



RRC

Sample Health and Safety Law and Case Law Guide

CARRIAGE OF DANGEROUS GOODS AND USE OF TRANSPORTABLE PRESSURE EQUIPMENT REGULATIONS 2009 (SI 2009 NO. 1348) (AS AMENDED)

Introduction

These Regulations, although lengthy, are simplifications of earlier Regulations of the same name. They are split into seven parts and have three schedules:

- Part 1: Introductory Provisions.
- Part 2: Prohibitions and Requirements.
- Part 3: Exemptions.
- Part 4: Transportable Pressure Equipment.
- Part 5: Radiological Emergencies.
- Part 6: GB Competent Authority Functions.
- Part 7: Miscellaneous.

This is a very technical piece of legislation and is the preserve of specialist Dangerous Goods Safety Advisers (DGSAs). Some of the technical content is not obvious because, rather than being self-contained, it makes extensive reference to existing legally binding international agreements. This is an eminently sensible approach because the experts already refer to the international agreements. These agreements are: ADR (The European Agreement concerning the International Carriage of Dangerous Goods by Road) and RID (The Regulations concerning the International Carriage of Dangerous Goods by Rail). These international agreements deal with, in turn, the operational requirements for the carriage of dangerous goods by road and rail across Europe. There is also a brief mention of carriage of dangerous goods by inland waterways. The Regulations therefore need to be read in conjunction with these agreements to fully understand the requirements.

The text here focuses on the appointment of Dangerous Goods Safety Advisers, and their functions, knowledge of which is required by the NEBOSH Diploma syllabus.

Part 1: Introductory Provisions

Regulation 4: Application

These Regulations apply to the carriage of dangerous goods by road and by rail (excluding the Channel Tunnel). They also apply to inland waterways but only in respect of the training and examination system for safety advisers.

Part 2: Prohibitions and Requirements

Regulation 5: Carriage to be in Accordance with ADR and RID

With a simple sentence, these Regulations reference completely the existing international agreements. These are weighty external tomes containing an extreme amount of technical detail. In practice, experts in this field already use these documents extensively, so it is reflecting reality. Copies of The Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR) can be downloaded free from www.unece.org/trans/danger/publi/adr/adr_e.html

Dangerous Goods Safety Advisers

Paragraph 1.8.3 of **ADR** (from 1 January 2021) sets out the requirements for the appointment of Dangerous Goods Safety Advisers ('DGSAs' - known in **ADR** simply as 'Safety Advisers') as follows:

1.8.3.1 Each undertaking, the activities of which include the consigning or the carriage of dangerous goods by road, or the related packing, loading, filling or unloading shall appoint one or more safety advisers for the carriage of dangerous goods, responsible for helping to prevent the risks inherent in such activities with regard to persons, property and the environment.

ADR 1.8.3.2 gives limited exemptions from the duty to appoint a DGSA as follows:

- where quantities do not exceed the limits set out in ADR 1.1.3.6, 1.7.1.4 and in chapters 3.3, 3.4 and 3.5, or
- "The main or secondary activities [...] are not the carriage or related packing, filling, loading or unloading of dangerous goods but which occasionally engage in the national carriage or the related packing, filling, loading or unloading of dangerous goods posing little danger or risk of pollution."

ADR 1.8.3.3 sets out the role of the DGSA, as follows:

1.8.3.3 The main task of the adviser shall be, under the responsibility of the head of the undertaking, to seek by all appropriate means and by all appropriate action, within the limits of the relevant activities of that undertaking, to facilitate the conduct of those activities in accordance with the requirements applicable and in the safest possible way.

With regard to the undertaking's activities, the adviser has the following duties in particular:

- monitoring compliance with the requirements governing the carriage of dangerous goods;
- advising his undertaking on the carriage of dangerous goods;
- preparing an annual report to the management of his undertaking or a local public authority, as appropriate, on the undertaking's activities in the carriage of dangerous goods. Such annual reports shall be preserved for five years and made available to the national authorities at their request.

