

2011 No. 365

HEALTH AND SAFETY

**The Carriage of Dangerous Goods and Use of Transportable
Pressure Equipment (Amendment) Regulations (Northern
Ireland) 2011**

Made - - - - *18th October 2011*

Coming into operation - *10th November 2011*

The Department of Enterprise, Trade and Investment(a), being the Department concerned(b), makes the following Regulations in exercise of the powers conferred by Articles 17(1) to (6), 40(2) to (4), 55(2) of, and paragraphs 1,2,3(1), 5 to 8, 10 to 15 and 19 of Schedule 3 to, the Health and Safety at Work (Northern Ireland) Order 1978(c) (“the 1978 Order”).

The Regulations give effect without modifications to proposals submitted to it by the Health and Safety Executive for Northern Ireland under Article 13(1A)(d) of the 1978 Order after the Executive had carried out consultations in accordance with Article 46(3)(e).

Citation and commencement

1. These Regulations may be cited as the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment (Amendment) (Regulations) (Northern Ireland) 2011 and come into operation on 10th November 2011.

Amendment of Regulations

2. The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations (Northern Ireland) 2010(f) are amended in accordance with regulations 3 to 10.

Interpretation – General

3.—(1) In regulation 2, the Table in paragraph (5) is amended as follows.

(2) For the row containing the expression and meaning of “conformity mark”, substitute—

(a) Formerly the Department of Economic Development; see S.I. 1999/283 (N.I. 1), Article 3(5); that Department was formerly the Department of Manpower Services; see S.I. 1982/846 (N.I. 11), Article 3.
(b) see Article 2(2) of S.I. 1978/1039 (N.I.9)
(c) S.I. 1978/1039 (N.I.9); Article 17(6) was amended by the Health and Safety (Offences) Act 2008 (c.20), section 2 and Schedule 3, paragraph 3(1) and Schedule 4; Article 3(1)(c) was modified by the Health and Safety at Work Order (Application to Environmentally Hazardous Substances) Regulations (Northern Ireland) 2003 (S.R. 2003 No. 52) as amended by S.R. 2007 No. 403 and S.R. 2009 No. 296
(d) Article 13(1A) was substituted by S.I. 1998/2795 (N.I. 18), Article 4
(e) Article 46(3) was amended by S.I. 1998/2795 (N.I. 18), Article 6(1) and Schedule 1, paragraphs 8 and 18
(f) S.R. 2010 No. 160

“conformity mark”	The mark referred to in article 14 of the Transportable Pressure Equipment Directive, the form of the mark being set out in article 15 of that Directive.”
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(3) Before the row in which the expression “conformity mark” is given a meaning, insert—

“conformity assessment”	The assessment and the procedure for assessment of conformity set out in the Directives.”
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(4) After the row in which the expression “the Dangerous Goods Directive” is given a meaning, insert—

“the Directives”	The Dangerous Goods Directive and the Transportable Pressure Equipment Directive.”
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(5) After the row in which the expression “national carriage” is given a meaning, insert—

“relevant member State”	A member State of the EU on whose market the equipment in question has been made available.”
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(6) After the row in which the expression “the security provisions” is given a meaning, insert—

“TPED competent authority”	The GB competent authority or the competent national authority in respect of the Transportable Pressure Equipment Directive in Northern Ireland or another member State of the EU.”
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(7) For the row containing the expression and meaning of “the Transportable Pressure Equipment Directive” substitute—

“the Transportable Pressure Equipment Directive”	Directive 2010/35/EU of the European Parliament and the Council of 16 June 2010 on transportable pressure equipment and repealing Council Directives 76/767/EEC, 84/525/EEC, 84/526/EEC, 84/527/EEC and 1999/36/EC.(a)”
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Interpretation of ADR, RID and ADN

4.—(1) Regulation 3 is amended as follows.

(2) In paragraphs (b) and (c), for “Communities” substitute “EU”.

(3) Omit paragraphs (f), (g), and (h).

(4) In paragraph (k), at the end, omit “and”.

(5) In paragraph (l), at the end, for “.” substitute—

“;

(m) Sub-sections 2.2.1.1.2, 2.2.1.1.3 and 2.2.1.1.4 of ADR apply as if the words “by the competent authority of a Contracting Party” were included after the word “assigned”; and

(a) OJ L165, 30.6.2010, p.1.

- (n) Sub-sections 2.2.1.1.2, 2.2.1.1.3 and 2.2.1.1.4 of RID apply as if the words “by the competent authority of a Member State of COTIF” were included after the word “assigned”.”.

