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STATUTORY INSTRUMENTS

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**2016 No. 721**

**The Dangerous Goods in Harbour Areas Regulations 2016**

**PART 1**

**INTERPRETATION AND APPLICATION**

**Citation and commencement**

1. These Regulations may be cited as the Dangerous Goods in Harbour Areas Regulations 2016 and come into force on 1st October 2016.

**Interpretation**

2.—(1) In these Regulations—

“the 1987 Regulations” means the Dangerous Substances in Harbour Areas Regulations 1987(1);

“appropriate authority” means—

- (a) in relation to a harbour which is, or forms part of, an ONR regulated site, the Office for Nuclear Regulation,
- (b) otherwise, the Health and Safety Executive;

“berth” means a dock, jetty, quay, wharf or similar structure (whether floating or not) or a buoy berth at which a vessel may tie up, and—

- (a) includes any plant or premises, other than a vessel, used for purposes ancillary or incidental to the handling of dangerous goods within the harbour area; but
- (b) does not include a monobuoy;

“Class” has the same meaning as in the IMDG Code;

“Compatibility Group” has the same meaning as in the IMDG Code;

“dangerous goods” is defined in regulation 3;

“Division” has the same meaning as in the IMDG Code;

“dumb craft” means a vessel not possessing mechanical means of propulsion and includes a dumb barge and a dracone;

“explosive” means goods of Class 1 in the IMDG Code ;

“explosives licence” means a licence issued by the Health and Safety Executive or the Office for Nuclear Regulation under Part 5 of these Regulations;

“freight container” means a container as defined in regulation 2(1) of the Freight Containers (Safety Convention) Regulations 1984(2) other than a container within the definition of “portable tank” in those Regulations;

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(1) [S.I. 1987/37](#).

(2) [S.I. 1984/1890](#).

“handling” in relation to dangerous goods includes loading, unloading and transferring the goods and cleaning, purging, gas-freeing and ballasting any tank on a vessel which contains dangerous goods or their vapour;

“harbour area” means any harbour, natural or artificial, and any port, haven, estuary, tidal or other river or inland waterway navigated by seagoing vessels, including—

- (a) all areas of water within the jurisdiction of a statutory harbour authority;
- (b) any land, within the jurisdiction of or occupied by a statutory harbour authority, used in connection with the loading or unloading of a vessel;
- (c) any berth where the handling of any dangerous goods takes place;
- (d) any monobuoy connected to one or more storage facilities in a harbour area and its monobuoy area;
- (e) any land adjacent to the harbour area used wholly or mainly for the normal activities of a harbour,

but excluding areas of water which are in the jurisdiction of another statutory harbour authority where those areas of water are used primarily by vessels using berths or land within the harbour area of that other statutory authority;

“harbour authority” means—

- (a) a statutory harbour authority; or
- (b) where there is no provision for a statutory harbour authority in respect of a harbour area, a person—
  - (i) who is, or claims to be, the proprietor of that harbour area, or
  - (ii) who has the duty or power to improve, manage, maintain or regulate that harbour area;

“harbour craft” means a self-propelled craft which is used wholly or mainly within a harbour area;

“harbour master” means the harbour master, dock master or other officer appointed by the harbour authority, or any person having authority to act in such capacity;

“headquarters” means those headquarters or organisations designated under the International Headquarters and Defence Organisations Act 1964<sup>(3)</sup>;

“IMDG Code” means the 2014 edition of the International Maritime Dangerous Goods Code as amended by Amendment no. 37-14 and as revised or reissued from time to time<sup>(4)</sup>;

“loading” and “unloading” means the acts of loading and unloading a vessel and includes any acts of ullaging, sounding or sampling carried out in connection with those acts and the handling of dangerous goods ancillary to such acts;

“master” includes any person, other than a marine pilot, having charge of a vessel:

“monobuoy” means a mooring buoy at which dangerous goods may be loaded onto or unloaded from a vessel and which is connected to one or more storage facilities in a harbour area and includes any pipeline connecting to it;

“monobuoy area” means the area of water surrounding a monobuoy where loading or unloading of dangerous goods takes place but does not extend to the area of water surrounding the pipeline or pipelines connected to it;

“ONR regulated site” means a site which is—

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(3) 1964 c.5.

(4) ISBN: 978-92-801-1597-0.

