

PROPOSALS FOR THE CARRIAGE OF DANGEROUS GOODS AND USE OF TRANSPORTABLE PRESSURE EQUIPMENT REGULATIONS 2004

SUMMARY OF THE CONSULTATION EXERCISE - analysis of main issues and HSE commentary

Introduction

1. Current domestic legislation on the land carriage of dangerous goods consists of requirements based on RID/ADR, the UN Model Regulations and purely domestic provisions. This legislation is contained in 14 sets of regulations, supported by seven Approved Documents and a suite of priced guidance. These proposals sought to bring together all the requirements into one set of Regulations, while directly referencing the 2003 texts of RID/ADR for technical detail.
2. The Consultative Document containing the proposals (CD188) was published on 2 June. It was widely targeted with over 1000 copies being immediately distributed to known contacts, a further 4,000 copies were issued by HSE Books and over 3000 pdf copies were requested from the website. The consultation period ended on 2 September.
3. We received 155 responses to the CD with at least half of these being via e-mail to a specially constructed account. Excluding the 33 responses from the ballooning sector (see paragraph 16 below), those who responded reflected the interest groups of those involved in the carriage of dangerous goods. The preponderance of replies came from trade associations and businesses of all sizes, with consultants, training providers, government and unions also represented (appendix 1 lists respondents). Although most respondents were involved in the carriage of goods by road, we received a good range of representation for those involved in both road and rail and in both domestic and international carriage.
4. We asked 11 questions plus the two standard questions about the consultative exercise itself, providing a questionnaire for respondents to complete. In the event, the questionnaire was not greatly used, as respondents were unable to complete it on-line. As many responses failed to provide the basic information about type and size of organisation, we have been hindered slightly in some of the detailed analysis of the responses. This summary follows the format of the questions raised in the CD.

Reaction to consolidation and cross-referencing

5. The CD explained the background to the proposals and the policy objective to rationalise the regulatory framework and move to referencing RID/ADR for compliance requirements. We provided details on bringing forward current requirements on the use of transportable pressure receptacles and complete the implementation of the Transportable Pressure Equipment Directive. We set out the legal issues that constrained the approach we could take to ensure the Regulations were consistent and enforceable: we could not simply cross refer to RID/ADR but had to make explicit the duty holders and their duties within the Regulations; and we had to conform to legal drafting conventions.
6. The very great majority of those who responded to this question welcomed the principles and policy aim of consolidation and cross-reference. The outcome would harmonise requirements for both domestic and international carriage by road and rail and be a welcome step to multi-modal harmonisation, tying in future regulatory changes with the biennial revisions of RID/ADR. However, there was a fair degree of criticism that the proposed Regulations were lengthy, difficult to follow and required an understanding of both them and the agreements they reference. Particular concerns were expressed about the duplication of definitions contained in the Regulations and within RID/ADR with a call for rationalisation. Many felt that an opportunity

had been missed to follow the lead used in the maritime and aviation sectors simply to refer in implementing Regulations to the latest versions of the appropriate international agreements.

7. Given the advice of the Joint Committee on Statutory Instruments, there is little that can be done with the Regulations themselves. Unlike the maritime and aviation sectors, we have to implement EC Directives and therefore are more restricted in our means to do this. We will look again at the framing of the Regulations during the implementation of the 2005 amending Directives to see whether improvements can be made but, as with the majority of regulations, we shall have to rely on guidance to help duty holders understand their obligations (see paragraphs 29-31 below).

8. In considering the 2005 implementation, we will also take account of the points made to us about respondents' preferred method of handling. We are taking the approach that it would not be desirable to refer in the Regulations to the agreements 'as amended from time to time' as we believe that duty holders would soon become confused about which texts of the international agreements to comply with and requirements could become misaligned. In that context, we will be considering whether to produce a full set of revised Regulations, the preferred option of the (relatively few) who raised the issue, or produce amending Regulations. We will assess this when we have a clearer idea of the extent of necessary changes.

Duty holder responsibilities

9. One key task in preparing the proposed Regulations has been to seek to ensure, for compliance purposes, that we place the right duties on the right people. Referencing RID/ADR altered some of the terminology used in existing carriage legislation, notably the way in which some of the duty holders in the transport chain, and their duties are referred to. We made judgements on how these should now fall in the proposed Regulations and sought views on their comprehensiveness and accuracy.