Obligations relating to the Transportable Pressure Equipment Directive

5.—(1) For regulation 15, substitute—

“Scope of Obligations

15.—(1) Regulations 15A to 15F apply to transportable pressure equipment within the scope of the Transportable Pressure Equipment Directive by virtue of article 1(2)(a) of that Directive.

(2) For the avoidance of doubt, any reference in those regulations to a manufacturer, importer, distributor, owner or operator as “it” is not to be construed as excluding a natural person.”.

(2) After regulation 15, insert—

“General Obligations

15A.—(1) A manufacturer, importer, distributor, owner or operator may only place or make available on the market, put into service or use equipment if it ensures that the equipment meets the requirements of the Dangerous Goods Directive.

(2) On receipt of a request from the Health and Safety Executive for Northern Ireland, a manufacturer, importer, distributor, owner or operator must identify to the Executive any manufacturer, importer, distributor or owner who has supplied it with, or to whom it has supplied, equipment over at least the previous 10 years.

(3) A request made pursuant to paragraph (2) must—

- (a) be in writing; and
- (b) contain a date by which a response is to be provided with that date being reasonable in all the circumstances.

(4) Paragraph (5) applies where a manufacturer, importer, distributor or owner provides to an operator information about equipment it has placed or made available on the market, or put into service.

(5) The information must comply with the Directives.

(6) This regulation does not apply to an owner who is a private individual using or intending to use equipment in the circumstances set out in article 8(4) of the Transportable Pressure Equipment Directive.

Obligations of Manufacturers

15B.—(1) A manufacturer must—

- (a) ensure a conformity assessment is carried out by a notified body;
- (b) mark equipment in accordance with articles 14 and 15 of the Transportable Pressure Equipment Directive; and
- (c) keep the technical documentation specified in the Dangerous Goods Directive for the period specified in that Directive.

(2) Where a manufacturer knows or has reason to believe that equipment it has placed on the market does not comply with the Directives, that manufacturer must—

- (a) take immediate corrective measures to ensure that the equipment complies with the Directives,
- (b) withdraw the equipment from the market, or

(c) issue a recall of the equipment.

(3) Where a manufacturer considers that equipment it has placed on the market presents a risk, that manufacturer must immediately inform the TPED competent authority in any relevant member State of the risk, including providing details of any non-compliance with the Directives and any action taken in accordance with paragraph (2).

(4) A manufacturer must record each instance of non-compliance with the Directives and any corrective measure taken and must retain that record for at least 20 years from the date that the non-compliance is discovered.

(5) On receipt of a reasoned request from a TPED competent authority, a manufacturer must—

(a) provide to that authority, in a language that it easily understands, all information and documents necessary to show that the equipment meets the requirements of the Directives; and

(b) cooperate with that authority in any action it takes to eliminate risks posed by that equipment.

(6) This regulation applies to an importer or a distributor as if that person were a manufacturer where the importer or distributor—

(a) places equipment on the market under the importer or distributor's own name or trademark; or

(b) modifies equipment already placed on the market in such a way that compliance with the Directives may be affected.

Obligations of Importers

15C.—(1) An importer must ensure that—

(a) the manufacturer has complied with conformity assessment and drawn up the technical documentation in accordance with the Dangerous Goods Directive;

(b) equipment has been marked in accordance with articles 14 and 15 of the Transportable Pressure Equipment Directive;

(c) the certificate of conformity for the equipment either contains the name and address of the importer or has this information attached to it;

(d) the conditions in which equipment under the responsibility of the importer is stored and transported do not jeopardise the equipment's compliance with the Dangerous Goods Directive; and

(e) the technical documentation specified in the Dangerous Goods Directive is kept for the period set out in that Directive.

(2) Where an importer knows or has reason to believe that equipment it has placed on the market does not comply with the Directives, that importer must—

(a) take immediate corrective measures to ensure that the equipment complies with the Directives;

(b) withdraw the equipment from the market; or

(c) issue a recall of the equipment.

(3) Where an importer considers that equipment presents a risk before it has been placed on the market, that importer must inform the manufacturer and the Health and Safety Executive for Northern Ireland of the risk.

(4) Where an importer considers that equipment it has placed on the market presents a risk, that importer must immediately inform the manufacturer and the TPED competent authority in any relevant member State of the risk, including details of any non-compliance with the Directives and any action taken in accordance with paragraph (2).

(5) An importer must record each instance of non-compliance with the Directives and any corrective measure taken and must retain that record for at least 20 years from the date that the non-compliance is discovered.

(6) On receipt of a reasoned request from a TPED competent authority, an importer must—

- (a) provide to that authority, in a language that it easily understands, all information and documents necessary to show that the equipment meets the requirements of the Directives; and
- (b) cooperate with that authority in any action taken to eliminate risks posed by that equipment.

