

EXPLANATORY MEMORANDUM TO

THE CARRIAGE OF DANGEROUS GOODS AND USE OF TRANSPORTABLE PRESSURE EQUIPMENT (AMENDMENT) (EU EXIT) REGULATIONS 2021

2021 No. 1370

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid by Command of Her Majesty.
- 1.2 This explanatory memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (S.I. 2009/1348) (“the 2009 Regulations”) in respect of Transportable Pressure Equipment (“TPE”) being placed on the market of Great Britain (“GB”). In particular, it will end recognition of conformity assessments by bodies established in the European Union (“EU”) in respect of such TPE. This instrument will, therefore, make amendments to prohibit the placing of EU conformity assessed ‘pi’ marked TPE on the GB market on or after 1 January 2023, so that only TPE which has been conformity assessed by a GB appointed body and marked with a UK ‘rho’ marking, or “qualifying Northern Ireland TPE”, will be accepted on the GB market. Under the Northern Ireland Protocol, Northern Ireland (“NI”) remains subject to the EU customs code and regulatory regime for goods. The Government has committed to ensuring that qualifying NI goods receive “unfettered access” to the United Kingdom (“UK”) market. The criteria for qualifying NI goods are set out in The Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020. This Instrument will also fulfil obligations arising from part three of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community dated 19 October 2019 (the “Withdrawal Agreement”) relating to the continued acceptance of goods already placed on the GB market prior to IP completion day, allowing them to continue to circulate until they reach their end user and introduces a requirement to facilitate the exchange of information between GB/EU conformity assessment bodies so that conformity assessments which were previously issued by EU notified bodies can be transferred to GB appointed bodies and vice versa.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument was laid for sifting on 1 November 2021 and considered by the European Statutory Instruments Committee and the Secondary Legislation Committee on 16 November 2021. The Sifting Committees agreed that the instrument should follow the negative resolution procedure.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, and Scotland.

4.2 The territorial application of this instrument is England and Wales, and Scotland.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The European Union (Withdrawal) Act 2018 (c. 16) (“the Withdrawal Act”) (as amended by the European Union (Withdrawal Agreement) Act 2020 (c. 1)) made provision for repealing the European Communities Act 1972, to convert EU law as it stood immediately before IP completion day into domestic law and preserved laws made in the UK to implement EU obligations. The Withdrawal Act also contains powers to make secondary legislation to enable Ministers to fix deficiencies in retained EU law, to ensure that the UK’s legal system continues to function properly outside of the EU.

6.2 The 2009 Regulations transposed Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (“the Dangerous Goods Directive”). The 2009 Regulations were amended by the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment (Amendment) Regulations 2011 (S.I. 2011/1885), which transposed Directive 2010/35/EU of the European Parliament and of 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 (“the TPE Directive”).

6.3 The 2009 Regulations were amended in 2020, to address inoperabilities and deficiencies in the retained EU law arising from the UK’s exit from the EU, by the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment (Amendment) (EU Exit) Regulations 2020 (2020/1111) (“the EU Exit SI”). The EU Exit SI was made under sections 8 and 23 of, and para 21(b) of Schedule 7 to, the Withdrawal Act to ensure that the 2009 Regulations could function properly in respect of GB on IP completion day, removing deficiencies that would otherwise have arisen in retained EU law. The 2009 Regulations are made under the powers provided by the Health and Safety at Work etc. Act 1974. Health and Safety is a transferred matter for Northern Ireland under section 4 of the Northern Ireland Act 1998 and NI is therefore responsible for making its own legislation to implement the UK’s exit from the EU. Due to the Protocol on Ireland/Northern Ireland (“NIP”), part of the Withdrawal Agreement, the TPE Directive still applies to TPE placed on the NI market.

6.4 Although the EU Exit SI addressed deficiencies in retained EU law to enable a functioning statute book on IP completion day, some deficiencies remain which were identified but required more time to fully consult with industry. This instrument is being made to address these remaining deficiencies and is being made using powers conferred in Sections 8(1), 8(2)(c) and 8B(1) of the Withdrawal Act. The specific deficiencies arising on IP completion day that this instrument corrects are set out below in section 7.

7. Policy background

What is being done and why?

