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STATUTORY INSTRUMENTS

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**2009 No. 2048**

**The Port Security Regulations 2009**

**PART 1**

Preliminary

**Citation and commencement**

1. These Regulations may be cited as the Port Security Regulations 2009 and come into force on 1st September 2009.

**Interpretation**

2. In these Regulations—

“1972 Act” means the European Communities Act 1972;

“AMSA” means the Aviation and Maritime Security Act 1990(1);

“AMSA facility” means a harbour area or a harbour operation that is subject to a direction of the Secretary of State under Part III of AMSA which is in force, and for this purpose “harbour area” has the meaning given in section 18 of AMSA and “harbour operation” has the meaning given in section 46 of AMSA;

“controlled building” means a building or part of a building in a port that has been—

- (a) described as a controlled building in a port facility security plan that has been integrated into a port security plan, or
- (b) designated as a controlled building;

“designated” means designated by the Secretary of State in an Order under section 2(2) of the 1972 Act;

“directed party” means a person who has been served with a direction of the Secretary of State under Part III of AMSA, in relation to an AMSA facility, while that direction remains in force;

“EC Regulation” means Regulation (EC) No. 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security;

“ISPS Code” means the International Ship and Port Facility Security Code as amended from time to time, in so far as those amendments are integrated in Community maritime legislation in accordance with Article 2 and Article 10 of the EC Regulation and are published in the Official Journal of the European Union;

“owner of the port facility security plan” means the person who submits the port facility security plan (or the person on whose behalf that plan is submitted) to the Secretary of State for approval in accordance with section 16.2 of Part A of the ISPS Code;

“port” has the meaning given in regulation 3(2);

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(1) 1990 c. 31.

“port facility” means a location where the ship/port interface takes place, and this includes areas such as anchorages, waiting berths and approaches from seaward, as appropriate and for this purpose “ship/port interface” means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons or goods or the provision of port services to or from the ship;

“port facility security officer” means a person identified as responsible for the development, implementation, revision and maintenance of a port facility security plan and for liaison with the ship security officers and company security officers in accordance with section 17.1 of Part A of the ISPS Code;

“port facility security plan” means a plan developed under the EC Regulation in accordance with the provisions of section 16 of Part A of the ISPS Code, and “approved port facility security plan” means a plan that has been approved by the Secretary of State in accordance with the requirements of section 16.2 of Part A of the ISPS Code;

“port related area” means an area of land or property that is affecting or is likely to affect the security of a port and has been designated as a port related area in relation to that port;

“port related area security plan” means a plan developed in accordance with Schedule 1;

“port security assessment” means an assessment carried out by the Port Security Authority under regulation 14;

“Port Security Authority” means a body that has been designated as a Port Security Authority for a port;

“port security officer” means a person appointed under regulation 12;

“port security plan” means a plan prepared and maintained by a Port Security Authority under regulation 15;

“prohibited article” means—

- (a) any firearm, or any article having the appearance of being a firearm, whether capable of being discharged or not,
- (b) any explosive, any article manufactured or adapted so as to have the appearance of being an explosive, whether it is capable of producing a practical effect by explosion or not, and any article marked or labelled so as to indicate that it is or contains an explosive, or
- (c) any article (not falling within paragraph (a) or (b)) which is capable of use for causing injury to or incapacitating a person or for destroying or damaging property, or intended by the person having it with them for such use, whether by that person or by any other person;

“recognised security organisation” means an organisation that has been appointed by the Secretary of State for the purposes of these Regulations under regulation 23;

“restricted area” means an area that has been—

- (a) described, in accordance with section 16.3.2 of Part A of the ISPS Code, as a restricted area in a port facility security plan that has been integrated into a port security plan, or
- (b) designated as a restricted area;

“security manager” means a person appointed under Schedule 1;

“transport security inspector” means a person authorised in writing by the Secretary of State to act as an authorised person for the purposes of—

- (a) part III of AMSA,
- (b) part III of the Channel Tunnel (Security) Order 1994(2),

- (c) part II of the Aviation Security Act 1982<sup>(3)</sup>, or
  - (d) part III of the Railways Act 1993<sup>(4)</sup>;
- “UK control authorities” means—
- (a) the Department for Transport, including the Maritime and Coastguard Agency,
  - (b) Her Majesty’s Revenue and Customs,
  - (c) the UK Border Agency, an executive agency of the Home Office,
  - (d) the Serious Organised Crime Agency<sup>(5)</sup>,
  - (e) the Department for Environment Food and Rural Affairs, and
  - (f) any police service that has an interest in the port concerned.

