

Subsidiary Legislation made under s.337.

## **Transportable Pressure Equipment Regulations 2011**

**LN.2011/185**

<i>Commencement</i>	<b>7.10.2011</b>
r. 22(2)(d)	<b>1.1.2012</b>

**Transposing:**  
Directive 2010/35/EU

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*In exercise of the powers conferred upon it by section 337 of the Public Health Act as read with section 23(g)(i) of the Interpretation and General Clauses Act and for the purpose of transposing into the law of Gibraltar 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 Government has made the following Regulations—*

**Title and commencement.**

1.(1) These Regulations may be cited as the Transportable Pressure Equipment Regulations 2011.

(2) These Regulations come into operation on the day of publication save for regulation 22(2)(d) which comes into operation on 1 January 2012.

**Interpretation.**

2. In these Regulations—

“accreditation” means an attestation by an accreditation body that a notified body meets the requirements set out in the second paragraph of 1.8.6.8 of the Annexes to Directive 2008/68/EC;

“accreditation body” means the sole body in Gibraltar that performs accreditation with authority derived from the Government;

“Annexes to Directive 2008/68/EC” means Section I.1 of Annex I, Section II.1 of Annex II, and Section III.1 of Annex III to Directive 2008/68/EC;

“authorised representative” means any natural or legal person established within the European Union who has received a written mandate from the manufacturer to act on his behalf in relation to specified tasks;

“Commission” means the European Commission;

“conformity assessment” means the assessment and the procedure for the assessment of conformity set out in the Annexes to Directive 2008/68/EC;

“the Directive” means 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, as the same may be from time to time amended;

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“Directive 2008/68/EC” means Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods, as amended from time to time transposed in the Transport (Carriage of Dangerous Goods by Road) Regulations 2010 (LN 2010/122);

“distributor” means any natural or legal person established within the European Union, other than the manufacturer or the importer, who makes transportable pressure equipment or parts thereof available on the market;

“economic operator” means the manufacturer, the authorised representative, the importer, the distributor, the owner or the operator acting in the course of a commercial or public service activity, whether in return for payment or free of charge;

“exceptional check” means the exceptional check and the procedures governing the exceptional check set out in the Annexes to Directive 2008/68/EC;

“importer” means any natural or legal person established within the European Union who places transportable pressure equipment or parts thereof from a third country on the European Union market;

“intermediate inspection” means the intermediate inspection and the procedures governing the intermediate inspection as set out in the Annexes to Directive 2008/68/EC;

“making available on the market” means any supply of transportable pressure equipment for distribution or use on the European Union market in the course of a commercial or public service activity, whether in return for payment or free of charge;

“manufacturer” means any natural or legal person who manufactures transportable pressure equipment, or parts thereof, or who has such equipment designed or manufactured and markets it under his name or trademark;

“market surveillance” means the activities carried out and measures taken by public authorities to ensure that transportable pressure equipment during its life cycle complies with the requirements set out in the Transport (Carriage of Dangerous Goods by Road) Regulations 2010 and in these Regulations and does not endanger health, safety or any other aspect of public interest protection;

“market surveillance authority” has the meaning given to that phrase in Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93;

“notification” is the process of awarding notified body status to an inspection body and includes communication of this information to the Commission and to the Member States;

“notified body” means an inspection body meeting the requirements set out in the Annexes to Directive 2008/68/EC and the conditions set out in regulations 21 and 25, and notified in accordance with regulation 23, of these Regulations;

“notifying authority” means the Gibraltar Notifying Authority established under regulation 18 in the case of Gibraltar and, in the case of the Member States, the authorities designated by the Member States pursuant to Article 17 of the Directive;

“operator” means any natural or legal person established in the European Union using transportable pressure equipment;

“owner” means any natural or legal person established within the European Union who owns transportable pressure equipment;

“periodic inspection” means the periodic inspection and the procedures governing the periodic inspection as set out in the Annexes to Directive 2008/68/EC;

“Pi marking” means a marking which indicates that the transportable pressure equipment is in conformity with the applicable conformity assessment requirements set out in the Annexes to Directive 2008/68/EC and in these Regulations;

“placing on the market” means the first making available of transportable pressure equipment on the European Union market;

“reassessment of conformity” means the procedure undertaken, at the request of the owner or operator, for the subsequent assessment of the conformity of transportable pressure equipment manufactured and placed on the market before 1 July 2001;

“recall” means any measure aimed at achieving the return of transportable pressure equipment that has already been made available to the end user;

“transportable pressure equipment” means—

- (a) all pressure receptacles, their valves and other accessories when appropriate, as covered in Chapter 6.2 of the Annexes to Directive 2008/68/EC;

