EXPLANATORY MEMORANDUM TO

THE CARRIAGE OF DANGEROUS GOODS AND USE OF TRANSPORTABLE PRESSURE EQUIPMENT (AMENDMENT) REGULATIONS 2011

2011 No. 1885

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

2. Purpose of the instrument

2.1. This Statutory Instrument amends *The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009* (No. 1348) ("the 2009 Regulations"), which relates to the carriage of dangerous goods by road and by rail, and in so far as they relate to safety advisers, by inland waterway.

2.2. It transposes Directive 2010/35/EU of the European Parliament and of the Council on transportable pressure equipment, which also repeals five earlier Directives:

- Council Directive 76/767/EEC on common provisions for pressure vessels and methods for inspecting them.
- Council Directive 84/525/EEC on seamless, steel gas cylinders.
- Council Directive 84/526/EEC on seamless, unalloyed aluminium and aluminium alloy gas cylinders.
- Council Directive 84/527/EEC on welded unalloyed steel gas cylinders.
- Council Directive 1999/36/EC on transportable pressure equipment.

2.3. Additionally, this instrument makes provision relating to the classification of class 1 (explosives) and revokes *The Classification and Labelling of Explosives Regulations 1983* (No. 1140) as amended ("the 1983 Regulations") which are no longer required.

2.4. It also amends responsibility for performing certain functions under the 2009 Regulations; giving the Secretary of State for Energy and Climate Change responsibilities for competent authority and enforcing functions in relation to class 7 (radioactive material) and the Secretary of State for Defence enforcing authority responsibilities for certain armed forces related transport.

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

3.1. None.

4. Legislative Context

4.1. The 2009 Regulations make provision relating to transportable pressure equipment, in particular they implement Directive 1999/36/EC. That Directive has been replaced by Directive 2010/35/EU which makes changes to the EU regime governing transportable pressure equipment. In order to meet its obligations under EU law, the UK (including

Gibraltar) is required to transpose Directive 2010/35/EU into domestic legislation. This instrument, in its amendment of the 2009 Regulations, does that for Great Britain. Similar Regulations are being prepared by the Health and Safety Executive for Northern Ireland. Gibraltar will make its own legal instrument to ensure it complies with the Directive. In addition to transposing EU law, this instrument also revokes the 1983 Regulations.

4.2. A Transposition Note is at Annex 1.

4.3. The 1983 Regulations make provision about the classification and labelling of explosives. The 2009 Regulations prohibit the carriage of dangerous goods (including explosives, known as class 1) unless the carriage complies with the requirements (including in relation to classification) of the international agreements governing the transport of dangerous goods by road (ADR) and rail (RID). This instrument makes provision to make clear that the competent authority of a party to ADR or RID must carry out the classification of class 1 goods. This amendment to the 2009 Regulations allows for the revocation of the 1983 Regulations.

4.4. The 2009 Regulations sets out who is responsible for carrying out competent authority functions under those Regulations (see in particular regulation 25) and for enforcing the requirements of the Regulations (see in particular regulation 32). This instrument makes certain amendments to those provisions.

5. Territorial Extent and Application

5.1. This instrument applies to Great Britain, except for:

5.1.1. the consequential amendments made by way of regulation 17 and paragraph 1 to 6 of the Schedule, which applies outside Great Britain to the extent that the regulations which they are amending apply outside Great Britain; and

5.1.2. the consequential amendment to Pyrotechnic Articles (Safety) Regulations 2010, which applies to the UK.

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

What is being done and why

7.1. EU legislation on transportable pressure equipment has been revised by Directive 2010/35/EU, which repeals five earlier directives (see para 2.2). To ensure harmonisation for transportable pressure equipment requirements within Great Britain, the Department for Transport (DfT) considers amending the 2009 Regulations to be the best way forward. This Directive has a transposition deadline of 30 June 2011.

