

<b>Health and Safety Commission Paper</b>		<b>HSC/03/96</b>	
<b>Meeting Date:</b>	15 July 2003	<b>Open Gov. Status:</b>	Fully open
<b>Type of Paper:</b>	<b>Below the line</b>	<b>Paper File Ref:</b>	160/SPD/1007/2002
<b>Exemptions:</b>	None		

## HEALTH AND SAFETY COMMISSION

### Further Consultation on Proposals for the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 200[x]

**A Paper by Eddie Bailey, Head of Transport of Dangerous Goods Policy Section**

**Advisor(s): Geoff Lloyd and Helen Shorey**

**Cleared by Vic Coleman, Acting Head, Transport Safety Policy Division on 20 June 2003**

#### **Issue**

1. Approval to issue a consultative letter to seek views on certain changes that need to be made to the proposed Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 200[x] as a result of two developments which have arisen since the main Consultative Document (CD) setting out these proposals was published.

#### **Timing**

2. Routine. Delay to the introduction of the proposed Regulations needs to be minimised as implementation of the main European Directives is already overdue. The draft consultative letter therefore seeks views on changes to the proposed Regulations to the same deadline as that agreed for the main CD.

#### **Recommendation**

3. The Commission is invited to approve the issue of the attached consultative letter (at Annex A) which seeks views on certain changes to the draft provisions contained in the main CD by 2 September (the deadline for comments on the main CD).

#### **Background**

4. On 13 May 2003, the Commission approved the issue of a CD setting out proposals for new Regulations to implement a number of Directives covering the carriage of dangerous goods by completely replacing the existing suite of regulations and approved documents which currently govern the safe carriage of such goods in GB (HSC/03/69). The CD was published on 3 June.

5. Since then, there have been two developments at European level that require certain changes to be made to the proposals in the CD if we are to implement provisions in certain of the Directives properly. These are decisions:

- a) To further defer implementation of the Transportable Pressure Equipment Directive (TPED - Council Directive 1999/36/EC of 29 April 1999) as it relates to

certain types of transportable pressure equipment (referred to in this paper as 'TPED deferral'); and

- b) Regarding certain amendments to the 2003 text of RID<sup>1</sup> (made since this text was published and which come into force from the beginning of 2004) as part of the requirements which need to be incorporated into domestic law in order to fully implement Commission Directive 2003/29/EC of 7 April 2003, adapting for the fourth time to technical progress Council Directive 96/49/EC on the approximation of the laws of Member States with regard to the transport of dangerous goods by rail (referred to in this paper as 'RID 2004 amendments').

### TPED Deferral

6. The aim of TPED is to enhance the safety of transportable pressure equipment (eg cylinders and tanks used for the transport of gases) and to ensure the free movement of such equipment within the EU. It does so by requiring that such equipment is made to construction standards that are acceptable across the EU and that the conformity of equipment to such standards is verified in accordance with detailed inspection procedures by inspection bodies appointed by Member States' competent authorities against certain criteria. The construction standards which TPED requires such equipment to be built to are those referenced in RID and ADR<sup>2</sup> and deemed to meet the basic construction requirements in these two international agreements. Equipment meeting the requirements of TPED is given a pi-mark to denote recognition that it can be freely used across the EU.

7. TPED was only partially implemented in 2001 because the only standards that were available (and referenced in RID and ADR) were those concerning cylinders, tubes and cryogenic receptacles. There were no such standards for pressure drums, bundles of cylinders and tanks, and an amending Directive deferred the implementation of TPED in respect of these types of equipment to 1 July 2003 (with a two-year transition period to 1 July 2005). The original implementing Regulations (the Transportable Pressure Vessels Regulations 2001) therefore did not apply to these types of equipment. Because no further amending Directive had been issued, the expectation was that we would need to extend implementation of TPED to these types of equipment in the new draft Regulations and the main CD includes such proposals.

