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STATUTORY INSTRUMENTS

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**2004 No. 568**

**The Carriage of Dangerous Goods and Use of  
Transportable Pressure Equipment Regulations 2004**

**PART 6**

**MISCELLANEOUS**

**Fees for applications relating to pressure receptacles and tanks**

**56.**—(1) On the making of an application to the—

- (a) GB competent authority for the appointment or the amendment of an appointment as an appointed person in accordance with regulation 29(2);
- (b) GB competent authority for the recognition of a standard in accordance with regulation 30(3);
- (c) competent authority for the appointment or the amendment of an appointment as a notified body or an approved body under regulation 44(2);
- (d) Secretary of State for the appointment or the amendment of an appointment as an inspection body under paragraph 3(1)(a) of Schedule 1;
- (e) Executive for the approval or amendment of an approval as a person under paragraph 3(2) of Schedule 2; or
- (f) Executive for the appointment or the amendment of an appointment as an inspection body under paragraph 4(1)(b) of Schedule 2,

there shall be payable by the applicant in connection with the performance by or on behalf of the GB competent authority, the competent authority, the Secretary of State or the Executive as the case may be, in respect of its or his functions in relation to that application the relevant fee referred to in paragraph (2).

(2) The fees referred to in paragraph (1) are—

- (a) in respect of sub-paragraph (a) or (c), where the GB competent authority or the competent authority is the Executive, or sub-paragraph (e) or (f)—
  - (i) a fee of £305 for processing the application; and
  - (ii) such fee as is reasonable in light of the actual work performed in respect of the determination of the suitability of the applicant for appointment or the amendment of an existing appointment; and
- (b) in respect of sub-paragraphs (a) or (c), where the GB competent authority or the competent authority is the Secretary of State, in respect of sub-paragraph (b), where the GB competent authority is the Executive, or sub-paragraph (d) such fee as is reasonable in light of the actual work performed.

(3) A fee which shall be reasonable in light of the actual work performed shall be payable by the relevant notified body, approved body or appointed person in respect of any inspection undertaken

by or on behalf of the competent authority or the GB competent authority in accordance with regulation 44(5).

- (4) Subject to paragraph (5), where an application has been made to—
- (a) a notified body, an approved body, an inspection body or an approved person in accordance with these Regulations; or
  - (b) an appointed person in compliance with the provisions of ADR or of RID referred to in regulations 21 and 22,

the notified body, the approved body, the inspection body, the approved person or the appointed person may charge such fees in connection with, or incidental to, carrying out its duties in relation to the procedures and tasks referred to in regulation 44(3)(c), paragraph 8(3)(c) of Schedule 1 or paragraph 9(3)(c) of Schedule 2 as it may determine.

- (5) The fees referred to in paragraph (4) shall not exceed—
- (a) the costs incurred or to be incurred by the notified body, approved body, inspection body, approved person or appointed person in performing the relevant function; and
  - (b) an amount on account of profit which is reasonable in the circumstances having regard to—
    - (i) the character and extent of the work done or to be done by that body or person on behalf of the applicant; and
    - (ii) the commercial rate normally charged on account of profit for that work or similar work.

(6) The power in paragraph (3) includes the power to require payment of fees or a reasonable estimate thereof in advance of carrying out the work requested by the applicant.

- (7) In this regulation, “competent authority” has the same meaning as in Part 4.

### **Transitional defence**

**57.** In any proceedings for an offence consisting of a contravention of regulation 18 in relation to the packing of goods in metal—

- (a) IBCs; or
- (b) drums,

exceeding 50 litres in capacity, it shall be a defence for the person charged to prove that the IBCs or drums in question were manufactured less than 15 years prior to the date of consignment and prior to 1st July 1995.

### **Defence and enforcement**

**58.**—(1) In any proceedings for an offence for a contravention of any of the provisions of these Regulations, it shall be a defence, subject to paragraphs (2) and (3), for the person charged to prove that—

- (a) the commission of the offence was due to the act or default of another person, not being one of his employees (“the other person”); and
- (b) he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) The person charged shall not be entitled, without leave of the court, to rely on the defence referred to in paragraph (1) unless, at least seven clear days before the—

- (a) hearing to determine the mode of trial, where the proceedings are in England or Wales;
- (b) intermediate diet, where the proceedings are summary proceedings in Scotland; or

(c) first diet, where the proceedings are solemn proceedings in Scotland, he has served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, the other person, as was then in his possession.

(3) Where a contravention of any of the provisions of these Regulations by any person is due to the act or default of the other person, then that other person shall be guilty of the offence, which would, but for the defence in paragraph (1), be constituted by the act or default.

