

EXPLANATORY MEMORANDUM TO

THE CARRIAGE OF DANGEROUS GOODS AND USE OF TRANSPORTABLE PRESSURE EQUIPMENT (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

- 1.1 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 instrument further amends the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (S.I. 2009/1348) (“the 2009 Regulations”), to ensure that Great Britain (“GB”) has a functioning statute book at the end of the transition period (“IP completion day”).
- 2.2 This instrument will amend references predicated on the UK being a member State of the European Union (“EU”), maintain the dangerous goods regulatory framework and the international process behind it, including the power for the Secretary of State to grant authorisations and implement new exceptions to and apply existing derogations from the standards imposed by 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”). It will also maintain recognition of the EU pi marking for Transportable Pressure Equipment (“TPE”) and allow for the optional use of a UK ‘rho’ marking for TPE either manufactured in GB or imported and conformity assessed in GB by appointed inspection bodies. The instrument will also implement an aspect of the Protocol on Ireland/Northern Ireland (“NIP”), part 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 19th October 2019 (“the Withdrawal Agreement”), in relation to TPE on the GB market which has either been manufactured in Northern Ireland or conformity assessed in Northern Ireland.

Explanations

What did any relevant EU law do before exit day?

- 2.3 The 2009 Regulations transposed the Dangerous Goods Directive and, following amendments made by the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment (Amendment) Regulations 2011 (S.I. 2011/1885), 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”). (The Dangerous Goods Directive and the TPE Directive 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). The Directives provide for the safe and secure transport of dangerous goods by road and rail, 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.

Why is it being changed?

- 2.4 The requirements for those involved in the carriage of dangerous goods by road and rail within GB are not being changed by this instrument. The requirements for those operating in the transportable pressure equipment industry will be amended so that what were, prior to this instrument, notified bodies in GB, can continue their role as appointed bodies for TPE that is either for non-EU or non-Northern Ireland use, or for transporting dangerous goods between the GB and the EU or Northern Ireland to the extent permitted by Article 4 of the Dangerous Goods Directive. It will also confirm that there is continued recognition of the pi marking and the introduction of the optional use on the non-EU or non-Northern Ireland market of the ‘rho’ marking for GB conformity assessed TPE. As a result of the NIP, TPE on the market in Northern Ireland will need to continue to comply with the requirements of the TPE Directive which means that only TPE which is compliant with that Directive (and marked with the pi marking) can be placed or made available on the market in Northern Ireland. This instrument will recognise TPE on the GB market which bears the additional mark of ‘UK(NI)’ which is a requirement of the NIP, alongside the pi mark. Without recognising ‘UK(NI)’ as an additional marking on TPE such TPE would not be able to enter the GB market.

What will it now do?

- 2.5 The 2009 Regulations, as amended by this instrument, will continue to function as before by ensuring that the regulatory framework for the carriage of dangerous goods by road and rail will remain in place on IP completion day. The amendments made by this instrument will revise references predicated on the UK being a member State of the EU and retain the power for the Secretary of State to grant authorisations, apply existing derogations approved prior to IP completion day and issue new exceptions. Amendments made to the 2009 Regulations will maintain recognition of the EU pi marking, and conformity assessments and inspections conducted by notified bodies and allow for the optional use of a UK ‘rho’ marking for TPE which has been conformity assessed by appointed bodies. It will also recognise TPE on the GB market which has been manufactured and/or conformity assessed by an inspection body in Northern Ireland and bears the ‘UK(NI)’ mark in addition to the pi marking.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland.
- 3.3 The sole instrument being amended, the 2009 Regulations, apply to the whole of Great Britain. For the purposes of Standing Order No. 83P, the instrument does not apply to England only, or England and Wales only.

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 The Parliamentary Under Secretary of State, Rachel Maclean MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment (Amendment) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