7.2. *The United Nations Economic Commission for Europe's European Agreement Concerning the International Carriage of Dangerous Goods by Road* (known as ADR), and its equivalents for Rail (RID) and Inland Waterways (ADN) have been adopted into domestic legislation by the 2009 Regulations. The effect of incorporating aspects of Directive 1999/36/EC on transportable pressure equipment (2010/35/EU's predecessor) into ADR, RID and ADN was consulted on in the process of making the 2009 Regulations. This instrument completes that process by transposing those transportable pressure equipment regulatory aspects with EU rather than wider international application (as in ADR and RID). This instrument and Directive 2010/35 harmonises and removes possible conflicts on the requirements for the approval and certification of transportable pressure equipment (e.g. pressurised cylinders and tanks) arising from Directive 1999/36/EC and the more recent versions of ADR, RID and ADN.

The 1983 Regulations

7.3. This instrument revokes the 1983 Regulations. A review by the Health and Safety Executive (HSE) of health and safety legislation found that the classification and labelling provisions of the 1983 Regulations had become redundant as a result of more recent legislation, and its revocation would remove an unnecessary burden on industry. The ADR and RID regimes implemented by the 2009 Regulations require carriage to comply with the requirements of ADR and RID including in relation to classification. This instrument amends the 2009 Regulations to make explicit that it is for a competent authority of an ADR or RID country to classify class 1 goods. That amendment allows for the revocation of the 1983 Regulations because it removes doubt (that would otherwise be removed by the 1983 Regulations) about who is responsible for such classification.

Restructuring of the Nuclear Regulatory Framework

7.4. This instrument includes amendments to the 2009 Regulations (see regulations 6, 11 and 13) to allow responsibility for the functions in relation to the carriage of class 7 (radioactive material) to be undertaken by the Secretary of State for Energy and Climate Change. The legislative changes are part of the wider Government's objective, announced in February 2011, to restructure the regulation of the civil nuclear industry in the UK. This entails consolidating the relevant regulatory responsibilities of the HSE and DfT into one body – the Office for Nuclear Regulation. Connected to this reform this instrument amends the 2009 Regulations to make the Secretary of State for Energy and Climate Change the main competent authority for class 7 goods and an enforcing authority for their movement.

Secretary of State for Defence

7.5. This instrument amends the 2009 Regulations so that the Secretary of State for Defence is an enforcing authority in relation to carriage of military related goods. This change is made because it is considered appropriate that the Secretary of State for Defence should have such a role given their responsibilities.

Public Consultation

7.6. The Department deemed that as the subject matter of these changes was technical and specialised, and not of general interest to the public, an eight week public consultation was appropriate. Over 250 organisations were e-mailed to alert them to this consultation and relevant documentation was published on DfT's website - dft.gov.uk/consultations. Responses were received from 30 interested parties.

Summary

7.7. Directive 2010/35/EU has a transposition deadline of 30 June 2011; it is legally necessary under the UK's obligations as a member of the EU for this instrument to be made in so far as it implements the Directive.

7.8. This instrument updates the technical provisions, conformity requirements and responsibilities of economic operators, in order to enhance safety and ensure the free movement of transportable pressure equipment within, to and from Great Britain. It also revokes an instrument that is no longer needed, changes some Ministerial function responsibilities in connection with class 7 goods, amends the provisions relating to enforcing authorities and makes other, minor, amendments.

Consolidation

7.9. As this instrument is the first amendment to the 2009 Regulations the Department does not intend to consolidate the relevant legislation. However, the Department has produced an informal consolidated text which is available free of charge – see paragraph 14 ('Contact').

8. Consultation Outcome

8.1. The public consultation from 22 March to 17 May received responses from 30 interested parties. Those consulted included companies which move dangerous goods by road and / or rail, or manufacture transportable pressure equipment (used for moving dangerous goods), emergency services, trade unions, local authority representative groups and other Government departments / agencies.

8.2. The liquefied petroleum gas (LPG) industry (including UKLPG - the UK trade association for this industry) raised concern on whether the new Directive would force operators to comply with a more costly reference temperature standard for new tanks (used to transport LPG by road and rail). Following the consultation we re-confirmed to the industry our intention to ensure no unnecessary regulatory burdens were introduced or retained and that the relevant directives were being re-examined to secure this.