- (a) a GB nuclear site (within the meaning given in section 68 of the Energy Act 2013<sup>(5)</sup>);
- (b) an authorised defence site (within the meaning given in regulation 2(1) of the Health and Safety (Enforcing Authority) Regulations 1998<sup>(6)</sup>); or
- (c) a new nuclear build site (within the meaning given in regulation 2A of those Regulations);

“operator” is defined in regulation 4;

“portable tank” means a portable tank with a capacity of 450 litres or more, or a tank as defined in ADR 2015 (the European Agreement Concerning the International Carriage of Dangerous Goods by Road) as revised or reissued from time to time<sup>(7)</sup>;

“receptacle” includes any form of packaging used for the transport of dangerous goods, but does not include a freight container, a portable tank or a vehicle;

“statutory harbour authority” has the same meaning as “harbour authority” has in the Harbours Act 1964<sup>(8)</sup>;

“vessel” means any vessel, propelled or not, and includes a dumb craft, hovercraft, a hydrofoil vessel, anything constructed or adapted to carry persons or goods by water and a flying boat or seaplane on the water;

“visiting forces” means visiting forces within the meaning of Part 1 of the Visiting Forces Act 1952<sup>(9)</sup>.

- (2) Any duty imposed upon a master of a vessel shall, in relation to a dumb craft, be imposed—
  - (a) while the dumb craft is being towed, upon the master of the towing vessel;
  - (b) at any other time, upon the operator of the dumb craft.

(3) Any reference in these Regulations to the quantity of any explosive shall be construed as a reference to the net mass of explosive substance.

### **Meaning of “dangerous goods”**

3. “Dangerous goods” means goods or cargoes, whether packaged or in bulk, which meet the criteria in the IMDG Code for classification as dangerous goods.

### **Meaning of “operator”**

4. “Operator” means—

- (a) in relation to a road vehicle, a person who holds, or is required to hold by law, a licence for the use of that vehicle for the carriage of goods on a road; or, where no such licence is required, the keeper of the vehicle;
- (b) in relation to any other mode of transport or a berth, the person who has operational control of it for the time being.

### **Application**

5.—(1) These Regulations apply in Great Britain to—

- (a) every harbour area;

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(5) 2013 c.32.

(6) S.I. 1998/494; insertions made by S.I. 2014/469, there are other amendments to the instrument which are not relevant to these Regulations.

(7) ISBN: 978-92-1-139149-7.

(8) 1964 c.40.

(9) 1952 c.67.

- (b) premises or activities in any part of a harbour area in the territorial waters to which sections 1 to 59 of the 1974 Act apply under Articles 6 (but only to the extent it relates to monobuoys) and 11 of the Health and Safety at Work etc. Act (Application outside Great Britain) Order 2013<sup>(10)</sup> but not, except as provided in regulation 14, elsewhere.
- (2) These Regulations apply to or in relation to dangerous goods except—
- (a) dangerous goods of Class 4.2 meeting the definition of dangerous goods solely by virtue of being at risk of oxidative self-heating when stored over a long period of time;
  - (b) goods meeting the definition of dangerous goods solely by virtue of being marine pollutants;
  - (c) dangerous goods carried under the limited quantity or excepted quantity provisions in the IMDG Code;
  - (d) dangerous goods taken in sample form for testing by an enforcement officer;
  - (e) dangerous goods being used solely in connection with the propulsion of a vessel or any other mode of transport and which are not loaded or carried as cargo;
  - (f) dangerous goods, other than explosives, which are brought into a harbour area from inland and which are not loaded onto a vessel as cargo;
  - (g) dangerous goods when carried—
    - (i) by a vessel as part of the equipment or stores of that vessel;
    - (ii) by a vehicle or in a freight container or by any other mode of transport as part of the equipment of that vehicle, vessel, freight container or any other mode of transport;
    - (iii) for safety purposes;
    - (iv) by a vessel as a result of the use of a fumigant;
  - (h) dangerous goods, other than explosives, when carried by a harbour craft in the course of harbour engineering operations; and
  - (i) any nuclear explosive device or any part of a nuclear explosive device.
- (3) These Regulations do not affect—
- (a) any action of Her Majesty’s Commissioners for Revenue and Customs or any requirement for the approval of, authority from, clearance by or notification to them or the necessity to comply with any order or conditions imposed by them;
  - (b) any action taken by a person in relation to a direction given under Schedule 3A to the Merchant Shipping Act 1995<sup>(11)</sup>, or any action taken under paragraphs 1-4 of that Schedule.

