

**EXPLANATORY MEMORANDUM TO THE
THE CARRIAGE OF EXPLOSIVES REGULATIONS (NORTHERN IRELAND) 2010**

2010 No. 59

1. This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.

It contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 This Statutory Rule regulates the carriage of dangerous goods (explosives and certain substances controlled in Northern Ireland as if they were explosives) by road and rail in Northern Ireland. In so far as it relates to the training and examination of, and the issue of vocational training certificates to, safety advisers, it also regulates the carriage of dangerous goods by inland waterway. It replaces the Carriage of Explosives Regulations (Northern Ireland) 2006 (S.R. 2006/182).

2.2 It transposes certain Directives of the European Community:

- (i) It transposes the new Directive of the Parliament and Council on the Inland Transport of Dangerous Goods (the Dangerous Goods Directive) ¹**2008/68/EC**. This Directive is the latest in a succession of European legislation applying RID (Rail), ADR (Road) and safety adviser qualifications (including for inland waterway.) The new Directive consolidates and replaces five directives and takes into account technical progress as well as ensuring the continued safe and secure transport of dangerous goods.

The Directives being consolidated and replaced are:

- Council Directive 94/55/EC on the transport of dangerous goods by road.
- Council Directive 96/49/EC on the transport of dangerous goods by rail.
- Council Directive 96/35/EC on the appointment and vocational qualification of safety advisers for the transport of dangerous goods by road, rail and inland waterway.
- Council Directive 2000/18/EC on the minimum examination requirements for safety advisers for the transport of dangerous goods by road, rail and inland waterway.
- Council Directive 82/714/EEC on the technical requirements for inland waterway vessels.

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

3.1 None

4. **Legislative Context**

4.1 International agreements based on the UN Transport of Dangerous Goods Model Regulations regulate the transport of dangerous goods by road and by rail:

¹ OJ No L260, 30.9.2008, p.13.

- (i) the European Agreement concerning the international carriage of dangerous goods by road (ADR); and
 - (ii) the European Agreement concerning the international carriage of dangerous goods by rail (RID).
 - (iii) the European Agreement concerning the international carriage of dangerous goods by inland waterway (ADN).
- 4.2 The United Kingdom is required to apply the provisions of ADR, RID to national transport within its territory because the Dangerous Goods Directive requires ADR and RID to be applied (although the UK, like other member States of the European Community, is permitted to modify in certain ways how ADR and RID are applied within its territory.)

The Regulations transpose the provisions of ADN in respect of training, examination and issuing of vocational training certificates to, safety advisers.

In order to meet its obligations under EC law, the UK is required to transpose 2008/68/EC into domestic law. These Regulations do that for carriage in Northern Ireland. The Department of Enterprise, Trade and Investment is making similar Regulations for other dangerous goods.

These Regulations are made under powers in the Health and Safety at Work (Northern Ireland) Order 1978. In respect of the Dangerous Goods Directive, they also rely on paragraph 1A of Schedule 2 to the European Communities Act 1972 to allow for references to that Directive to be references to it as it is amended from time to time.

5. Territorial Extent and Application

- 5.1 This instrument applies to the whole of Northern Ireland.

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 Secretary of State for Northern Ireland is required to implement the Dangerous Goods Directive in respect of explosives and certain substances that are controlled in Northern Ireland as if they were explosives. The Directive requires, subject to certain exemptions, member States to implement in national legislation the full range of provisions in the European Agreement Concerning the International Carriage of Dangerous Goods by Road (known as ADR) and the Regulation concerning the International Carriage of Dangerous Goods by Rail (known as RID). As the agreements are subject to biennial review, the Framework Directive itself is amended on the same basis to apply the latest revisions to the agreements.
- 7.2 As part of the simplification process, the 2009 Regulations have been drafted in such a way so as to break the two yearly cycle of domestic transposition by relying on legal powers to refer to the international modal agreements and the Dangerous Goods Directive as they are amended in future. This will avoid the

necessity to make new or amending Regulations every two years with the consequent benefits of greater certainty to users of the Regulations and savings in respect of public resources. There will be a continuing need to review whether any particular future changes to the international requirements will require amendment of the Regulations. The Regulations (by virtue of “incorporating” Sub-section 1.6.1.1 of ADR and RID) provide that when a new edition of ADR or RID comes into effect, the superseded edition may continue to be used for six months. The Secretary of State will seek to ensure that Parliament, the dangerous goods industry and others with an interest in dangerous goods transport continue to be updated on changes to the international framework.

