

**EXPLANATORY MEMORANDUM TO**  
**THE CARRIAGE OF DANGEROUS GOODS AND USE OF**  
**TRANSPORTABLE PRESSURE EQUIPMENT REGULATIONS**  
**(NORTHERN IRELAND) 2010**

**S.R. 2010 No. 160**

**1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment (“DETI”) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under powers in the Health and Safety at Work (Northern Ireland) Order 1978 (“the 1978 Order”) as read with the Health and Safety at Work Order (Application to Environmentally Hazardous Substances) Regulations (Northern Ireland) 2003 (last amended by S.R. 2009 No. 296) (which extends the meaning of “dangerous” under the Order for certain purposes). This Statutory Rule also, in respect of the Dangerous Goods Directive, relies on paragraph 1A of Schedule 2 to the European Communities Act 1972 to allow for references to that Directive to be references to it as it is amended from time to time. The Statutory Rule is subject to negative resolution procedure.

**2. Purpose**

- 2.1 This Statutory Rule regulates the carriage of dangerous goods by road and rail in Northern Ireland. It also, in so far as it relates to the training and examination of, and issuing of vocational training certificates to, safety advisers, regulates the carriage of dangerous goods by inland waterway. It replaces the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations (Northern Ireland) 2006 (the 2006 Regulations) (S.R. 2006 No.173).
- 2.2 It transposes certain Directives of the European Community:
  - (i) It transposes the new Directive of the Parliament and Council on the Inland Transport of Dangerous Goods (the Dangerous Goods Directive) 2008/68/EC<sup>1</sup>. This Directive is the latest in a succession of European legislation applying RID (Rail), ADR (Road) and safety adviser qualifications (including for inland waterway.) The new Directive consolidates and replaces 5 directives and takes into account technical progress as well as ensuring the continued safe and secure transport of dangerous goods.

The five Directives being consolidated and replaced by the Dangerous Goods Directive are:

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<sup>1</sup> OJ No L260, 30.9.2008, p.13

- Council Directive 94/55/EC on the transport of dangerous goods by road.
  - Council Directive 96/49/EC on the transport of dangerous goods by rail.
  - Council Directive 96/35/EC on the appointment and vocational qualification of safety advisers for the transport of dangerous goods by road, rail and inland waterway.
  - Council Directive 2000/18/EC on the minimum examination requirements for safety advisers for the transport of dangerous goods by road, rail and inland waterway.
  - Council Directive 82/714/EEC that lays down the technical requirements for inland waterway vessels.
- (ii) It also transposes Directive 1999/36/EC<sup>2</sup> relating to common provisions for transportable pressure equipment and methods for inspection and certain parts of Directives 89/618/Euratom<sup>3</sup> and 96/29/Euratom<sup>4</sup> which relate to measures to be taken in connection with a radiological emergency.

### 3. Background

- 3.1 The Department of Enterprise, Trade and Investment is required to implement the Dangerous Goods Directive. The Directive requires, subject to certain exemptions, Member States to implement in national legislation the full range of provisions in the European Agreement Concerning the International carriage of Dangerous Goods by Road (known as ADR) and the Regulation concerning the International Carriage of Dangerous Goods by Rail (known as RID). The Department also implements ADN as provided for under the Directive in respect of safety adviser training, examination and certification. As the agreements are subject to biennial review, the Framework Directive itself is amended on the same basis to apply the latest revisions to the agreements.
- 3.2 In addition to implementing the new directive 2008/68/EC, these Regulations presented a further opportunity for simplification - this time by the use of a simpler form of referencing to the Directives and the international agreements.. The main purpose of this simplification was to allow, so far as was legally possible under domestic law, the international agreements to “speak for themselves.” These agreements are sizeable and contain considerable technical detail. This purpose behind the further simplification was driven by a wish to make the legal framework for the carriage of dangerous goods simpler to use and understand. Consultation and feedback from the dangerous goods industry suggests that the primary documents used on a “day to day” basis are ADR and RID. The Department believed that this proposed simplification would be supported by the dangerous goods industry and the formal consultation responses and wider feedback confirmed that this is the case.