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)) will make provision for repealing the European Communities Act 1972, will convert EU law as it stood immediately before IP completion day into domestic law and preserve 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 the Dangerous Goods Directive in GB and were amended by the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment (Amendment) Regulations 2011, which transposed The TPE Directive. The 2009 Regulations have been further amended by the Carriage of Dangerous Goods (Amendment) Regulations 2019 (S.I. 2019/598) which transposed Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom.
- 6.3 The 2009 Regulations, as amended, adopted, with some variations, Annexes A and B to the European Agreement concerning the International Carriage of Dangerous Goods by Road (commonly known as and referred to in the Regulations as “ADR”) and the Annex to the Regulation concerning the International Carriage of Dangerous Goods by Rail (“RID”). They also implement, to a limited extent, the Regulations annexed to the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterway, where this relates to the training and examination systems for safety advisers and the connected issuing and renewal of vocational driver certificates. Copies of ADR, RID and ADN can be obtained at <http://www.unece.org/trans/danger/publi/adr/adr2019/19contentse.html>, <http://otif.org/fileadmin/new/3-Reference-Text/3B-RID/RID%202019%20E.pdf> and http://www.unece.org/trans/danger/publi/adn/adn2017/19files_e.html respectively. Copies can also be purchased from The Stationery Office (<https://www.tsoshop.co.uk> or 0333 200 2425) or made available for inspection through the contact identified at paragraph 15.1.
- 6.4 The 2009 Regulations imposed obligations upon manufacturers, importers, distributors, owners and operators of TPE, including the use of the pi marking to

indicate conformity with standards and periodic inspection requirements. They also provided for the appointment of inspection bodies, known as notified bodies.

- 6.5 This instrument is being introduced pursuant to powers contained in the Withdrawal Act to ensure that the 2009 Regulations continue to function appropriately in respect of GB on IP completion day, removing deficiencies that would otherwise arise.

7. Policy background

What is being done and why?

- 7.1 The specific deficiencies arising on IP completion day that this instrument corrects are set out below.
- 7.2 A number of terms within the 2009 Regulations are defined with reference to the definitions contained within the TPE Directive in the context of the UK being a member State of the EU. This instrument inserts the new definitions “conformity assessment”, “distributor”, “importer”, “making available on the GB market”, “manufacturer”, “notified body”, “operator”, “owner” and “placing on the GB market” to remedy this deficiency. A number of provisions also refer to the term “relevant member State” so, where the use includes the UK, a further new definition, “relevant territory”, which means GB, Northern Ireland or a member State of the EU, replaces references to “relevant member State”.
- 7.3 The 2009 Regulations place a duty upon UK manufacturers, importers and distributors who, upon discovering that TPE they have placed on the market of the UK or EU presents a risk, must immediately inform the relevant competent authorities in GB, Northern Ireland and EU member States of this risk. They are also required to respond to requests from these competent authorities for information and documents necessary to demonstrate that their TPE complies with standards. Given the safety-critical nature of these duties, this instrument preserves them for pi marked TPE. As UK TPE has not been placed or made available on the EU or Northern Ireland market, the duty for such TPE extends only to cooperating with the GB competent authority. An exception to this approach applies to manufacturers, importers or distributors who become aware of risks posed by their equipment, in which case they must inform both the GB Competent Authority and the Northern Ireland Competent Authority. In accordance with Article 43 of the Withdrawal Agreement, the GB Competent Authority will, in turn, inform the competent authority for each EU member State and the European Commission.
- 7.4 At present, the 2009 Regulations provide that TPE conformity assessments, reassessments of historic TPE previously assessed under previous regimes, periodic inspections and, where required, intermediate inspections, are conducted by notified bodies. These bodies are approved by EU member States who then notify the Commission of the appointment. If neither the Commission nor an EU member State object to the appointment, the body becomes a “notified body” and is allocated an identification number by the Commission. Notified bodies are required to be established in an EU member State. To ensure that the existing notified bodies based only in GB at the current time are able to continue conducting periodic assessments after IP completion day, this instrument provides for the appointment of and allocation of an identification number to “appointed bodies” in GB under the 2009 Regulations.
- 7.5 Appointed bodies will be able to conduct periodic and intermediate inspections of TPE used either on the market outside of the EU and Northern Ireland or for

transporting ADR or RID-compliant dangerous goods between the UK and the EU or Northern Ireland to the extent permitted by Article 4 of the Dangerous Goods Directive. No fee will be charged for notified bodies that wish to become appointed bodies. This instrument will also provide a mechanism for transferring the existing identification number issued by the Commission to GB notified bodies to appointed bodies.

- 7.6 Under the 2009 Regulations and the TPE Directive, conformity assessments on new TPE conducted by notified bodies conclude with the TPE being stamped with the pi marking. To maintain safety standards of TPE on the market in GB, the revised instrument still requires TPE to meet the same standards as pi marked TPE. However, as GB based notified bodies will cease to be able to conformity assess TPE manufactured in the UK because they cease to be ‘notified bodies’ on IP completion day, the amended instrument allows for the optional use of the UK only ‘rho’ marking which places the same obligations and requirements for the manufacture and conformity assessment of TPE on the non-EU and non-Northern Ireland market by appointed bodies. This approach is intended to limit the effect on the business of GB notified bodies following IP completion day. The ‘rho’ marking consists of the Greek letter ‘rho’ taking the form shown in the Schedule to this instrument.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 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. The instrument is also made under sections 8B(1), 8C(1), 23(1) and paragraph 21(b) of Schedule 7 powers in that Act. 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 This instrument amends the 2009 Regulations, which were previously amended by the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment (Amendment) Regulations 2011 and the Carriage of Dangerous Goods (Amendment) Regulations 2019. A review of these instruments will be undertaken after IP completion day with a view to consolidating legislation in this area.

