

1992 No. 15

HEALTH AND SAFETY

Gas Cylinders (Pattern Approval) Regulations
(Northern Ireland) 1992

Made 14th January 1992

Coming into operation 2nd March 1992

The Department of Economic Development, being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the regulation of design, construction, verification and inspection of pressure vessels, in exercise of the powers conferred on it by that section, and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Gas Cylinders (Pattern Approval) Regulations (Northern Ireland) 1992, and shall come into operation on 2nd March 1992.

Interpretation

2.—(1) In these Regulations—

“application” shall be construed in accordance with regulation 3(1);

“appointed person” shall be construed in accordance with regulation 8(4);

“the Department” means the Department of Economic Development;

“the Framework Directive” means the Council Directive No. 76/767/EEC(c) concerning the approximation of the laws of the Member States relating to common provisions for pressure vessels and methods of inspecting them;

“manufacturer” means a manufacturer of gas cylinders;

“provisional fee” means the fee payable under regulation 4(1);

“review” shall be construed in accordance with regulation 8(1); and

“Separate Directives” means Council Directives No. 84/525/EEC(d), No. 84/526/EEC(e) and No. 84/527/EEC(f) concerning the

(a) S.I. 1977/1718

(b) 1972 c. 68; section 2 is subject to Schedule 2 to that Act and is to be read with S.I. 1984/703 (N.I. 3) and S.R. 1984 No. 253

(c) O.J. No. L262, 27.9.76, p. 153

(d) O.J. No. L300, 19.11.84, p. 1

(e) O.J. No. L300, 19.11.84, p. 20

(f) O.J. No. L300, 19.11.84, p. 48

approximation of the laws of the Member States relating to seamless steel gas cylinders, seamless unalloyed aluminium and aluminium alloy gas cylinders, and welded unalloyed steel gas cylinders respectively; and any reference in these Regulations to the relevant Separate Directive is a reference to the Separate Directive which relates to the type of gas cylinder concerned.

(2) References in these Regulations to EEC pattern approval of a type of gas cylinder include references to EEC pattern approval of a family of gas cylinders, that is to say, gas cylinders from the same factory differing only in length within the following limits—

- (a) the minimum overall length must not be less than 3 times the external diameter of the cylinder; and
- (b) the maximum overall length must not be more than 1.5 times the overall length of the cylinder tested.

(3) The Interpretation Act (Northern Ireland) 1954(a) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

Application for approval

3.—(1) An application by a manufacturer for EEC pattern approval of a type of gas cylinder (hereafter referred to as “an application”) may be made to the Department.

(2) An application shall be made in writing and shall contain such information and be supported by such documents as the Framework Directive and the relevant Separate Directive require, and such further information and supporting documents as the Department may reasonably require.

(3) The manufacturer making an application in respect of any type of gas cylinder shall make available to the Department such samples of that type of gas cylinder as the relevant Separate Directive requires.

Grant of EEC pattern approval

4.—(1) On receiving an application in respect of any type of gas cylinder the Department shall, on payment of the provisional fee, carry out or cause to be carried out on its behalf such checks, examinations and tests on that type of cylinder as are required for EEC pattern approval under the Framework Directive and the relevant Separate Directive.

(2) If the results of the checks, examinations and tests carried out on any gas cylinders in accordance with paragraph (1) are satisfactory, the Department shall, in respect of that type of cylinder grant EEC pattern approval and issue an EEC pattern approval certificate to the applicant.

(3) The EEC pattern approval certificate issued under paragraph (2) in respect of a type of gas cylinder shall—

- (a) be in accordance with the model set out in the relevant Separate Directive; and

(a) 1954 c. 33 (N.I.)

(b) be accompanied by the technical annex specified in that Directive, and such descriptions and drawings as are necessary to identify the pattern and, where it is appropriate, to explain how it functions.

(4) The Department shall not proceed with an application in respect of any type of gas cylinder in any case where, to its knowledge, an application for EEC pattern approval in respect of the same type of gas cylinder has previously been made to another authority which, under the law of any Member State, is authorised to grant such approval for the purposes of the Framework Directive and the relevant Separate Directive.

Fees

5.—(1) The provisional fee shall be equal to the costs which the Department estimates it will incur in, or in connection with, carrying out or causing to be carried out the functions referred to in regulation 4(1) or (2) in respect of the application concerned.

(2) Where the actual costs referred to in paragraph (1) are greater than the provisional fee, the difference between those costs and that fee shall be payable by the manufacturer who made the application concerned to the Department, and where those costs are less than the provisional fee, the difference between those costs and that fee shall be repayable by the Department to that manufacturer.

(3) For the purposes of estimating the provisional fee and ascertaining the costs referred to in paragraph (1) the Department may determine the cost of employing an officer for any period on work appropriate to his grade by reference to the cost to it of employing officers of his grade for that period.

Withdrawal of approval

6. The Department shall withdraw an EEC pattern approval granted, and the appropriate EEC pattern approval certificate issued, under regulation 4(2) if it has reason to believe that—

(a) the approval should not have been granted; or

(b) gas cylinders of the type for which the approval was granted fail to conform to the approval and either—

(i) the cylinders concerned constitute a safety hazard; or

(ii) the manufacturer has failed to comply with a written request from the Department to make within the period specified in the request, the appropriate manufacturing changes necessary to conform to the approval; except that the approval need not be withdrawn if the changes are minimal, or have no fundamental effect on the design of the cylinder or on manufacturing methods.

Notices of withdrawal or refusal.

7.—(1) On taking a decision, in respect of any type of gas cylinder, to refuse to grant EEC pattern approval or to withdraw such an approval the Department shall, as soon as practicable thereafter, send to the manufacturer a notice in writing of that decision.

