

Title: The Carriage of Dangerous Goods and use of Transportable Pressure Equipment Regulations 2009: Proposed amendment Lead department or agency: DfT Other departments or agencies: HSE	Impact Assessment (IA)
	IA No: DfT00107
	Date: 08/06/2011
	Stage: Final
	Source of intervention: EU
	Type of measure: Secondary legislation
Contact for enquiries: Ian Boddington: 020 7944 2762 ian.boddington@df.t.gsi.gov.uk	

Summary: Intervention and Options

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

There is the potential for conflicting regulations on the equipment used for transporting dangerous goods by road and rail - domestic regulations implement Directive 1999/36 and Directive 2010/35 repeals it (and four others) from 1 July 2011. Unless domestic regulations are updated, operators who manufacture / sell this equipment will be unable to obtain certification and approval thereby making it un-saleable.

Separately, a review of Health and Safety legislation identified the Classification and Labelling of Explosives Regulations 1983, as amended, to be no longer required.

What are the policy objectives and the intended effects?

The policy objectives are to promote safety, safeguard the environment, provide a 'level playing-field' for the dangerous goods land transport (road and rail) logistics industry, and remove unnecessary 'red-tape'. The common rules are intended to eliminate unnecessary costs and administrative procedures relevant to the equipments (re)approval, remove technical barriers to trade and minimise the risk of road and rail accidents from the movement of dangerous goods. Regulators and industry will be affected by these minor changes. Repealing the Classification and Labelling of Explosives Regulations will assist in reducing unnecessary 'red tape'.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Do Nothing.

Option 1 (preferred option): The European Commission adopted - with UK support - Directive 2010/35/EU with a 30 June 2011 transposition deadline. Following Regulatory Policy Committee's opinion (3 Feb 2011) and public consultation the preferred option is still to amend The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 to ensure domestic legislation complies with the Directive; but changes beneficial to industry have been made - including removal of a requirement for new tanks to comply with a common reference temperature standard - to ensure no 'gold plating'. This option also retains the CLER revocation provision which most consultee respondents agreed with.

Option 2: Consolidating domestic regulations: Ruled out as impractical and so there is no summary sheet.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** Month/Year

What is the basis for this review? Sunset clause. **If applicable, set sunset clause date:** 7/2016

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Yes

SELECT SIGNATORY Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Mike Penning

Date: 4th July 2011

Summary: Analysis and Evidence

Policy Option 1

Description:

Amendment of 'The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009' (CDG 2009) to transpose Directive 2010/35/EU on transportable pressure equipment.

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: n/a	High: n/a	Best Estimate: 0.30

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	n/a	n/a	N/A
High	n/a	n/a	N/A
Best Estimate	n/a	0.0	0.0

Description and scale of key monetised costs by 'main affected groups'

As the higher cost of new tanks - due to a reference temperature requirement involving the need for new tanks to have thicker skins - has been reviewed and removed from the revised amendment regulations after consultation on the ground of ensuring no unnecessary gold plating, there are now no major costs to main affected groups. More details in the 'Public Consultation' section in the evidence base.

Other key non-monetised costs by 'main affected groups'

The time involved for those involved with the carriage of dangerous goods to ensure they understand the changes made and that they are appropriately implemented.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a	n/a	N/A
High	n/a	n/a	N/A
Best Estimate	n/a	0.035	0.30

Description and scale of key monetised benefits by 'main affected groups'

Revocation of the explosives provision in Classification and Labelling of Explosives Regulations 1983 (CLER: S.I. 1983/1140), and its replacement by amendment to CDG 2009 aligning it with current European requirements, would mean 20-25 per cent of classifications currently conducted annually by HSE would no longer be necessary. This regulatory activity reduction would enable savings of: £20k per annum in fees and £15k per annum in associated costs - detailed under 'Benefits'.