- (b) tanks, battery vehicles/wagons, multiple-element gas containers (MEGCs), their valves and other accessories when appropriate, as covered in Chapter 6.8 of the Annexes to Directive 2008/68/EC;

when the equipment under (a) or (b) is used in accordance with those Annexes for the transport of Class 2 gases, excluding gases or articles with figures 6 and 7 in the classification code, and for the transport of the dangerous substances of other classes specified in Schedule 1. Transportable pressure equipment shall be understood as including gas cartridges (UN No 2037) and excluding aerosols (UN No 1950), open cryogenic receptacles, gas cylinders for breathing apparatus, fire extinguishers (UN No 1044), transportable pressure equipment exempted according to 1.1.3.2 of the Annexes to Directive 2008/68/EC and transportable pressure equipment exempted from the rules for construction and testing of packaging according to special provisions in 3.3 of the Annexes to Directive 2008/68/EC;

“use” means filling, temporary storage linked to carriage, emptying and refilling of transportable pressure equipment;

“withdrawal” means any measure aimed at preventing transportable pressure equipment from being made available on the market or from being used.

(2) Expressions used but not defined in these Regulations shall have the meaning given to them in the Directive.

### **Scope.**

3.(1) These Regulations apply to—

- (a) new transportable pressure equipment which does not bear the conformity markings provided for in Directives 84/525/EEC, 84/526/EEC, 84/527/EEC or 1999/36/EC, for the purpose of making it available on the market;
- (b) transportable pressure equipment bearing the conformity markings provided for in these Regulations or in Directives 84/525/EEC, 84/526/EEC, 84/527/EEC or 1999/36/EC, for the purposes of its periodic inspections, intermediate inspections, exceptional checks and use;
- (c) transportable pressure equipment which does not bear the conformity markings provided for in Directive 1999/36/EC, for the purposes of reassessment of conformity.

(2) These Regulations do not apply to—

- (a) transportable pressure equipment which was placed on the market before 1 July 2001 and which has not been subject to a reassessment of conformity; and
- (b) transportable pressure equipment used exclusively for the transport of dangerous goods between Gibraltar and third countries, carried out in accordance with Article 4 of Directive 2008/68/EC.

(3) The application of these Regulations is without prejudice to the fact that Gibraltar does not form part of the European Union's common customs territory and that European Union rules on the free movement of goods do not apply to Gibraltar.

#### **On-site requirements.**

4. If provision is made under, or pursuant to, these Regulations for the establishment of on-site requirements for the mid- or long-term storage or the on-site use of transportable pressure equipment, the Government shall not establish additional requirements for the transportable pressure equipment itself.

#### *Obligations of economic operators*

#### **Manufacturer's obligations.**

5.(1) A manufacturer of transportable pressure equipment shall not place any such equipment on the market unless the equipment has been designed, manufactured and documented in accordance with the requirements set out in the Annexes to Directive 2008/68/EC and in these Regulations.

(2) Where the compliance of the transportable pressure equipment with the applicable requirements has been demonstrated through the conformity assessment process set out in the Annexes to Directive 2008/68/EC and in these Regulations, the manufacturer shall affix the Pi marking in accordance with regulation 16 and Schedule 2.

(3) The manufacturer shall keep the technical documentation specified in the Annexes to Directive 2008/68/EC for the period specified in those Annexes.

(4) A manufacturer who considers, or has reason to believe, that transportable pressure equipment he has placed on the market is not in conformity with the Annexes to Directive 2008/68/EC or with these Regulations, shall immediately take the corrective measures necessary to bring the transportable pressure equipment into conformity, to withdraw it or to recall it, if appropriate.

(5) Where the transportable pressure equipment presents a risk, the manufacturer shall immediately inform the Minister for transport and the competent authorities of the Member

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States in which he made the transportable pressure equipment available, giving details, in particular, of the non-compliance and of any corrective measures taken.

(6) A manufacturer to whom subregulation (5) applies shall document all such instances of noncompliance and corrective measures.

(7) A manufacturer shall, further to a reasoned request from the Minister for transport, provide him with all the information and documentation necessary to demonstrate the conformity of the transportable pressure equipment in English and shall cooperate with the Minister, at his request, as regards any action taken to eliminate the risks posed by transportable pressure equipment which the manufacturer has placed on the market.

(8) A manufacturer shall only provide information to operators if it complies with the requirements set out in the Annexes to Directive 2008/68/EC and in these Regulations.

**Authorised representatives.**

6.(1) A manufacturer may, by a written mandate, appoint an authorised representative but the obligations set out in regulation 5(1) and (2) and the drawing up of technical documentation shall not form part of the authorised representative's mandate.

(2) An authorised representative shall perform the tasks specified in the mandate received from the manufacturer, pursuant to subregulation (1).