10. Consultation outcome

- 10.1 A public consultation was conducted between 9th August and 6th September 2018. It is publicly available at <https://www.gov.uk/government/consultations/carriage-of-dangerous-goods-and-use-of-transportable-pressure-equipment-reference-changes>. Copies were also sent to stakeholders, including Industry Associations (e.g. the Road Haulage Association, the Chemical Business Industry, the British Aerosol Manufacturers Association and the Institute of Explosives Engineers), other Government Departments and Agencies (e.g. the Ministry of Defence, the Vehicle Certification Agency, the Health and Safety Executive and the Maritime and Coastguard Agency), 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.

- 10.2 Seven responses to the consultation were received. The respondents were supportive of the proposed instrument that was presented. None felt that it involved any significant benefits or disbenefits to the industry.
- 10.3 One respondent asked about TPE and how the current EU derived system for the approval of new TPE and inspection of in-service TPE will be handled as result of EU exit, particularly if there was a no deal situation. The Department has responded to this query by including, in regulation 20 of this instrument, provisions to ensure that notified bodies based only in GB will, as appointed bodies, continue to have a role in the intermediate and periodic inspection of UK TPE.
- 10.4 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.
- 10.5 In June 2019 the optional introduction of the ‘rho’ marking into the instrument was subject to a separate informal consultation with those affected such as UK manufacturers of TPE and existing GB and Northern Ireland notified bodies, the GB competent authority and the Northern Ireland competent authority. No concerns were raised from this consultation and, as the ‘rho’ marking allows those notified bodies who do not wish to re-register with an EU member State the option to remain based in the UK and apply the ‘rho’ marking instead, it was considered by consultees to be a welcome amendment to the instrument.

11. Guidance

- 11.1 Public guidance is not required for this instrument, because there will be no substantive changes to the regulatory requirements as a result of it. However, due to the introduction of the ‘rho’ marking and the requirements of the NIP, targeted guidance will be prepared for the TPE industry and enforcers of the instrument to ensure that there are no issues with its implementation. 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 There is no, or no significant, impact on business, charities or voluntary bodies.
- 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 it deals with maintaining existing regulatory standards.

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 because this instrument will not introduce any additional regulatory requirements.

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 (upon commencement of that paragraph) 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 Withdrawal Act, no review clause is required.

15. Contact

15.1 Helen North at the Department for Transport. Telephone: 07977 436937. Email: Helen.north@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 David Buttery, 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 Rachel Maclean 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

Part 1

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), 9 and 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), 9 and 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), 9 and 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), 9 and 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), 9 and 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 exit 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 offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and 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 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit 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 exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 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.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

- 1.1 The Parliamentary Under Secretary of State, Rachel Maclean 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 2020 does no more than is appropriate.”

- 1.2 This is the case because: this instrument does not make any changes to the regulatory requirements within GB, instead maintaining on IP completion day the regulatory framework that currently exists. This is covered in detail in sections 2, 6 and 7 and sub-section 12.3.

2. Good reasons

- 2.1 The Parliamentary Under Secretary of State, Rachel Maclean 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.”

- 2.2 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 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 sections 6 and 7 of this Explanatory Memorandum.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State, Rachel Maclean MP has made the following statement(s):

“The 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.”

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

“In relation to the instrument, I, Rachel Maclean 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.”

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

5. Legislative sub-delegation

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

“In my view it is appropriate to create a relevant sub-delegated power in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment (Amendment) (EU Exit) Regulations 2020.”

- 5.2 This is appropriate because: on IP completion day, the UK will not be able to issue requests for derogations from Annex I, Section I.1, Annex II, Section II.1, and Annex III, Section III.1 of the Dangerous Goods Directive to the European Commission. Providing the Secretary of State, in respect of Great Britain, with a power to issue exceptions from the requirements and prohibitions arising under Part 2 of the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 in the circumstances identified within this instrument, will maintain that flexibility. The obligation to consult identified bodies and discretion to consult more widely will ensure that exceptions are only issued following expert advice.