Other key non-monetised benefits by 'main affected groups'

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.
Enable British operators to continue to compete in this 'global market'.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

If the UK does not comply with Directive 2010/35/EU the European Commission is likely to commence infraction proceedings - see 'Risks' in the 'Evidence Base'.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0.035	Net: -0.035	Yes	OUT

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	Great Britain				
From what date will the policy be implemented?	01/07/2011				
Which organisation(s) will enforce the policy?	HSE, VOSA, Police				
What is the annual change in enforcement cost (£m)?	No change				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: n/a		Non-traded: n/a		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: n/a		Benefits: n/a		
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance	No	9
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	9
Small firms Small Firms Impact Test guidance	No	9
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	9
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	<u>The Carriage of Dangerous Goods and Transportable Pressure Equipment Regulations 2009</u>
2	<u>Directive 2010/35/EU on transportable pressure equipment</u>
3	<u>Council Directive 1999/36/EC on transportable pressure equipment</u>
4	<u>Directive 2008/68/EC - inland transport of dangerous goods — OSHA —</u>
5	ADR 2011
6	RID 2011

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	0	0	0	0	0	0	0	0	0	0
Annual recurring cost	0	0	0	0	0	0	0	0	0	0
Total annual costs	0	0	0	0	0	0	0	0	0	0
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	0.035	0.035	0.035	0.035	0.035	0.035	0.035	0.035	0.035	0.035
Total annual benefits	0.035	0.035	0.035	0.035	0.035	0.035	0.035	0.035	0.035	0.035

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Introduction

The European Parliament and the Council of the European Union have adopted Directive 2010/35/EU on transportable pressure equipment. This equipment includes pressurised cylinders and tanks used to transport dangerous goods by road and rail, such as liquefied petroleum gas (LPG), and needs to be regulated to ensure that dangerous goods can be transported safely on our busy road and rail networks. This Directive harmonises and removes any possible conflict on the requirements for the approval and certification of this equipment arising from an older EU Directive (1999/36/EC on transportable pressure equipment) and more recent wider European agreements on the transport of dangerous goods by road and rail (known as ADR and RID respectively).

Directive 2010/35/EU repeals five earlier directives relevant to transportable pressure equipment including Directive 1999/36/EC which is transposed in GB by *The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009* (CDG 2009). Directive 2010/35/EU has an implementation deadline for Member States of 30 June 2011.

Public Consultation

A consultation on the proposed way forward held between 22 March and 17 May received responses from 30 interested parties. The Department is grateful to all who responded and is particularly grateful for the factual evidence provided. Having carefully re-examined the relationship between Directive 2010/35 and Directive 2008/68, the Department re-considered the draft amendment regulations - including Regulation 15 - which would have removed regulation 28(2) of CDG 2009. This draft regulation was included as the Department previously considered that Directive 2010/35 no longer allowed Great Britain to recognise different reference temperatures and standards in the construction of tank shells intended for use in moving liquefied gases by road and rail in Great Britain. Following re-examination of these texts, the Department has decided that the draft Regulation 15 is a 'non-essential requirement' and therefore the UK is not required to implement it. Hence the Option One draft amendment regulations detailed in this final stage impact assessment have been modified to remove this change.

Although this requirement has been removed, we have summarised below the relevant costing information from UKLPG and others received during the consultation:

- LPG industry operates about 800 tankers of various types;
- at the end of their working lives these tanks would have to be replaced with structurally heavier ones;
- industry would then need at least 50 extra vehicles to do the same work as now.

This could then mean:

- greater risk of road traffic accidents;
- risk of greater damage to roads;
- risk of greater damage to the environment - CO₂:1500 tonnes per annum more if and when there was a complete fleet of these vehicles;
- increased capital cost: a new LPG tankers costs between £125,000 to £150,000;
- increase in fuel costs of about £0.5 million per annum;
- cost of extra personnel – estimated at £1.5 million per annum;

However, as detailed above these dis-benefits should not now occur as the proposed Regulation 15 has been deleted from the draft amendment regulations.

Minor clarification changes to the draft regulations have also been made for the benefit of industry.

The concerns raised on consultation with interested parties prior to the UK formally agreeing to apply internationally agreed requirements for transportable pressure equipment (and the carriage of dangerous goods in general which strictly speaking is outside the scope of this consultation) are being carefully considered by the Department.

Transportable Pressure Equipment

This term includes:

- transportable cylinders
- tubes
- gas cartridges
- cryogenic vessels
- tanks, and
- associated valves and cylinders

used for transporting gases as well as hydrogen cyanide, hydrogen fluoride and hydrofluoric acid.