(3) The mandate shall allow the authorised representative to do at least the following—

- (a) keep the technical documentation at the disposal of market surveillance authority in Gibraltar for at least the period specified in the Annexes to Directive 2008/68/EC for manufacturers;
- (b) further to a reasoned request from the Minister for transport, provide the Minister with all the information and documentation necessary to demonstrate the conformity of the transportable pressure equipment in English;
- (c) cooperate with the Minister for transport, at his request, on any action taken to eliminate the risks posed by transportable pressure equipment covered by the mandate.

(4) The identity and address of the authorised representative shall be indicated on the certificate of conformity specified in the Annexes to Directive 2008/68/EC.

(5) Authorised representatives shall only provide information to operators if it complies with the requirements set out in the Annexes to Directive 2008/68/EC and in these Regulations.



**Importer's obligations.**

7.(1) An importer shall only place on the market transportable pressure equipment if it is in conformity with the Annexes to Directive 2008/68/EC and with these Regulations.

(2) Before placing transportable pressure equipment on the market, an importer shall ensure that—

- (a) the appropriate conformity assessment procedure has been carried out by the manufacturer;
- (b) the manufacturer has drawn up the technical documentation and that the transportable pressure equipment bears the Pi marking and is accompanied by the certificate of conformity specified in the Annexes to Directive 2008/68/EC.

(3) An importer who knows or has reason to believe that the transportable pressure equipment is not in conformity with the Annexes to Directive 2008/68/EC or with these Regulations shall not place the transportable pressure equipment on the market until it has been brought into conformity.

(4) Where the transportable pressure equipment presents a risk, the importer shall inform the manufacturer and the market surveillance authorities to that effect.

(5) Importers shall indicate their name and the address at which they can be contacted either in, or attached to, the certificate of conformity specified in the Annexes to Directive 2008/68/EC.

(6) Importers shall ensure that, while transportable pressure equipment is under their responsibility, storage or transport conditions do not jeopardise its compliance with the requirements set out in the Annexes to Directive 2008/68/EC.

(7) An importer who knows or has reason to believe that transportable pressure equipment which he has placed on the market is not in conformity with the Annexes to Directive 2008/68/EC or with these Regulations shall immediately take the corrective measures necessary to bring the transportable pressure equipment into conformity, to withdraw it or to recall it, if appropriate.

(8) If the transportable pressure equipment presents a risk, the importer shall immediately inform the manufacturer and the competent authorities of the Member States in which he made the transportable pressure equipment available to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken.

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(9) An importer shall document all such instances of non-compliance and corrective measures.

(10) An importer shall, for at least the period specified in the Annexes to Directive 2008/68/EC for manufacturers, keep a copy of the technical documentation at the disposal of the market surveillance authorities and ensure that the technical documentation can be made available to those authorities upon request.

(11) An importer shall, further to a reasoned request from the Minister for transport, provide him with all the information and documentation necessary to demonstrate the conformity of the transportable pressure equipment, in English and shall cooperate with the Minister, at his request, on any action taken to eliminate the risks posed by transportable pressure equipment which the importer has placed on the market.

(12) An importer shall only provide information to operators if the information complies with the requirements set out in the Annexes to Directive 2008/68/EC and in these Regulations.

**Distributor's obligations.**

8.(1) A distributor shall only make available on the market transportable pressure equipment if it is in conformity with the Annexes to Directive 2008/68/EC and with these Regulations.

(2) Before making transportable pressure equipment available on the market, a distributor shall verify that the transportable pressure equipment bears the Pi marking, and that it is accompanied by the certificate of conformity and the contact address referred to in regulation 7(5).

(3) A distributor who knows or has reason to believe that transportable pressure equipment is not in conformity with the Annexes to Directive 2008/68/EC or with these Regulations shall not make the transportable pressure equipment available on the market until it has been brought into conformity and where the transportable pressure equipment presents a risk, the distributor shall inform the manufacturer or the importer to that effect as well as the market surveillance authorities.

(4) A distributor shall ensure that, while transportable pressure equipment is under his responsibility, storage or transport conditions do not jeopardise the equipment's compliance with the requirements set out in the Annexes to Directive 2008/68/EC.

(5) A distributor who knows or has reason to believe that transportable pressure equipment which he has made available on the market is not in conformity with the Annexes to Directive 2008/68/EC or with these Regulations shall make sure that the corrective measures necessary to bring that transportable pressure equipment into conformity, to withdraw it or to recall it, if appropriate, are taken and, where the transportable pressure equipment presents a risk, the

distributor shall immediately inform the manufacturer, the importer, where relevant, and the competent authorities of the Member States in which they made the transportable pressure equipment available to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken.

(6) A distributor shall document all such instances of non-compliance and corrective measures.

(7) A distributor shall, further to a reasoned request from the Minister for transport, provide him with all the information and documentation necessary to demonstrate the conformity of the transportable pressure equipment in English and shall cooperate with the Minister, at his request, on any action taken to eliminate the risks posed by transportable pressure equipment which the distributor has made available on the market.