Part of the simplification process involves the inclusion in the Regulations of a power for the Secretary of State to issue exemptions from the Regulations where those exemptions are provided for by the Dangerous Goods Directive (regulation 12). These exemptions relate to:

- (i) Derogations under article 7 (2) to (4) which allow member States to be exempt from certain requirements of the Dangerous Goods Directive. These derogations may change or become redundant over a fairly short space of time.
- (ii) Transitional provisions under article 8 which allow certain provisions, not otherwise permitted under the Dangerous Goods Directive to be maintained in some situations; for example provisions relating to old tanks, ie tanks that were constructed lawfully to standards other than harmonised European standards before harmonised standards were compulsory. It is anticipated that these transitional provisions will become increasingly irrelevant over time.
- (iii) One particular advantage of the exemption provision is that it will provide greater flexibility to react more quickly to technical changes in the dangerous goods environment. A consultation provision is included in respect of substantive changes to the exemptions. In introducing this exemption power into the Regulations, the Northern Ireland Office is seeking to maintain a proper balance between ensuring proper scrutiny of health and safety provisions whilst providing for an appropriate degree of flexibility in these technical areas.
There will be a document issued under regulation 12 that will come into effect at the same time as these Regulations come into operation. The Secretary of State is taking steps to publish it and make it available on the Office’s website and from The Stationery Office

8. Consultation outcome

- 8.1 A full consultation exercise was carried out on the proposed Regulations to transpose EU Directive 2006/89Ec and 2006/90/EC. The consultees included individuals and bodies representative of section 75 of the Northern Ireland Act 1998 and other organisation with an interest in equality and related issues (including each member of the Northern Ireland Assembly. There were no adverse responses in relation to the proposed Regulations

Great Britain carried out a 12 week consultation exercise to transpose EU Directive 2008/68/EC. The consultees included representatives from the explosives industry with links to Northern Ireland.

In view of the urgency in moving to the 2009 position informal contacts were made with the major stake holders involved in the carriage of explosives and there were no adverse responses

9. Guidance

9.1 Guidance on the Regulations, where specifically requested by industry has been produced (eg. the requirements for safety advisers) and will accompany the Regulations.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal as most changes to the Regulations result in benefits and savings to business.

10.2 The impact on the public sector is the reduction in the requirement to transpose the directive every 2 years.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to provide for exemptions in the Regulations from certain requirements where the quantity of goods carried is below certain thresholds.

11.3 The basis for the final decision on what action to take to assist small business was agreed at UNECE level.

12. Monitoring and review

12.1 The Regulations are monitored and will be reviewed after 6 months. There is a process in place for reviewing the international framework.

13. Contact

13.1 Eric Kingsmill at the Northern Ireland Office email: Eric.Kingsmill@nio.x.gsi.gov.uk can answer any queries regarding the instrument.

**SHORT IMPACT ASSESSMENT (SUMMARY INTERVENTIONS AND
OPTIONS)**

FOR

**THE CARRIAGE OF EXPLOSIVES REGULATIONS (NORTHERN IRELAND)
2010**

1. The following pages contain a copy of the Short Impact Assessment (Summary: Intervention and Options) that was conducted in respect of the corresponding Great Britain Regulations.

2. The Secretary of State is of the opinion that the analysis and the considerations set out in the Great Britain Impact Assessment can be applied directly to Northern Ireland. There is no reason to doubt that, where appropriate and on a proportionate basis, the costs and benefits for Northern Ireland would be similar to those in Great Britain.

**Northern Ireland Office
March 2009**

Summary: Intervention & Options

Department /Agency: Department for Transport	Title: Impact Assessment of The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009	
Stage: Consultation	Version: Final	Date: 20 June 2008
Related Publications:		

Available to view or download at:

<http://www.dft.gov.uk/pgr/freight/dgt1>

Contact for enquiries: Caroline Billingham - DfT

Telephone: 0207 944 5706

What is the problem under consideration? Why is government intervention necessary?

To introduce new requirements related to the safe carriage of dangerous goods through statutory instrument under the Health and Safety at Work Act.

The European Commission has adopted the new Directive (awaiting number) which provides amended regulations on the safe carriage of dangerous goods. The European Commission has made these changes to maintain and improve the safe carriage of dangerous goods - with benefits to industry, the public and the environment.