Background

The regulatory framework for the global transport of dangerous goods is agreed by the UN Sub-Committee of Experts for the Transport of Dangerous Goods. Its provisions are set out in the UN Model Regulations which are revised and re-published every two years and form the basis of the internationally agreed mode-specific requirements.

Detailed rules for the international transport of dangerous goods by road are set out in the United Nations Economic Commission for Europe (UNECE) publication known, from its French title, as ADR (Accord dangereux routier). The text for each edition of ADR (re-issued every two years) is agreed by a UNECE committee which usually meets twice per year in Geneva and the UK is represented at these meetings by DfT, which consults key dangerous goods stakeholders before the UK position on the various agenda items is decided. Currently the UK and 46 other States are signatories to ADR (which are known as 'Contracting Parties'). This Agreement between States has no overall enforcing authority; in practice checks are carried out by Contracting Parties and non-compliance is dealt with by national authorities against offenders in accordance with their domestic legislation.

Detailed provisions for the international transport of dangerous goods by rail are published under the OTIF (Organisation intergouvernementale pour les transports internationaux ferroviaires) Convention in a document known from its French title, as RID (Reglement International concernant le transport de marchandises Dangereuses par chemin de fer). OTIF is an intergovernmental organisation with a mainly European membership that includes the UK. The RID Committee usually meets once a year, in different locations, and the UK is again represented by DfT. The text of RID is almost identical to that of ADR, varying only to reflect modal differences.

The EU has adopted the UNECE/OTIF rules in a series of Directives, which extended the scope of ADR and RID to apply to national as well as intra-Community transport. A new combined Directive for the inland transport of dangerous goods (covering road, rail and inland waterways) – 2008/68/EC - (published in 2008) is transcribed into GB domestic legislation via 'The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009'.

The separate EU legislation on transportable pressure equipment has been revised – with UK support - by Directive 2010/35/EU. To ensure harmonisation for transportable pressure equipment requirements within GB, the Department for Transport considers the proposed

amendment to the domestic regulations by 30 June 2011 – the EU transposition deadline – to be the best option.

In addition to transposing EU law, the Option 1 draft regulations – following close co-operation between the Health and Safety Executive (HSE) and the Department for Transport – include a provision to revoke *The Classification and Labelling of Explosive Regulations 1983 (S.I. 1983/1140)*, as amended: HSE’s review of health and safety legislation has identified these explosive regulations as no longer having practical use and imposing unnecessary burdens on industry.

The main purpose of these Regulations (*at Annex 2*) is to ensure explosives are classified so they can be transported safely and that the packaging of those explosives is labelled with specific information. But since these Regulations came into force, the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR) which includes provisions on the classification of explosives has been introduced. ADR, which has been implemented in Great Britain via *The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations*, has evolved since 2004, and domestic legislation on the classification of explosives needs to fully align with it.

Current legislation

The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 regulates the carriage of dangerous goods by road and rail in Great Britain, and the training, examining and certification of dangerous goods safety advisers. It transposes Directive 2008/68/EC (known as ‘the Dangerous Goods Directive’ as it consolidated and replaced five directives relevant to dangerous goods). And it re-transposes Directive 1999/36/EC relating to common provision for transportable pressure equipment and methods for inspection and parts of Directives 89/618/Euratom and 96/29/Euratom which relate to measures to be taken for a radiological emergency previously transposed by the *The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007* (S.I. 2007/1573) which the 2009 Regulations revoked.

CDG 2009 provides:

- requirements for transportable pressure equipment;
- requirements and prohibitions for the carriage of dangerous goods by road and rail – which include explosives, gases, flammable liquids, toxic and infectious substances and radioactive material;
- packaging, labelling and marking requirements for the carriage of dangerous goods;
- duties for participants in this industry,
- documentation requirements;
- vehicle approval and construction rules;
- security responsibilities for consignors, carriers and others involved in transporting dangerous goods;
- authority for the Secretary of State to issue a separate guidance document detailing derogations and transitional provisions for the carriage of dangerous goods which can be provided under specific circumstances.