### **Application of the Regulations**

- 3.—(1) These Regulations apply to ports in the United Kingdom.
- (2) For the purposes of these Regulations “port” means an area of land and water—
- (a) within boundaries that have been identified by the Secretary of State in an Order made under section 2(2) of the 1972 Act, and
  - (b) that contains at least one port facility that is covered by an approved port facility security plan,

and every reference to a port includes a reference to any port related area that has been designated in relation to that port.

(3) These Regulations do not apply to installations used by Her Majesty’s armed forces or members of a visiting force, in ports.

- (4) In this regulation—
- (a) “armed forces” includes the navy and air force;
  - (b) “visiting force” means any body, contingent or detachment of the forces of a country for the time being present in the United Kingdom on the invitation of Her Majesty’s Government in the United Kingdom.

(5) Where a port contains only one port facility that is covered by an approved port facility security plan, and no port related area has been designated in relation to that port, and the boundaries of that port facility are effectively the same as those of that port, the relevant provisions of the EC Regulation take precedence over these Regulations.

### **Port related areas**

4. Schedule 1, which makes provision for port related areas, has effect.

## **PART 2**

### **Port Security Authorities**

#### **Port Security Authorities**

- 5.—(1) A body may be designated as the Port Security Authority for more than one port.

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(3) 1982 c.36.

(4) 1993 c.43.

(5) Established by the Serious Crime and Police Act 2005 (c.15) section 1.

- (2) Schedule 2, which makes provision about Port Security Authorities, has effect.

**Duty to apply for or nominate membership of a Port Security Authority**

6. An application for membership of the Port Security Authority for a port must be made to the Secretary of State by—

- (a) the port facility security officer of each port facility within the port, or an individual nominated by that port facility security officer or by the owner of the port facility plan to represent the port facility on the Port Security Authority;
- (b) an individual nominated by the directed party of each AMSA facility (if any) within the port to represent the AMSA facility on the Port Security Authority; and
- (c) the security manager of each port related area (if any) designated in relation to the port, or an individual nominated by that security manager to represent the port related area on the Port Security Authority.

**Port Security Authority: Objection to decisions**

7.—(1) A person affected by a decision of a Port Security Authority (“the objector”) may require the Secretary of State to consider an objection to that decision by serving on the Secretary of State a notice in writing within 30 days of the date on which the decision was made.

- (2) A notice under paragraph (1) must be copied to the Port Security Authority.

(3) A notice under paragraph (1), and the copy served on the Port Security Authority under paragraph (2), must be accompanied by a statement in writing—

- (a) specifying the grounds on which the objector is objecting to the decision; and
- (b) providing such further information as may be appropriate.

(4) The Port Security Authority may provide the Secretary of State with a response to the objector’s notice under paragraph (1) within 30 days of receipt of that notice, and a copy of any such response must be sent at the same time by that Port Security Authority to the objector.

(5) If the Secretary of State requests any further information that the Secretary of State considers necessary from either party that information must be provided to the Secretary of State within 30 days of receipt of such a request or such longer time as the Secretary of State may allow.

(6) If the information requested under paragraph (5) is not supplied within 30 days, or such longer time as the Secretary of State may have allowed, the Secretary of State may serve a notice in writing either—

- (a) confirming the decision;
- (b) directing the Port Security Authority to reconsider the decision; or
- (c) imposing a new or modified decision on the Port Security Authority.

(7) If, no later than 30 days after the latest of—

- (a) the date of service of a notice under paragraph (1),
- (b) the date of service of a response (if any) under paragraph (4), and
- (c) the date that information requested under paragraph (5) is provided,

either party so requests in writing to the Secretary of State, the Secretary of State must allow both parties the opportunity of appearing before and being heard by a person appointed by the Secretary of State for that purpose.

(8) After considering the notice and statement served under paragraphs (1) and (3), any response provided under paragraph (4), any further information provided under paragraph (5) and the report

of any person appointed under paragraph (7), the Secretary of State must serve on both parties a notice in writing either—

- (a) confirming the decision;
- (b) directing the Port Security Authority to reconsider the decision; or
- (c) imposing a new or modified decision on the Port Security Authority.

(9) A notice served by the Secretary of State under paragraph (8) shall be binding on the Port Security Authority and the objector.