The adviser's duties also include monitoring the following practices and procedures relating to the relevant activities of the undertaking:

- the procedures for compliance with the requirements governing the identification of dangerous goods being transported;
- the undertaking's practice in taking account, when purchasing means of transport, of any special requirements in connection with the dangerous goods being transported;
- the procedures for checking the equipment used in connection with the carriage, packing, filling, loading or unloading of dangerous goods;
- the proper training of the undertaking's employees, including on the changes to the regulations, and the maintenance of records of such training;
- the implementation of proper emergency procedures in the event of any accident or incident that may affect safety during the carriage, packing, filling, loading or unloading of dangerous goods;
- investigating and, where appropriate, preparing reports on serious accidents, incidents or serious infringements recorded during the carriage, packing, filling, loading or unloading of dangerous goods;
- the implementation of appropriate measures to avoid the recurrence of accidents, incidents or serious infringements;
- the account taken of the legal prescriptions and special requirements associated with the carriage of dangerous goods in the choice and use of subcontractors or third parties;
- verification that employees involved in the consigning, carriage, packing, filling, loading or unloading of dangerous goods have detailed operational procedures and instructions;
- the introduction of measures to increase awareness of the risks inherent in the carriage, packing, filling, loading or unloading of dangerous goods;
- the implementation of verification procedures to ensure the presence on board the means of transport of the documents and safety equipment which must accompany transport and the compliance of such documents and equipment with the regulations;
- the implementation of verification procedures to ensure compliance with the requirements governing packing, filling, loading and unloading;
- the existence of the security plan indicated in [ADR] 1.10.3.2.

ADR 1.8.3.4 states that the DGSA can be "...the head of the undertaking, a person with other duties in the undertaking, or a person not directly employed by that undertaking, provided that that person is capable of performing the duties of adviser".

ADR 1.8.3.7 - An adviser shall hold a vocational training certificate, valid for transport by road. The certificate shall be issued by the competent authority or the body designated for that purpose by each Contracting Party.

ADR 1.8.3.8 - To obtain a certificate, a candidate shall undergo training and pass an examination approved by the competent authority of the Contracting Party.

ADR 1.8.3.9 - The main aims of the training shall be to provide candidates with sufficient knowledge of the risk inherent in the carriage, packing, filling, loading or unloading of dangerous goods, of the applicable laws, regulations and administrative provisions and of the duties listed in 1.8.3.3.

ADR 1.8.3.10 states that "The examination shall be organized by the competent authority or by an examining body designated by the competent authority. The examining body shall not be a training provider." It goes on to set out the criteria for designation of an examining body.

ADR 1.8.3.11 sets out what the examination will cover, as follows:

- Knowledge of the types of consequences which may be caused by an accident involving dangerous goods and knowledge of the main causes of accidents.
- Requirements under national law, international conventions and agreements, with regard to the following in particular:
 - classification of dangerous goods (procedure for classifying solutions and mixtures, structure of the list of substances, classes of dangerous goods and principles for their classification, nature of dangerous goods transported, physical, chemical and toxicological properties of dangerous goods);
 - general packing provisions, provisions for tanks and tank-containers (types, code, marking, construction, initial and periodic inspection and testing);
 - marking and labelling, placarding and orange-coloured plate marking (marking and labelling of packages, placing and removal of placards and orange-coloured plates);
 - particulars in transport documents (information required);
 - method of consignment and restrictions on dispatch (full load, carriage in bulk, carriage in intermediate bulk containers, carriage in containers, carriage in fixed or demountable tanks);
 - transport of passengers;
 - prohibitions and precautions relating to mixed loading;
 - segregation of goods;
 - limitation of the quantities carried and quantities exemptions;
 - handling and stowage (packing, filling, loading and unloading – filling ratios, stowage and segregation);
 - cleaning and/or degassing before packing, filling, loading and after unloading;
 - crews, vocational training;
 - vehicle documents (transport documents, instructions in writing, vehicle approval certificate, driver training certificate, copies of any derogations, other documents);
 - instructions in writing (implementation of the instructions and crew protection equipment);
 - supervision requirements (parking);
 - traffic regulations and restrictions;
 - operational discharges or accidental leaks of pollutants;
 - requirements relating to transport equipment.

Regulation 6: Alternative Placarding Requirements to Apply to Certain National Carriage

In certain cases, it is permissible to use alternative placards, marks and plate markings on UK-registered vehicles for **UK domestic** carriage. The detail of this derogation is given in Schedule 1 and covers such things as the UK's "HazChem" style plates, incorporating the familiar UK Emergency Action Codes (EACs), instead of the European Hazard Identification Numbers (HINs). Both systems are designed to assist the emergency services when dealing with an incident.

Schedules

Schedule 1: PLACARDS, MARKS AND PLATE MARKINGS FOR NATIONAL CARRIAGE

Part 1: Carriage of Goods by Road

Details are given of the design and use of hazard warning panels.

