

Pressure equipment directive 97/23/ec - Interpretation of recital no 5 as implemented by reg 4(2) of the pressure equipment regulations 1999

OC 308/14

Review Date

12/09/2013

Open Government Status

Partially Open

Version No & Date

2: 01/10/2011

Author Unit/Section

Safety Unit 1

Target Audience:

All Inspectors

This OC is intended to provide an interpretation of Recital No 5 in the Pressure Equipment Directive as implemented by Regulation 4(2) of the Pressure Equipment Regulations 1999. The information contained in this OC is relevant for all Inspectors dealing with the enforcement of the Pressure Equipment Regulations 1999.

Background

1 The Pressure Equipment Regulations 1999 (SI 1999/2001) (PER) implement the [Pressure Equipment Directive \(PED\) \(97/23/EC\)](#)^[1]. The Directive does not apply to the assembly of pressure equipment "on the site and under the responsibility of the user" by virtue of recital No 5 implemented in the PER by Regulation 4(2). The reason for the exemption is that assembly on site by the user is not considered to be trade for the purpose of the Directive. Pressure equipment which is not within scope of the PER falls automatically within the scope of the relevant national legislation. For the majority of businesses within the UK, the relevant national legislation is the Pressure Systems Safety Regulations 2000 (PSSR). Offshore equipment which is excluded by Reg 4(2) and to which the PSSR do not apply is subject to separate sector specific legislation. Offshore industries that fall within articles 4 to 6 of the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2001 are excluded from the PSSR by virtue of PSSR r.3(1)(b).

2 The exclusion for pressure equipment assembled on the site and under the responsibility of the user has been discussed at the European Commission Working Group for the PED. The Working Group produces guidelines on the interpretation of the PED which are arrived at by discussion and consensus. The guidelines are published on the European Commission's pressure equipment website and can be accessed through the HSE pressure web page^[2]. Although the guidelines are not legally binding, they are the official interpretation of the Directive across the EU and should be treated accordingly. The status of the guidelines is further explained on the above website.

3 There are three guidelines dealing with the exclusion of pressure equipment in Recital No 5. These are guidelines 3/2, 3/8 and 3/9. The guidelines deal with four specific areas, namely joining operations on site, the definition of an assembly, the difference between an assembly and an installation, and the limits of an assembly. Taken together with solicitors advice, the guidelines provide the basis for the current interpretation of Recital No 5 and therefore of Regulation 4(2) PER.

Recitals

4 The recitals in Directives are preliminary statements that introduce the main parts of the Directive. They give details of relevant earlier positions leading up to the present Directive and they explain the background of the Directive. Recitals always begin with the word "whereas".

5 Recital No 5 states:

"Whereas this Directive relates also to assemblies composed of several pieces of pressure equipment assembled to constitute an integrated and functional whole: whereas these assemblies may range from simple assemblies such as pressure cookers to complex assemblies such as water tube boilers; whereas, if the manufacturer of an assembly intends it to be placed on the market and put into service as an assembly - and not in the form of its constituent non-assembled elements - that assembly must conform to this Directive; whereas, on the other hand, this Directive does not cover the assembly of pressure equipment on the site and under the responsibility of the user, as in the case of industrial installations;"

If we break this down into its constituent parts the meaning becomes much clearer. The recital states:

1. The Directive applies to assemblies as well as to individual items of pressure equipment.
2. Assemblies are several pieces of pressure equipment put together to form an integrated and functional whole.
3. Assemblies may range from very simple pieces of equipment to very complex pieces of equipment.
4. A manufacturer may market an assembly as an assembly and not as separate pieces of equipment.
5. A manufacturer marketing an assembly as an assembly must make sure that the assembly conforms to the Directive.
6. The Directive does not cover the situation where a user is putting items of pressure equipment together on their own site and under their own responsibility.

6 Regulation 4(2) PER implements the final point of the recital and states "For the avoidance of doubt, these Regulations shall not apply to the assembly of pressure equipment on the site and under the responsibility of the user".

Definition of "assembly"

7 An "assembly" is defined in Article 1.2.1.5 in the Directive and in Regulation 2(1) in the PER as "several pieces of pressure equipment **assembled by a manufacturer** to form an integrated and functional whole". For the purposes of this definition, the assembly must be carried out by the manufacturer or by persons acting on behalf of the manufacturer.