(10) For the purposes of this regulation “a decision” is a decision of the Port Security Authority—

- (a) that will result in the adoption or amendment of a port security plan; or
- (b) regarding the charging of fees.

### **Port Security Authority: Fees**

**8.**—(1) Subject to paragraph (2), a Port Security Authority may charge a port facility security officer, directed party or security manager such a fee in connection with, or incidental to, carrying out any function under these Regulations as it may decide.

(2) The fee charged under paragraph (1) must not exceed the costs reasonably incurred or to be incurred by the Port Security Authority in carrying out the function in question.

(3) A fee charged under paragraph (1) shall be—

- (a) due upon written demand; and
- (b) recoverable only as a civil debt.

### **Power to require information from a Port Security Authority**

**9.**—(1) The Secretary of State may, by notice in writing, require a Port Security Authority to provide information and documentation relating to—

- (a) the security of the port;
- (b) the proceedings of that Authority; or
- (c) the membership of that Authority.

(2) A Port Security Authority must provide the Secretary of State with any information or documentation requested under paragraph (1) within 30 days of the notice being served on it, or such longer period as the Secretary of State may allow.

### **Power of the Port Security Authority to require information**

**10.**—(1) A Port Security Authority may, by notice in writing, require a port facility security officer, directed party or security manager, to furnish it with such information relating to the security of the port in relation to which that Authority has been designated, as that Authority may consider necessary for the carrying out of its functions.

(2) A person served with a notice under paragraph (1) must provide the Port Security Authority with the information requested in that notice within 30 days of that notice being served on that person, or such longer period as the Port Security Authority specifies in that notice.

### **Co-operation with UK control authorities**

**11.** A Port Security Authority must ensure that there is adequate liaison and cooperation with UK control authorities.

## PART 3

### Port Security Officer

#### Port security officer

12.—(1) A Port Security Authority must appoint a person to be the port security officer for the port.

(2) The Port Security Authority must notify the Secretary of State of any appointment made under paragraph (1) within 30 days of that appointment and request approval for the appointment.

(3) If the Secretary of State fails to give or refuse approval within 30 days of receipt of a request under paragraph (2), the Secretary of State shall be deemed to have approved that appointment.

(4) If, within 30 days of receipt of a request made under paragraph (2) the Secretary of State gives the Port Security Authority notice of refusal to approve the appointment, the appointment of the port security officer terminates and the Port Security Authority must appoint under paragraph (1) a new person to be the port security officer for the port within 30 days of receiving that notice.

(5) A person may be appointed and approved as a port security officer under this regulation for more than one port.

#### Functions of the port security officer

13.—(1) A port security officer for a port—

- (a) is the point of contact for port security related issues; and
- (b) must co-operate with—
  - (i) port facility security officers of port facilities situated in the port;
  - (ii) directed parties of AMSA facilities (if any) situated in the port; and
  - (iii) security managers of port related areas (if any) for the port.

(2) A port security officer for a port may require a port facility security officer of a port facility situated in the port, a directed party of an AMSA facility situated in the port or a security manager of a port related area for the port, to furnish him with such information as he may consider necessary to carry out his functions.

## PART 4

### General Requirements

#### Port security assessment

14.—(1) A Port Security Authority must complete a port security assessment in respect of each port for which it has been designated.

(2) The port security assessment must be carried out taking into account—

- (a) the provisions of Schedule 3;
- (b) the port facility security assessments carried out for the port facilities situated within the port;
- (c) specificities of different sections of—
  - (i) the port; and
  - (ii) any areas adjacent to the port referred to in a notice under paragraph (3).

(3) The Secretary of State may by notice in writing require a Port Security Authority to include in its port security assessment any area adjacent to the port that the Secretary of State considers could have an impact on the security of the port.

(4) Where international maritime transport services operate from a port, the Port Security Authority must, when conducting the port security assessment, co-operate with the authorities of the other Member States to which those services operate.

(5) The Port Security Authority may appoint a recognised security organisation to carry out the port security assessment on its behalf.

(6) A Port Security Authority must request approval from the Secretary of State for the port security assessment within 9 months of the designation of that Port Security Authority coming into force.

(7) A request for approval under paragraph (6) must be made in writing and be accompanied by information demonstrating that the assessment has been carried out in accordance with paragraph (2).