Part 2: Carriage of Goods by Rail

Schedule 2: RADIOLOGICAL EMERGENCIES

Schedule 3: APPOINTMENTS

PERSONAL PROTECTIVE EQUIPMENT (PPE) AT WORK REGULATIONS 1992 (SI 1992 NO. 2966)

Note

As amended by the **Health and Safety (Miscellaneous Amendments) Regulations 2002 (SI 2002 No. 2174)**, the **Health and Safety (Miscellaneous Repeals, Revocations and Amendments) Regulations 2013**, and by the **Personal Protective Equipment at Work (Amendment) Regulations 2022**.

NB: Do not confuse these Regulations with the **Personal Protective Equipment Regulations 2002**, or the previous **PPE (EC Directive) Regulations 1992** as amended 1993, 1994 and 1996, made under consumer protection legislation, which are concerned with the standards to which PPE is to be manufactured.

The **Health and Safety (Miscellaneous Repeals, Revocations and Amendments) Regulations 2013** amended these Regulations so that they now apply to the provision and use of head protection on construction sites.

The **Personal Protective Equipment at Work (Amendment) Regulations 2022** came into force on 6 April 2022 and amended the **Personal Protective Equipment at Work Regulations 1992** to extend the duties contained in regulations 4 to 11 of the 1992 Regulations from “employees” to “workers”, and to update cross-references to other legislation. Workers include employees and those known as “limb (b) workers”. Workers include employees and those known as “limb (b) workers”.

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Summary

These Regulations revoked much of the older more specific PPE-related Regulations. They cover all protective equipment for use at work from that designed for adverse weather conditions through protective clothing such as aprons, gloves, footwear, helmets, jackets, eye protection, safety harnesses and respirators to life jackets where employees work on or near water.

They do not apply where there is a more comprehensive requirement for provision and use of PPE, as mentioned below.

You should note specifically that the Regulations require employers to provide PPE but only as a last resort after they have taken all measures to attempt to remove or control the risk, although they can use PPE as an interim measure while carrying out remedial action.

Regulation 2: Interpretation

In these Regulations:

“the 1974 Act” means the **Health and Safety at Work, etc. Act 1974**;

“employer”, in relation to a worker, means the person by whom the worker is employed under their worker’s contract;

“personal protective equipment”, unless the context requires otherwise, means all equipment (including clothing affording protection against the weather) which is intended to be worn or held by a person at work and which protects the person against one or more risks to that person’s health and safety, and any addition or accessory designed to meet that objective;

“relevant self-employed person” means a self-employed person (except a worker) who conducts an undertaking of a prescribed description for the purposes of section 3(2) of the 1974 Act;

“worker” means an individual who has entered into or works under:

- (a) a contract of employment;
- (b) any contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker’s contract shall be construed accordingly.

Definition and Application

PPE includes both the following, when they are worn for protection of health and safety:

- protective clothing such as aprons, protective clothing for adverse weather conditions, gloves, safety footwear, safety helmets, high visibility waistcoats, and
- protective equipment such as eye protectors, life jackets, respirators, underwater breathing apparatus and safety harnesses.

Regulation 3: Disapplication of These Regulations

PPE does not include the following:

- Ordinary working clothes and uniforms which do not specifically protect the health and safety of the wearer.
- An offensive weapon within the meaning of section 1(4) of the **Prevention of Crime Act 1953** used as self-defence or as deterrent equipment.
- Portable devices for detecting and signalling risks and nuisances.
- PPE used for protection while travelling on a road within the meaning (in England and Wales) of section 192(1) of the **Road Traffic Act 1988** and (in Scotland) of section 151 of the **Roads (Scotland) Act 1984**.
- Equipment used during the playing of competitive games.

Regulations 4 and 6 to 12 shall not apply where any of the following Regulations apply and in respect of any risk to a person’s health or safety for which any of them require the provision or use of PPE, namely:

- **Control of Lead at Work Regulations 2002.**
- **Ionising Radiations Regulations 2017.**
- **Control of Asbestos Regulations 2012.**
- **Control of Substances Hazardous to Health Regulations 2002.**
- **Control of Noise at Work Regulations 2005.**
- **Construction (Head Protection) Regulations 1989.**

- 3A - The duty placed on the employer in respect of their employees by section 9 of the 1974 Act (duty not to charge employees) is modified to apply in respect of the duties under these Regulations to their workers, and “employer”, as referenced in section 9, in relation to a worker means the person by whom the worker is employed under their worker’s contract.
- (1) In these Regulations, section 52 of the 1974 Act (meaning of “work” and related expressions) is extended as follows:
- (a) “work” includes work as a worker;
 - (b) a worker is at work throughout the time when they are working under their worker’s contract, but not otherwise.

