STATUTORY INSTRUMENTS

1987 No. 116

HEALTH AND SAFETY

The Gas Cylinders (Pattern Approval) Regulations 1987

Made - - - -	*30th January 1987*
Laid before Parliament	*10th February 1987*
Coming into force	*3rd March 1987*

The Secretary of State, being the Minister designated (a) for the purposes of section 2(2) of the European Communities Act 1972 (b) in relation to the regulation of design, construction, verification and inspection of pressure vessels, in exercise of the powers conferred on him by that section, and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and extent

1. These Regulations, which extend to Great Britain, may be cited as the Gas Cylinders (Pattern Approval) Regulations 1987, and shall come into force on 3rd March 1987.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires–

"the Executive" means the Health and Safety Executive;

"the Framework Directive" means the Council Directive No. 76/767/EEC (c) concerning the approximation of the laws of the Member States relating to common provisions for pressure vessels and methods of inspecting them;

"provisional fee" means the fee referred to in Regulation 5;

"Separate Directives" means Council Directives No. 84/525/EEC (d), No. 84/526/EEC (e) and No. 84/527/EEC (f) concerning the approximation of the laws of the Member States relating to seamless steel gas cylinders, seamless unalloyed aluminium and aluminium alloy gas cylinders, and welded unalloyed steel gas cylinders respectively; and any reference in these Regulations to the relevant Separate Directive is a reference to the Separate Directive which relates to the type of gas cylinder concerned.

(2) References in these Regulations to EEC pattern approval of a type of gas cylinder include references to EEC pattern approval of a family of gas cylinders, that is to say, gas cylinders from the same factory differing only in length within the following limits–

(a) the minimum overall length must not be less than 3 times the external diameter of the cylinder,

(b) the maximum overall length must not be more than 1.5 times the overall length of the cylinder tested.

(3) Unless the context otherwise requires, any reference in these Regulations to–

(a) a numbered Regulation, is a reference to the Regulation so numbered in these Regulations,

(a) S.I. 1977/1718.
(b) 1972 c.68.
(c) OJ No. L262, 27.9.1976, p.153.
(d) OJ No. L300, 19.11.84, p.1.
(e) OJ No. L300, 19.11.84, p.20.
(f) OJ No. L300, 19.11.84, p.48.

(b) a numbered paragraph, is a reference to the paragraph so numbered in the Regulation in which that reference appears.

Application for approval

3.—(1) An application by a manufacturer for EEC pattern approval of a type of gas cylinder may be made to the Executive.

(2) The application shall be made in writing and shall contain such information and be supported by such documents as the Framework Directive and the relevant Separate Directive require, and such further information and supporting documents as the Executive may reasonably require.

(3) The manufacturer shall make available to the Executive such samples of gas cylinders as the relevant Separate Directive requires.

Grant of EEC pattern approval

4.—(1) On receiving an application under Regulation 3, the Executive shall, on payment of the provisional fee, carry out or cause to be carried out on its behalf such checks, examinations and tests as are required for EEC pattern approval under the Framework Directive and the relevant Separate Directive.

(2) If the results of the checks, examinations and tests are satisfactory, the Executive shall grant EEC pattern approval and issue an EEC pattern approval certificate to the applicant.

(3) The certificate issued shall–

(a) be in accordance with the model set out in the relevant Separate Directive, and

(b) be accompanied by the technical annex specified in that Directive, and such descriptions and drawings as are necessary to identify the pattern and, where it is appropriate, to explain how it functions.

(4) The Executive shall not proceed with an application under this Regulation in any case where to its knowledge an application for EEC pattern approval in respect of the same pattern of gas cylinder has previously been made to another authority which, under the law of any Member State, is authorised to grant such approval for the purposes of the Framework Directive and the relevant Separate Directive.

Fees

5.—(1) The provisional fee payable under Regulation 4 shall be equal to the amount which the Executive estimates it will incur in, or in connection with, carrying out or causing to be carried out the functions referred to in that Regulation in respect of the application concerned.

(2) Where the costs incurred by the Executive are greater than the provisional fee, the difference between those costs and that fee shall be payable by the manufacturer to the Executive, and where those costs are less than the provisional fee, the difference between those costs and that fee shall be repayable by the Executive to the manufacturer.

(3) For the purposes of estimating the provisional fee and ascertaining the costs incurred by it the Executive may determine the cost of employing an officer for any period on work appropriate to his grade by reference to the average cost to it of employing officers of his grade for that period.

Withdrawal of approval

6. The Executive shall withdraw an EEC pattern approval granted under Regulation 4 if it has reason to believe that–

(a) the approval should not have been granted, or

(b) gas cylinders of the type for which the approval was granted fail to conform to the approval and either–

(i) the cylinders concerned constitute a safety hazard, or

(ii) the manufacturer has failed to comply with a written request from the Executive to make within the period specified in the request, the appropriate manufacturing changes necessary to conform to the approval;

except that the approval need not be withdrawn if the changes are minimal, or have no fundamental effect on the design of the cylinder or on manufacturing methods.