(8) After receiving a request for approval under paragraph (6) the Secretary of State may—

- (a) approve,
- (b) refuse to approve, or
- (c) approve subject to amendment,

the port security assessment.

(9) If the Secretary of State fails to give or refuse approval within 30 days of receipt of a request under paragraph (6), the Secretary of State shall be deemed to have refused to approve the port security assessment.

(10) If the Secretary of State has, or is deemed to have, refused to approve the port security assessment, the Port Security Authority must revise that assessment and submit a further request for approval within 30 days of that refusal or deemed refusal.

(11) Paragraphs (7), (8), (9) and (10) apply to a further request made under paragraph (10) as they do to a request made under paragraph (6).

(12) In this regulation “port facility security assessment” means an assessment of a port facility carried out pursuant to the EC Regulation.

### **Port security plan**

**15.—**(1) A Port Security Authority must develop, maintain and update the port security plan for each port for which it has been designated.

(2) The Port Security Authority must ensure that the port security plan—

- (a) addresses the specificities of different sections of the port;
- (b) has integrated into it—
  - (i) the approved port facility security plans for every port facility situated in that port;
  - (ii) the port related area security plans created for all port related areas (if any) designated in relation to the port; and
  - (iii) the AMSA facility contingency plans created for all AMSA facilities (if any) in the port;
- (c) where and to the extent appropriate, sets out the security measures to be applied to passengers and vehicles set for embarkation on seagoing vessels;
- (d) identifies for each of the security levels set out in regulation 20—
  - (i) the procedures to be followed,

- (ii) the measures to be put in place, and
  - (iii) the actions to be taken,
- for the port, or where appropriate, for each part of the port,
- (e) takes into account the requirements of Schedule 4; and
  - (f) identifies the person or persons responsible for each of the measures contained in that plan.
- (3) Nothing in this regulation requires the Port Security Authority to carry out work that has been carried out in the course of developing a port facility security plan, a port related area security plan or an AMSA facility contingency plan.
- (4) The Port Security Authority may appoint a recognised security organisation to develop the port security plan on its behalf.
- (5) The Port Security Authority must ensure that, if a recognised security organisation has carried out a port security assessment or review of a port security assessment for a port, that recognised security organisation does not develop or review the port security plan for that port.
- (6) In this regulation “AMSA facility contingency plan” means a contingency plan created by a directed party pursuant to an AMSA direction.

#### **Approval of the port security plan**

**16.**—(1) A Port Security Authority must request approval from the Secretary of State for the port security plan within 12 months of the designation of that Port Security Authority.

- (2) The Secretary of State may, in respect of a request under paragraph (1)—
  - (a) approve,
  - (b) refuse to approve, or
  - (c) approve subject to amendment,
 the port security plan.
- (3) When, or at any time after, approving a port security plan (whether or not subject to amendment), the Secretary of State may notify the Port Security Authority of types of amendments to the port security plan that must be submitted to the Secretary of State for approval before those amendments are implemented.
- (4) Where a Port Security Authority has received a notification under paragraph (3), that Port Security Authority must request an approval from the Secretary of State before implementing an amendment to the port security plan of any type specified in that notification and must not implement that amendment until an approval has been obtained.
- (5) The Secretary of State may in respect of a request under paragraph (4)—
  - (a) approve,
  - (b) refuse to approve, or
  - (c) approve subject to further amendment,
 an amendment to a port security plan.
- (6) Any request under this regulation must be in writing, and a request for approval under—
  - (a) paragraph (1) must be accompanied by a copy of the port security plan;
  - (b) paragraph (4) must be accompanied by a copy of the port security plan and an explanation of the proposed amendments.
- (7) The Secretary of State may request additional information in support of a request for approval under paragraph (1) or paragraph (4).



(8) If the Secretary of State fails to give or refuse approval within 30 days of the date of receipt of a request under paragraph (1) or (4), or of the date on which the Secretary of State requested additional information under paragraph (7), whichever is later, the Secretary of State shall be deemed to have refused to give approval for the plan or amendment in question.

(9) If the Secretary of State has, or is deemed to have, refused to approve a request made under paragraph (1) the Port Security Authority must, within 30 days of that refusal or deemed refusal, revise the port security plan and submit a further request for approval.

(10) Paragraphs (2), (6), (7), (8) and (9) apply to a further request made under paragraph (9) as they do to a request made under paragraph (1).

### **Implementation of the port security plan**

17.—(1) A Port Security Authority must satisfy itself that the port security plan is implemented.