(4) Notwithstanding anything to the contrary in regulation 3 of the Health and Safety (Enforcing Authority) Regulations 1998(1) and subject to paragraph (5), the enforcing authority for these Regulations shall be the Executive.

#### **Amendments to the Health and Safety (Fees) Regulations 2004**

59. Schedule 10 shall have effect.

#### **Amendments to Chemicals (Hazard Information and Packaging for Supply) Regulations 2002**

60. Schedule 11 shall have effect.

#### **Amendments to the Classification and Labelling of Explosives Regulations 1983**

61. Schedule 12 shall have effect.

#### **Consequential amendments**

62. The enactments referred to in Schedule 13 shall be amended as set out in that Schedule.

#### **Revocations and savings**

63.—(1) Schedule 14 shall have effect.

(2) In the Order of Secretary of State (No. 9), dated 23rd June 1919 relating to compressed acetylene contained in a porous substance(2), for the purpose of deeming acetylene not to be an explosive, conditions (1) to (4) and (11) of the Order shall be deemed to have been satisfied in respect of any cylinder which complies with Part 4 of these Regulations.

(3) Order in Council No. 30(3) shall not apply to the importation or use at work of acetylene in transportable pressure equipment which complies with the provisions of Part 4 of these Regulations.

(4) For the purposes of the interpretation of the Approved Tank Requirements(4), expressions defined in the Carriage of Dangerous Goods by Road Regulations 1996(5) or the Carriage of Dangerous Goods (Classification, Packaging and Labelling) and Use of Transportable Pressure Receptacles Regulations 1996(6) shall have the meaning defined in those Regulations as if those Regulations were still in force.

(5) Any appointment of a person as a notified or an approved body under regulation 10 of the Transportable Pressure Vessels Regulations 2001(7) (“TPVR Regulations”) in force immediately before the coming into force of these Regulations, shall be deemed to be an appointment as a notified

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(1) S.I. 1998/494, to which there are amendments not relevant to these Regulations.

(2) S.R.&O. 1919/809, amended by S.I. 1974/1885 and to which there are amendments not relevant to these Regulations.

(3) S.R.&O. 1937/54, to which there are amendments not relevant to these Regulations.

(4) ISBN 0-7176-1226-0.

(5) S.I. 1996/2095, amended by S.I. 1999/303 and to which there are amendments not relevant to these Regulations.

(6) S.I. 1996/2092, amended by S.I. 2001/2046 and to which there are amendments not relevant to these Regulations.

(7) S.I. 2001/1426.

or approved body under regulation 44 of these Regulations but shall remain subject to any terms specified in the appointment under the TPVR Regulations.

(6) Any approval of a person under paragraph 2(4)(a) of Schedule 8 to the Carriage of Dangerous Goods (Classification, Packaging and Labelling) and Use of Transportable Pressure Receptacles Regulations 1996 in force immediately before the coming into force of these Regulations shall be deemed to be an approval under paragraph 3(2)(a) of Schedule 2 to these Regulations but shall remain subject to the terms of the approval under the said 1996 Regulations.

(7) Any approval certificate issued by the Secretary of State for Defence or the Executive under sub-paragraph (e)(i) of Schedule 9 to the Carriage of Dangerous Goods by Rail Regulations 1996<sup>(8)</sup> or paragraph 6(f) of Schedule 4 to the Carriage of Explosives by Road Regulations 1996<sup>(9)</sup> in force immediately before the coming into force of these Regulations shall be deemed to be an approval certificate issued under regulation 36 of these Regulations.

(8) Any registration by the Secretary of State for Defence or the Executive of a packaging under regulation 11 of the Packaging of Explosives for Carriage Regulations 1991<sup>(10)</sup> in force immediately before the coming into force of these Regulations shall be deemed to comply with regulation 21 of these Regulations.

(9) Any cylinder, tube or cryogenic receptacle which complied with the provisions of regulations 4 to 6 of the TPVR Regulations immediately before the coming into force of these Regulations shall be deemed to comply with regulations 38 to 40 of these Regulations.

(10) Any periodic inspection of a cylinder, tube or cryogenic receptacle made in accordance with regulation 7 of the TPVR Regulations shall be taken to be a periodic inspection under regulation 41 of these Regulations and accordingly shall be taken into account in calculating the time for the next periodic inspection of such equipment pursuant to regulation 41.

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<sup>(8)</sup> S.I. 1996/2089, amended by S.I. 1999/303 and to which there are amendments not relevant to these Regulations.

<sup>(9)</sup> S.I. 1996/2093, amended by S.I. 1999/303 and to which there are amendments not relevant to these Regulations.

<sup>(10)</sup> S.I. 1991/2097, to which there are amendments not relevant to these Regulations.