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Department for
Transport

Consultation Response Document

Carriage of Dangerous Goods: Approved Derogations and Transitional Provisions & VCA Document Procedures for Inspection Bodies: Testing and Inspection of UK Tanks

Introduction and Background

The Secretary of State for Transport, in her role as the competent authority in Great Britain (GB), the Health and Safety Executive for Northern Ireland (HSENI) and the Department of Justice in NI (DOJNI), as the competent authorities in NI, may grant certain exemptions from the requirements and prohibitions relating to the transport of dangerous goods. Where exemptions are granted, there is a legal obligation to publish them in the respective GB and NI versions of the Carriage of Dangerous Goods: Approved Derogations and Transitional Provisions (AD&TP). This document needed updating to remove obsolete derogations and recognise new ones.

In addition, there were proposed changes to the transitional provisions regarding the inspection of certain tanks and mobile explosive manufacturing units (MEMUs) which also required amendments to the AD&TP.

The consultation was done in partnership with the HSENI and the DOJNI. We used an informal consultation process and consulted for eight weeks starting from 4 July until 30 August 2011. The shorter consultation period was driven by the highly technical and specialised subject matter (and therefore of no general public interest) and the fact that we have involved stakeholders closely on the development of revisions to AD&TP.

The purpose of this consultation paper was to seek views on:

- the proposal to consolidate the separate NI and GB versions of the AD&TP into one single document covering the United Kingdom (UK);
- the description we were proposing to include in the AD&TP to explain the meaning and purpose of those particular derogations;

- the accompanying explanation for the updated transitional provisions covering the inspection of certain tanks;
- the accompanying explanation for the new transitional provisions covering the inspection of MEMUs; and
- other minor changes that have been made.

The consultation document was published on the Department for Transport (DfT) website as well as DOJNI and HSENI websites and sent electronically to interested parties in both GB and NI. Responses were collated centrally at the DfT with responses from NI consultees additionally copied to DOJNI and HSENI for information.

Responses (Total responses – 46; Completed Questionnaires – 27*) *Not everybody answered all consultation questions
A summary of the consultation response numbers is below:

| Question | | Category | | | | | | | | | | | Total |
|--|------------|-----------|------------|----|------------|-------------------|-------------|-------------------|-------------|-----------------|----------------|-------|-----------|
| | | Govt Dept | Other Govt | LA | Small Firm | Trade Association | Trade Union | Training Provider | Consultancy | Private Company | Tunnel Manager | Other | |
| Q1 – joint GB and NI document | Yes | 3 | 1 | | 2 | 8 | | | 3 | 6 | | 2 | 25 |
| | No | | | | | | | | | | | | 0 |
| | Don't Know | | | | | | | | | | | | 0 |
| Q2 – Road derogation 3 | Yes | 1 | 1 | | 2 | 3 | | | 3 | 3 | | 1 | 14 |
| | No | | | | | | | | | | | | 0 |
| | Don't Know | 1 | | | | 5 | | | | 3 | | 1 | 10 |
| Q3 – Road derogation 17 | Yes | 1 | 1 | | 2 | 3 | | | 2 | 1 | | 1 | 11 |
| | No | | | | | | | | | 3 | | | 3 |
| | Don't Know | 1 | | | | 5 | | | 1 | 2 | | 1 | 10 |
| Q4 – Replace written scheme of examination | Yes | 2 | 2 | | 2 | 6 | | | 2 | 5 | | 1 | 20 |
| | No | | | | | | | | | | | | 0 |
| | Don't Know | 1 | | | | 2 | | | | 1 | | 1 | 5 |
| Q5 – VCA document on Tank inspections | Well | 1 | 1 | | 2 | 2 | | | | 1 | | | 7 |
| | Adequately | 2 | | | | 2 | | | 2 | 4 | | 1 | 11 |
| | Badly | | | | | 1 | | | | | | | 1 |
| Q6 - MEMUS | Yes | 2 | 1 | | 2 | 1 | | | | 2 | | | 8 |
| | No | | | | | 1 | | | | | | | 1 |
| | Don't Know | | | | | 6 | | | 2 | 4 | | 2 | 14 |
| Q7 - Benefits | Yes | | 1 | | | 1 | | | | 1 | | 1 | 4 |
| | No | 2 | | | 2 | 7 | | | 2 | 5 | | 1 | 19 |
| | Don't Know | | | | | | | | | | | | 0 |
| Q8 – Dis-benefits | Yes | | | | | 3 | | | | 1 | | 1 | 5 |
| | No | 2 | 1 | | | 5 | | | 2 | 5 | | 1 | 16 |
| | Don't Know | | | | | | | | | | | | 0 |