10. The very great majority of respondents were content with the way in which the draft Regulations were framed in this respect. Indeed some commented that the placement of duties was more precise and helpful than under current requirements. There was some misunderstanding about the interaction of the safety obligations of participants in chapter 1.4 of ADR with more specific duties set out elsewhere in the agreement: we will cover this in guidance. In the light of consultation, we have made some changes to relevant regulations, for example to maintain the existing role of Dangerous Goods Safety Advisers (DGSA) and to clarify the role of tank, portable tank and tank wagon operators and to remove an obligation on a carrier to mark and label goods (for the consignor/packer).

Effect of direct referencing of RID/ADR

11. The direct referencing of RID/ADR introduces changes to existing measures, for example in respect of the carriage of dangerous goods in limited quantities, load limit thresholds and packaging requirements. Current provisions rely either on UN requirements or were developed domestically as permitted via a national derogation from the 1996 RID/ADR Framework Directives.

12. The new proposals can no longer rely on the derogation or need to be in line with the policy of global harmonisation. Our estimate of their impact is that there would be winners and losers but that overall the necessary changes by industry would be cost neutral, given that RID/ADR offered relaxations to some existing provisions. Through DfT, a number of UK derogations had also been secured to facilitate the transport of dangerous in small amounts and/or for local journeys. Recognising that we were restricted in the extent to which we could alter the Regulations in these respects, we sought views.

13. Not surprisingly, those businesses adversely affected by the changes to the limited quantity provisions in particular, raised concerns about the impact of the proposals on their operations, for example those in the parcels/small packages sector. It is difficult for us to assess the implications for individual organisations but it is our experience that when the full package of new requirements is considered, there is often less of an adverse impact than first thought (for example, we offered reassurance to representatives of the agricultural sector that the new Regulations would carry forward exemptions currently enjoyed, albeit in a different format). Our challenge will be to summarise the changes and provide advice, particularly to those organisations coming newly into scope of the Regulations.

14. Several respondents voiced concerns about the transposition into the Regulations of two UK derogations secured by DfT at EC level, relating to opening packages when authorised and to the distribution of goods in inner packages for retail sale. We have recognised these concerns and altered the relevant regulations as far as we are able but the wording of the derogation agreed by the EC restricts us. On the latter derogation, for example, DfT have had to submit a further request to seek a wording more in line with the needs of industry. Overall, industry very much welcomed the derogations.

15. The 2003 texts of RID/ADR themselves also introduced changes to current requirements. We listed those we considered significant and highlighted in particular the change in scope to the carriage of diesel and the impact on those transporting dangerous goods in 'browsers' (often the same duty holders). We had considerable representations on these linked issues, with those in the freight transport and plant hire industries to the fore. By explaining that existing browsers would not come in scope of new inspection and testing regime and by offering flexibilities in relation to placarding, we have been able to reduce the impact of the regulations on those sectors. Nonetheless, it is the case that there will be costs in respect of driver training and the appointment of DGSA's in particular.

16. Lastly, under this heading, we received a co-ordinated response from 33 organisations or individuals involved in hot air ballooning. Their concern, a misunderstanding, was that the proposals duplicated existing CAA rules, adding to costs and potentially driving many out of business. They also expressed concerns about the wording of a UK derogation in relation to the carriage of cylinders used for ballooning. We responded immediately by issuing a letter to explain the true legal position, that the proposals would not be adding new burdens and that we would look again at the transposition of the UK derogation into the draft Regulations. We have since adjusted the wording to allow a more flexible, but still safe, application.

The choice of emergency placarding

17. Under current legislation, it is mandatory for those transporting dangerous goods in bulk or in tanks to display orange coloured panels bearing the appropriate UN number, emergency action code (EAC) and, for carriage in tanks, an emergency telephone number. These requirements apply to UK registered vehicles on journeys within GB. Those carrying such goods on an international journey within GB or operating non-UK registered vehicles or wagons within GB must comply with the RID/ADR Hazard Identification Number (HIN) marking system. Our policy of referencing RID/ADR would introduce alternatives to the current regime, allowing carriers to placard their vehicles or wagons using either the EAC or HIN systems. So we drafted the Regulations to allow duty-holders the option of using either the EAC or HIN marking system for journeys wholly within GB and sought views on whether to offer such a choice, maintain current requirements, or move wholly to the HIN system.