- 7.1 The EU Exit SI which came into force on IP completion day, amongst other things, provided for continued recognition of the EU conformity assessed pi marking for TPE being placed on the GB market in accordance with the requirements of the TPE Directive. This followed the continuity approach, ensuring time-limited continuity of goods imports into the UK after our exit from the EU.
- 7.2 It is a requirement of the TPE Directive that TPE can only be pi marked by a conformity assessment body established in a member State of the EU (a “notified body”) for the purposes of conformity assessment or inspection. An effect of GB’s continued acceptance of pi marked TPE as the only means to place TPE on the GB market would be that conformity assessment bodies established in GB (“GB appointed bodies”) would not be able to conformity assess TPE intended for the GB market. The EU Exit SI introduced the optional use of an equivalent UK rho marking for TPE conformity assessed by GB appointed bodies to the same standards that are required by the TPE Directive. This provision was necessary to provide GB appointed bodies, which were until IP completion day EU notified bodies, with a mechanism for conducting conformity assessments on TPE intended for the GB market.
- 7.3 The EU Exit SI also implemented an aspect of the NIP in relation to TPE on the GB market which has been conformity assessed by a body established in NI. It ensured continuing unfettered access of such TPE on the GB market post IP completion day. Under the NIP, the TPE Directive applies to TPE placed on the NI market, which means TPE placed on the NI market must use the pi marking. Additionally, the NIP requires that conformity assessment bodies established in the UK carrying out conformity assessment on TPE for the NI market must affix the pi marking alongside a ‘UK(NI)’ marking to prevent it from entering the EU single market. The EU Exit SI provided for the recognition of such marked TPE on the GB market.
- 7.4 The Government published a Command Paper in July 2021 on the subject of the NIP and Northern Ireland’s place in the United Kingdom¹. This Command Paper emphasised the importance of removing frictions on goods being supplied within the UK internal market. The practical effect of these proposals would be that TPE could be placed on the NI market with either a rho or pi marking.
- 7.5 This instrument will bring an end to the current dual pi or rho marking system as a means of placing TPE on the market in GB so that on or after 1 January 2023 only TPE which has been conformity assessed by a GB appointed body and is marked with the rho marking or qualifying NI TPE will be accepted on the GB market. This will ensure there is fully unfettered access to all parts of the United Kingdom market for qualifying NI TPE. This instrument will not amend the requirements for placing TPE on the NI market. As the carriage of dangerous goods is a transferred matter, NI is responsible for amending its legislation and implementing the NIP in relation to the requirements for UK conformity assessment bodies to apply the ‘UK(NI)’ mark. The movement of goods referred to in the TPE Directive, such as certain gases, between

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1008451/CCS_207_CCS0721914902-005_Northern_Ireland_Protocol_Web_Accessible__1_.pdf

GB and NI and vice versa will therefore not be affected by ending acceptance of pi marked TPE on the market in GB.

- 7.6 If, in GB we were to continue to recognise EU conformity assessed TPE on the market indefinitely then this would place GB conformity assessment bodies at a disadvantage to their EU counterparts as they would have access to both the GB and EU markets whereas GB bodies would only have access to the GB market. It is highly unlikely that, without ending recognition of pi marked TPE on the GB market through legislation, industry would voluntarily only use GB appointed bodies for the conformity assessment of TPE. Informal consultation with industry has shown that in the period post IP completion day to April 2021, no conformity assessments or inspections have been conducted on rho marked TPE. This is likely to be due to the current acceptance of conformity assessments/inspections which have been undertaken by EU notified bodies.
- 7.7 As a consequence of ending recognition of pi marked TPE on the market in GB, additional amendments are necessary to the 2009 Regulations. This instrument provides that for TPE placed on the market prior to IP completion day, such TPE can remain in circulation and be made further available on the market until it reaches its end user without the need for reassessment of conformity. This was not provided for in the EU Exit SI, but is necessary to meet the requirements of Article 41 of the Withdrawal Agreement. Additionally, this instrument will provide a mechanism and duty on manufacturers of TPE to request the transfer of conformity assessments that were carried out by notified bodies in EU Member States other than the UK (the “EU 27”) prior to IP completion day, to a GB appointed body in order to place TPE covered by those conformity assessments on the GB market after IP completion day. This is required because type approvals for TPE, which are part of the conformity assessment process, are valid for a maximum period of ten years so a conformity assessment may have been undertaken prior to IP completion day by an EU 27 notified body which would otherwise be valid for placing TPE on the market in GB after IP completion day. This instrument also requires that information held by a conformity assessment body established in GB in relation to its activities as a notified body before IP completion day, is made available to an EU 27 notified body, upon request. Both provisions meet the requirements of Article 46 of the Withdrawal Agreement.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.8 The 2009 Regulations, as amended, transposed the Dangerous Goods Directive and the TPE Directive which are collectively referred to as “the Directives”. The Directives, in turn, implemented, in the EU, the dangerous goods agreements that are negotiated at the United Nations (under the United Nations Economic Commission for Europe) and OTIF (the Intergovernmental Organisation for International Carriage by Rail). The Directives provide for the safe and secure transport of dangerous goods by road and rail and, to a limited extent, by inland waterway, allow the application of derogations, place obligations upon those involved in the transportable pressure equipment industry, provide for the appointment of notified bodies to certify and carry out inspections on such equipment and mandates the use of the pi marking to confirm conformity. The EU Exit SI did not change the requirements for the carriage of dangerous goods by road and rail within GB but did amend the requirements for those

