

**EXPLANATORY MEMORANDUM TO  
THE HEALTH AND SAFETY AT WORK ETC. ACT 1974 (APPLICATION TO  
ENVIRONMENTALLY HAZARDOUS SUBSTANCES) (AMENDMENT)  
REGULATIONS 2009**

**2009 No. 318**

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 This statutory instrument amends regulation 2 of the Health and Safety at Work etc. Act 1974 (Application to Environmentally Hazardous Substances) Regulations 2002 (“the 2002 Regulations”) to add a reference to Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods<sup>1</sup> (“Directive 2008/68”) so that Regulations can be made under section 15 of the Health and Safety at Work etc Act 1974 to implement the Directive to the extent that it relates to substances which are dangerous to the environment but not to people.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

4. **Legislative Context**

4.1 The carriage of dangerous goods by road, rail and inland waterway are the subject of separate international agreements each based on the UN Transport of Dangerous Goods Model Regulations:

- a. the European Agreement concerning the international carriage of dangerous goods by road(ADR);
- b. the Regulation concerning the international carriage of dangerous goods by rail (RID); and
- c. European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN).

4.2 Directive 2008/68 requires member States to require (subject to certain exceptions) compliance with the 2009 editions of ADR<sup>2</sup>, RID<sup>3</sup> and ADN<sup>4</sup> (see 4.5 below in relation to one ADN exemption).

---

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

<sup>2</sup> ISBN 9789211391312 (paper version) and ISBN 9789210397230 (CD-ROM version). It is also available, without charge, at <http://www.unece.org/trans/danger/publi/adr/adr2009/09ContentsE.html>.

4.3 In Great Britain, it is proposed that the provisions of Directive 2008/68 will be transposed by regulations to be called the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (“the Carriage Regulations”) made under section 15 the HSWA. The intention is to lay the Carriage Regulations before Parliament in order that, subject to the Parliamentary process, they come into force no later than 1 July 2009. This follows previous practice; most recently the amendments made to the 2002 Regulations by S.I. 2007/1332.

4.4 Regulations may be made under section 15 of the HSWA for the general purposes of Part 1 of the Act. One of the general purposes (set out in section 1(1)(c) of the HSWA) is “controlling the keeping and use of explosive or highly flammable or otherwise dangerous substances, and generally preventing the unlawful acquisition, possession and use of such substances.” This provision is the general purpose most relevant to the making of the Carriage Regulations under section 15. This general purpose does not, however, without extension, cover substances which are only dangerous to the environment. Consequently these Regulations are being made to extend the relevant purpose so that it covers dangerous goods which are only dangerous to the environment in so far as the extension is necessary to transpose Directive 2008/68.

4.5 It should be noted that, as permitted by Directive 2008/68, the only ADN requirements that it is anticipated the Carriage Regulations will contain relate to the training and examination of safety advisers (and in relation to which there are similar provisions in ADR and ADN.)

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The Government is required to implement Directive 2008/68. Amending the 2002 Regulations to refer to Directive 2008/68 and, hence, extend the meaning of “dangerous” for the purposes of section 15 Regulations under HSWA as described above follows the model used in respect of previous directives. There are, however, other options including making the Carriage Regulations entirely or partly under section 2(2) of the European Communities Act 1972 (ECA) instead of entirely relying on HSWA. These other options do have disadvantages as compared with using HSWA; most notably that HSWA contains an enforcement regime which

---

<sup>3</sup> ISBN: 9788086206394

<sup>4</sup> On the date of the making the Regulations to which this Explanatory Memorandum relates, there is no available ISBN reference for the 2009 edition of ADN (due to come into force on 1<sup>st</sup> July 2009). The ISBN for the 2007 version is 9789211391183.

automatically applies to Regulations made under it and which is well known to industry and other users of the Regulations (regulations made under the ECA would either need, so far as is necessary, to contain a detailed enforcement regime or adopt such a regime.) Regulations made under both HSWA and the ECA might be overly complex as compared to amending the 2002 Regulations and later making the Carriage Regulations under HSWA (relying on the 2002 Regulations as amended in part for the power to do so).

It is therefore considered appropriate to continue with the existing model and amend the 2002 Regulations and then later make the Carriage Regulations under HSWA. Given that the expectation is that ADR, RID and ADN are revised every two years and that a new directive will then require compliance with the new versions, it is likely that the question of the most appropriate way to transpose directives that amend Directive 2008/68 will be an issue in due course. At that point the issue of whether using the 2002 Regulations remains the best way to proceed will be further considered. It should be noted that it is hoped that the way the Carriage Regulations are being drafted will dispense with the need for the Carriage Regulations to be amended every two years in consequence of amendments to ADR, RID and ADN (although this is not anticipated to alter the need to amend the 2002 Regulations in light of an amending directive requiring compliance with new versions of ADR, RID and ADN.)

7.2 Consideration to consolidating the Health and Safety at Work etc. Act 1974 (Application to Environmentally Hazardous Substances) Regulations 2002 was considered but it was not considered appropriate given the nature of the amendment being made and the history of amendment to the 2002 Regulations.

## **8. Consultation outcome**

8.1 There was a consultation undertaken in respect of the Carriage Regulations between July and October 2008. The consultation document indicated at paragraph 17 an intention to continue with the process of extending the meaning of dangerous under the Health and Safety at Work etc Act 1974 for the purposes of transposing the dangerous goods Directive to cover the small number of substances regulated by ADR and RID which are only dangerous to the environment. No comments were received in respect of that issue.

## **9. Guidance**

9.1 No guidance is required for this instrument.

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument. An Impact Assessment is being prepared for the Carriage Regulations.

**11. Regulating small business**

11.1 This legislation does not apply to small business.

**12. Monitoring & review**

12.1 The monitoring and review of this instrument is encompassed in the review of the Carriage Regulations (though the comments at 7.1 above about considering whether another option should be adopted in future in respect of new amending directives should be noted.)

**13. Contact**

Caroline Billingham at the Department for Transport Tel: 020 7944 5706 or email: [caroline.billingham@dft.gsi.gov.uk](mailto:caroline.billingham@dft.gsi.gov.uk) can answer any queries regarding the instrument.