(8) A distributor shall only provide information to operators which complies with the requirements set out in the Annexes to Directive 2008/68/EC and in these Regulations.

#### **Owner's obligations.**

9.(1) An owner who knows or has reason to believe that transportable pressure equipment is not in conformity with the Annexes to Directive 2008/68/EC, including the requirements for periodic inspection, and with these Regulations, shall not make it available or use it until it has been brought into conformity and where the transportable pressure equipment presents a risk, the owner shall inform the manufacturer, the importer or the distributor to that effect as well as the market surveillance authorities.

(2) An owner shall document all such instances of non-compliance and corrective measures.

(3) An owner shall ensure that, while transportable pressure equipment is under his responsibility, storage or transport conditions do not jeopardise the equipment's compliance with the requirements set out in the Annexes to Directive 2008/68/EC.

(4) An owner shall only provide information to operators which complies with the requirements set out in the Annexes to Directive 2008/68/EC and in these Regulations.

(5) This regulation shall not apply to a private individual who is intending to use, or is using, transportable pressure equipment for his personal or domestic use or for his leisure or sporting activities.

#### **Operator's obligations.**

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10.(1) An operator shall only use transportable pressure equipment which is in conformity with the requirements set out in the Annexes to Directive 2008/68/EC and in these Regulations.

(2) If the transportable pressure equipment presents a risk, the operator shall inform the owner to that effect as well as the market surveillance authorities.

**Cases in which manufacturer's obligations apply to importers and distributors.**

11. An importer or distributor shall be considered to be a manufacturer for the purposes of these Regulations and subject to the obligations of the manufacturer pursuant to regulation 5, where he places transportable pressure equipment on the market under his name or trademark or modifies transportable pressure equipment already placed on the market in such a way that compliance with the applicable requirements may be affected.

**Identification of economic operators.**

12. An economic operator shall, if requested by the market surveillance authority, provide the authority with the identity of the following-

- (a) any economic operator who has supplied him with transportable pressure equipment in the previous ten years;
- (b) any economic operator to whom he has supplied transportable pressure equipment in the previous ten years.

*Conformity of transportable pressure equipment***Conformity of transportable pressure equipment and its assessment.**

13.(1) The transportable pressure equipment referred to in regulation 3(1)(a) shall meet the relevant conformity assessment, periodic inspection, intermediate inspection and exceptional checks requirements set out in the Annexes to Directive 2008/68/EC and in regulations 13 to 26.

(2) The transportable pressure equipment referred to in regulation 3(1)(b) shall meet the specifications of the documentation according to which the equipment was manufactured and the equipment shall be subject to periodic inspections, intermediate inspections and exceptional checks in accordance with the Annexes to Directive 2008/68/EC and with the requirements in regulations 13 to 26.

(3) Certificates of conformity assessment and certificates of reassessment of conformity and reports of periodic inspections, intermediate inspections and exceptional checks issued by a notified body in a Member State shall be valid in Gibraltar.

(4) A separate conformity assessment may be carried out on demountable parts of refillable transportable pressure equipment.

**Reassessment of conformity.**

14.(1) The reassessment of conformity of transportable pressure equipment referred to in regulation 3(1)(c) manufactured and put into service before 1 July 2001 shall be established in accordance with the conformity reassessment procedure set out in Schedule 3.

(2) The Pi marking shall be affixed in accordance with Schedule 3.

**General principles of the Pi marking.**

15.(1) The Pi marking shall only be affixed by the manufacturer or, in cases of reassessment of conformity, as set out in Schedule 3 and in the case of gas cylinders previously in compliance with Directives 84/525/EEC, 84/526/EEC or 84/527/EEC the Pi mark shall be affixed by or under the surveillance of the notified body.

(2) The Pi marking shall be affixed only to transportable pressure equipment which—

- (a) meets the conformity assessment requirements in the Annexes to Directive 2008/68/EC and in these Regulations; or
- (b) meets the reassessment of conformity requirements referred to in regulation 14,

and it shall not be affixed to any other transportable pressure equipment.

(3) A manufacturer who affixes or has affixed the Pi marking is responsible for the conformity of the transportable pressure equipment with all applicable requirements set out in the Annexes to Directive 2008/68/EC and in these Regulations.

(4) For the purposes of these Regulations, the Pi marking shall be the only marking which attests conformity of the transportable pressure equipment with the applicable requirements set out in the Annexes to Directive 2008/68/EC and in these Regulations.

(5) A person who—

- (a) affixes on transportable pressure equipment markings, signs and inscriptions which are likely to mislead third parties as to the meaning or form of the Pi marking; or

- (b) affixes on transportable pressure equipment any marking that impairs the visibility, legibility and meaning of the Pi marking,

commits an offence and is liable on summary conviction to a fine at level 1 on the standard scale.