operating in the transportable pressure equipment industry so that what were, prior to IP completion day, GB notified bodies can continue their role as GB appointed bodies for TPE that is for non-EU markets. It maintained recognition of the pi marking and introduced the optional use of rho marking for GB conformity assessed TPE essentially establishing two methods of placing TPE on the market in GB. In addition, the EU Exit SI recognised TPE on the GB market which has been conformity assessed by a NI conformity assessment body bearing the pi marking and the ‘UK(NI)’ marking.

Why is it being changed?

- 7.9 This amendment to the 2009 Regulations is necessary to implement the policy decision of the Government to end acceptance of EU conformity assessed goods on the market in GB. The Government agreed that for TPE, the period in which EU conformity assessed TPE could continue to be accepted on the GB market would be a maximum of 24 months from IP completion day but that the precise length of time would be subject to consultation with industry. Details of the consultation undertaken are in section 10. This instrument will ensure there is unfettered access for qualifying NI TPE to all parts of the United Kingdom market, while restricting access for EU notified bodies to the GB market which will benefit domestic conformity assessment bodies.

What will it now do?

- 7.10 This instrument will not change the transport requirements for dangerous goods. The amendments being made are to restrict access to the GB market of TPE which has been conformity assessed by an EU conformity assessment body. After 1 January 2023, only TPE which has been conformity assessed by a GB conformity assessment body or qualifying NI TPE will have access to the GB market. Further amendments are required because of this change, such as provisions for the continued acceptance of TPE already on the market prior to IP completion day until that TPE reaches its end user. Additionally, this Instrument will require that information relating to conformity assessments for TPE undertaken prior to IP completion day is shared between GB and EU conformity assessment bodies so that the transfer of conformity assessments for placing TPE on the GB market post IP completion day can be achieved.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is being made using the power in sections 8 and 8B of the Withdrawal Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 There are no plans to consolidate.

10. Consultation outcome

- 10.1 A public consultation was conducted between 2 June 2021 and 30 June 2021. It is publicly available at <https://www.gov.uk/government/consultations/transportable-pressure-equipment-conformity-assessment-and-marking-requirements-in-great->

britain. The focus of the consultation was to evaluate the impact to business of either a 12 or 24-month timeframe for ending acceptance of TPE on the GB market which has been conformity assessed by EU 27 conformity assessment bodies. The responses received to this consultation provided the evidence of the impact to business and influenced the date which is implemented by this instrument. Copies were also sent directly to stakeholders, including GB TPE inspection bodies/conformity assessment bodies, industry associations (e.g. the British Compressed Gases Association, the Road Haulage Association, and the Chemical Industry Association, Chemical Business Association and Liquid Gas UK), other Government Departments and Agencies (e.g. the Department for Business, Energy and Industrial Strategy, the Vehicle Certification Agency, and the Health and Safety Executive), and individual safety advisors and businesses covering a wide range of UK industry in the carriage of dangerous goods sector. The Northern Ireland Department of Justice and the Health and Safety Executive for Northern Ireland were also consulted and did not provide any comments.