The Classification and Labelling of Explosive Regulations 1983 (S.I. 1983/1140), as amended, consists of a single regulation on explosives classification; three regulations on labelling the packaging of explosives, with others that cover enforcement, definitions and exemptions.

Options

Do nothing – Notwithstanding the risk of infraction proceedings, failure to transpose the Directive would have practical negative effects for UK Plc. Operators involved in the manufacture and sale of new pressure equipment would be unable to obtain certification and approval for their new products and therefore would be unable to sell them to UK and EU markets.

The UK is legally obligated, as an EU Member State, to implement EU Directives.

Option One

The favoured option:

Transpose the Directive into UK law by amending CDG 2009. The changes required by the Directive are relatively minor and the proposed amendment regulations seek only to implement what we have to do to comply and ensure we have a clear legal framework for the benefit of regulators, the industry, and customers. For example, the obligations on industry - manufacturers, importers, distributors, owners, operators - have been made more explicit to improve clarity; safety should be safeguarded whilst unnecessary costs and administrative procedures reduced. This is the simplest and least costly way to transpose this Directive. The effect of incorporating aspects of Directive 1999/36/EC into RID and ADR were consulted on in the process of making CDG 2009; this option completes that process by transposing those aspects of regulations that have EU rather than wider international application (as in RID and ADR). The specific changes being made by this Instrument are detailed below.

Separately, the opportunity has been taken to include a provision to revoke *The Classification and Labelling of Explosive Regulations 1983*, as amended. This will better align classification in GB with European requirements thereby reducing the number of explosives requiring GB classification.

Option Two

There was in theory another option - to consolidate CDG 2009 to ensure domestic regulations comply with Directive 2010/35/EU: Some consultees expressed a preference for this approach on the ground it would make it easier - less time consuming - for industry to comply (eg. the domestic regulations relevant to road and rail use of transportable pressure equipment would be in one Instrument). However, this option was considered unworkable for the DfT in view of the timescale involved and resources available.

Cost and benefit analysis –

Option One:

Costs

The cost of enforcing this option is not estimated to be significantly different to the current position (with CDG 2009): ACPO Scotland's consultation response said "Having considered the content of the consultation document I can advise that other than technical modifications to the equipment used and the likely improvement to safety, the proposals will have no effect on operational policing."

There will also be a small familiarisation cost to all involved in implementing these amendment regulations due to the time involved to ensure they understand the changes made and that they are appropriately implemented.

Benefits

The financial benefits envisaged from adopting this option have not all been quantified due to disproportionate resource implications but a full qualitative explanation is provided below:

- Safety Benefits

Maintaining the safe movement of dangerous goods by road and rail in this 'global market'. The current domestic regulations and its predecessors have played an important part in ensuring no deaths from the carriage of dangerous goods in GB since 1989; the proposed amendment regulations build on the current legal requirements. GB's road and rail networks are very busy with traffic – including pedestrians and passengers – and the Department has policies specifically to promote safety including Tomorrow's Roads – Safer for Everyone which have been very successful in reducing accidents. Together with the increasing threat of terrorist incidents, it is important for the transport of dangerous goods - which include explosives, gases and flammable liquids - to be sensibly regulated.

- Maintaining a level playing field for UK operators

Enabling British operators involved in the manufacture and sale of new transportable pressure equipment to continue in business as otherwise certification and approval for their products within the UK and EU markets would not be possible. Not implementing the EU directive would make such equipment un-saleable and therefore jeopardise the ability of such companies to compete in this 'global market'.

- Cost savings to the HSE and operators

Revocation of The Classification and Labelling of Explosive Regulations 1983 (as amended) is considered to be an 'Out' measure in the One In One Out system, and its replacement by amendment to CDG 2009 aligning it with other European requirements is expected to mean that around 20-25 per cent of classifications currently conducted annually by HSE will no longer be necessary (source: HSE internal estimates). This constitutes a reduction in regulatory activity directly due to the revocation and will save those who would previously have had to have explosives classified £20k in fees alone each year; ie:

- Number of total classification applications annually @320
- 25% of total applications = 80
- Average cost of an application - direct fees = £250
- $80 \times £250 = £20,000$

There would also be a commensurate reduction in associated costs incurred by industry in the time needed to administer such applications – eg. handling queries and providing more information. HSE estimates this saving and the saving to business from the revocation of CLER's labelling provisions to be in excess of £15k per year. HSE intends to review the economic effects one year after revocation.