8.3. Other minor clarification changes to the instrument have been made for the benefit of industry.

8.4. The final Impact Assessment - at dft.gov.uk/consultations/ia - provides a more detailed analysis of the consultation responses.

9. Guidance

9.1. A guidelines document on the technical provisions of Directive 2010/35 is currently being prepared by the European Commission.

9.2. An Industry Guide and Code of Practice for the Transport of Explosives by Road has been prepared by the CBI in association with HSE, which is also relevant to other transport modes.

9.3. A news release was issued on 1 April 2011 detailing the creation of the Office for Nuclear Regulation as an agency of HSE.

10. Impact

10.1. A full regulatory Impact Assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available at dft.gov.uk/consultations/ia and is annexed to this Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.

11. Regulating Small Business

11.1. The legislation applies to the small business community.

11.2. To minimise the impact of the requirements on small firms employing up to 20 people, the approach taken includes but is not limited to, simplified inspection.

11.3. Over 20 per cent of consultation responses were from small firms: the 'familiarisation cost' was their main financial concern - the time involved in ensuring the changes are understood and appropriately implemented – as it will be proportionately higher compared to larger businesses. The Department considers these costs to be relatively insignificant and the responses indicate that small firms can cope with them.

12. Monitoring and Review

12.1. This instrument is intended to:

- Maintain the safe movement of dangerous goods by road and rail in this global market.
- Ensure the 'level playing field' continues for British operators involved in the manufacture and sale of new transportable pressure equipment, nationally and internationally.
- Enable British operators to continue to compete effectively and competitively in this global market.

12.2. The Final Impact Assessment provides further detail at 'Benefits' on page 9.

12.3. This instrument includes a clause which imposes a statutory duty for a Ministerial review every five years.

13. Contact

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ANNEX 1

Transposition Note for Directive 2010/35/EU of the European Parliament and 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.

These regulations do no more than is necessary to implement the Directive, including consequential changes to domestic legislation to ensure its coherence in the area to which they apply. i.e. there is no 'gold plating'.

The main elements of the Transportable Pressure Equipment Directive:

Articles	Objectives	Implementation	Responsibility
4 & 6-11	To enhance safety for transportable pressure equipment approved for the inland transport of dangerous goods and ensure free movement within the EU, obligations of economic operators (those involved in the supply chain) are set out in detail, to increase clarity for those operators and the requirements to be fulfilled by the relevant equipment.	Regulation 7 replaces regulation 19 (conformity assessment) with regulations 19 to 19F. Regulation 19 sets out the scope of the obligations. Regulation 19A sets out the general obligations that apply to manufacturers, importers, distributors, owners and operators when transportable pressure equipment is placed or made available on the market, put into service or used. Regulations 19B to 19F set out specific obligations on manufacturers, importers, distributors, owners and operators.	Secretary of State

Articles	Objectives	Implementation	Responsibility
5	To enhance the common framework for the marketing of products within the EU – including transportable pressure equipment – the national carriage conformity assessment provision has been removed. And to enhance safety, the obligations of transportable pressure equipment manufacturers in delegating certain specific tasks to authorised representatives are to be specified, and obligations are also specified for authorised representatives.	Regulation 8 replaces regulation 20 (conformity assessment – national carriage), which is no longer allowed under the Directive, with a new regulation allowing manufacturers to appoint authorised representatives to carry out some of their obligations and setting out the responsibilities of authorised representatives.	Secretary of State
12-16	To ensure a uniform level of performance throughout the EU, conformity assessment procedures – including detailed operational requirements - are provided	Regulations 9 and 10 amend regulations 21 and 22 of the 2009 Regulations to reflect the changes made by the Directive to the procedures for re-assessment of conformity, periodic inspection and repeated use.	Secretary of State
20-26	To eliminate unnecessary costs and administration - whilst also ensuring consistent and uniform levels of performance - common rules for notifying authorities, notified bodies and inspection bodies are provided.	Regulation 12 amends regulation 29 of the 2009 Regulations to update the procedure for appointing a person to carry out the functions of a notified body.	Secretary of State