## PART 2

### ENTRY OF DANGEROUS GOODS INTO HARBOUR AREAS

#### Notice of entry of dangerous goods

- 6.—(1) The master, agent or operator, as relevant, of any vessel or vehicle, or any other mode of transport, must before bringing any dangerous goods into the harbour area, give notice to—
- (a) the harbour master of the harbour area;
  - (b) the berth operator where the goods are to be brought to a berth; and

<sup>(10)</sup> S.I. 2013/240.

<sup>(11)</sup> 1995 c.21: Schedule 3A was inserted by Schedule 1 to the Marine Safety Act 2003 (c.16).

- (c) where relevant, the harbour master of any abutting or overlapping harbour area.
- (2) The notice under paragraph (1) must be given not less than 24 hours and not more than 6 months before the dangerous goods are brought into the harbour area.
- (3) Notwithstanding paragraph (2)—
  - (a) the harbour master may, if operational limitations make it necessary, direct that a period of more than 24 hours, but less than 14 days notice, be given;
  - (b) the harbour master, and where relevant the berth operator, may agree to accept less than 24 hours notice where either it is not reasonably practicable to give 24 hours notice or neither health nor safety risks are increased by a shorter period;
  - (c) the master of a vessel carrying dangerous goods which is under the control of the Secretary of State, or under the control of a visiting force or headquarters, must give notice to the harbour master before entry into the harbour area, and with respect to the carriage of explosives is required to confirm that—
    - (i) the quantity of explosives is within the limit of any condition to which entry into or the carrying or handling within the harbour area of explosives will be subject; or
    - (ii) the explosives are subject to a scheme authorised by the Secretary of State for safe storage, carriage and handling.
- (4) Notice under this regulation is to be given in writing or such form as the harbour master may agree and contain sufficient information to assist a proper evaluation of the risk created by the goods to the health and safety of any person.
- (5) Notice is not required under this regulation in respect of—
  - (a) dangerous goods, except where the dangerous goods are explosives, carried by a vessel which is to pass through the harbour area without unloading in that area, an overlapping area or an abutting harbour area;
  - (b) a radioactive substance that is exempt from the requirements of the Carriage of Dangerous Goods and the Use of Transportable Pressure Equipment Regulations 2009<sup>(12)</sup>;
  - (c) a ferry operated entirely within Category A-D waters within the meaning of the Merchant Shipping (Categorisation of Waters) Regulations 1992<sup>(13)</sup>;
  - (d) dangerous substances in a pipeline;
  - (e) dangerous goods carried by a foreign warship.
- (6) A harbour master may exempt any person from the requirements of this regulation where such an exemption is necessary for securing the health and safety of any person, and any such exemption may be granted subject to conditions and time limits and may be revoked at any time.
- (7) A harbour master granting or revoking an exemption under this regulation must keep a record of the exemption, including any conditions and time limits.

### **Harbour master's powers**

- 7.—(1) Subject to paragraphs (2) and (6), in addition to any powers granted under byelaws made under regulation 25, a harbour master may give directions as set out in paragraph (4) to—
- (a) a person having control of dangerous goods;
  - (b) a person having control of a freight container, receptacle or portable tank containing dangerous goods;
  - (c) the operator of a vehicle carrying dangerous goods;

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<sup>(12)</sup> S.I. 2009/1348.

<sup>(13)</sup> S.I. 1992/2356.

(d) the master of a vessel carrying dangerous goods.

(2) A harbour master may give directions to those persons in paragraph (1) if, taking into account all relevant circumstances, the condition of the dangerous goods, or their containers, or matters related to the dangerous goods create a risk to the health and safety of any person in, or in the vicinity of, the harbour area.

(3) For the purpose of securing the safety of any person, where the harbour master has given directions under paragraph (1), the Secretary of State may give directions to require that harbour master to give such other directions under this regulation as may be specified by the Secretary of State.

(4) Directions given under this regulation may—

- (a) regulate or prohibit entry into;
- (b) require the removal from;
- (c) regulate the handling, movement or position within,

the harbour area of the dangerous goods, freight container, receptacle, vehicle, vessel, portable tank or other mode of transport.

(5) Where the harbour master intends to give a direction requiring the dangerous goods to be removed by land from the harbour area, the harbour master must consult any police force through whose area the dangerous goods are to be moved.

(6) A person to whom directions are given under this regulation must comply with those directions.