The £15k is an internal HSE estimate which consists of these components:

- (Annual) Number of classification applications no longer necessary = 80
- Average amount of time spent by businesses per application = 5 hours
- True economic cost per hour for a functional manager = approx £36 (from www.statistics.gov)
- Total saving $(80 \times 5 \times 36) = £14400$
- Plus saving in printing costs = in excess of £600

The Specific Changes

These Regulations amend the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 ("the 2009 Regulations") in order to implement Directive 2010/35/EU of the European Parliament and of the Council of 16 June 2010 on transportable pressure equipment and repeal Council Directives 76/767/EEC, 84/525/EEC, 84/526/EEC, 84/527/EEC and 1999/36/EC (OJ L165, 30.6.2010, p.1) ("the 2010 Directive"). These Regulations also include a provision prohibiting the carriage of explosives unless they have been classified by an appropriate authority.

On the ground of proportionality not all of these listed changes have been individually costed:

- Regulation 3 amends the Table in regulation 2 of the 2009 Regulations by inserting new defined terms and updating the meaning of the Transportable Pressure Equipment Directive so it refers to the 2010 Directive.
- Regulation 4 adds regulation 5A to the 2009 Regulations, which prohibits the carriage of explosives in Great Britain, unless they have been classified by one of the persons listed in sub-paragraphs (a) to (c), or they have not been classified and meet the conditions in paragraph (2). This regulation replaces and updates regulation 3(2) of Classification and Labelling of Explosive Regulations 1983 (“the 1983 Regulations”), which are revoked by these Regulations.
- Regulation 5 amends regulation 11(3) of the 2009 Regulations to reflect the fact that the document referred to now exists and that its name has changed.
- Regulation 6 amends regulation 12 of the 2009 Regulations allowing the Secretary of State for Energy and Climate Change to issue authorisations in relation to the national carriage of class 7 goods.
- Regulation 7 adds an additional paragraph to regulation 3 of the 2009 Regulations allowing operations referred to in special provision CV1(1) of section 7.5.11 of ADR to be carried out without permission from the competent authority provided the driver or another competent person remains with the vehicle while it is being loaded or unloaded.
- Regulation 8 replaces regulation 19 (conformity assessment) with regulations 19 to 19E. Regulation 19 sets out the obligations of all economic operators when transportable pressure equipment is placed or made available on the market, put into service or used. Regulations 19A to 19E set out specific obligations on manufacturers, importers, distributors, owners and operators respectively.
- Regulation 9 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.
- Regulations 10 and 11 amend regulations 21 and 22 of the 2009 Regulations to reflect the changes made by the Directive to the procedures for reassessment of conformity, and for periodic inspection and repeated use.
- Regulation 12 adds a new regulation 23A containing definitions applicable to Part 4 of the 2009 Regulations.
- Regulation 13 amends regulation 25 of the 2009 Regulations clarifying that the Health and Safety Executive is responsible for the classification of commercial explosives, and makes the Secretary of State for Energy and Climate Change a competent authority in relation to the carriage of class 7 goods.
- Regulation 14 amends regulation 29 of the 2009 Regulations to update the procedure for appointing a person to carry out the functions of a notified body.
- Regulation 15 amends regulation 32 of the 2009 Regulations to add the Secretary of State for Defence and the Secretary of State for Energy and Climate Change as enforcing authorities.
- Regulation 16 amends Schedule 2 (Radiological Emergencies) to clarify the duties of the consignor and the carrier.
- Regulations 17, 18 and the Schedule revoke the 1983 Regulations and make provision for amendments to various pieces of legislation as a consequence of revoking the 1983 Regulations.

Risks

If the UK fails to comply with the regulations by 30 June 2011, the Commission could recommend to the European Courts of Justice (ECJ) a lump sum payment as a penalty for failing to comply with the first ECJ judgment up to the date of the second ECJ judgment and a penalty payment as a daily fine continuing from the date of the second judgment until compliance.

The lump sum payment would be the minimum level set for the UK: currently €9,666,000 (£8.39m at an exchange rate of €1:£0.868). This is the figure that has been used in this IA.