(2) Any person who is identified as being responsible for a measure contained in a port security plan, as required by regulation 15(2)(f), must implement that measure.

### **Review of the port security assessment and port security plan**

18.—(1) A Port Security Authority must complete a review of the port security assessment and the port security plan—

- (a) at each meeting of the Port Security Authority;
- (b) within 30 days of a major operational change in the port;
- (c) within 30 days of a major structural change in the port;
- (d) within 30 days of a major security incident at the port;
- (e) within 30 days of any written request of the Secretary of State; and
- (f) not more than 5 years after that assessment was last approved or that plan was last approved.

(2) A review of a port security assessment under paragraph (1)(a) must consist of a review of the security risks highlighted in the port security assessment, the likelihood of the security risks occurring, the impact such an occurrence would have and the actions to be taken to address those security risks.

(3) A review of a port security assessment under paragraph (1)(b), (c), (d), (e) or (f) must consist of a review of the matters that the Port Security Authority is required to take into account by regulation 14(2).

(4) A review of a port security plan under paragraph (1) must consist of a review of the matters that the Port Security Authority is required to comply with under regulation 15(2).

(5) Following a review under paragraph (1) the Port Security Authority must amend the port security assessment and port security plan as appropriate.

(6) Where a port security plan or a port security assessment has been reviewed under paragraph (1) (b), (c), (d), (e) or (f), the Port Security Authority must request approval from the Secretary of State for the port security plan or port security assessment (as amended if appropriate under paragraph (5)) no later than 30 days after the deadline for undertaking the review specified in that provision.

(7) The provisions of regulation 14(7),(8),(9) and (10) apply to a request for approval from the Secretary of State of a port security assessment following a review of that port security assessment under paragraph (1)(b), (c), (d), (e) or (f) as they apply to a request for approval under regulation 14(6).

(8) The provisions of regulation 16(2),(6),(7),(8) and (9) apply to a request for approval from the Secretary of State of a port security plan following a review of that port security plan under paragraph (1)(b),(c),(d), (e) or (f) as they apply to a request for approval under regulation 16(1).

(9) The Port Security Authority may appoint a recognised security organisation to carry out a review of the port security assessment or port security plan on its behalf.

(10) In this regulation—

- (a) “major operational change” means a major change to a commercial maritime transport operator or its operations that will have an impact on the security of the port; and
- (b) “major structural change” means a major change to any physical structures in the port that will have an impact on the security of the port.

### **Security training**

**19.** A Port Security Authority must ensure that adequate training exercises are carried out that take into account the requirements of Schedule 5.

### **Security levels**

**20.—**(1) Where the Secretary of State gives a Port Security Authority notice of the security level that is to apply to a port or part of a port, the Port Security Authority must ensure that the security measures required for that level and set out in the port security plan are in place at that port or that part of a port—

- (a) within such time as is specified in the notice; or
- (b) if no time is specified in the notice, within 24 hours of that notice being given.

(2) The three security levels are—

- (a) security level 1;
- (b) security level 2; and
- (c) security level 3.

(3) In this regulation—

- (a) “security level 1” means the level for which minimum appropriate protective security measures are to be maintained at all times;
- (b) “security level 2” means the level for which appropriate additional protective security measures are to be maintained for a period of time as a result of a heightened risk of a security incident;
- (c) “security level 3” means the level for which further specific protective security measures are to be maintained for a limited period of time when a security incident is probable or imminent, even if it is not possible to identify the specific target.

### **Security clearance and protective marking of documents**

**21.—**(1) A person who carries out security inspections of a port, or handles confidential information relating to the security of a port, must be approved for such work by the Secretary of State.

(2) A person who creates pursuant to these Regulations any document that relates to the security of a port must ensure that the document is clearly marked so as to indicate the degree of sensitivity with which that document is to be treated.

(3) In determining whether paragraph (2) has been complied with, account shall be taken of any Guidance issued by the Secretary of State on the protective marking of documents.

## **Monitoring of port security plans**

**22.**—(1) For the purpose of verifying that a port security plan is being implemented in accordance with these Regulations, a transport security inspector, may, on production (if required) of their credentials, inspect—

- (a) any part of a port;
- (b) any land, building or works within a port; and
- (c) any vehicle, vessel, train or freight container in a port.