These regulations are reviewed and changes transposed into UK law currently every 2 years.

What are the policy objectives and the intended effects?

The policy objectives are to promote safety: effective regulation seeks to minimise the risks in transporting dangerous goods, ensuring these goods are packaged and carried in a way that prevents leakage and protects the population, environment and economy. Secondly, to promote a level playing field: dangerous goods are transported within the UK and internationally. It is essential each country applies broadly the same regulations to minimise the burden on industry to enable industry to transport the goods across borders in compliance with the regulations.

What policy options have been considered? Please justify any preferred option.

The European Commission has already adopted (with support of the UK) the Directive and the dangerous goods industry has to comply with the new regime by July 2009. The UK is therefore amending legislation accordingly to bring it in line with the new regulations. Failure to implement the regulations could result in infraction proceedings being taken against the department. We could also face potential actions in damages brought by industry, who claimed to have suffered a loss as a result of our failure not to implement.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The policy is constantly reviewed through working party meetings of all member states who are contracting parties to the Directive.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

.....Date:

Summary: Analysis & Evidence

Policy Option:	Description: To amend UK Transport of Dangerous Goods legislation to ensure compliance with EC legislation on the carriage of dangerous goods.
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' The dangerous goods industry will incur a initial one-off cost in the region of about £600,000. This initial cost is offset within the fourth year of the regulations and will deliver ongoing annual cost savings of around £145,000.	
	One-off (Transition)	Yrs		
	£ 608k to £614k	1		
	Average Annual Cost (excluding one-off)			
	- £158k to - £133k	10	Total Cost (PV)	- £696k to - £501k
Other key non-monetised costs by 'main affected groups' None				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' These regulations build on the current regulations to ensure the safe carriage of dangerous goods. There are around 45 reported incidents a year involving the carriage of dangerous goods and these regulations aim to maintain and improve safety.	
	One-off	Yrs		
	£ N/A			
	Average Annual Benefit (excluding one-off)			
	£ N/A		Total Benefit (PV)	£ N/A
Other key non-monetised benefits by 'main affected groups' Level playing field for industry. Direct referencing of the directive (a key industry requirement) to ensure continued international movement of dangerous goods uninhibited by european boundaries. Continued ability to operate in a global market.				

Key Assumptions/Sensitivities/Risks Although regulations are currently updated every 2 years we assume that these changes will be in force for the foreseeable future and therefore the costs are reflected on a ten year cycle. If we do not comply with the directive the department will be open to infraction proceedings. There is also a risk that court proceedings for losses could be made as a result of our failure to implement.

Price Base Year 2007	Time Period Years 10	Net Benefit Range (NPV) £501k to £696k	NET BENEFIT (NPV Best estimate) £599k
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What is the geographic coverage of the policy/option?		Great Britain		
On what date will the policy be implemented?		July 2009		
Which organisation(s) will enforce the policy?		HSE, VOSA, Police		
What is the total annual cost of enforcement for these organisations?		No change		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£ none		
What is the value of changes in greenhouse gas emissions?		£ 0		
Will the proposal have a significant impact on competition?		Yes, positive		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£ 0	Decrease of	£0
		Net Impact	£0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Introduction

The United Kingdom is required to transpose the European Directive relating to the land carriage of dangerous goods. These regulations maintain and improve safety to the benefit of human health and the environment. They also ensure there is a level playing field across European transport markets, promoting competition in the provision of transport services, to the benefit of users. The carriage of dangerous goods by other modes is being transposed separately.

We are also required to transpose the Transportable Pressure Equipment Directive which governs the placing on the market and use of such equipment. The UK intends to transpose both of these directives by virtue of one statutory instrument – “The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (CDG 2009).

Background

By virtue of the Dangerous Goods Directive, the UK is required to implement the requirements of RID (Rail) and ADR (Road) for domestic as well as for international carriage of dangerous goods by rail and road. RID and ADR are annexes to the Directive. ADN (in relation to inland waterways) is also an annex but CDG does not, as is permitted by the directive, implement any part of ADN except that part which relates to the granting of safety advisor qualifications. RID and ADR are updated every 2 years (a new edition of each comes into force on 1st January 2009). RID and ADR are currently implemented through CDG 2007 (which implemented the 2007 edition).

The Directive is the latest in a succession of directives applying RID and ADR primarily to take into account technical progress and ensure the continued safe and secure transport of dangerous goods.