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<sup>2</sup> O.J. No. L138, 1.6.1999, p. 20 as last amended by Commission Directive 2002/50/EC (O.J. No. L149, 7.6. 2002, p. 28)

<sup>3</sup> O.J. No. L357, 7.12.1989, p.31

<sup>4</sup> O.J. No. L159, 29.6.1996, p. 1

3.3 As part of the simplification process, the 2010 Regulations have been drafted in such a way so as to break the two yearly cycle of domestic transposition by relying on legal powers to refer to the international modal agreements and the Dangerous Goods Directive as they are amended in future. This will avoid the necessity to make new or amending Regulations every two years with the consequent benefits of greater certainty to users of the Regulations and savings in respect of public resources. The Department will continue to need to review whether any particular future changes to the international requirements will require amendment of the Regulations. The Regulations (by virtue of “incorporating” Sub-section 1.6.1.1 of ADR and RID) provides that when a new edition of ADR or RID comes into effect, the superseded edition may continue to be used for six months. The Department will seek to ensure that the dangerous goods industry and others with an interest in dangerous goods transport continue to be updated on changes to the international framework.

Part of the simplification involves the inclusion in the Regulations of a power for the Health and Safety Executive for Northern Ireland (“HSENI”) to issue exemptions from the Regulations where those exemptions are provided for by the Dangerous Goods Directive (regulation 8). These exemptions relate to:

- (i) Derogations under article 6 (2) to (4) which allow Member States to be exempt from certain requirements of the Dangerous Goods Directive. These Derogations may change or become redundant over a fairly short space of time.
- (ii) Transitional provisions under article 7 which allow certain provisions, not otherwise permitted under the Dangerous Goods Directive to be maintained in some situations; for example provisions relating to old tanks, ie tanks that were constructed lawfully to standards other than harmonised European standards before harmonised standards were compulsory. It is anticipated that these transitional provisions will become increasingly irrelevant over time.
- (iii) One particular advantage of the exemption provision is that it will provide greater flexibility to react more proactively and quickly to technical changes in the dangerous goods environment. A consultation provision is included in respect of substantive changes to the exemptions. In introducing this exemption power into the Regulations, the Department is seeking to maintain a proper balance between ensuring proper scrutiny of health and safety provisions whilst providing for an appropriate degree of flexibility in these technical areas.

There will be a document issued under regulation 8 that will come into effect at the same time these Regulations come into operation. The Department is taking steps to make it available on HSENI’s website.

## **4. Consultation**

4.1 A full consultation exercise was carried out on the proposed 2008 CDG Regulations. There were approximately 600 consultees, including individuals and bodies representative of section 75 of the Northern Ireland Act 1998 and other organisations with an interest in equality and related issues (including each member of the Northern Ireland Assembly). In total there were 6 responses with no adverse comments in relation to the proposed 2008 Regulations. In view of the urgency in moving to the 2010 position informal contacts were made with the major stake holders involved in the carriage of dangerous goods and all were in favour of moving directly to the 2010 position without the need for further consultation.

## **5. Equality Impact**

5.1 The Statutory Rule has been screened for any possible impact on equality of opportunity affecting the groups listed in section 75 of the Northern Ireland Act 1998 and no adverse or differential aspects were identified.

## **6. Regulatory Impact**

6.1 There are no options other than to transpose the Directives into Northern Ireland legislation. As the Directives have already been adopted by the European Commission and brought into force in Great Britain, industry will have to comply with the new regime from the operation date of the proposed Northern Ireland Regulations. Not to do so would introduce confusion to industry undertaking international journeys and could have a detrimental effect on safety.

The proposed Northern Ireland 2010 CDG Regulations aim to directly reference the European Agreements RID and ADR. This will enable DETI to produce domestic legislation that does not require transposition of the Directives every 2 years. This will enable the freedom of amending technical requirements with industry engagement through administrative processes.

The Northern Ireland costs and benefits are based on the Great Britain assessment for the GB Regulations. There is no reason to doubt that, where appropriate and on a proportionate basis, the costs and benefits for Northern Ireland would be similar to those for GB. Total costs to Northern Ireland industry are estimated to be as follows:

One-off cost: £15k  
Annual cost: £2.75k

Estimated savings are expected to be £5.25k per annum.

The majority of changes reflected in the proposed Regulations are clarifications and relaxations. These regulations will continue the provisions for exemptions from the full scope of the Regulations through limited quantity thresholds, which are of greater proportionate benefit to small firms. The additional higher-impact changes, will mainly affect large businesses. The higher cost-impact changes are likely to have little or no significant additional impact on small or medium enterprises (SMEs).