Overview

Forty-six responses from forty-four respondents to the consultation on the ***Carriage of Dangerous Goods: Approved Derogations and Transitional Provisions*** and ***VCA Document: Procedures for Inspection Bodies: Testing and Inspection of UK Tanks*** were received. Twenty-seven respondents completed the questionnaire, but not all of these answered all the questions.

There were many detailed responses from a range of private sector organisations and consultancies, which addressed some or all of the questions posed in the consultation paper and in some case proposed different wording for the text of the final version of the ***Carriage of Dangerous Goods: Approved Derogations and & Transitional Provisions*** and ***VCA Document: Procedures for Inspection Bodies: Testing and Inspection of UK Tanks***.

Structure of Analysis

All comments have been gratefully received and given careful consideration. This document is intended to identify the key points made by respondents, it is not the intention to summarise every comment and view.

Key Points

Overall, respondents strongly supported the proposal to consolidate the separate NI and GB versions of the AD&TP into one single document covering the United Kingdom (UK).

Road Derogation 2

(RO-a-UK-2)

In light of the comments received and in consultation with the Health and Safety Executive's Explosives Inspectorate (HSE) two new UN numbers were added to Table 1 of this derogation: UN 0506 and UN 0507. UN 0505 was added to Table 3.

Road Derogation 3

(RO-a-UK-3)

This derogation exempts from the requirements relating to fire-fighting equipment for the carriage of certain Class 7 goods by road. It has been amended to include the provision that the dangerous goods specified in paragraph 1 of the derogation may be carried with dangerous goods of other classes in certain specified circumstances.

This derogation does not permit RAM and other dangerous goods to be packed within the same packaging, as suggested by some comments received, and we have amended paragraph 2 of the derogation to make it clearer that this derogation relates to fire-fighting equipment only and not mixed loading. Mixed loading is a separate issue, and is permitted in accordance with ADR 7.5.2.

Road Derogation 4

(RO-a-UK-4)

At present road derogation 4 allows the distribution of certain goods for retail sale without the need for marking/labelling or package approval when the goods have been removed from their outer packaging for the final stages of the carriage operation between a distribution centre and a retailer or end-user, or a retailer and end-user.

In light of comments received it was agreed to amend the text to allow the reverse logistic operation where, for example, a customer needs to return goods which have been distributed under this derogation. The text has been reworded to reflect that the derogation also averts the need to comply with packaging provisions of 3.4.2 and 4.1

Road Derogation 8 (RO-a-UK-8)

This derogation covers mixing rules for vehicles carrying Class 1 goods.

In light of the comments received and in consultation with HSE's Explosives Inspectorate, UN 0505 has been added to the road derogation 8.

The reference to UN 0367 has been deleted. This explosive is classified in Division 1.4, Compatibility Group S (and not Compatibility Group B) and by ADR 7.5.2 can be loaded with Compatibility Groups D, E or F.

Road Derogation 15 (RO-bi-UK-5)

This derogation covers the collection of used batteries for disposal or recycling.

Some respondents raised the issue of Lithium-ion UN batteries (UN 3480 and UN 3481) not being included in this derogation. The entries specific to Lithium-ion batteries, UN 3480 and UN 3481, did not exist in ADR until the 2009 edition. The derogation will now cover UN 3480 and UN 3481. It was also suggested to reword the derogation offering more flexibility to people who carry batteries, however, as this would involve substantial changes to the current agreed text it would need to be negotiated at EU level and there are currently no plans to do so.