Obligations of Distributors

15D.—(1) A distributor must ensure that—

- (a) the equipment has been marked in accordance with articles 14 and 15 of the Transportable Pressure Equipment Directive;
- (b) the certificate of conformity for the equipment contains or has attached to it the name and address of the importer where relevant; and
- (c) the conditions in which equipment under the responsibility of the distributor is stored and transported do not jeopardise the equipment's compliance with the Directives.

(2) Where a distributor knows or has reason to believe that equipment it made available on the market does not comply with the Directives, that distributor must—

- (a) take immediate corrective measures to ensure that the equipment complies with the Directives;
- (b) withdraw the equipment from the market; or
- (c) issue a recall of the equipment.

(3) Where a distributor considers that equipment presents a risk before it has been made available on the market, that distributor must inform—

- (a) the manufacturer or the importer; and
- (b) the Health and Safety Executive for Northern Ireland,

of the risk.

(4) Where a distributor considers that equipment it has made available on the market presents a risk, that distributor must immediately inform—

- (a) the manufacturer or the importer; and
- (b) the TPED competent authority in any relevant member State,

of the risk, including details of any non-compliance with the Directives and any action taken in accordance with paragraph (2).

(5) A distributor must record each instance of non-compliance with the Directives and any corrective measures taken and must retain that record for at least 20 years from the date that the non-compliance is discovered.

(6) On receipt of a reasoned request from a TPED competent authority, a distributor must—

- (a) provide to that authority, in a language that it easily understands, all information and documents necessary to show that the equipment meets the requirements of the Directives; and
- (b) cooperate with that authority in any action taken to eliminate risks posed by that equipment.

Obligations of Owners

15E.—(1) An owner must ensure that equipment for which it is responsible is stored and transported in conditions that do not jeopardise the compliance of that equipment with the Dangerous Goods Directive.

(2) Where an owner considers that the owner’s equipment presents a risk it must inform—

- (a) the manufacturer, importer or distributor; and
- (b) the Health and Safety Executive for Northern Ireland,

of the risk.

(3) An owner must record each instance of non-compliance with the Directives and any corrective measure taken and must retain that record for at least 20 years from the date that the non-compliance is discovered.

(4) This regulation does not apply to private individuals using or intending to use equipment in the circumstances set out in article 8(4) of the Transportable Pressure Equipment Directive.

Obligations of Operators

15F. Where an operator considers that equipment presents a risk, that operator must inform the owner and the Health and Safety Executive for Northern Ireland of the risk.”.

Authorised Representatives

6. For regulation 16, substitute—

“Authorised Representatives

16.—(1) Subject to paragraph (3), a manufacturer may appoint in writing a person (“an authorised representative”) to carry out some or all of the duties imposed on the manufacturer by regulations 15A and 15B.

(2) An appointment made in accordance with paragraph (1) must include at least the following duties—

- (a) keeping technical documentation;
- (b) providing to a TPED competent authority, in response to a reasoned request and in a language that it easily understands, the information and documents necessary to show the equipment meets the requirements of the Directives; and
- (c) cooperating with a TPED competent authority in any action it takes to eliminate risks posed by the equipment.

(3) An authorised representative must not be appointed to carry out duties imposed by regulation 15A(2), 15B(1)(a) or 15B(1)(b).

(4) The name and address of an authorised representative must be included on the certificate of conformity.

(5) An authorised representative must only provide information to an operator that complies with the requirements of the Directives.”.

Reassessment of conformity

7.—(1) Regulation 17 is amended as follows.

(2) In paragraph (1), for “(b)” substitute “(c)”.

(3) In paragraph (3)(a)—

- (a) after “reassessed by a”, insert “type A”; and

- (b) for “Part II of Annex IV” substitute “Annex III”.
- (4) For paragraph (3)(b), substitute—
 - “(b) inspected by a notified body notified for periodic inspection of that equipment and marked in accordance with the requirements of articles 14 and 15 of that Directive.”
- (5) For paragraph (4), substitute—
 - “(4) But if a pressure receptacle has been manufactured in series to a design type for which a type A notified body notified for reassessment of conformity has issued a certificate of type reassessment, the reassessment of conformity may be undertaken by a notified body notified for periodic inspection of that pressure receptacle.”
- (6) After paragraph (4), insert—
 - “(5) In this regulation—
 - (a) “certificate of type reassessment” means a certificate issued in accordance with paragraph 7 of Annex III to the Transportable Pressure Equipment Directive; and
 - (b) “type A notified body” means a notified body conforming to standard EN ISO/IEC 17020 type A(a) as revised or reissued from time to time.”