Guideline 3/8 - Definition of an assembly

8 Guideline 3/8 gives four criteria which help to define an "assembly". Items of pressure equipment are considered to form an "assembly" if all of the following apply:

1. the items of pressure equipment are integrated i.e. they are designed to be compatible and connected to each other
2. they are functional i.e. when connected they achieve specific objectives and are capable of being put into operation

3. they form a whole i.e. all the items which are necessary for the assembly to function safely and as intended are present
4. they are integrated by one manufacturer who intends the resulting assembly to be placed on the market as an assembly. The manufacturer should subject the assembly to a global conformity assessment procedure.

9 The guideline makes it clear that it is irrelevant whether the manufacturer puts the assembly together in their workshop or at the user's site. As long as the assembly is being put together under the responsibility of the manufacturer, or on behalf of the manufacturer if sub-contractors are being used, then the resulting assembly will fall within the PER and will need to undergo an appropriate conformity assessment procedure.

Guideline 3/2 - Joining operations, difference between an assembly and an installation

10 Guideline 3/2 clarifies the situation with regard to the actual joining operations involved in the installation of pressure equipment/assemblies. There is a clear distinction made between joining individual components (which cannot be classified as pressure equipment/assemblies in their own right) and joining items of pressure equipment/assemblies.

The guideline states that the PER will always apply where the joining operation consists of joining individual components to form an item of pressure equipment, irrespective of whether the manufacturer or the user is carrying out the joining. (Where the user is carrying out the joining operations of individual components, then they have become a manufacturer of pressure equipment in their own right and the PER apply.) Where the user is joining items of pressure equipment/assemblies (as defined in the PER) on their own site, then, in order to avoid confusion, the resulting product should be termed an "installation". Such an installation would fall under the exclusion in Reg 4(2) and would fall within the requirements of national legislation. The term "installation" is not a legal term used within the body of the Directive or within the PER. The term is used generally to indicate the difference between those assemblies which fall within the PER and those assemblies which fall outside the PER by virtue of Reg 4(2).

Guideline 3/9 - Size limits to an assembly

11 Guideline 3/9 makes it clear that there is no upper or lower limit to an assembly. The guideline states that an assembly may range from a simple standard product (e.g. a pressure cooker) all the way up to a large complex industrial plant. However, where the user takes the responsibility for the final assembly of pressure equipment/assemblies, then the resulting assembly (installation) will fall outside of the PER, **irrespective of its size.**

Subsequent supply

12 The exclusion for installations within Reg 4(2) applies to installations of any size, although the issue has assumed the greatest importance for industries using large pressure systems such as the offshore and chemical industries. If a company is responsible for the construction of a pressure system composed of individual items of pressure equipment or assemblies of pressure equipment (supplied as assemblies by the manufacturer), and the resulting installation is on their site, then the installation is outside the scope of the PER. If, at some point in the future, the user places the installation on the market as an integrated and functional whole, solicitors advice is that the installation remains outside the scope of the PER. The reason being, that in circumstances where the installation is expressly excluded at the point of first supply, subsequent supply should not treat the installation differently i.e. as if the installation had been placed on the market for the first time.

Application of national legislation

13 An installation that is outside of the scope of the PER must comply with the relevant national legislation. For most industries the relevant legislation in the UK will be Regulations 4,5 & 6 of the PSSR. Offshore industries are not subject to PSSR and will need to comply with their own sector specific legislation. (See paragraph 1).

Action by Inspectors

14 The important point with reference to the exclusion under Regulation 4(2) is the assumption of responsibility for the final assembly of pressure equipment by the user. This will normally be clear in the documentation and the contracts between the user and the supplier. Where the responsibility for the final assembly of pressure equipment is not made explicit, it should be assumed that the responsibility lies with the manufacturer and that the assembly will need to conform with the PER 1999. ➔ In reality, lines of responsibility may not be clear cut. According to solicitors office, the phrase "under the responsibility of the user" means that the user takes complete responsibility. However, where responsibility appears to be divided or shared, then Inspectors should try to determine who has the actual responsibility. Decisions may need to be taken on a case by case basis together with advice from HSE solicitors to help determine which party has the actual responsibility. ←¹

Further information

15 Further information on the application of the PED can be found at:

1. [HSE Guide to the Inspection of Manufacture and Supply - Chapter 4.9](#)^[3]
2. HSE Pressure Systems Web site

Date revision issued: 21 June 2011

1 Exemption 2 - Internal discussion and advice.

Link URLs in this page

1. HSE Guide to the Inspection of Manufacture and Supply - Chapter 4.9
http://intranet/productsafety/fod_guide_inspec/index.htm
2. HSE Pressure Web Site