(7) Paragraph (1) does not apply to any vessel under the control of the Secretary of State or a visiting force or headquarters or to any dangerous goods, freight container, portable tank or receptacle carried by such vessel.

(8) A harbour master is not under any duty to examine the condition of any dangerous goods, freight container, portable tank, receptacle, vehicle or vessel as a result of this regulation.

## PART 3

### Marking of Vessels

#### **Flags and lights to be displayed by vessels**

**8.—**(1) Where a vessel is carrying any of the dangerous goods specified in Schedule 1, the master of that vessel shall ensure that it displays—

- (a) in the case of a vessel with a mast—
  - (i) during the day, a flag complying with the requirements of Parts 1 and 2 of Schedule 2, and
  - (ii) at times of restricted visibility or during the night, an all-round red light giving a clear, uniform and unbroken light visible in good night time conditions for a distance of at least 2 nautical miles;
- (b) in the case of a vessel without a mast—
  - (i) during the day, a flag complying with the requirements of Parts 1 and 3 of Schedule 2, and
  - (ii) when moored or anchored during the night and during the day in restricted visibility, an all-round red light.

(2) Any flag or light required by paragraph (1) to be displayed shall be positioned so as to be as conspicuous as is reasonably practicable, and in the case of a light, so that it is above any other light being displayed by the vessel.

(3) Any dumb craft must have either its towing craft or, when moored, its accompanying craft display the appropriate flag or light as detailed in the paragraphs above.

(4) This regulation does not apply to a ferry operated entirely within Category A-D waters within the meaning of the Merchant Shipping (Categorisation of Waters) Regulations 1992.

### **Vessels to keep a safe distance from moored or anchored vessels displaying the flag or light required by regulation 8**

**9.**—(1) A master shall not bring a vessel alongside a moored or anchored vessel which is displaying a flag or signal required by regulation 8 without—

- (a) the permission of the berth operator and the master of the vessel if it is at berth;
- (b) the permission of the harbour master and the master of the vessel if it is elsewhere,

and must otherwise keep a safe distance from that vessel.

(2) The permission in paragraph (1) may relate to a named vessel, to a class of vessels or to vessels generally.

## **PART 4**

### **Emergency Arrangements and Untoward Incidents**

#### **Preparation of emergency plans by harbour authorities**

**10.**—(1) A harbour authority must have in place an effective emergency plan, before dangerous goods are permitted into the harbour area, for dealing with emergencies which may arise and which involve, affect or could affect dangerous goods that are brought into or are handled in the harbour area.

(2) In preparing the emergency plan the harbour authority must consult—

- (a) the emergency services; and
- (b) any other bodies which appear to it to be appropriate.

(3) Where the harbour authority's harbour area abuts the harbour area of another harbour authority the emergency plan must in addition be agreed by both harbour authorities.

(4) The harbour authority must review the emergency plan periodically, having consulted with the parties listed in paragraph (2), and where relevant paragraph (3).

#### **Emergency arrangements at berths**

**11.** When dangerous goods are being handled or carried at a berth, and at any other time when there are risks from dangerous goods, the berth operator must, in a timely manner, inform the master of any vessel entering a berth of the means of emergency communication and escape.

#### **Untoward incidents**

**12.**—(1) The master of a vessel carrying dangerous goods must immediately inform the harbour master, or if the vessel is at a berth, the berth operator and the harbour master, of any untoward incident which occurs or has occurred on the vessel.

(2) The berth operator must immediately inform the harbour master, and the master of any vessel at the berth, of any untoward incident which occurs on the berth.

(3) Where an untoward incident occurs during the operation of handling dangerous goods, the person in control of the operation must stop the operation as soon as it is safe to do so and must immediately report the incident to the harbour master, the berth operator and the master of any vessel that may be affected by the incident and, where appropriate, the emergency services.

(4) Where an operation has been stopped in accordance with paragraph (3), it shall not be resumed until it is safe to do so in the opinion of the harbour master.

(5) In this regulation an “untoward incident” means an incident involving or threatening the containment of dangerous goods inside a harbour area, which might create in the harbour area a serious risk to the health and safety of any person or a risk to the safety of a vessel.

### **Parking of road vehicles carrying dangerous goods**

**13.**—(1) Every berth operator is required, so far as is reasonably practicable, to designate a suitable parking area for road vehicles carrying dangerous goods that use the berth.

