent that it relates to the requirements in chapter 5.3 of ADR;

(d) 19(4), to the extent that it relates to the requirements in chapter 5.4 of ADR;

(e) 23(1)(a), to the extent that it relates to the requirements in section 8.2.1 of ADR;

(f) 23(1)(b) and 23(2), to the extent that they relate to the requirements in sections 8.1.2 and 8.1.3 of ADR; and

(g) 23(4),

shall not apply to the carriage of class 1 goods by road in a vehicle which is used for the purposes described in sub-paragraphs (a) and (b) of paragraph (16).

(19) Parts II, III and V of, and Schedules 1 and 2 to these Regulations, shall not apply to or in relation to the carriage of dangerous goods by rail where the dangerous goods in question are moved only within an establishment in compliance with such regulations relating to safety as apply to that establishment and where such movement is not on a road or on a railway.

(20) In paragraph (5), "mobile machinery" shall have the same meaning as in the ADR Directive.

Application to international carriage

4.—(1) Regulations 9, 10 and 13 to 22, Part III (except insofar as it relates to competent authority functions referred to in chapters 1.7 and 1.8 of ADR in relation to carriage by road or of RID in relation to carriage by rail and Parts 8 and 9 of ADR in relation to carriage by road), Parts IV and V and Schedules 1 and 2 shall not apply to or in relation to the carriage of dangerous goods where the carriage forms part of an international transport operation–

(a) within the meaning of–

(i) COTIF and conforms in every respect with the provisions of RID; or

(ii) article 1(c) of ADR and the carriage conforms in every respect with the provisions of ADR; or

(b) which is subject to a bilateral or multilateral special agreement made under the terms of–

(i) COTIF to which the United Kingdom is a signatory and conforms in every respect with any conditions attached to the agreement concerned; or

(ii) article 4.3 of ADR to which the United Kingdom is a signatory and conforms in every respect with any conditions attached to the agreement concerned.

(2) In this regulation–

(a) "RID" means the Regulations concerning the International Carriage of Dangerous Goods by Rail which form Annex 1 to Appendix B to COTIF; and

(b) "ADR" means the European Agreement concerning the International Carriage of Dangerous Goods by Road signed at Geneva on 30th September 1957, as revised or re-issued from time to time(a).

Application to tanks, pressure receptacles and transportable pressure equipment

5.—(1) Regulations 17 and 20, insofar as they relate to pressure receptacles, shall not apply to pressure receptacles which are old pressure receptacles.

(2) Regulations 18 (except for paragraphs (1)(a) and (3)(a)) and 21, insofar as they relate to tanks, shall not apply to tanks which are old tanks.

(3) Schedule 1 shall, subject to the exception in paragraph 8 of that Schedule and to the following paragraphs, apply to old tanks except for those which are transportable pressure equipment to which Part IV applies.

(a) Current edition (2003): ISBN 92-1-139078-8.

(4) Any old tank which complies with the requirements of ADR in relation to carriage by road or of RID in relation to carriage by rail shall be deemed to have satisfied the requirements of Schedule 1.

(5) Schedule 2 shall, subject to the exceptions in paragraph 8 of that Schedule and to the following paragraphs, apply to the following equipment which is used or intended to be used or carried or intended to be carried by road or rail, at work–

(a) old pressure receptacles, except for those which are transportable pressure equipment to which Part IV applies; and

(b) notwithstanding regulation 3(13), UN 1044 FIRE EXTINGUISHERS with compressed or liquefied gas which comply with the provisions of special provision 594 of chapter 3.3 of ADR in relation to carriage by road or of special requirement 594 of chapter 3.3 of RID in relation to carriage by rail, as that Schedule applies to old pressure receptacles.

(6) Any old pressure receptacle, other than one which is UN 1044 FIRE EXTINGUISHERS with compressed or liquefied gas, which complies with the requirements of ADR in relation to carriage by road or of RID in relation to carriage by rail, shall be deemed to have satisfied the requirements of Schedule 2.

(7) Any cylinder–

(a) used to contain class 2 goods;

(b) which forms a component part of a breathing appliance or is a portable fire extinguisher; and

(c) which complies with the requirements of the Pressure Equipment Regulations 1999(a),

shall be deemed to meet the requirements of paragraphs 2, 3 and 6(1) of Schedule 2.

(8) Schedule 2 shall not apply to an old pressure receptacle–

(a) known as a two-part beer keg, one part of which is intended to contain a gas or a mixture of gases under pressure;

(b) used for the conveyance or storage of beer or carbonated drinks, the capacity of which does not exceed 0.252 cubic metres and the maximum working pressure of which is not greater than 12 bar above atmospheric pressure; or

(c) which is a portable fire extinguisher with a working pressure below 25 bar at 60°C and having a total mass not exceeding 23 kilogrammes.