For the continuous penalty payment, the formula for the daily fine from the date of the second ECJ judgment is the multiple of:

Basic flat rate penalty payment (€640 per day) x coefficient for seriousness (on a scale 1 to 20) x coefficient for seriousness (1 to 3 calculated at a rate of 0.1 per month from the date of the first judgment to the second) x 'n' factor (18.31 for the UK, based on capacity of the MS to pay and the number of votes it has in the Council).

This means the daily rate could vary between €1,171 (£1,016) and €70,310 (£61,029), hence the low and high estimates of costs having such a large variation. This corresponds to a low and high estimate of annual costs of £0.371m and £22.276m with an average best estimate of £11.323m.

The total cost of non-compliance is shown in the table below:

£m	One off cost (constant price)	Annual costs (constant price)	Total (PV)
Low	N/A	£0.371m	£13.847m
High	N/A	£22.276m	£336.061m
Best Estimate	£8.39m	£11.323m	£174.954m

Specific Impact Tests

The Specific Impact Tests (page 3) have been considered and this is a summary of the main ones:

Statutory Equality Duties

It is confirmed that this proposal has been screened for its likely impact (positive or adverse) on the equality groups and an Equality Impact Screening Proforma (see Annex 3) has been completed.

Competition

Following consideration of the guidance the Department considers that the preferred Option 1 would not have a significant negative impact on competition:

1. Option 1 would not directly limit the number or range of suppliers.
2. Option 1 would not indirectly limit the number or range of suppliers.
3. Option 1 would not limit the ability of suppliers to compete.
4. Option 1 would not reduce suppliers' incentives to compete vigorously.

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 draft amendment regulations help to:

- ensure there is a level playing-field across European transport markets
- promote competition in the provision of transport services to the benefit of users
- clarify who is responsible for what in the transport chain
- enable better control on imported goods from outside the EU

Small Firms

The Department accepts that Option One includes small familiarisation costs which will be proportionately higher for small firms. But overall this Option is expected to assist them in competing for

business in this 'global market' as it enables the various multi-national requirements for approval and certification of transportable pressure equipment to be harmonised.

The regulatory moratorium for micro-businesses and new start-ups due to come into force on 1 April 2011 does not apply as European Directives are out of scope. Nevertheless, meetings with industry representatives – including small firms - are held regularly by the Department which carefully consider the UK's position prior to commitments being made internationally.

Over 20 per cent of the responses received to the public consultation were from small firms. Some of these said the changes would have negative cost implications although specific figures were not provided. But from the comments made it appears clear they can cope with them.

Greenhouse Gas

Following changes to the Option One amendment regulations (on reference temperature requirements which would have meant new tanks having a lower maximum volume capacity thereby creating a potential need for more tanks to carry the same maximum volume) no increase in CO₂ emissions is now expected.

One in One Out

The regulations to implement the European Directive are not in scope of OIOO.

But revoking the *Classification and Labelling of Explosives Regulations 1983* is considered an 'Out' under OIOO rules. The benefits emerging from the reduction of regulatory activity are:

Fee savings

HSE has assessed that there will be an annual fee saving to applicants of £20k (further detail under 'Benefits' above). Although fees and charges are out of scope of OIOO according to the OIOO methodology, these are direct benefits from a reduction in regulatory activity (ie. the removal of the requirement to apply for a classification of explosive) and therefore can be counted as an Out.

Other savings

HSE has also assessed that there will be a reduction in associated costs incurred by industry in the time needed to administer the applications – eg. handling queries, and in its labelling costs, which it estimates to be £15k in total per year (further detail under 'Benefits' above). HSE intends to review the economic effects one year after coming into force.

Overall we estimate that this Out will provide a total of £35,000 in annual benefits to business.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p>
<p>Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]</p> <p>A specific PIR review has not been planned as the preferred policy - Policy Option One - is expected to impose an annual cost of <£5m on the public sector. But as detailed under 'Benefits' above, HSE plans to review the effect of CLER's revocation one year after coming into force and the draft Option One regulations commit the Secretary of State to a "Duty to Review" this secondary legislation five years after coming into force, and each successive period of five years.</p>

Add annexes here.