- 10.2 22 responses to the public consultation were received. All the responses provided were from those involved in the TPE industry representing a mix of TPE inspection bodies/conformity assessment bodies and manufacturers, owners, importers and distributors of TPE as these are the parts of industry which will be affected by the changes to the legislation. The responses indicated that the majority supported a 24-month period of continued acceptance of pi marked TPE on the GB market. Reasons provided for supporting a longer period of acceptance included doubts over the capacity of GB appointed bodies to meet the demand for GB conformity assessments and the transfer of existing type approvals from EU 27 notified bodies to GB appointed bodies in a 12-month period. It was also presented that the impact of the cost associated with making the change from pi marked TPE to rho marked TPE would be reduced if spread over a longer period.
- 10.3 The full consultation and response can be found on the above website, or copies can be made available for inspection through the contact identified at paragraph 15.1.
- 10.4 In August 2021 a second, informal consultation was conducted with TPE conformity assessment bodies, the British Compressed Gases Association, other Government Departments (e.g. Vehicle Certification Agency and the Health and Safety Executive) and the Health and Safety Executive for Northern Ireland on the draft amendments to the SI. The aim of this informal consultation was to ensure that the amendments made achieved the aims set out in this Explanatory Memorandum.

11. Guidance

- 11.1 Public guidance is not required for this instrument, because there will be no substantive changes to the regulatory requirements for the transport of dangerous goods as a result of it. However, targeted guidance will be prepared for the TPE industry and enforcers of the instrument to ensure that there are no issues with its implementation particularly in relation to market surveillance. Once produced, this will be available at www.gov.uk and copies can be made available for inspection through the contact identified at paragraph 15.1.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is assessed as being within the de minimis threshold.

- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the financial impact of the amendments to business are considered to be within the de minimis threshold i.e. it is uncontroversial and is less than £5m net cost or benefit to UK businesses average per year over the 10-year appraisal or total ~£50m over a 10-year period.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses as some small businesses may benefit from this instrument (such as smaller conformity assessment bodies), whereas for others such as purchasers of TPE, the financial implications will be a direct cost of business.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is provided by regulation 34 of the 2009 Regulations. This will continue to apply save that, by virtue of paragraph 9(1) of Schedule 8 to the Withdrawal Act, the Secretary of State will no longer be required to have regard to how any former EU obligation is implemented elsewhere than in the United Kingdom.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Helen North at the Department for Transport. Telephone: 07977 436937 or email: Helen.north@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Rosalind Wall, Co-Director for the dangerous goods policy area, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Trudy Harrison MP, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State, Trudy Harrison MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment (Amendment) (EU Exit) Regulations 2021 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because: this instrument does not contain provisions falling within paragraph 1(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 requiring it to be made under the affirmative procedure, the amendments being made are minor, not of significant public interest and are no more than those necessary to maintain the operability of retained EU law following the UK’s exit from the EU.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State, Trudy Harrison MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment (Amendment) (EU Exit) Regulations 2021 does no more than is appropriate”.

- 2.2 This is the case because this instrument: does not contain provisions falling within paragraph 1(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 requiring it to be made under the affirmative procedure, the amendments being made are minor and not of significant public interest and no more than those necessary to maintain the operability of retained EU law following the UK’s exit from the EU.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State, Trudy Harrison MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 These are that we are making appropriate amendments to domestic legislation to address deficiencies arising from the withdrawal of the UK from the EU, to ensure that Great Britain continues to recognise qualifying Northern Ireland TPE (as

Directive 2010/35/EU will continue to apply to Northern Ireland under the Northern Ireland Protocol) and to ensure that the Withdrawal Agreement is complied with. The amendments are limited to achieving those purposes. This is covered in detail in section 7 of this Explanatory Memorandum.

4. Equalities

4.1 The Parliamentary Under Secretary of State, Trudy Harrison MP has made the following statement(s):

“The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

4.2 The Parliamentary Under Secretary of State, Trudy Harrison MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Parliamentary Under Secretary of State, Trudy Harrison MP have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

5. Explanations

5.1 The explanations statement has been made in sub-section 7.8 to 7.10 of the main body of this explanatory memorandum.