18. The emergency services, led by the Chief Fire Officers association and HM Fire Services Inspectorate, with the support of the chief police officers and the environment agency, argued to retain existing requirements. In their opinion, the EAC, in giving more immediate information to assess what first actions should be taken to tackle an incident, provided a safer system of work than the HIN system which solely provides information on the substance being carried. They

asserted that the provision of expert telephone advice helped to deal with incidents and hastened clean up operations. Furthermore, making the EAC system optional would undermine the UK Fire Service line at continuing discussions at UN/EU level to rationalise various placarding arrangements in favour of one providing information on both the hazard of the substance and the emergency action to be taken.

19. Industry's view was split. Seven trade associations and 14 companies also lent their support to the emergency services' line. Others took a different view: some 10 trade associations and 26 companies preferred to be able to choose between using the EAC or HIN systems for their GB operations. Arguments in favour of choice were that it would reduce the potential for confusion amongst consignors/carriers; emergency services have to understand both systems in any case; placarding costs would reduce over time; and there would be improved harmonisation and the removal of the burden of dual system placarding. A smaller number preferred a move to mandatory HIN placarding for both domestic and international carriage, arguing that maintaining a dual system was potentially confusing.

20. In weighing up these differing views, we have looked at whether there is a compelling case for change to established safety systems. The arguments put to us by the lead bodies that have to take the first steps in dealing with incidents, were powerfully made although we remain somewhat quizzical about the alleged deficiencies of the HIN system. The fact that industry was divided on the issue, with support for the views of the emergency services on the one hand but backing for lifting burdens on business on the other, provided a mixed picture. Overall, we have judged that the Regulations should be drafted to revert to maintaining current requirements, making an exception of the MoD who, by virtue of being exempted from the requirements of RID/ADR Framework Directives, have a degree of flexibility in compliance. We shall keep the overall situation under review.

Incident reporting

21. The Regulations will reflect new requirements on RID/ADR incident reporting, in addition to those currently required under RIDDOR. We proposed in the CD that we should keep reporting arrangements for these separate, recognising that there could be overlaps, but arguing that the processes and criteria were different and that the former could be subject to change during subsequent negotiations on the agreements. The majority of respondents supported this approach with some arguing that it would be helpful if, on the singular occasions where dual reporting was necessary, the forms could be sent via one handling address. In tandem with DfT, we intend to issue guidance on this issue and looking ahead, to keep the scope for co-ordinating reporting requirements and arrangements under review.

Approved standards

22. Turning to a series of issues connected with transportable pressure equipment, complicated by a last minute decision by the EC to defer the implementation date of the Transportable Pressure Equipment Directive (TPED) by the further two years, we first asked whether respondents were content with the standards already approved by HSE for pressure receptacles and those DfT proposed to approve for tanks. Where available, these linked construction, testing and inspection regimes to standards laid down in RID/ADR or, where yet to be agreed, approved by the GB Competent Authority. The proposals were supported with some raising the question over the maintenance and publicity for the standards, arrangements for which are in hand.

Inspection regimes

23. In preparing the draft Regulations, we had not only to complete the implementation of TPED but take account of the need to bring forward requirements for tanks and pressure receptacles constructed before the Regulations come into force. Without some sort of

rationalisation, this could result in putting in place three separate administrative systems for the periodic inspection of such equipment. Our proposal, based on safety concerns, was that we should phase out the competent person periodic inspection regime in favour of inspection bodies appointed by HSE or DfT as appropriate. We asked for views on this and on whether it was reasonable that the new arrangements should be in place by 1 July 2005.

24. We received a mixed response on this issue. The general principle of rationalisation was supported. Unsurprisingly, those already appointed as inspection bodies were keen that the new regime should be put into effect as soon as possible. Other parts of industry voiced strong views that a longer transition period should be allowed to enable organisations to prepare properly for the change; and some complained about the likely increase in costs. In response, we have decided to defer the phasing out of the competent person regime to 1 July 2006 and, in discussions with UKAS about future arrangements for the appointment of inspection bodies under the Regulations, to look at means to alleviate the impact on sectors that would be disproportionately affected, for example diving cylinders.

Pressure equipment

25. In addition to the above, we also proposed a number of changes to requirements in respect of the safe carriage of pressure receptacles in use before the draft Regulations come into force. These included provisions to ensure the stricter regulation of filling and marking procedures for cylinders and to prohibit the use or carriage of old pressure receptacles overdue for their periodic inspection. We received a number of detailed comments on these proposals. With the exception of the latter provision (which was criticised for being onerous and impractical), there was general agreement to the changes provided that they were not out of line with the requirements of RID/ADR.

