

EXPLANATORY MEMORANDUM TO
THE HEALTH AND SAFETY AT WORK ETC. ACT 1974 (APPLICATION TO
ENVIRONMENTALLY HAZARDOUS SUBSTANCES) (AMENDMENT)
REGULATIONS 2007

2007 No. 1332

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

- 2.1 This statutory instrument amends regulation 2 of the Health and Safety at Work etc. Act 1974 (Application to Environmentally Hazardous Substances) Regulations 2002 ("the EHS Regulations 2002") to add references to two Commission Directives

Commission Directive 2006/89/EC¹ adapting for the sixth time to technical progress Council Directive 94/55/EC on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road;

and

Commission Directive 2006/90/EC² adapting for the seventh time to technical progress Council Directive 96/49/EC on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail.

so that Regulations can be made under section 15 of the Health and Safety at Work etc Act 1974 (HSWA) to implement these Directives to the extent that these Directives relate to substances which are dangerous to the environment but not to people.

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

- 3.1 None.

4. Legislative Background

- 4.1 The carriage of dangerous goods by road and by rail are the subject of two international agreements each based on the UN Transport of Dangerous Goods Model Regulations:
- a. the European Agreement concerning the international carriage of dangerous goods by road(ADR)³; and
 - b. the Regulation concerning the international carriage of dangerous goods by rail (RID)⁴;

¹ OJ No. L305, 4.11.2006, p.4.

² OJ No. L305, 4.11.2006, p.6.

³ Current edition (2007): ISBN 9789211391121.

- 4.2 European Community Directives require member States to apply ADR and RID:
- a. ‘ADR Directive’: Council Directive 94/55/EC with regard to the transport of dangerous goods by road; and
 - b. ‘RID Directive’: Council Directive 96/49/EC with regard to the transport of dangerous goods by rail;
- 4.3 The Directives are amended on a two year cycle and need to be transposed into national regulations.
- 4.4 In Great Britain, it is proposed that the provisions of the Directives shall be transposed by regulations to be called the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007 (the Carriage Regulations) made under section 15 the HSWA. The intention is to lay the Carriage Regulations before Parliament in order that they could come into force no later than 1 July 2007.
- 4.5 Regulations may be made under section 15 of the HSWA for the general purposes of Part 1 of the Act. One of the general purposes (set out in section 1(1)(c) of the HSWA) is “controlling the keeping and use of explosive or highly flammable or otherwise dangerous substances, and generally preventing the unlawful acquisition, possession and use of such substances.” This provision is the general purpose most relevant to the making of the Carriage Regulations under section 15. This general purpose does not, however, without extension, cover substances which are only dangerous to the environment. Consequently these Regulations are being made to extend the relevant purpose so that it covers dangerous goods which are only dangerous to the environment in so far as the extension is necessary to transpose the ADR and RID Directives as amended by the Directives mentioned in paragraph 2.

5. Territorial Extent and Application

- 5.1 This Statutory Instrument applies to Great Britain.

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 Both ADR and RID contain requirements relating to the carriage of dangerous goods which are dangerous to the environment but not to humans. Such goods form a small proportion of the total (4⁵ out of approximately 3500). Because the HSWA relates only to health and safety in relation to humans, not to the environment, the provisions of the Act need to be broadened specifically to enable the Carriage Regulations to be made under its vires.

⁴ Current edition (2007): ISBN 9788086206288.

⁵ **I2** (Infectious substances affecting animals only); **M6** (Pollutant to the aquatic environment, liquid); **M7** (Pollutant to the aquatic environment, solid) and **M8** (Genetically modified micro-organisms and organisms).

- 7.2 Other options such as the making of the Carriage Regulations under HSWA and section 2(2) of the European Communities Act 1972 or making the Carriage Regulations entirely under section 2(2) of the European Communities Act 1972 would not produce the same level of benefits to coherence and ease of understanding as the making of these Regulations to be followed, once they are in force, by the making of the Carriage Regulations.
- 7.3 For instance, the use of separate Regulations to extend the meaning of 'dangerous' for the purposes of transposing the road and rail directives, means that the provisions of HSWA relating to enforcement and inspectors will apply in relation to *all* substances covered by the Carriage Regulations rather than creating a separate enforcement regime either
- for all substances (if the Carriage Regulations are made only using the European Communities Act 1972);
- or*
- for those substances that, but for the extension, would not fall within the meaning of 'dangerous' for the purposes of HSWA (if the Carriage Regulations are made using HSWA and section 2(2) of the European Communities Act 1972).
- 7.4 As these Regulations are made under section 2(2) of the European Communities Act 1972, there is no statutory requirement to consult in relation to them. While there was consultation in relation to the Carriage Regulations on the issue of vires, the consultation did not cover the extension of the application of the HSWA to cover environmental damage. Copies of the consultation document were in placed in the House Libraries⁶.
- 7.5 Assuming that these Regulations successfully pass through the Parliamentary processes, the intention is to make the Carriage Regulations once these Regulations are in force and have the Carriage Regulations come into force, assuming they successfully pass through the Parliamentary processes, no later than 1 July 2007.
- 7.6 A single, unified Framework Directive⁷ for inland transport (replacing, amongst others, the ADR and RID Directives) is proposed for 2009 - this would present an opportunity to replace the current EHS Regulations 2002.

8. Impact

- 8.1 A Regulatory Impact Assessment (RIA) has not been prepared for this Statutory Instrument as it has no impact on business, charities or voluntary bodies. A partial RIA has been carried out for the Carriage Regulations; this RIA will be revised in the

⁶ CDG 2007 Consultation Document was lodged with the library on 25 August 2006.
<http://www.dft.gov.uk/consultations/closed/cdgpereg/>

⁷ 5080/07 Proposal for a Directive of the European Parliament and of the Council on the inland transport of dangerous goods. http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0852en01.doc

light of comments received during the consultation exercise, and a full RIA will be submitted when the Carriage Regulations are finalised.

9. Contact

- 9.1 Caroline Billingham at the Department for Transport, (Tel: 020 7944 5706 or e-mail: dangerousgoods@dft.gsi.gov.uk) can answer any queries regarding the Instrument.