Road Derogation 17 (RO-a-UK-10)

This is a newly adopted derogation exempting health care workers from the requirements of ADR 8.1.4.1 to carry a 2kg fire extinguisher subject to certain conditions.

Part 3 Requirements for UK Tanks

These requirements cover tanks other than RID or ADR tanks used or intended to be used for the carriage of dangerous goods in UK.

This has been amended to remove the requirement to maintain certain tanks to a written scheme of examination and replace it with an inspection process similar to that

prescribed by RID / ADR. It has also been amended to include tanks constructed to EN 12493 Annex C as permitted under the transitional provisions with regards to the reference temperature in Directive 2008/68/EC. This will now cover LPG tanks.

New subsection 5a

To identify those tanks owned and operated by the armed forces a new subsection 5a was included, which defines an 'MOD tank'. This allows certain arrangements to meet the Ministry of Defence's requirements to maintain tanks to a high standard when the tanks are deployed overseas.

Procedures for Inspection Bodies: Testing and Inspection of UK Tanks

Set out below are the main changes as a result of the consultation on ***Procedures for Inspection Bodies: Testing and Inspection of UK Tanks***.

The Procedures

There were responses from 10 organisations amounting to over 120 individual comments. The comments can be divided into two broad groups:

- a) Comments which affect all tanks not only UK tanks e.g. reference to EN14564, internal inspections, application of hydraulic pressure tests to certain tanks. These issues have to be dealt with at an international level (at the Joint Meeting or UN) and could not therefore be part of this consultation.
- b) Comments on the UK tank procedures. These were all carefully considered with over 50% being editorial changes/improvements and most have been adopted.

Part 5 of the Procedures

The requirement to establish a file, if records do not already exist, will be applicable from the date of the first periodic inspection after under the new procedures enter into force and replace the old written schemes (see below). The procedure will incorporate text to cover this.

Part 6 Inspection requirements

Table 6 has been amended to reflect the changes in Part 5 and Part 7

A similar amendment has been made to Table 7 addressing the hydraulic pressure test changes.

The advice on P&V valves has been left because there were different views. The DfT is investigating the legal position.

The "dry" conditions element is not relevant to the standard.

Part 7.6 Hydraulic Pressure test

The requirements for the hydraulic pressure testing have been modified as follows:

A UK tank constructed, before 10 May 2004 to the requirements in force in Great Britain or before 31 July 2006 to the requirements in force in Northern Ireland, which by virtue of its design and construction is not suitable to undergo a hydraulic pressure

test shall not be subject to the hydraulic test set out in these procedures. Such a tank, provided it remains suitable, may continue in service until 1 July 2021.

Annex: Certificates

The tank certificate in the consultation document has been removed. The certificate was intended to be used for all tanks and there is on going consultation regarding this. Meanwhile Inspection Bodies will continue to use their own certificates.

Implementation dates for the Procedures

1. Inspection Bodies

The new procedures for UK tanks will be published in March 2012 and will be available for incorporation into Inspection Body control documentation. UKAS will indicate a date from which they will carry out inspections to this standard.

All inspection bodies approving UK tanks must be accredited to the VCA tank procedures no later than 30 June 2013.

Any UKAS accreditation visits after 30 June 2012 will only be carried out under the new procedures for UK tanks.

However, from 1 December 2011 until 30 June 2013 Inspection Bodies, once they have been accredited to the VCA procedures may carry out inspections to either the old written schemes or the new UK tank procedures for their clients.

From 1 July 2013 mandatory inspections of old UK tanks and new UK tanks will only take place according to the new procedures.

2. Operators/Owners

Owner/operators may continue to have inspections carried out to either the old written schemes or the UK tank scheme until 30 June 2013.

Thereafter only the UK tank scheme will be permitted.

Existing certificates issued under the written scheme prior to 30 June 2013 remain valid until their normal expiry date (next inspection).