26. In response, we have sought to clarify that application of the Regulations to pressure equipment, a complex area and ensured that the requirements covering the construction and conditions of use of tanks cover accurately all the appropriate equipment. We have reworded the transposition of a UK derogation allowing tanks and pressure receptacles to be constructed and filled in relation to reference temperatures different from those in RID/ADR.

Regulatory Impact Assessment

27. We included in the CD a pre-consultation Regulatory Impact Assessment (RIA) highlighting those changes in the full set of proposals that we considered would involve significant costs or bring benefits to industry. We recognised that some of our estimates were based on limited data and asked for views and contributions. The tone of many comments was rather critical, questioning the comprehensiveness of the RIA and in particular arguing that by putting the cost/benefit of the proposals within the context of separate provisions relating to increased vehicle axle weights, introduced a few years earlier, we were giving a distorted picture. Some provided more detailed information on costs but much of this has been difficult to verify. Nevertheless we have made some adjustments to the RIA, for example to reflect better management's time in familiarisation with new inspection regimes and in reducing the estimates for additional labelling costs. We have also acknowledged other potential costs which we have not been able to explore. Details are in the post-consultation RIA which will be posted on our website in due course.

Guidance

28. Our existing suite of advisory material was designed to guide stakeholders through the current extensive portfolio of regulations. Our new approach of consolidating these into one set and directly referencing RID/ADR for detailed compliance requirements, renders the suite of guidance redundant. We explained our intention to replace it with a short introductory leaflet to steer readers through the Regulations and agreements, using web-based guidance in support, offering to assist industry prepare more sector-specific advice.

29. In bald terms, the balance among those who answered this question was approximately 2:1 in favour of our intended approach. The majority felt that this was a proportionate response given that the agreements themselves provided most of the source material. Unsurprisingly, given the perceived complexity of the Regulations, there was a strong call that the leaflet be as straightforward as possible, explaining in particular where the Regulations differed from the agreements. Some, however, argued for more comprehensive guidance to minimise differing interpretations of the requirements. Others were concerned about targeting and reaching out to new businesses coming into scope of the requirements for the first time.

30. In response, we have prepared and subsequently issued for informal consultation, a 32-page (free) leaflet on the carriage of dangerous goods by road. In it we summarise the principal duties and duty holders and signpost readers to the relevant sections of ADR for further details of how to comply. We explain, too, how the Regulations differ from ADR. The draft has been favourably received and we aim to publish the leaflet at the same time as the Regulations, using established networks to publicise it and seeking means to bring it to the attention of more difficult to reach audiences. In support of this, we have identified from the consultation exercise a range of issues on which respondents sought advice. Working with DfT, we aim to meet these needs through short web-based information sheets and we have indicated our willingness to work as much as we can with industry to assist them with their planned publications. We will also be revising our existing leaflet on the "Safe Use of Gas Cylinders" in due course.

Future changes

31. Although not directly relevant to the preparation of the Regulations, we took the opportunity in the CD to ask respondents what future changes to RID/ADR they would welcome. A range of generally technical issues was raised which have been forwarded to DfT to consider for future negotiations at UN and EU level.

Other issues

32. In respect of other issues covered in the CD, there was support for our proposals on requirements on the transport of explosives additional to RID/ADR. Respondents noted our plans to consult on two petroleum-related issues to preserve first the prohibition of the direct filling of fuel tanks with petrol from road tankers and second the power for HSC to approve and publish the Approved Tank Requirements. These proposals are to be published shortly; in the meantime the Carriage Regulations will preserve the requirements. Lastly, we had hoped to reduce the length of the Regulations by cross-referring to relevant Schedules to the Transportable Pressure Equipment Directive rather than reproducing their requirements in the Regulations. Due to time constraints we have been unable to do this but we intend to make the necessary changes when we prepare the 2005 set of Regulations.

The consultation exercise

33. Finally, we asked the standard questions about the consultation exercise itself. Setting aside the co-ordinated view of the ballooning sector that felt it had been excluded, the majority of respondents were supportive of our efforts and welcomed the opportunity to comment. Some repeated their criticism that the Regulations were overly complex.

