
EXPLANATORY NOTE

(This note is not part of the Regulations)

In so far as it is necessary to do so, these Regulations implement in the United Kingdom Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004, (the EC Regulation) which introduces and implements Community measures aimed at enhancing ship and port facility security.

The EC Regulation also provides a basis for the harmonised interpretation and implementation and Community monitoring of the special measures to enhance maritime security adopted by the Diplomatic Conference of the International Maritime Organisation (IMO) on 12 December 2002, which amended the International Convention for the Safety of Life at Sea (SOLAS) and established the International Ship and Port Facility Security Code (ISPS). The relevant amendments to the SOLAS Convention are set out in Chapter XI-2 of the Convention.

The EC Regulation extends the application of Chapter XI-2 of the SOLAS Convention and Part A of the ISPS Code to domestic shipping from 1st July 2005 in respect of Class A passenger ships, their companies and the port facilities serving them.

The EC Regulation further provides that specified paragraphs in the guidance in Part B of the ISPS Code shall be complied with as if those paragraphs are of mandatory application.

Regulation 4 of these Regulations specifies the types of ships, their companies and the port facilities serving them that the regulations apply to.

Regulation 5 designates the Secretary of State for Transport the focal point for maritime security and the competent authority for the purposes of Article 2.6 and 2.7 respectively of the EC Regulation. The Secretary of State is also the designated authority for the purposes of Chapter XI-2 of the SOLAS Convention and the ISPS Code.

Regulation 6 provides for the inspection of ships and port facilities by a duly authorised officer for the purpose of establishing that they are in compliance with the requirements of the EC Regulation and, by virtue of Article 3 of that Regulation, the provisions in Chapter XI-2 of the SOLAS Convention, Part A and the mandatory provisions in Part B of the ISPS Code.

Regulation 7 requires companies, company security officers, ship security officers, masters, port facility security officers and owners of port facility security plans to submit to inspections by the European Commission and to rectify any shortcomings identified by the Commission following such an inspection as are notified to them by the Secretary of State.

Regulation 8 makes provision for the detention of ships pursuant to the control and compliance measures set out in Regulation 9 of Chapter XI-2 of the SOLAS Convention. It specifies the matters that are to be set out in a detention notice and the effect of such a notice. It also specifies the procedure for objecting to a detention notice and provides that it is an offence if a person without reasonable excuse fails to comply with a detention notice.

Regulation 9 makes provision for compensation to be paid to the owner of a ship in circumstances where there was no valid basis for the detention of the ship and where the owner of the ship has suffered loss or damage in direct consequence of the detention.

Regulations 10 and 11 provide that it is an offence subject on summary conviction to a fine of up to level 5 on the standard scale, for a person to enter a restricted area of a ship or a port facility without lawful authority. It also provides that certain persons specified in those regulations may use reasonable force to remove an unauthorised person from a restricted area where they remain in such an area in contravention of those provisions.

Regulation 12 provides that obstructing a duly authorised officer acting in exercise of his powers or falsely pretending to be a duly authorised officer is an offence and makes provision for penalties for such offences.

Changes to legislation: *There are currently no known outstanding effects for the The Ship and Port Facility (Security) Regulations 2004. (See end of Document for details)*

Regulations 13 to 16 make provision for the enforcement of the requirements set out in the EC Regulation and thereby Chapter XI-2 of the SOLAS Convention and Part A and the mandatory provisions in Part B of the ISPS Code, the requirement to co-operate with inspections by the Commission (*regulation 7*) and the requirement to submit specified changes or amendments to a ship security or port facility security plan to the Secretary of State for approval (*regulation 19*). Regulation 14 specifies the matters that are to be set out in the enforcement notice. Regulation 15 provides that failure to comply with an enforcement notice is a criminal offence and that a person convicted of such an offence is liable on summary conviction to fine not exceeding level 5 on the standard scale or on conviction on indictment, to a fine. Regulation 16 sets out the procedure for objecting to an enforcement notice.

Regulation 17 provides that records of the activities specified in section 10.1 in Part A of the ISPS Code which are addressed in the ship security plan are to be kept on board the ship by the master for a period of at least three years from the date of the activity taking place.

Regulation 18 provides that any declaration of security that is completed in respect of a ship or a port facility must be retained on board the ship by the master, or by the port facility security officer for a period of at least three years. It also provides that where a declaration of security relates to one of a ship's last ten calls at port facilities, it must be retained on board the ship by the master for as long as it relates to one of those last ten calls, even though the period over which those calls extend exceeds the minimum three year period referred to in regulation 17.

Regulation 19 provides that specified changes or amendments to a ship security plan or a port facility security plan must be submitted to and approved by the Secretary of State before they are implemented.

Regulation 20 makes provision for the service of notices and other documents which may be served upon or given to persons under these Regulations.

The Schedule to the Regulations lists the expressions used in these Regulations and their meanings as they are defined in the SOLAS Convention and the ISPS Code.

A Regulatory Impact Assessment relating to the EC Regulation and these Regulations has been produced and a copy placed in both Houses of Parliament. Copies may be obtained from the Transport Security Directorate (TRANSEC), Department for Transport, 5th Floor, Southside, 105 Victoria Street, London SW1E 6DT (telephone 020 7944 2844).

Copies of the SOLAS Convention and the ISPS Code referred to in these regulations may be obtained from the International Maritime Organisation at 4 Albert Embankment, London SE1 7SR.

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