Part 5 MEMUs

Mobile Explosive Manufacturing Units (MEMUs) in Great Britain

Mobile Explosive Manufacturing Units (MEMUs) in Northern Ireland

The proposal was adopted that all pre-ADR 2009 MEMUs constructed to the national requirements in the UK prior to 1 July 2009, and provided that they are safe for their intended purpose, will be approved for the use in GB only. In NI MEMUs will continue to be approved by the competent authority and part of the approval will be an inspection by DVA / VOSA. The approval will be valid in Northern Ireland only. Pre-ADR 2009 MEMUs imported into the UK will require competent authority approval before they can be used in the UK.

Some consultees raised concerns over the safety risk of not introducing mandatory annual inspections of pre-ADR 2009 MEMUs. We carefully considered the option of introducing an annual inspection requirement. However, this would attract fees imposing a net cost to the industry and under the current Government policy such a proposal would need to have an offsetting deregulatory measure of equivalent value attached to it, which we were unable to identify. The approach we adopted does create a discrepancy between GB and NI provisions for pre-ADR MEMUs as those registered in NI will have to undergo annual inspections. However, the risk associated with using pre-ADR MEMUs remains unchanged to what it has been since MEMUs were first introduced. We will be looking to identify a deregulatory measure in the future with a view to introducing annual inspections for pre-ADR 2009 MEMUs in GB in due course.

There was also a note of caution concerning MEMUs from one respondent in relation to a safety update in 2009: <http://www.hse.gov.uk/explosives/safetyalerts/alert-1-09.htm>. This refers to an incident that occurred during clearing a blockage in a MEMU. However, checking safety controls on guards on the operation of ancillary machinery does not form part of either the HGV Annual Test or the ADR part 9 Annual Inspection. Machinery is not required to be operated during any of the tests. At present it would not be possible to legally or practically implement any requirements over and above the published standards for these tests in response to this safety alert.

Impact Assessment

The majority of respondents had no comments to make on the impact assessment as such although two respondents provided comments on the costs likely to be incurred under the proposed inspection regime for UK tanks. There was concern that some of the content would significantly increase the cost of testing rail tank wagons, contrary to the Impact Assessment conclusions. There was also a worry that there would be an increase in costs and in carbon emissions if wagons had to be taken to covered workshops to do the tests in the dry.

We have therefore reconsidered certain aspects of the process and made some amendments to ensure that there were no extra costs to the industry whilst continuing to maintain vigorous inspection standards. As a result the requirements for the hydraulic pressure testing have been modified to exempt tanks that are not suitable to undergo a hydraulic pressure test subject to certain conditions until 1 July 2021. Table 6 of the inspection procedures has also been amended to reflect the changes. It was agreed that the "dry" conditions element was not relevant to the standard.

List of the consultees that responded

1. DB Schenker Rail (UK) Ltd
2. John Simpson, Class7
3. New Alchemy Training and Consultancy Organisation
4. Department for Transport, Radioactive Materials Transport
5. Mike Billington, DGSA
6. Hartburn Road Tanker Services Ltd
7. Pace Fuelcare Ltd
8. LRT Limited
9. DRD Road Service NI
10. Dangerous Goods Ltd
11. Biocair
12. WCF Ltd
13. Rentokil Initial Plc
14. Federation of Petroleum Supplies
15. Simtex International Ltd
16. Disability Action
17. Environmental Scientifics Group
18. Calor Gas Ltd
19. Office of Rail Regulation
20. Police Service of Northern Ireland
21. Southern Health & Social Care Trust
22. Agriculture and Rural Development NI
23. Adler & Allan Ltd
24. British Coatings Federation
25. UK Cleaning Products Industry Association
26. ACPOS
27. Williams Tanker Services
28. UKLPG
29. Leicestershire Constabulary
30. L2 Business Consulting Limited
31. British Adhesives and Sealants Association - BASA
32. The Private Wagon Federation (PWF)
33. Freight Transport Association
34. ACFO
35. South Eastern Health and Social Care Trust
36. Safety Assessment Federation
37. Association of Chief Police Officers (ACPO)
38. Energy Institute
39. Road Haulage Association
40. VTG
41. United Kingdom Petroleum Industry Association
42. Chemring Marine Ltd
43. Northern Ireland Office
44. Amber Engineering Consultancy Ltd