Periodic inspection and repeated use

- 8.—(1) Regulation 18 is amended as follows.
 - (2) In paragraph (1), for “(c)” substitute “(b)”.
 - (3) In paragraph (2)—
 - (a) for “article 10(1) or (2)” substitute “articles 14 and 15”;
 - (b) omit “or the marking for gas cylinders referred to in the second indent of article 1(2)(c) of that Directive”; and
 - (c) for “article 6(1) of the Directive” substitute “the Dangerous Goods Directive”.
 - (4) Omit paragraph (3).
 - (5) In paragraph (4), for “article 10” substitute “articles 14 and 15”.

Appointments by the Northern Ireland competent authority

- 9.—(1) Regulation 25 is amended as follows.
 - (2) In paragraph (4), for “Annexes I and II to the Transportable Pressure Equipment Directive” substitute “the Dangerous Goods Directive and the requirements set out in Articles 20 and 26 of the Transportable Pressure Equipment Directive.”.
 - (3) Omit paragraph (5).

Schedule 2 – Radiological Emergencies

- 10.—(1) Schedule 2 is amended as follows.
 - (2) In paragraph 4—
 - (a) in sub-paragraph (1), after “consignor”, insert “and the carrier”; and
 - (b) in sub-paragraph (3), after “consignor”, insert “and the carrier”.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 18th
October 2011



Mike Bohill
A senior officer of the
Department of Enterprise, Trade and Investment

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations (Northern Ireland) 2010 (“the 2010 Regulations”) in order to implement Directive 2010/35/EU of the European Parliament and the Council of 16 June 2010 on transportable pressure equipment and repealing Council Directives 76/767/EEC, 84/525/EEC, 84/526/EEC, 84/527/EEC and 1999/36/EC (OJ L165, 30.6.2010, p.1) (“the 2010 Directive”).

These Regulations also include provision relating to ADR, RID and ADN. These are terms defined in the Table in regulation 2(5) of the 2010 Regulations and refer to the technical requirements (as revised or reissued) annexed to the international agreements governing the transport of dangerous goods by, respectively, road, rail and inland waterway.

Regulation 3 amends the Table in regulation 2 of the 2010 Regulations by inserting new defined terms and updating the meaning of the Transportable Pressure Equipment Directive so it refers to the 2010 Directive.

Regulation 4 amends regulation 3 of the 2010 Regulations in respect of the interpretation of ADR, RID and ADN for the purposes of those Regulations. A number of redundant provisions are removed and “EU” is substituted for “Communities” to reflect European institutional reform.

Regulation 5 replaces regulation 15 (conformity assessment) in the 2010 Regulations with regulations 15 to 15F. Regulation 15 sets out the equipment to which the general and specific obligations apply. Regulation 15A sets out the general obligations that apply where transportable pressure equipment is placed or made available on the market, put into service or used. Regulations 15B to 15F set out specific obligations on manufacturers, importers, distributors, owners and operators respectively.

Regulation 6 replaces regulation 16 (conformity assessment – national carriage), which is no longer allowed under the 2010 Directive, with a new regulation allowing a manufacturer to appoint an authorised representative to carry out some of its obligations and setting out the responsibilities of that authorised representative.

Regulations 7 and 8 amend regulations 17 and 18 of the 2010 Regulations to reflect the changes made by the 2010 Directive to the procedures for reassessment of conformity, and for periodic inspection and repeated use.

Regulation 9 amends regulation 25 of the 2010 Regulations to update the procedure for appointing a person to carry out the functions of a notified body.

Regulation 10 amends Schedule 2 (Radiological Emergencies) to make the carrier jointly responsible with the consignor for ensuring an emergency plan is in place and for reviewing and revising that plan when necessary.

A transposition note and impact assessment in relation to the implementation of the Directive have been prepared. Copies can be obtained from the Health and Safety Executive for Northern Ireland, 83 Ladas Drive, Belfast, BT6 9FR and are annexed to the Explanatory Memorandum which is available alongside this rule on the website, www.legislation.gov.uk.

A copy of Directive 2010/35/EU may be downloaded without charge from EURLEX, the European Law website (<http://eur-lex.europa.eu/en/index.htm>). ADR, RID, ADN and the United Nations Recommendations on the Transport of Dangerous Goods (the current edition of each is 2011) are available for purchase. The print versions of the 2011 editions have the following ISBN references; ADR - 9789211391404; RID - 9788086206400; ADN - 9789211391381; the United Nations Recommendations - 9789211391411. The current editions of ADR and ADN may also be downloaded without charge from the dangerous goods section of the United Nations Economic Commission for Europe website (<http://live.unece.org/trans/danger/danger.html>).

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