(6) Demountable parts of refillable transportable pressure equipment with a direct safety function shall be Pi-marked.

**Rules and conditions for the affixing of the Pi marking.**

16. The Pi marking shall comply with the provisions set out in Schedule 2.

**Free movement of transportable pressure equipment.**

17. Without prejudice to regulation 3(3), to the safeguard procedures in regulations 27 and 28 and to the market surveillance framework set out in Regulation (EC) No 765/2008, transportable pressure equipment which complies with the provisions of these Regulations shall not be the subject of any prohibitions, restrictions or other qualifications regarding the free movement, the placing on the market and the use of that equipment in Gibraltar.

*Notifying authorities and notified bodies*

**Establishment of notifying authority.**

18.(1) There is hereby established the Gibraltar Notifying Authority.

(2) The Gibraltar Notifying Authority shall comprise of the Minister with responsibility for transport, who shall be the chairman, plus such other members as the Government may appoint.

(3) In making appointments under subregulation (2) the Government shall have regard to the need for the Authority to possess a sufficient number of persons possessing the necessary skill and expertise required for it to discharge its functions and the need for the Authority to be able to take objective and impartial decisions.

(4) A member of the Authority who has an interest in any matter before the Authority shall not take part in any process in which the Authority is required to make a determination.

(5) Where the Authority is required to make a decision in relation to the notification of notified bodies, the Authority shall proceed in such a manner as to ensure that the decision is taken by competent persons who are different from those who carried out the assessment.

**Duties of the Authority.**

19.(1) The Authority shall be responsible for setting up and carrying out the necessary procedures for the assessment, notification and subsequent monitoring of notified bodies.

(2) Subject to the provisions in regulation 18 and in this regulation, the Authority shall determine its own procedures and in so doing shall ensure that no conflict of interests occur with notified bodies.

(3) The Authority shall take such steps as it deems necessary in order to safeguard the confidentiality of the information obtained.

(4) The Authority shall not offer or provide any activities or consultancy services on a commercial or competitive basis.

**Commission to be informed.**

20. The Government shall ensure that the Commission is informed of the procedures which are in place in Gibraltar for the assessment, notification and monitoring of notified bodies, and of any subsequent changes to that information.

**Requirements relating to notified bodies.**

21.(1) For the purposes of notification, a notified body shall meet the requirements set out in the Annexes to Directive 2008/68/EC and in these Regulations.

(2) A competent authority, within the meaning of the Annexes to Directive 2008/68/EC, may be a notified body provided it meets the requirements set out in the Annexes to Directive 2008/68/EC and in these Regulations.

(3) The Authority may not act as a notified body.

(4) The notified body shall be established under the laws of Gibraltar and shall have legal personality.

(5) The notified body shall participate in, or ensure that its assessment personnel is informed of, the relevant standardisation activities and the activities of the notified body coordination group established pursuant to Article 29 of the Directive and apply as general guidance the administrative decisions and documents produced as a result of the work of that group.

**Application for notification.**

22.(1) An inspection body established in Gibraltar shall submit an application for notification to the Authority.

(2) An application under this regulation shall be accompanied by a description of–

- (a) the activities relating to conformity assessment, periodic inspection, intermediate inspection, exceptional checks and reassessment of conformity;
- (b) the procedures relating to the activities set out in paragraph (a);
- (c) the transportable pressure equipment for which the body claims to be competent;
- (d) an accreditation certificate issued by an accreditation body within the meaning of Regulation (EC) No 765/2008, attesting that the inspection body fulfils the requirements set out regulation 21.

**Notification procedure.**

23.(1) The Authority shall ensure that the Commission and the other Member States are notified of those bodies in Gibraltar which have satisfied the requirements set out in regulation 21.

(2) The notification referred to in subregulation (1) shall include the information required in regulation 22(2).

(3) The bodies referred to in subregulation (1) may perform the activities of a notified body only where no objections are raised by the Commission or the Member States within two weeks of a notification having been made and only such a body shall be considered a notified body for the purposes of these Regulations.

(4) The Authority shall ensure that the Commission and the other Member States are informed of any subsequent relevant changes to the notification.

(5) In-house inspection services of the applicant as defined in the Annexes to Directive 2008/68/EC shall not be notified.

**Changes to notifications.**

24.(1) If the Authority ascertains or has been informed that a notified body no longer meets the requirements set out in regulation 21, or that it is failing to fulfil its obligations, the Authority shall restrict, suspend or withdraw the notification, as appropriate, depending on the seriousness of the failure to meet those requirements or fulfil those obligations, and where it



does so, it shall ensure that the Commission and the other Member States are immediately informed of the action it has taken.