(2) A transport security inspector carrying out an inspection under paragraph (1) may, so far as he or she considers necessary for the purpose for which the inspection is carried out—

- (a) subject any part of the port or any property found by that inspector there or on such land or in that building or in those works, to tests;
- (b) subject any vehicle, vessel, train or freight container, or any apparatus or equipment installed in it, to tests;
- (c) take steps—
  - (i) to ascertain what practices or procedures are being followed in relation to security; and
  - (ii) to test the effectiveness or any practice or procedure relating to security;
- (d) require—
  - (i) the Port Security Authority,
  - (ii) the port security officer,
  - (iii) the port facility security officer or the owner of the port facility security plan of a port facility in the port,
  - (iv) the directed party of an AMSA facility in the port,
  - (v) the security manager of a port related area,
  - (vi) any person whose place of work is in the port, or
  - (vii) any person acting on behalf of any of the persons listed in sub-paragraphs (i) to (vi),to furnish that inspector with information.

(3) Subject to paragraphs (4) and (5), a transport security inspector may, for the purpose of exercising any power conferred on that inspector by paragraph (1) or (2), enter any land, building or works in a port.

(4) The powers conferred by paragraph (3) do not include power for a transport security inspector to use force for the purpose of entering any land, building or works.

(5) The powers conferred by paragraphs (1) to (3) do not apply in the case of premises used only as a private dwelling.

(6) For the purpose of this regulation “freight container” means an article of transport equipment which is—

- (a) of a permanent character and accordingly strong enough for repeated use,
- (b) designed to facilitate the transport of goods by one or more modes of transport without intermediate reloading,
- (c) designed to be secured or readily handled or both, having corner fittings for these purposes, and
- (d) of a size such that the area enclosed by the outer bottom corners is either—
  - (i) if the container is fitted with top corner fittings, at least 7 square metres, or

(ii) in any other case, at least 14 square metres,  
and includes a container when carried on a chassis but does not include a vehicle or packaging, or any article of transport equipment designed solely for use in air transport, or a swap body except when it is carried by or on board a sea-going ship and is not mounted on a road vehicle or rail wagon.

### **Recognised security organisations**

**23.**—(1) The Secretary of State may appoint a person as a recognised security organisation for the purposes of these Regulations.

(2) The Secretary of State must not appoint a person under paragraph (1) unless the Secretary of State is satisfied that the person meets the conditions set out in Schedule 6.

## **PART 5**

### **Controlled buildings and restricted areas**

#### **Entering a controlled building**

**24.**—(1) A person must not enter a controlled building except with the permission of a relevant person, and in accordance with any conditions imposed with that permission.

(2) A person must not remain in a controlled building after being instructed to leave by a relevant person.

(3) A relevant person may use such force as is reasonable in the circumstances to remove a person who by remaining in a controlled building is in contravention of paragraph (2).

(4) For the purposes of this regulation “a relevant person” means—

- (a) a constable,
- (b) the port security officer,
- (c) the port facility security officer, if the controlled building is situated in a port facility,
- (d) the directed party, if the controlled building is situated in an AMSA facility,
- (e) the security manager, if the controlled building is situated in a port related area,

or a person acting on behalf of that port security officer, port facility security officer, directed party or security manager.

#### **Searching people or property entering or in a restricted area or controlled building**

**25.**—(1) A relevant person may search any person attempting to enter a controlled building or restricted area, or any baggage, cargo, vehicle, vessel or other moveable property of any description which is entering or about to enter a controlled building or restricted area.

(2) Neither a person who refuses to submit to such a search nor that person’s baggage, cargo, vehicle, vessel or other moveable property, may enter a restricted area or controlled building.

(3) A relevant person who has reasonable cause to suspect that a prohibited article is in, or may be brought into, a controlled building or restricted area, may, without a warrant, search any part of—

- (a) the controlled building or any baggage, cargo, vehicle, vessel or other moveable property of any description which, or any person who, is for the time being in any part of the controlled building; and

(b) the restricted area, or any baggage, cargo, vehicle, vessel or other moveable property of any description which, or any person who, is for the time being in any part of the restricted area.

(4) For the purpose of paragraph (3) a relevant person may stop any person, baggage, cargo, vehicle, vessel or other moveable property of any description and detain it or that person for so long as may be necessary for that purpose.

(5) For the purpose of paragraph (3) a relevant person may enter any controlled building or any building or works in the restricted area or enter upon any land in the restricted area, if need be by force.