(2) If the berth operator is unable to designate a suitable parking area for such vehicles—

- (a) the berth operator must notify the harbour authority, and
- (b) the harbour authority must, so far as is reasonably practicable, designate the parking area.

(3) The driver of any vehicle which is carrying dangerous goods must not—

- (a) where a parking area has been designated by the berth operator or the harbour authority, leave the vehicle unattended except in that area;
- (b) park the vehicle at a place or in a manner that may create a risk to the health or safety of any person.

## **PART 5**

### **EXPLOSIVES**

#### **Application**

**14.**—(1) Subject to paragraph (2), regulations 15 to 19, in addition to their application in every harbour area under regulation 5, apply to—

- (a) the loading on board or the unloading from a vessel (other than a vessel which is an offshore installation within the meaning of regulation 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995<sup>(14)</sup>) of any explosive on any part of the coast of Great Britain or in any tidal water; and
- (b) the loading on board or unloading from a vessel of any explosive within territorial waters to which sections 1 to 59 and 80 to 82 of the 1974 Act are applied by article 11 of the Health and Safety at Work etc. Act 1974 (Application Outside Great Britain) Order 2013.

(2) Regulations 15 to 19 do not apply to—

- (a) explosives—
  - (i) in Division 1.4 of the IMDG Code; or
  - (ii) in any other division of the IMDG Code (except explosives in Compatibility Group L), where the total quantity of explosive does not exceed 10 kilograms;

<sup>(14)</sup> S.I. 1995/738, as amended by S.I. 2002/2175 and S.I. 2015/398, there are other amendments not relevant to these Regulations.



- (b) explosives that are to be used immediately by a vessel at sea;
- (c) explosives of less than 1 tonne in quantity intended for immediate use in the harbour area, if—
  - (i) the harbour master has given written consent; and
  - (ii) any conditions for carriage and use in that consent are complied with;
- (d) a berth which forms part of a site which is—
  - (i) licensed under the Explosives Regulations 2014<sup>(15)</sup> in cases where, in relation to the application for that licence, the assent of the local authority is required under regulation 13 of those Regulations;
  - (ii) exempt from the requirement for assent of the local authority in accordance with regulation 13(4) paragraphs (f) and (g) of those Regulations;
  - (iii) deemed to be licensed by virtue of regulation 82(1) of those Regulations in cases where, in relation to that deemed licence, the assent of the local authority would have been required under regulation 13(3) of those Regulations had the licence been applied for under those Regulations;
- (e) explosives under the control of the Secretary of State for Defence, or a visiting force or headquarters, complying with a scheme approved by that Secretary of State which—
  - (i) provides for safe storage, carriage and handling; and
  - (ii) prescribes separation distances or separation distances in combination with other safety measures as necessary;
- (f) explosives carried by a foreign warship;
- (g) explosives carried by a vessel passing through a harbour area or adjacent area without mooring, anchoring or handling;
- (h) the handling of explosives from a vessel which is an offshore installation under the Offshore Installations and Pipeline Works (Administration and Management) Regulations 1995; and
- (i) explosives being carried by a vessel into an unlicensed harbour area in an emergency situation, including life-threatening weather conditions, provided—
  - (i) the explosives are undamaged and in a safe condition;
  - (ii) the explosives are not handled while the vessel is in the harbour area; and
  - (iii) the vessel leaves the harbour area as soon as practicable.

#### **Requirement for an explosives licence**

**15.** No person is to carry or handle explosives within a harbour area, or load or unload any explosive in circumstances to which this regulation applies by virtue of regulation 14(1), unless the appropriate authority has issued a licence permitting such activity and there is full compliance with any conditions of that licence.

#### **Applications for explosives licences**

**16.—(1)** An application to the appropriate authority for an explosives licence or for any variation to an existing explosives licence is to be made by—

- (a) a harbour authority;

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<sup>(15)</sup> S.I. 2014/1638, amended by S.I. 2016/315.

- (b) a berth operator, subject to the berth operator giving notice of such intention to the harbour authority; or
- (c) a person having an interest in the activities for which a licence is required under regulation 15,

in accordance with the procedure specified in Schedule 3.

(2) The appropriate authority may grant, transfer, renew, vary, revoke or cancel an explosives licence.

#### **Consideration of licence applications**

17.—(1) The appropriate authority must take account of any comments or objections received by it in response to a licence application and may reject the application or may grant the licence or variation subject to such conditions as it considers appropriate, with or without time limit and subject to variation or revocation in writing at any time.

