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STATUTORY INSTRUMENTS

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**2016 No. 721**

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

**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>(1)</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;
- (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>(2)</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;

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<sup>(1)</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.

<sup>(2)</sup> S.I. 2014/1638, amended by S.I. 2016/315.

- (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;
- (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(3).