- (2) A notice referred to in paragraph (1) shall—
- (a) state the exact grounds on which the decision in question was based; and
 - (b) inform the manufacturer of his right to request a review under regulation 8 and of the time limit for making such a request.

Application for review

8.—(1) A manufacturer who is aggrieved by a decision of the Department, in any case, to refuse to grant EEC pattern approval or to withdraw such an approval may make a request to the Department for a review of that decision (hereinafter referred to as “a review”).

(2) A request for a review shall be made by written notice to the Department which shall comply with the requirements of paragraph (3) and shall be lodged not later than 14 days from the date on which the manufacturer making the request received from the Department the notice referred to in regulation 7.

(3) A notice under paragraph (2) shall state the grounds on which the request is made and shall be accompanied by—

- (a) a copy of the manufacturer’s application for EEC pattern approval and of every other document submitted to the Department by the manufacturer in connection with the application; and
- (b) a copy of the notice from the Department referred to in regulation 7.

(4) A review shall be conducted in accordance with the provisions of Article 9 by a person appointed by the Department for the purpose (hereinafter referred to as “the appointed person”).

Review

9.—(1) The appointed person may—

- (a) hold an inquiry in connection with the review; and
- (b) appoint an assessor for the purposes of assisting him with the review or any such inquiry.

(2) The appointed person shall afford the manufacturer who requested the review an opportunity of appearing before him and of making such other representations to him as the manufacturer considers necessary and, if he determines to find in favour of the manufacturer, the Department shall, as the case may be, grant or re-grant an EEC pattern approval, and issue or re-issue an EEC pattern approval certificate in relation to the type of gas cylinder concerned.

(3) The Arbitration Act (Northern Ireland) 1937 shall not apply in relation to a review.

Fees and allowances

10.—(1) The Department may pay to any appointed person such fees and travelling and other allowances in respect of his services as it may, with the approval of the Department of Finance and Personnel, determine.

(2) Where, following a review conducted by the appointed person, the Department does not issue or re-issue, as the case may be, a certificate of approval in relation to the type of gas cylinders to which the review relates, it may require the manufacturer who requested the review to repay to it any fees or allowances paid to the appointed person under paragraph (1) or any other costs which it has incurred in relation to the review.

(3) For the purposes of paragraph (2) the Department may determine the costs of employing an officer for any period on work appropriate to his grade by reference to the average costs to the Department of employing officers of his grade for that period.

False marks

11.—(1) Subject to paragraph (2), a manufacturer shall not affix to a gas cylinder—

- (a) a pattern approval mark described in the Framework Directive or any mark liable to be confused with such a mark unless the cylinder is of a type for which EEC pattern approval is in force;
- (b) a pattern approval mark described in one of the separate Directives or any mark liable to be confused with such a mark unless the cylinder is of a type for which EEC pattern approval granted for the purposes of that Directive, is in force.

(2) Paragraph (1) does not apply to a sample cylinder to be submitted to the Department in connection with an application for pattern approval.

(3) Paragraph (1) shall have effect as if it were a health and safety regulation made under Article 17 of the Health and Safety at Work (Northern Ireland) Order 1978(a) and the provisions of that Order as regards enforcement and offences shall apply to that paragraph.

(4) It shall be a defence to a charge of committing an offence under paragraph (1) for a manufacturer to show that he neither knew nor had reasonable grounds to believe that the cylinder in question was not of a type, in relation to an offence charged under sub-paragraph (a), for which EEC pattern approval was in force or, in relation to an offence charged under sub-paragraph (b), for which EEC pattern approval, granted for the purposes of the separate Directive in question, was in force.

Sealed with the Official Seal of the Department of Economic Development on 14th January 1992.

(L.S.)

Suzanna Cooper

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations implement as respects Northern Ireland those provisions of Council Directives 76/767/EEC (O.J. No. L262, 27.9.76, p. 153), 84/525/EEC (O.J. No. L300, 19.11.84, p. 1), 84/526/EEC (O.J. No. L300, 19.11.84, p. 20) and 84/527/EEC (O.J. No. L300, 19.11.84, p. 48) which relate to the pattern approval of gas cylinders.

The regulations—

- (a) enable manufacturers to make applications for pattern approval to the Department of Economic Development (“the Department”) (regulation 3);
- (b) empower the Department, on payment of a provisional fee and subject to satisfactory results of certain tests, to grant pattern approval and issue a certificate of such approval for any type of gas cylinder submitted to it for approval, which conform with the appropriate requirements of the Framework Directive and the relevant Separate Directive (regulation 4);
- (c) prescribe the fees to be taken by the Department in relation to its functions under the Regulations (regulation 5);
- (d) empower the Department to withdraw its certificate of pattern approval if such approval should not have been granted or if gas cylinders of the type for which a certificate of pattern approval was granted fail to conform with that approval (regulation 6);
- (e) require the Department to send a written notice of its decision refusing to grant EEC pattern approval or to withdraw an approval (regulation 7);
- (f) enable manufacturers to apply to the Department for a review of its decision to refuse or withdraw the appropriate pattern approval certificate (regulation 8);
- (g) provide the procedure for a review (regulation 9);
- (h) enable the Department to pay fees, travelling and other allowances to a person appointed under the Regulations, to conduct a review and to recover such fees and allowances, in certain circumstances, from the manufacturer who requested the review (regulation 10);
- (i) make it an offence for a manufacturer to affix a pattern approval mark described in the Directives to a gas cylinder if it is not of a type for which the appropriate pattern approval certificate is in force and provide for defences to such a charge (regulation 11).

A person who contravenes regulation 11 is guilty of an offence under Article 31 of the Health and Safety at Work (Northern Ireland) Order 1978, and is liable on summary conviction, to a fine not exceeding £2,000, or on conviction on indictment, to a fine.