(2) The appropriate authority may grant a provisional explosives licence or vary an existing licence in cases of urgency and any such provisional licence or variation may have effect for a period not exceeding 6 months from the date on which it was granted unless revoked in writing by the appropriate authority before its date of expiry.

#### **Harbour areas ceasing to be nuclear harbour areas**

18.—(1) Where this regulation applies any explosives licence issued by, or treated as issued by, the Office for Nuclear Regulation is to be treated, on and after the date on which it ceased to be a nuclear harbour area, as an explosives licence issued by the Health and Safety Executive.

(2) This regulation applies where—

- (a) the harbour area in respect of which the licence was issued ceases to be nuclear harbour area; and
- (b) the licence mentioned in sub-paragraph (a) remained in force (with or without variations) immediately before the date on which the harbour area ceased to be a nuclear harbour area.

(3) In this regulation “nuclear harbour area” means a harbour area which is, or forms part of an ONR regulated site.

#### **Harbour areas becoming nuclear harbour areas**

19.—(1) Where this regulation applies any explosives licence issued by, or treated as issued by, the Health and Safety Executive is to be treated, on and after the date on which it became a nuclear harbour area, as an explosives licence issued by the Office for Nuclear Regulation.

(2) This regulation applies where—

- (a) the harbour area in respect of which the licence was issued becomes a nuclear harbour area; and
- (b) the licence remained in force (with or without variations) immediately before the date on which the harbour area became a nuclear harbour area.

(3) “nuclear harbour area” has the meaning given by regulation 18.

#### **Security of explosives**

20.—(1) Where explosives are handled or carried at a berth, the berth operator shall ensure that all appropriate precautions are taken against the damage, loss, theft or wrongful use of the explosives at the berth.

(2) In harbour areas, or parts thereof, for which a berth operator is not responsible under paragraph (1) the harbour authority must ensure that all appropriate precautions are taken against the damage, loss, theft or wrongful use of the explosives being carried or handled.

(3) Any person having custody of explosives in a harbour area, however temporary, must—

- (a) ensure adequate precautions are taken against the damage, loss, theft or wrongful use of the explosives;
- (b) comply with any instructions given by the berth operator or harbour authority; and
- (c) co-operate with the berth operator or harbour authority in the execution of duties under this regulation.

(4) Where there is a transfer of custody of explosives within the harbour area the transferor and transferee must both retain a record of the transfer.

(5) Where explosives are dropped overboard or lost the person who previously had custody of them must—

- (a) report the incident to the harbour master; and either—
  - (i) to the berth operator, if the incident took place at a berth; or
  - (ii) to the harbour authority; and
- (b) take all steps as are reasonably practicable to recover those explosives.

#### **Vessels and vehicles loaded with explosives to be taken out of harbour areas**

**21.** Following the loading of a vessel or a vehicle with explosives, the master of the vessel or the person in charge of the vehicle must remove the vessel or vehicle from the harbour area as soon as is reasonably practicable unless—

- (a) the harbour master and berth operator agree that the vessel or vehicle may remain within the harbour area; or
- (b) it is less safe for the vessel or vehicle to be outside of the harbour area, in which case the vessel or vehicle is to remain within the harbour area until it is safe for the vehicle or vessel to leave the vicinity.

#### **Passenger prohibition on harbour craft carrying explosives**

**22.—**(1) Harbour craft carrying explosives must not carry passengers at the same time.

(2) Paragraph (1) does not apply—

- (a) where the only explosives carried are—
  - (i) explosives in Division 1.4, Compatibility Group S; or
  - (ii) ships' pyrotechnic signals, totalling less than 1 kilogram of explosives, which are being carried to another vessel; or
- (b) where the only passengers are those—
  - (i) carried in connection with the harbour works for which the explosives are carried; or
  - (ii) who are to handle the explosives being carried.

#### **Deteriorated explosives**

**23.** Where explosives have deteriorated or have undergone any change resulting in an increased risk to handling or carriage in the harbour area, the person having custody of those explosives must—

- (a) notify the harbour master and, where the explosives are at a berth, the berth operator of the deterioration or change; and

- (b) where any additional safety requirements are imposed by the harbour master, and where appropriate, the berth operator, comply with those requirements before moving or handling the explosives.