8. However on 4 June (after the meeting at which HSC approved the main CD), a European Commission decision was taken (not supported by the UK) to delay implementation of TPED in respect of these types of equipment for a further two years (ie from 1 July 2005 with a transition period to 1 July 2007). The decision was taken on the basis that there were still no sufficiently detailed technical specifications or European construction standards referenced in RID and ADR. We were aware of the possibility that this decision might be taken. A letter was included in the CD when it was sent to consultees warning them about this possibility and saying that we would consult them urgently on the consequences for the proposals if the decision to defer was in fact made.

9. The decision is to defer TPED only. It does not affect the need to implement the provisions of the RID and ADR Framework Directives as they apply to the equipment affected by the TPED deferral. New items of such equipment will therefore still need to be built to the basic construction requirements of RID and ADR. It is just that the particular

---

<sup>1</sup> Regulations concerning the International Transport of Dangerous Goods by Rail

<sup>2</sup> European Agreement concerning the International Carriage of Dangerous Goods by Road

requirements for conformity assessment by inspection bodies appointed in accordance with TPED will not apply. Such equipment will not therefore be able to be pi-marked and be able to be circulated freely throughout the EU (see paragraph 6).

#### RID 2004

10. As explained in HSC/03/69, the draft Regulations in the main CD implement the requirements of the RID and ADR Framework Directives by setting out duties which must be complied with by meeting relevant provisions in the published version of RID and ADR to which the Regulations directly refer. However, in the case of RID, the published version omitted certain provisions which, in the main, aligned RID to those provisions already in ADR – in particular, requirements for a certain type of tank (Vacuum Operated Waste tanks or ‘VOW’ tanks). Following discussion, the Intergovernmental Organisation for International Carriage by Rail (OTIF – the organisation which administers RID) has recently decided that, for the purposes of the international agreement, these provisions should come into force by 1 January 2004 rather than wait to be incorporated into the 2005 text of RID, and should therefore be regarded as part of 2003 text. We have urgently sought the European Commission’s confirmation that these provisions should be implemented as part of the need to implement Commission Directive 2003/29/EC (see paragraph 5(b)). The response we have received is not yet definitive, but has indicated that implementation should cover these provisions.

#### **Argument**

11. These developments could not have been predicted before the proposals contained in the main CD were put to the Commission in May. As they have implications for the accuracy of implementation, we believe that the most effective way of dealing with the situation is to issue a consultative letter setting out what the developments mean in terms of the changes to the proposals in the main CD and asking consultees to consider them alongside the main CD. Because implementation of the Directives covered in the main CD is already overdue, we do not believe there should be an extension of the three-month consultation period agreed for the main CD as this would increase the risk of infraction proceedings.

#### **Consultation**

12. Internally with HSE Solicitors, economists and colleagues in policy, enforcement and technical services; with DfT.

#### **Presentation**

13. The Consultation letter will be sent to all those consultees to whom the CD was sent. We intend issuing a press notice when the letter is sent out.

#### **Costs and Benefits**

14. There has not been time to fully assess the impact these changes will have on the assessment in the RIA included in the main CD, but we believe the impact will be small. In relation to the deferral of TPED, industry will still need to begin to construct new tanks and pressure receptacles to the requirements of RID and ADR as TPED would have required had it not been deferred – although the lack of a transition period in the RID and ADR Framework Directives may have a limited impact. However, deferral will put back the extra

cost of having such equipment assessed for conformity to those requirements in accordance with the more detailed inspection procedures required by TPED.

15. In relation to the RID 2004 amendments, the main change which brings in requirements on the construction and use of VOW tanks will have no initial impact since we understand no VOW tanks are currently used on the British rail system although there may be an impact if rail operators decide to use such tanks in the future. The consultation letter specifically seeks comments on the impact these changes may have on the RIA contained in the main CD.

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

16. No implications other than those highlighted in HSC/03/69.

#### **Environmental Implications**

17. No additional implications to those highlighted in HSC/03/69.

#### **Other Implications**

18. No additional implications to those highlighted in HSC/03/69.

#### **Action**

19. The Commission is invited to approve the recommendation in paragraph 3. HSE will then take account of comments to the main CD in the light of the changes set out in the consultation letter and return with concrete proposals later in the year.