(9) Subject to the following paragraphs of this regulation, Part IV and Schedules 4 to 8 shall apply to any transportable pressure equipment used at work and manufactured-

(a) on or after 1st July 2001 in the case of transportable pressure equipment which is a cylinder, tube or cryogenic receptacle;

(b) on or after 1st July 2005 in the case of equipment which is a pressure drum, bundle of cylinders or a tank;

(c) on or before 30th June 2003 where that equipment is -

(i) a cylinder, tube or cryogenic recpetacle which is subject to a reassessment of conformity; or

(ii) an EEC-type cylinder; and

(d) on or before 30th June 2007 where that equipment is a pressure drum, bundle of cylinders or a tank which is subject to a reassessment of conformity.

(10) Until 30th June 2007, any person who places on the market or uses at work transportable pressure equipment which is a–

(a) tank and which has been manufactured on or after 1st July 2005 may choose to ensure that regulations 18 and 21, insofar as they relate to tanks, are complied with rather than Part IV; or

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(a) S.I. 1999/2001, to which there are amendments not relevant to these Regulations [2002/1267?]

(b) pressure drum or a bundle of cylinders and which has been manufactured on or after 1st July 2005 may choose to ensure that regulations 17 and 20, insofar as they relate to such equipment, are complied with rather than Part IV.

(11) Part IV shall not apply to any pressure equipment to which the Pressure Equipment Regulations 1999 apply.

(12) Part IV shall not apply to any transportable pressure equipment which is used exclusively for the transport of a gas, UN 1051 STABILISED HYDROGEN CYANIDE, UN 1052 ANHYDROUS HYDROGEN FLUORIDE or UN 1790 HYDROFLUORIC ACID, with more than 85% hydrofluoric acid, between the European Community and third-countries provided that–

(a) the goods are being carried in connection with the transport of those goods by sea and the goods are classified, packaged and labelled in accordance with the appropriate provisions of the IMDG Code, as revised or re-issued from time to time;

(b) the goods are being carried in connection with the transport of those goods by air and the goods are classified, packaged and labelled in accordance with the appropriate provisions of the Technical Instructions for the Safe Transport of Dangerous Goods by Air issued by the International Civil Aviation Organisation(a), as revised or re-issued from time to time;

(c) the transport forms part of an international transport operation within the meaning of article 1(c) of ADR and conforms to the provisions of that agreement; or

(d) the transport forms part of an international transport operation within the meaning of COTIF and conforms with the provisions of RID.

(13) Regulations 36 to 38 shall not apply to an EEC-type cylinder made on or before [insert coming into force date of these Regulations].

(14) These Regulations shall not apply to or in relation to the carriage of a storage tank where it is nominally empty.

(15) Notwithstanding regulations 17 and 20(7) and (8) the requirements in paragraphs 6.2.1.1.1, 6.2.1.2, 6.2.1.4 to 6.2.1.6, section 6.2.3 and packing instruction P200 of paragraph 4.1.4.1 of ADR shall not apply to or in relation to the carriage of UN 1011, 1965 or 1978 in the circumstances set out in paragraph (16).

(16) The goods referred to in paragraph (15) may be carried by road in cylinders from a site where a cylinder is filled to a site where a hot air balloon is launched or from a site where a hot air balloon has landed to a site where the cylinder in question is to be re-filled if all of the following conditions are met–

(a) the cylinders must be made from–

(i) rolled and annealed pure titanium with the minimum requirements of RM 450 Mpa, A 20% (where A = elongation after fracture); or

(ii) austenitic steel;

(b) the main body of the cylinders must be provided with an outer, water resistant protective layer which is at least 25mm thick and is made from foam or a similar material;

(c) the cylinders are marked with a label which is clearly visible and states that the cylinders are to be used only for the operation of hot air balloons; and

(d) no more than 5 of such cylinders may be carried in any one transport unit.

(17) In paragraph (14)–

(a) "storage tank" means a tank used or intended to be used only for the storage of dangerous goods; and

(b) a storage tank shall be "nominally empty" if as much of the dangerous goods as it is reasonably practicable to discharge from it has been discharged from it.

(a) [ ]

(7) Any technical documentation or other information required to be retained under a conformity assessment procedure shall be retained by the person specified in that procedure for any period specified in that procedure.