## **7. Financial Implications**

7.1 As explained above, and based on the Great Britain costs which were obtained through consultation with UK industry, the cost to Northern Ireland industry is relatively minor with little or no significant additional impact on SMEs.

## **8. Section 24 of the NI Act 1998**

8.1 The Department has considered the matter of Convention rights and is satisfied that there are no matters of concern.

## **9. EU Implications**

9.1 The Statutory Rule will implement a number of European Directives as respects Northern Ireland, the most significant of which is The Dangerous Goods Directive, 2008/68/EC. This Directive consolidates and replaces 5 Directives and takes into account technical progress as well as ensuring the continued safe and secure transport of dangerous goods. The Directive took effect from 1 July 2009 and on 3 August 2009 the Commission initiated infraction proceedings against the UK for the failure of Northern Ireland to transpose the Directive by 1 July 2009. A Northern Ireland response has been made through UK contacts to the effect that Northern Ireland intends to transpose the Directive by making these Regulations in April 2010. A transposition note has been prepared and is attached.

## **10. Parity or Replicatory Measure**

10.1 In Great Britain the corresponding Regulations are the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (S.I. 2009/1348), which were made on 27 May 2009 and came into force on 1 July 2009.

10.2 As the Great Britain and Northern Ireland proposals, taken together, are intended to ensure that the UK meets the necessary requirements and implement Directive 2009/107/EC, it is essential that the same legal requirements apply throughout the United Kingdom.

## **11. Additional Information**

11.1 Not applicable.

Department of Enterprise, Trade and Investment

April 2010

**THE CARRIAGE OF DANGEROUS GOODS AND USE OF  
TRANSPORTABLE PRESSURE EQUIPMENT REGULATIONS  
(NORTHERN IRELAND) 2010 (S.R. 2010 No. 160)**

**TRANSPOSITION NOTE**

**Purpose**

1. The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations (Northern Ireland) 2010 (CDG 2010) transpose, in relation to Northern Ireland, Directive 2008/68/EC of the European Parliament and of the Council of 24<sup>th</sup> September 2008 on the inland transport of dangerous goods (the Dangerous Goods Directive).

The transposition of the following Directives (or parts of the Directives) is restated in relation to Northern Ireland by CDG 2010:

Transportable Pressure Equipment

Council Directive 1999/36/EC of 29th April 1999 on transportable pressure equipment as last amended by Commission Directive 2002/50/EC of 6 June 2002 (“the Transportable Pressure Equipment Directive”);

Radiological Emergencies

(i) Article 5 of Title II of Council Directive 89/618/Euratom of 27th November 1989 on informing the general public about health protection measures to be applied and steps to be taken in the event of a radiological emergency in so far as it is relevant to carriage by road and by rail; and

(ii) Title IX, Section 1 ( Intervention in cases of radiological emergency) of Council Directive 96/29/Euratom of 13th May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation, in so far as Section 1 of Title IX is relevant to carriage by road and by rail.

This note explains how CDG 2010 implements the main elements of these Directives.

**Transposition**

2. These Regulations do more than is necessary to implement the Dangerous Goods Directive in the following areas:-

As compared with the Dangerous Goods Directive, CDG 2010 imposes:

(i) in respect of certain national carriage, an alternative placarding system for vehicles which are registered in the United Kingdom (or towed by such a vehicle) or wagons used only for carriage within the United Kingdom;

(ii) an additional security requirement relating to the prevention of unauthorised access to dangerous goods when carriage is by road; and

(iii) the prohibitions and requirements of ADR on carriage by vehicles which have fewer than four wheels.

3. The Annexes listed below provide details about how the Directives listed in section 1 of this note has been implemented through the CDG 2010:

**Annex 1** – The main elements of the Dangerous Goods Directive

**Annex 2** – The transportable Pressure Equipment Directive as amended

**Annex 3** – Article 5 of Title II of Council Directive 89/618/Euratom

**Annex 4** – Title IX, Section 1 of Council Directive 96/29/Euratom

## ANNEX 1

### The Dangerous Goods Directive

Articles	Objectives	Implementation	Responsibility
3 and 4	<p>Dangerous goods are not to be transported within a member State or between member States if such transport is prohibited by ADR, RID and ADN.</p> <p>The transport of dangerous goods shall be permitted within a member State or between member States if such transport complies with the conditions laid down in ADR, RID and ADN.</p> <p>The transport of dangerous goods between member States and third countries shall be permitted if such transport complies with ADR, RID and ADN.</p>	<p>Regulation 5 as read with regulation 3(a) and Part 3 of the Regulations.</p> <p>Pursuant to article 1(3), these Regulations do not apply ADN (except that they do provide that it is a function of the Northern Ireland competent authority functions of ADN that provide for a training and examination system for safety advisers (regulations 21 and 22)).</p> <p>Part 6 of the Regulations imposes the competent authority functions of ADR, RID and ADN on the Northern Ireland competent authority (as provided for in regulation 21). These functions include providing for the approval of equipment so that transport using that equipment complies with the conditions of ADR and RID.</p>	The Health and Safety Executive for Northern Ireland



Articles	Objectives	Implementation	Responsibility
6(2) to (4)	Certain derogations are permitted.	Regulation 8 (insofar as it provides for exemptions to be granted in order to implement derogations).	The Health and Safety Executive for Northern Ireland
6(5)	Provides for individual authorisations.	Regulation 9	The Health and Safety Executive for Northern Ireland and The Department of the Environment for Northern Ireland
7	Permits transitional provisions to be maintained.	Regulation 6 and Schedule 1, regulation 8 (insofar as it provides for exemptions to be granted in order to implement transitional provisions), regulations 10 and 24.	The Health and Safety Executive for Northern Ireland

**ANNEX 2**

## The Transportable Pressure Equipment Directive as amended

<b>Articles</b>	<b>Objectives</b>	<b>Implementation</b>	<b>Responsibility</b>
3	Conformity assessment of new transportable pressure equipment is to be undertaken	Regulation 15	The Health and Safety Executive for Northern Ireland
4	Relaxation of new transportable pressure equipment placed on the national market	Regulation 16	The Health and Safety Executive for Northern Ireland
5	Reassessment of conformity for existing transportable pressure equipment	Regulation 17	The Health and Safety Executive for Northern Ireland
6	Periodic inspection and repeated use of transportable pressure equipment	Regulation 18	The Health and Safety Executive for Northern Ireland
8	Appointment and requirements for notified bodies	Regulation 25(2) and (4)	The Health and Safety Executive for Northern Ireland
9	Appointment and requirements for approved bodies	Regulation 25(2) and (5)	The Health and Safety Executive for Northern Ireland
10(5)	Misleading marking of transportable pressure equipment	Regulation 19	The Health and Safety Executive for Northern Ireland

**Annex 3**  
Council Directive 89/618/Euratom

<b>Articles</b>	<b>Objectives</b>	<b>Implementation</b>	<b>Responsibility</b>
5(1)	Direction on Member States to provide information about health protection measures and action to be taken in the event of an emergency	Regulation 20 and Schedule 2, paragraph 2(1)(a)	The Health and Safety Executive for Northern Ireland
5(2)	Direction on Member States on the elements to be included in the information provided	Regulation 20 and Schedule 2, paragraph 2(2)	The Health and Safety Executive for Northern Ireland
5(3)	Direction on Member States to communicate the information	Regulation 20 and Schedule 2, paragraph 2	The Health and Safety Executive for Northern Ireland
5(4)	Direction on Member States to update the information and circulate it at regular intervals and whenever there are significant changes to arrangements	Regulation 20 and Schedule 2, paragraph 2(4) and (5)	The Health and Safety Executive for Northern Ireland

**Annex 4**  
Council Directive 96/29/Euratom

<b>Articles</b>	<b>Objectives</b>	<b>Implementation</b>	<b>Responsibility</b>
50(2)	The drawing up and testing of intervention plans	Regulation 20 and Schedule 2, paragraphs 3 and 4	The Health and Safety Executive for Northern Ireland

51(1)	Immediate notification of any radiological emergency occurring on its territory	Regulation 20 and Schedule 2, paragraph 5	The Health and Safety Executive for Northern Ireland
51(2)	Requirement to make an initial assessment of the circumstances and consequences of the emergency	Regulation 20 and Schedule 2, paragraph 5	The Health and Safety Executive for Northern Ireland
52	Provisions for situations involving emergency occupational exposure	Regulation 20 and Schedule 2, paragraphs 3 and 4	The Health and Safety Executive for Northern Ireland