Notices of withdrawal or refusal

7. On taking a decision refusing to grant EEC pattern approval or withdrawing an approval the Executive shall, as soon as practicable thereafter, send to the manufacturer a notice in writing of that decision stating the exact grounds on which it was based and informing the manufacturer of his right to apply for a review under Regulation 8 and of the time limit for making such an application referred to in paragraph (2) of that Regulation.

Review

8.—(1) A manufacturer who is aggrieved by a decision of the Executive refusing to grant EEC pattern approval or withdrawing an approval may apply to the Secretary of State for a review of the decision.

(2) An application for review shall be made by written notice to the Secretary of State and shall be lodged not later than 14 days from the date on which the manufacturer received the notice from the Executive referred to in Regulation 7.

(3) A notice of application for review shall state the grounds on which the application is made and shall be accompanied by–

(a) a copy of the manufacturer's application for EEC pattern approval and of every other document submitted to the Executive by the manufacturer in connection with the application, and

(b) a copy of the notice from the Executive referred to in Regulation 7.

(4) On an application for review the Secretary of State shall have the power to do anything which the Executive is authorised or required to do by paragraph (1) of Regulation 4 and shall, if he determines to grant EEC pattern approval, issue a certificate of approval in accordance with paragraph (3) of that Regulation.

(5) On an application for review the Secretary of State may–

(a) hold an inquiry in connection therewith, and

(b) appoint an assessor for the purpose of assisting with the review or any such inquiry.

(6) If, on conducting a review, the Secretary of State confirms the decision of the Executive, he may require payment of any fees and costs which he has incurred in conducting the review from the manufacturer and for the purposes of this paragraph the Secretary of State may determine the cost of employing an officer for any period on work appropriate to his grade by reference to the average cost to the Secretary of State of employing officers of his grade for that period.

9.—(1) Subject to paragraph (2), no manufacturer shall affix to a gas cylinder–

(a) a pattern approval mark described in the Framework Directive or any mark liable to be confused with such a mark unless the cylinder is of a type for which EEC pattern approval is in force;

(b) a pattern approval mark described in one of the Separate Directives or any mark liable to be confused with such a mark unless the cylinder is of a type for which EEC pattern approval, granted for the purposes of that Directive, is in force.

(2) Paragraph (1) does not apply to a sample cylinder to be submitted to the Executive in connection with an application for pattern approval.

(3) Paragraph (1) shall have effect as if it were a health and safety regulation made under section 15 of the Health and Safety at Work etc. Act 1974 (**a**) and the provisions of that Act as regards enforcement and offences shall apply to that paragraph.

(4) It shall be a defence to a charge of committing an offence under sub-paragraphs (a) and (b) of paragraph (1) for the manufacturer to show that he neither knew nor had

(**a**) 1974 c.37; section 15 was amended by the Employment Protection Act 1975 (c.71), Schedule 15, p.6.

reasonable grounds to believe that the cylinder was not of a type, in relation to an offence charged under sub-paragraph (a), for which EEC pattern approval was in force or, in relation to an offence charged under sub-paragraph (b), for which EEC pattern approval, granted for the purposes of the Separate Directive in question, was in force.

Signed by order of the Secretary of State.

David Trippier
Parliamentary Under Secretary of State,
Department of Employment

30th January 1987

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement those provisions of Council Directives 76/767/EEC (OJ No. L262 p.153), 84/525/EEC (OJ No. L300 p.1), 84/526/EEC (OJ No. L300 p.20) and 84/527/EEC (OJ No. L300 p.48) which relate to the pattern approval of gas cylinders. The Regulations:

(a) enable manufacturers to make applications for pattern approval to the Health and Safety Executive (Regulation 3);

(b) provide for the Executive to grant pattern approval and issue a certificate of such approval if satisfied that a type of gas cylinder conforms with the appropriate requirements of the Directives (Regulation 4);

(c) empower the Executive to withdraw approval if it should not have been granted or if gas cylinders of the type for which an approval was granted fail to conform with it (Regulation 6);

(d) enable manufacturers to apply to the Secretary of State for a review of a decision by the Executive to refuse or withdraw pattern approval (Regulation 8);

(e) make it an offence for a manufacturer to affix a pattern approval mark described in the Directives to a gas cylinder if it is not of a type for which the appropriate pattern approval is in force (Regulation 9).

ISBN 0-11-076116-2

£1.10 net

Reprinted 1993
Printed in the UK by HMSO
831/WO2356 C1 11/93 3238724 19542