(2) In the event of the withdrawal, restriction or suspension of the notification or, where the notified body has ceased its activity, the Government shall take the appropriate steps to ensure that the files of that body are either processed by another notified body or kept available for the responsible notifying and market surveillance authorities on request.

**Operational obligations of notified bodies.**

25.(1) Notified bodies shall carry out conformity assessments, periodic inspections, intermediate inspections and exceptional checks in accordance with the terms of their notification and the procedures set out in the Annexes to Directive 2008/68/EC.

(2) Notified bodies shall carry out reassessments of conformity in accordance with Schedule 3.

(3) A body which has been notified by Gibraltar or by a Member State shall be authorised to work in all other parts of the European Union, but the responsibility for monitoring the ongoing activities of the notified body shall be retained by the notifying authority which carried out the initial assessment and notification.

**Information obligation of notified bodies.**

26.(1) Bodies notified by the Authority shall inform the Authority of the following–

- (a) any refusal, restriction, suspension or withdrawal of a certificate;
- (b) any circumstances affecting the scope of and conditions for notification;
- (c) any request for information on activities performed which they have received from market surveillance authorities;
- (d) on request, activities performed within the scope of their notification and any other activity performed, including cross-border activities and subcontracting.

(2) Notified bodies shall provide the other bodies notified under the Directive carrying out similar conformity assessment, periodic inspection, intermediate inspections and exceptional checks activities covering the same transportable pressure equipment with relevant information on issues relating to negative and, on request, positive conformity assessment results.

*Safeguard procedures*

**Procedure for dealing with transportable pressure equipment presenting a risk in Gibraltar.**

27.(1) Where the market surveillance authority in Gibraltar–

- (a) has taken action pursuant to Article 20 of Regulation (EC) No 765/2008; or
- (b) has sufficient reason to believe that transportable pressure equipment covered by these Regulations presents a risk to the health or safety of persons or to other aspects of public interest protection covered by these Regulations,

it shall carry out an evaluation in relation to the transportable pressure equipment concerned covering all the requirements laid down in these Regulations and the relevant economic operators shall cooperate, as necessary, with the market surveillance authority, including granting access to their premises and providing samples as appropriate.

(2) Where, in the course of the evaluation referred to in subregulation (1), the market surveillance authority finds that the transportable pressure equipment does not comply with the requirements set out in the Annexes to Directive 2008/68/EC and in these Regulations, it shall without delay require the relevant economic operator to take all appropriate corrective action to bring the transportable pressure equipment into compliance with those requirements, to withdraw the transportable pressure equipment from the market or to recall it within a reasonable period, commensurate with the nature of the risk, as it may prescribe and the market surveillance authority shall inform the relevant notified body accordingly.

(3) Article 21 of Regulation (EC) No 765/2008 shall apply to the corrective action referred to in subregulation (2).

(4) Where the market surveillance authority considers that non-compliance is not restricted to Gibraltar, it shall ensure that the Commission and the Member States are informed of the results of the evaluation and of the actions which it has required the economic operator to take.

(5) The economic operator shall ensure that all appropriate corrective action is taken in respect of transportable pressure equipment that it has made available on the market.

(6) Where the relevant economic operator does not take adequate corrective action within the period referred to in sub-regulation (2), the market surveillance authority shall take all appropriate provisional measures to prohibit or restrict the transportable pressure equipment being made available in Gibraltar, to withdraw the equipment from or to recall it and it shall ensure that the Commission and the Member States are notified without delay of those measures.

(7) The information referred to in sub-regulation (6) shall include all available details, in particular the data necessary for the identification of the non-compliant transportable pressure equipment, the origin of the equipment, the nature of the alleged non-compliance and the risk involved, the nature and duration of the measures taken and the arguments put forward by the relevant economic operator.

(8) The market surveillance authority shall, in particular, indicate whether the non-compliance is due to either-

- (a) failure of the transportable pressure equipment to meet requirements relating to the health or safety of persons or to other aspects of public interest protection set out in the Annexes to Directive 2008/68/EC and in these Regulations; or
- (b) shortcomings in the standards or technical codes referred to in the Annexes to Directive 2008/68/EC or in other provisions of that Directive.

(9) The Government shall, unless the procedure was initiated in Gibraltar, without delay ensure that the Commission and the Member States are informed of any measures adopted and of any additional information at its disposal relating to the non-compliance of the transportable pressure equipment concerned, and, in the event of disagreement with the notified national measure, of its objections.

(10) Where, within two months of receipt of the information referred to in sub-regulation (6), no objection has been raised by either a Member State or the Commission in respect of a provisional measure taken by the Government, that measure shall be deemed justified.

(11) In addition to any powers that the market surveillance authority may have conferred upon it by any other enactment, the market surveillance authority may issue a notice in writing for the purposes of the immediate withdrawal of transportable pressure equipment from the market.