Regulation 4: Provision of Personal Protective Equipment

- (1) Subject to paragraph (1A) every employer shall ensure that suitable PPE is provided for their workers who may be exposed to a risk to their health or safety while at work, except where and to the extent that such risk has been adequately controlled by other means which are equally or more effective.
- (1A) Where the characteristics of any policing activity are such that compliance by the relevant officer with the requirement in paragraph (1) would lead to an inevitable conflict with the exercise of police powers or performance of police duties, that requirement shall be complied with so far as is reasonably practicable.
- (2) Every self-employed person shall ensure that they are provided with suitable PPE where they may be exposed to a risk to their health or safety while at work except where and to the extent that such risk has been adequately controlled by other means which are equally or more effective.
- (3) PPE shall not be suitable unless:
 - (a) it is appropriate for the risk or risks involved, the conditions at the place where exposure to the risk may occur, and the period for which it is worn.
 - (b) It takes account of ergonomic requirements and the state of health of the person or persons who may wear it, and of the characteristics of the workstation of each such person.
 - (c) It is capable of fitting the wearer correctly, if necessary after adjustments within the range for which it is designed.
 - (d) So far as is practicable, it is effective to prevent or adequately control the risk or risks involved without increasing overall risk.
 - (e) It complies with any enactment (whether in an Act or instrument) which implements in Great Britain any provision on design or manufacture with respect to health or safety in any of the relevant EU directives which is applicable to that item of personal protective equipment.
- (4) Where it is necessary to ensure that personal protective equipment is hygienic and otherwise free of risk to health, every employer and every self-employed person shall ensure that personal protective equipment provided under this regulation is provided to a person for use only by them.

Regulation 5: Compatibility of Personal Protective Equipment

Every employer shall ensure that where the presence of more than one risk to health or safety makes it necessary for their worker to wear or use simultaneously more than one item of personal protective equipment, such equipment is compatible and continues to be effective against the risks in question.

This applies equally to a self-employed person in respect of equipment worn by himself.

Regulation 6: Assessment of Personal Protective Equipment

Before choosing any PPE, an employer or self-employed person shall ensure that an assessment is made to determine whether the PPE they intend to provide is suitable.

The assessment shall include:

- an assessment of any risks to health or safety which have not been avoided by other means;
- the definition of the characteristics which PPE must have in order to be effective against the risks referred to taking into account any risks which the equipment itself may create;
- comparison of the characteristics of the PPE available with the characteristics referred to above;
- an assessment as to whether the PPE is compatible with other PPE which is in use and which a worker would be required to wear simultaneously.

Every employer or self-employed person who is required to make an assessment shall ensure that any such assessment is reviewed if:

- there is reason to suspect it is no longer valid; or

- there has been a significant change in the matters to which it relates.

Where as a result of any such review changes in the assessment are required, the relevant employer or self-employed person shall ensure that they are made.

Regulation 7: Maintenance and Replacement of PPE

Every employer shall ensure that any PPE provided to their workers is maintained (including replaced or cleaned as appropriate) in an efficient state, in efficient working order and in good repair.

This applies equally to a self-employed person.

Regulation 8: Accommodation of PPE

Where PPE is provided, the employer will ensure the provision of appropriate accommodation for its storage when not in use.

Regulation 9: Information, Instruction and Training

Where an employer is required to ensure that PPE is provided to a worker, the employer shall also ensure that the worker is provided with such information, instruction and training as is adequate and appropriate to enable the worker to know:

- the risks which the PPE will avoid or limit;
- the purpose for which and the manner in which PPE is to be used;
- any action to be taken by the worker to ensure that the PPE remains in an efficient state, in efficient working order and in good repair;

and shall ensure that such information is kept available to workers.

The information and instruction provided must be comprehensible to the persons to whom it is provided.

The employer shall, where appropriate, and at suitable intervals, organise demonstrations in the wearing of PPE.

Regulation 10: Use of PPE

Every employer shall take all reasonable steps to ensure that any PPE provided to their workers is properly used.

Every worker shall use any PPE provided to them in accordance both with any training in the use of the PPE concerned which has been received by them and the instructions respecting that use which have been provided to them under regulation 9. This applies equally to self-employed persons.

Every worker and self-employed person shall take all reasonable steps to ensure that PPE is returned to the accommodation provided for it after use.

Regulation 11: Reporting Loss or Defect

Every worker who has been provided with PPE shall forthwith report to their employer any loss of or obvious defect in that PPE.

The remaining regulations 12, 13 and 14 cover exemption certificates, extension outside Great Britain and repeals and modifications.