To simplify the legislation, the Commission has decided to consolidate 5 Directives into one. It is this Directive that we are required to implement into our domestic legislation.

Preparation of the IA

The IA is at the public consultation stage and estimated costs are based on DfT statistics and preconsultation evidence received from industry for certain changes brought by the new regulations.

As part of the consultation exercise we aim to gather more costs from industry on the impact of the changes.

Options

There are no options other than to transpose the Directives into UK regulations. As the regulations have already been adopted by the European Commission industry will have to comply with the new regime from July 2009. The UK is therefore amending legislation accordingly to bring it in line with the new regulations. Not to do so would introduce confusion to industry undertaking international journeys and could have a detrimental effect on safety.

The current regulations CDG 2007 consolidated the Carriage regulations which separately covered different classes of dangerous goods. This resulted in one set of regulations covering all classes of dangerous goods. In line with industry wishes, we also made more use of referencing the technical annexes of RID and ADR.

In creating the 2007 regulations we took a staged approach by introducing one set of regulations for UK which allowed time for stability in the regulations. Through pre consultation and stakeholder feedback, the proposed 2009 regulations aim to go further by now directly referencing the European Agreements RID and ADR. This will enable GB to produce domestic legislation that does not require transposition of the Directives every 2 years. This will then enable the freedom of amending technical requirements with Industry engagement through administrative processes.

Analysis of Impacts

Groups and Sectors affected

The sectors affected by the change related to the carriage of DG (dangerous goods) are:

- Carriers (Road, Rail)
- Consignors
- Loaders
- Fillers
- Inspection Bodies
- Tank & Packaging Manufacturers

The main industries impacted on by the proposed changes are:

- Road Hauliers
- Rail Carriers
- Packaging Industry
- Chemical
- Paints
- Gases
- Nuclear
- Explosives
- Petrol/Diesel

These regulations apply to the whole of Great Britain.

Summary of main costs and benefits taken into account in the impact assessment for the carriage of dangerous goods regulations 2009

The UK consults industry on each proposal for change as they are debated by technical experts in the relevant international forums. Some of the changes have been proposed by industry in the first instance.

Costs

Not all changes have been costed as they are relatively minor, but costs for all changes will be provided during the formal consultation. The costs identified here are those that industry considers will have the main impact and are based on their estimates. Although regulations are currently updated every 2 years we assume that these changes will be in force for the foreseeable future and therefore the costs are reflected on a 10 year cycle.

The main costs, which are industry-wide (i.e. they will not be borne by individual businesses) are in relation to:

- Marking and labelling for environmentally hazardous substances – **£600k one-off cost**;
- Requirements to fill to more than 80% (or less than 20%), road tank vehicles intended to carry liquids and liquefied gases which are not divided by partitions or surge plates of not more than 7500 litre capacity to prevent undue movement of the liquids when it is being transported - **£57k per annum**;
- New labels for chlorine, which has been reclassified to reflect its oxidising nature - **£30k per annum**;
- New test requirements for all intermediate bulk containers (IBCs) intended to carry liquids and manufactured after 31 December 2010, and new marking requirements to show maximum permitted stacking loads - **£15k per annum**;
- New packing instructions and portable tank provisions for chlorosilanes - **£6k - £12k one-off cost**; and
- New packing instructions for bromine – **£2k one-off cost**.

Cost savings

The regulations also introduce changes which will deliver cost savings for industry. The main ones are as follows:

- New definitions and restructured regulations for mobile explosives manufacturing units, which carry various dangerous goods on the road to enable explosives to be produced on-site - **£25k - £50k savings per annum**; and
- New model instructions in writing with a standardised format and harmonised content and requirement that they no longer need to be in the language of each of the countries of origin, transit and destination, but only in the language of the driver and vehicle crew - **£210k savings per annum**.

Impact on small firms

The majority of changes reflected in the draft 2009 regulations are clarifications and relaxations. These regulations will continue the provision for exemptions from the full scope of the regulations through limited quantity thresholds, which are of greater

proportionate benefit to small firms. The additional higher-impact changes, will mainly affect large businesses. The higher cost-impact changes are likely to have little or no significant additional impact on SMEs.