(12) A person who having been served with a notice under subregulation (11) without reasonable excuse fails to comply with the terms of the notice commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

#### **European Union safeguard procedure.**

28. Where a Member State or the Commission raises an objection to a measure notified pursuant to regulation 27(6), or where the Commission considers that such a measure is contrary to European Union law, the Government shall comply with any decision adopted by the Commission pursuant to Article 31 of the Directive, as to the justifiability or not of that measure.

**Compliant transportable pressure equipment which presents a risk to health and safety.**

29.(1) If, having performed an evaluation pursuant to regulation 27(1) to (3), the Government finds that, although transportable pressure equipment is in compliance with the Transport (Carriage of Dangerous Goods by Road) Regulations 2010 and these Regulations, it presents a risk to the health or safety of persons or to other aspects of public interest protection, it shall, in writing inform the relevant economic operator to take all appropriate measures to ensure that the transportable pressure equipment concerned, when placed on the market, no longer presents that risk, to withdraw the equipment from the market or to recall it within a reasonable period, commensurate with the nature of the risk, within the period stated in the notice.

(2) The economic operator shall ensure that corrective action is taken in respect of all the transportable pressure equipment concerned that he has made available on the market or is using throughout the European Union.

(3) The Government shall ensure that the Commission and the Member States are immediately informed of the action taken pursuant to this regulation and that information shall include all available details, and in particular, the data necessary for the identification of the transportable pressure equipment concerned, the origin and the supply chain of the equipment, the nature of the risk involved and the nature and duration of the measures taken.

**Formal non-compliance.**

30.(1) Without prejudice to regulation 27, where the Government makes one of the following findings, it shall issue a notice to the relevant economic operator requiring it to put an end to the non-compliance concerned—

- (a) that the Pi marking has been affixed in violation of regulation 13, 14, 15 or 16;
- (b) that the Pi marking has not been affixed;
- (c) that the technical documentation is either not available or not complete;
- (d) that the requirements of the Annexes to Directive 2008/68/EC and of these Regulations have not been complied with.

(2) Where the non-compliance referred to in subregulation (1) persists, the Government shall take all appropriate measures to restrict or prohibit the transportable pressure equipment being made available on the market or shall ensure that it is recalled or withdrawn from the market.

(3) Any notice issued pursuant to this regulation shall be in writing and shall state the time for compliance.

(4) A person who without lawful excuse fails to comply with any provision of a notice issued under this regulation shall be guilty of an offence and liable to a fine not exceeding level 2 on the standard scale.

**Appeal.**

31.(1) A person who has been served with a notice under regulation 27, 29 or 30 and who is aggrieved by it may appeal to the Magistrates' Court.

(2) Upon hearing an appeal under subregulation (1) the court may confirm, quash or vary the terms of the notice.

(3) An appeal under this regulation shall not act as a stay or otherwise affect the validity of a notice being appealed until such appeal is determined.

**Duties.**

32. The Government shall take such steps as are necessary to ensure-

- (a) that the economic operators concerned comply with the provisions of regulations 5 to 12 and 27 to 30;
- (b) that the necessary implementing measures are taken in respect of regulations 13 to 16.

**Transitional provisions.**

33.(1) The Government may, by notice published in the Gazette, declare that the provisions listed in Annex II to the Directive shall remain in force.

(2) Where the Government maintains such provisions it shall ensure that the Commission is informed.

**Revocation.**

34. The Transportable Pressure Equipment Regulations 2003 are revoked.

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**SCHEDULE 1**

Regulation 2

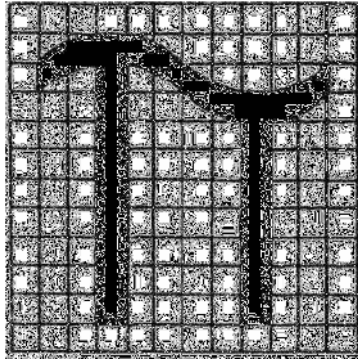
**List of dangerous goods other than those in class 2**

<b>UN Number</b>	<b>Class</b>	<b>Dangerous substance</b>
1051	6.1	hydrogen cyanide, stabilised containing less than 3 % water
1052	8	hydrogen fluoride, anhydrous
1745	5.1	bromine pentafluoride excluding carriage in tanks
1746	5.1	bromine trifluoride excluding carriage in tanks
1790	8	hydrofluoric acid with more than 85 % hydrogen fluoride
2495	5.1	iodine pentafluoride excluding carriage in tanks

## SCHEDULE 2

Regulation 16

1. The Pi marking shall consist of the following symbol in the following form—



2. The minimum height of the Pi marking shall be 5 millimetres. For transportable pressure equipment with a diameter less than or equal to 140 millimetres the minimum height shall be 2.5 millimetres.
3. The proportions given in the graduated drawing in paragraph 1 shall be respected. The grid does not form part of the marking.
4. The Pi marking shall be affixed visibly, legibly and permanently to the transportable pressure equipment or to its data plate as well as to demountable parts of refillable transportable pressure equipment having a direct safety function.
5. The Pi marking shall be affixed before the new transportable pressure equipment or demountable parts of refillable transportable pressure equipment having a direct safety function are placed on the market.
6. The Pi marking shall be followed by the identification number of the notified body involved in the initial inspections and tests.