Appendix 1 – List of respondents
Energas
Royal Environmental Health Institute of Scotland
Skin, Hide and Leather Trades Association Ltd
W. J. Dobson
EP Training Services
Institute of Directors
British Shooting Sports Council (Patrick Johnson)
J Westmoreland
Engineering and Physical Sciences Research Council
William Grant and Sons
Gary Botwright
Terry Wright – Danisco UK
Maidment Tankers
South Wales Police
Anglo Plant Hire
Scotsafe Testing Ltd
Despatch Association
Cleaning & Support Services Association
SEPA
British Coatings Federation
UKCPI
Police Service of Northern Ireland
Wyvern Cargo
Jackson Keay Ltd
Royal Pharmaceutical Society of GB
Whale Tankers
Ridgeway International
HM Fire Service Inspectorate
Blake Group
Lancashire Association of Chief Environmental Health Officers
Surrey Police – Sergeant Hogg
Brit European Transport Ltd
New Alchemy
Black cat Fireworks
Western Region Balloon and Airship Club
Assoc of Chief Police Officers in Scotland
BBAC - Liz Meek – Editor of Aerostat
Diveline Ltd
Agricultural Engineers Association
Moog Controls Limited
PIRA International
Oswestry Ballooning Club
HM Fire Service Inspectorate for Scotland
R.A.Simpson Ltd
Actaris Metering Systems
North Yorkshire Fire and Rescue Service

Appendix 1 – List of respondents
Dr Trevor Rising (DGSA)
Fife Constabulary
Assn of Private Pet Cemeteries and Crematoria
Paul Lugg
3-4-40 Region of BBAC
Gas Container Services Ltd
Syngenta- Huddersfield Centre
Syngenta – K Hepburn
Environment Agency- Air and Chemicals Policy
Edward Lubbock
Ineos Chlor
Paterson (Safety air Systems) Ltd
Black Horse Balloon Club
Multisol (Andrew Lamb DGSA)
Chief and Assistant Chief Fire Officers Assoc
South Staffs Industries
LPGA
Sericol Ltd
ICI Uniqema
Society of Motor Manufacturers and Traders Ltd
The Railway industry (Scientifics)
Conoco Ltd
European Balloon Display Co Ltd
The Road Haulage Association
The Fire Brigades Union
Airservices Ltd
VWR International
Safety Data Services
West Midland Region of the BBAR
Horizon Ballooning Ltd
Belvoir Balloons
Wye Valley Aviation
Chiltern Region of BBAC
Derek Grimshaw
Spirit of Adventure UK Ltd
Department for Transport
Killgerm Chemicals
Irish Balloon Flights
Peters & May (David Green DGSA)
Calor Gas
ExxonMobil Chemical
Assn of Liquid Gas & Equipment Distributors
Federation of Petroleum Suppliers
Wendover Trailers and the Balloon Repair Station
Biocair
Richard Nash Cars Ltd T/A Broadland Balloon Flights
Cameron Balloons Ltd
Airtopia
The British Balloon and Airship Club
Reach for the Sky Limited

Appendix 1 – List of respondents
Great Escape Ballooning Limited
BABO
Alba Ballooning
Aircite Ltd T/A Virgin Balloon Flights
Champagne Flights
High Adventure
The Mall Balloon Team Ltd
Balloon School International Ltd
NCEC
British Sub-Aqua Club
Fertiliser Manufacturers Association
The Board of Dangerous Goods Safety Advisers
PTF Training Ltd
Parcel Carriers Safety Forum
BCDTA
GoSafe International Ltd
Confederate Chemicals Ltd
Heart of England Balloons
Flogas (Anglo Plant Hire?)
Forestry Commission
BOC
Astec Chemical Waste
Teeside Hazardous Substances Transport Liaison Panel
BCGA
National Association of Agricultural Contractors
Securicor Omega Express
Luxfer Gas Cylinders
TUC
Messer UK
Chemical Industries Association
Clariant
Onyx
Freight Transport Association
Sigma Aldrich
LR-Training
LFEPA
Cameon
NHS Scotland Property and Environment Forum
BASA
The Energy Institute
ACPO
Petrol Retailers Association
Orica
MoD
London Region Balloon Club
Suzanna Balloon group
Dante Balloon Group
British Cave Research Assoc.

Appendix 1 – List of respondents
National Farmers Union
Road Surface Dressing Assoc.
Koppers UK Ltd
IDEST
British Pyrotechnics Association
Toby Clark (Westminster Spelaeological Group)
UKPIA
Zurich Risk Services
Federation of Small Business
Amersham Health
Association of British Theatre Technicians
Construction Plant Hire Association