Benefits

We have not costed benefits, as opposed to cost-savings, but there are benefits which will reduce the burden on industry, and which they have called for, as follows:

- We have opted for far greater direct referencing of the Directive. This has been high on industry's priorities to simplify the number of texts and cross-referencing they have to refer to in considering the regulatory requirements;
- Regulations which do not require us to transpose the Directive every two years after 2009. This will deliver policy and legal resource savings in the Department, but importantly will deliver resource benefits in industry as they will only have to become familiar with one new regulatory text (the Directive).

Carbon assessment and other environmental impacts

There is no change in transport fuel consumption as a result of these regulations. The regulations maintain and improve safe transport, including safety to the environment.

Competition assessment

In 2007 there were an estimated 53 000 international journeys undertaken by GB operators carrying dangerous goods. Foreign hauliers also transport dangerous goods within the UK. These regulations help to ensure there is a level playing field across European transport markets, promoting competition in the provision of transport services to the benefit of users.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

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	Average Annual Benefit (excluding one-off)			
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Other key non-monetised benefits by 'main affected groups'				
Level playing field for industry. Direct referencing of the directive (a key industry requirement) to ensure continued international movement of dangerous goods uninhibited by european boundaries. Continued ability to operate in a global market.				

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The sectors affected by the change related to the carriage of DG (dangerous goods) are:

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- Petrol/Diesel

These regulations apply to the whole of Great Britain.

Summary of main costs and benefits taken into account in the impact assessment for the carriage of dangerous goods regulations 2009

The UK consults industry on each proposal for change as they are debated by technical experts in the relevant international forums. Some of the changes have been proposed by industry in the first instance.

Costs

Not all changes have been costed as they are relatively minor, but costs for all changes will be provided during the formal consultation. The costs identified here are those that industry considers will have the main impact and are based on their estimates. Although regulations are currently updated every 2 years we assume that these changes will be in force for the foreseeable future and therefore the costs are reflected on a 10 year cycle.

The main costs, which are industry-wide (i.e. they will not be borne by individual businesses) are in relation to:

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- Requirements to fill to more than 80% (or less than 20%), road tank vehicles intended to carry liquids and liquefied gases which are not divided by partitions or surge plates of not more than 7500 litre capacity to prevent undue movement of the liquids when it is being transported - **£57k per annum**;
- New labels for chlorine, which has been reclassified to reflect its oxidising nature - **£30k per annum**;
- New test requirements for all intermediate bulk containers (IBCs) intended to carry liquids and manufactured after 31 December 2010, and new marking requirements to show maximum permitted stacking loads - **£15k per annum**;
- New packing instructions and portable tank provisions for chlorosilanes - **£6k - £12k one-off cost**; and
- New packing instructions for bromine – **£2k one-off cost**.

Cost savings

The regulations also introduce changes which will deliver cost savings for industry. The main ones are as follows:

- New definitions and restructured regulations for mobile explosives manufacturing units, which carry various dangerous goods on the road to enable explosives to be produced on-site - **£25k - £50k savings per annum**; and
- New model instructions in writing with a standardised format and harmonised content and requirement that they no longer need to be in the language of each of the countries of origin, transit and destination, but only in the language of the driver and vehicle crew - **£210k savings per annum**.

Impact on small firms

The majority of changes reflected in the draft 2009 regulations are clarifications and relaxations. These regulations will continue the provision for exemptions from the full scope of the regulations through limited quantity thresholds, which are of greater

proportionate benefit to small firms. The additional higher-impact changes, will mainly affect large businesses. The higher cost-impact changes are likely to have little or no significant additional impact on SMEs.

Benefits

We have not costed benefits, as opposed to cost-savings, but there are benefits which will reduce the burden on industry, and which they have called for, as follows:

- We have opted for far greater direct referencing of the Directive. This has been high on industry's priorities to simplify the number of texts and cross-referencing they have to refer to in considering the regulatory requirements;
- Regulations which do not require us to transpose the Directive every two years after 2009. This will deliver policy and legal resource savings in the Department, but importantly will deliver resource benefits in industry as they will only have to become familiar with one new regulatory text (the Directive).

Carbon assessment and other environmental impacts

There is no change in transport fuel consumption as a result of these regulations. The regulations maintain and improve safe transport, including safety to the environment.

Competition assessment

In 2007 there were an estimated 53 000 international journeys undertaken by GB operators carrying dangerous goods. Foreign hauliers also transport dangerous goods within the UK. These regulations help to ensure there is a level playing field across European transport markets, promoting competition in the provision of transport services to the benefit of users.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No