Reassessment of conformity

38.—(1) Transportable pressure equipment which is a –

(a) cylinder tube or cryogenic receptacle which is manufactured prior to 1st July 2003 and does not bear the conformity marking;

(b) pressure drum, bundle of cylinders or a tank which is manufactured prior to 1st July 2007 and does not bear the conformity marking may from 1st July 2005,

be reassessed for conformity in accordance with paragraphs (2) to (4).

(2) Subject to paragraph (6), the transportable pressure equipment must–

(a) comply with the requirements of regulations 20(7) and (8) and 21 which are applicable to the equipment in question;

(b) have been reassessed by a notified body, in accordance with the conformity reassessment procedure, to be in conformity with the relevant requirements referred to in regulations 20(7) and (8) and 21 which are applicable to the equipment in question; and

(c) bear the conformity marking and identification number of the notified body.

(3) Where the transportable pressure equipment includes valves, those valves must–

(a) comply with–

(i) the requirements of regulations 20(7) and (8) and 21 which are applicable to the valves in question; or

(ii) where there is no standard for the design, manufacture or testing of such valves in the requirements referred to in regulations 20(7) and (8) and 21, the relevant requirements of the Pressure Equipment Regulations 1999(a); and

(b) meet the requirements of paragraph (5).

(4) Where the transportable pressure equipment includes accessories, other than valves, which have a direct safety function, those accessories must–

(a) comply with the requirements of regulations 20(7) and (8) and 21 which are applicable to the accessories in question; and

(b) meet the requirements of paragraph (5).

(5) Subject to paragraph (6), the requirements referred to in paragraphs (3) and (4) are that the valves or the accessories must–

(a) where relevant, have been reassessed by a notified body, in accordance with the conformity reassessment procedure, to be in conformity with the standards or requirements identified pursuant to paragraphs (3)(a), in the case of valves, or (4)(a) in the case of accessories; and

(b) bear the conformity marking.

(6) Where the transportable pressure equipment, valve or accessory has been manufactured in series to a design type which has been reassessed by a notified body, in accordance with the conformity reassessment procedure to be in conformity with the requirements–

(a) referred to in regulations 20(7) and (8) and 21 which are applicable to the equipment in question; or

(b) where relevant, of the Pressure Equipment Regulations,

the reassessment procedure referred to in paragraphs (2)(b) and (5)(a) may be conducted by an approved body.

(7) For the purposes of paragraph (6) the references in Schedule 6 to "notified body" shall be read as if they were references to "approved body".

Periodic inspection and repeated use

39. —(1) The owner of transportable pressure equipment shall ensure that that equipment is periodically inspected in accordance with all relevant procedures in Schedule 7 to ensure that that equipment continues to meet the relevant requirements in regulations 20(7) and (8) and 21 or of the Pressure Equipment Regulations 1999 in relation to which they have been assessed or reassessed for conformity in accordance with this Part.

(2) No person shall fill, refill or transport transportable pressure equipment by road or by rail unless a valid certificate issued in accordance with Schedule 7 demonstrates that the equipment is not overdue for any periodic inspection which it is subject to under this Part.

(3) Any person who carries out a periodic inspection of transportable pressure equipment shall ensure that–

(a) the inspection complies with the relevant requirements of Schedule 7;

(b) at the end of the inspection, the equipment is marked with–

(i) the identification number of the relevant notified body or approved body;

(ii) where required by Schedule 7, the date of the inspection; and

(iii) in the case of EEC-type cylinders undergoing their first periodic inspection, the conformity marking.

(4) Any technical documentation or other information required to be retained under a periodic inspection procedure shall be retained by the person specified in that procedure for any period specified in that procedure.

Notified bodies

40. For the purposes of these Regulations, a notified body is a body which has been appointed–

(a) to carry out one or more of the following–

(i) one or more conformity assessment procedures;

(ii) the conformity reassessment procedure;

(iii) either or both periodic inspection procedures in relation to transportable pressure equipment which is a pressure receptacle or periodic inspection procedure, module 1 in relation to transportable pressure equipment which is a tank; and

(b) as a notified body–

(i) pursuant to regulation 42; or

(ii) by another member State, and whose appointment has been communicated by that member State to the Commission and the other member States pursuant to article 8 of the Transportable Pressure Equipment Directive.

Approved bodies

41.—(1) For the purposes of these Regulations, an approved body is a body which has been appointed–

(a) to carry out one or more of the following–

(i) one or more conformity assessment procedures;

(ii) the conformity reassessment procedure;

(iii) periodic inspection procedure module 1 in relation to transportable pressure equipment which is a pressure receptacle or periodic inspection procedure module 2 in relation to transportable pressure equipment which is a tank under the supervision of a notified body as provided for in module 2; and

ANNEX 3

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