### **Record keeping**

**24.**—(1) A harbour authority must keep a record of the handling of all explosives within its harbour area, together with import, export, and where relevant, transit details, for a period of three years.

(2) The berth operator must co-operate with the harbour authority in the compilation of the record.

(3) Where regulation 14(1) applies, the licensee must keep a record, for 3 years, of all explosives, loaded or unloaded there, and record whether the explosives were exports, imports or in transit cargoes.

(4) This regulation does not apply to category 1, 2 and 3 fireworks as defined in the Pyrotechnic Articles (Safety) Regulations 2015(16).

## **PART 6**

### **MISCELLANEOUS AND GENERAL**

#### **Byelaws**

**25.**—(1) A statutory harbour authority which is either—

- (a) a local authority; or
- (b) a public authority,

may, subject to the provisions in Schedule 4, make byelaws in respect of its harbour area prohibiting the entry or regulating the entry, carriage, handling or storage of dangerous goods.

(2) Byelaws must not conflict with these Regulations or with any other statutory provision.

(3) Byelaws are limited to matters relating to the harbour area.

(4) Byelaws may contain provisions for enforcement.

#### **Enforcement**

**26.**—(1) Subject to section 18(1A) of the 1974 Act and paragraphs (2) and (3), the Health and Safety Executive is responsible for enforcing these Regulations.

(2) A statutory harbour authority is responsible for enforcing regulations 6, 7, 8, 9, 13(3) and 21 against persons other than itself.

(3) The Office for Nuclear Regulation is responsible for enforcing these Regulations in any harbour area which is, or forms part of, an authorised defence site or a new nuclear build site.

(4) In this regulation “authorised defence site” and “new nuclear build site” have the meanings given in the Health and Safety (Enforcing Authority) Regulations 1998.

**27.** The exercise of due diligence to avoid the commission of an offence is a defence in any proceedings under these Regulations or byelaws made under these Regulations.

## **Exemptions**

**28.**—(1) Subject to paragraph (2), the Health and Safety Executive may, by a certificate in writing, exempt any person or class of persons, from any requirement or prohibition imposed by or under these Regulations, and any such exemption may be granted subject to conditions and to a time limit and may be revoked at any time by a certificate in writing.

(2) The Health and Safety Executive shall not grant any exemption unless, having regard to the circumstances of the case and in particular to—

- (a) the conditions, if any, which it proposes to attach to the exemption; and
- (b) any other requirements imposed by or under any enactment which apply to the case;

it is satisfied that neither the health or safety of persons, nor the security of any explosive, likely to be affected by the exemption will be prejudiced in consequence of it.

(3) The Secretary of State may, in the interests of national security, by a certificate in writing, exempt from all or any requirements or prohibitions imposed by these Regulations—

- (a) Her Majesty’s forces;
- (b) visiting forces or headquarters;
- (c) any person engaged in the carriage, keeping or supply of any military explosives, if that person is under the direct supervision of a representative of the Ministry of Defence,

and any such exemption may be granted subject to conditions and time limit and may be revoked by a certificate in writing at any time.

(4) In this regulation “military explosives” has the same meaning as in regulation 25(11)(a) of the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009(17).

## **Transitionals**

**29.** An emergency plan prepared under regulation 26 of the 1987 Regulations continues to have effect as if it were in place as required under regulation 10(1) and subject to review under regulation 10(4) of these Regulations.

**30.** An explosives licence granted under Part IX of the 1987 Regulations continues to have effect in accordance with any terms, conditions and limitations that applied to that grant.

**31.** Byelaws having effect under the 1987 Regulations continue to have effect until revoked.

**32.** Any extant exemption granted under regulation 46 of the 1987 Regulations continues to have effect until it is revoked or expires.

## **Revocations and modifications**

**33.** The 1987 Regulations are revoked.

**34.** Schedule 5 (which makes consequential amendments) has effect.

## **Review**

**35.**—(1) Before the end of the review period, the Secretary of State must—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

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(17) *S.I. 2009/1348*, the definition was substituted by *S.I. 2011/1885*, there are other amendments to the S.I. which are not relevant to these Regulations.

- (2) The report must in particular—
- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
  - (b) assess the extent to which those objectives are achieved; and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (3) “Review period” means the period of five years beginning with the date on which these Regulations come into force.

Signed by the authority of the Secretary of State for Work and Pensions

7th July 2016

*Justin Tomlinson*  
Parliamentary Under Secretary of State,  
Department of Work and Pensions