The identification number of the notified body shall be affixed by the body itself, or under its instructions, by the manufacturer.

7. The marking of the date of the periodic inspection or, where appropriate, the intermediate inspection shall be accompanied by the identification number of the notified body responsible for the periodic inspection.

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8. With regard to gas cylinders previously in compliance with Directives 84/525/EEC, 84/526/EEC or 84/527/EEC not bearing the Pi marking, when the first periodic inspection is carried out in accordance with these Regulations, the identification number of the notified body responsible shall be preceded by the Pi marking.



**SCHEDULE 3**

Regulations 14, 15(1), 25(2)

**PROCEDURE FOR THE REASSESSMENT OF CONFORMITY**

1. The method for ensuring that the transportable pressure equipment referred to in regulation 3(1)(c) manufactured and put into service before 1 July 2001 complies with the relevant provisions of the Annexes to Directive 2008/68/EC and of these Regulations as applicable at the time of reassessment shall be as set out in this Schedule.
2. The owner or operator must make available to a notified body conforming to EN ISO/IEC 17020:2004 type A, notified for reassessment of conformity, the information regarding the transportable pressure equipment which enables that body to identify the equipment precisely (origin, design rules, and for acetylene cylinders also details of the porous material). The information shall include, where appropriate, any prescribed restrictions on use, and any notes on possible damage or repairs which have been carried out.
3. The type A notified body, notified for reassessment of conformity, shall assess whether the transportable pressure equipment affords at least the same degree of safety as the transportable pressure equipment referred to in the Annexes to Directive 2008/68/EC. The assessment shall be carried out on the basis of the information produced in accordance with paragraph 2 and, where appropriate, of further inspections.
4. If the results of the assessment in paragraph 3 are satisfactory, the transportable pressure equipment shall be subject to the periodic inspection provided for in the Annexes to Directive 2008/68/EC. If the requirements of that periodic inspection are met the Pi marking shall be applied by or under the surveillance of the notified body responsible for the periodic inspection in accordance with regulation 15(1) to (5). The Pi marking shall be followed by the identification number of the notified body responsible for the periodic inspection. The notified body responsible for the periodic inspection shall issue a certificate of reassessment in accordance with paragraph 6.
5. Where pressure receptacles were manufactured in series, the Government may authorise the reassessment of conformity of individual pressure receptacles, including their valves and other accessories used for transport, to be carried out by a notified body notified for periodic inspection of the relevant transportable pressure receptacles provided that conformity of the type has been assessed in accordance with paragraph 3 by a type A notified body, responsible for the reassessment of conformity, and a certificate of type reassessment issued. The Pi marking shall be followed by the identification number of the notified body responsible for the periodic inspection.

6. In all cases the notified body responsible for the periodic inspection shall issue the certificate of reassessment containing as a minimum—

- (a) the identification of the notified body issuing the certificate, and, if different, the identification number of the type A notified body responsible for the reassessment of conformity in accordance with paragraph 3;
- (b) the name and address of owner or operator specified in paragraph 2;
- (c) in the case of the application of the procedure in paragraph 5, the data identifying the certificate of type reassessment;
- (d) the data for identification of the transportable pressure equipment to which Pi marking has been applied including at least the serial number or numbers; and
- (e) the date of issue.

7. A certificate of type reassessment shall be issued.

Where the procedure in paragraph 5 is applied the type A body, responsible for the reassessment of conformity, shall issue the certificate of type reassessment containing as a minimum—

- (a) the identification of the notified body issuing the certificate;
- (b) the name and address of the manufacturer and the holder of the original type approval for the transportable pressure equipment being reassessed when the holder is not the manufacturer;
- (c) the data identifying the transportable pressure equipment belonging to the series;
- (d) the date of issue; and
- (e) the words: “this certificate does not authorise manufacture of transportable pressure equipment or parts thereof”.

8. By affixing or having affixed the Pi marking, the owner or operator indicates that he takes responsibility for the conformity of the transportable pressure equipment with all applicable requirements set out in the Annexes to Directive 2008/68/EC and in these Regulations as applicable at the time of reassessment.

9. Where appropriate, the provisions of Annex II (2) to the Directive shall be taken into account and the cold marking provided for in that Annex shall also be affixed.