(6) If, in the course of a search carried out under this regulation, a prohibited article is found on a person (“A”), and a relevant person has reasonable cause to suspect that A does not have lawful authority or reasonable excuse to have that article in a controlled building or restricted area, a relevant person may—

- (a) detain A, and
- (b) confiscate the prohibited article,

for so long as may be necessary except that if detention is by a relevant person other than a constable, the police must be contacted as soon as reasonably practicable and the relevant person can then continue to detain A only if the police have indicated that they will attend and only until the police arrive.

(7) Subject to paragraph (8), searches undertaken under this regulation must be carried out in public and may not require a person to remove clothing other than an outer coat or jacket and any gloves and hats.

(8) Where—

- (a) a person so requests, or
- (b) it is necessary to require the removal of more than an outer coat or jacket and any gloves or hat in order to establish whether a prohibited article is being carried by a person,

the search must be undertaken in private and in the presence of two or more relevant persons who must be the same sex as the person being searched.

(9) In this regulation “relevant person” means—

- (a) a constable,
- (b) an officer of the UK Border Agency, an executive agency of the Home Office,
- (c) the port security officer for the port concerned,
- (d) the port facility security officer, if the controlled building or restricted area is situated in a port facility,
- (e) the directed party, if the controlled building or restricted area is situated in an AMSA facility, or
- (f) the security manager, if the controlled building or restricted area is situated in a port related area,

or a person acting on behalf of that port security officer, port facility security officer, directed party or security manager.

## PART 6

### Enforcement

#### Enforcement notices

**26.**—(1) Where a transport security inspector is of the opinion that a person has failed to comply with a requirement of regulation 6, 8, 10(2), 13(1)(b) or 13(2), 17(2), 21(1) or (2), paragraphs 1(2), 2, 3 or 4 of Schedule 1, or paragraph 3 of Schedule 2, the transport security inspector may serve on that person a notice (referred to in this Part as an “enforcement notice”).

(2) An enforcement notice must state the matters which appear to the transport security inspector to constitute a failure to comply with the requirement in question.

(3) An enforcement notice must specify the steps which the transport security inspector requires to be taken, or the activity which the transport security inspector requires to be ceased in order to achieve compliance with the requirement in question within the time specified in the enforcement notice.

(4) An enforcement notice may be framed so as to give the person on whom it is served a choice of different ways of complying with the requirements set out in the notice.

(5) An enforcement notice must specify the date on which it is to take effect, and takes effect on that date.

(6) An enforcement notice must specify the period by the end of which the steps specified in that notice must be taken or the activity specified in that notice must have ceased, and may specify different periods for different steps or activities.

(7) Where different periods apply to different steps or activities, references in these Regulations to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period by the end of which the step is required to have been taken or the activity is required to have ceased.

(8) An enforcement notice requiring a person not to cause or permit anything to be done shall be construed as requiring that person to take all such steps as in any particular circumstances are practicable and necessary to prevent that thing from being done.

#### Objections to enforcement notices

**27.**—(1) A person on whom an enforcement notice is served, (“the objector”) may require the Secretary of State to consider an objection to that enforcement notice by serving on the Secretary of State a notice in writing within 7 days of the date on which the enforcement notice was served.

(2) The only grounds of objection to an enforcement notice are—

- (a) that the steps required by the notice to be taken have been complied with;
- (b) that the matters stated in the enforcement notice in accordance with regulation 26(2) do not constitute a failure to comply with a requirement specified in regulation 26(1);
- (c) that any requirement of the notice—
  - (i) is unnecessary for complying with the requirements specified in regulation 26(1) and should be dispensed with; or
  - (ii) is excessively onerous or inconvenient and should be modified in a manner specified in the notice of objection.

(3) A notice under paragraph (1) must be accompanied by a statement in writing—

- (a) specifying the grounds on which the objector is objecting to the enforcement notice; and
- (b) providing such further information as may be appropriate.

(4) Where the objector serves a notice under paragraph (1), the Secretary of State must consider the grounds of the objection and, if so required by the objector, must afford to that objector an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose, and must then serve on the objector a notice in writing either—

- (a) confirming the enforcement notice as originally served; or
- (b) confirming the enforcement notice subject to one or more modifications specified in the notice under this paragraph; or
- (c) cancelling the enforcement notice.

(5) An enforcement notice to which an objection has been made under paragraph (1) does not take effect until it has been confirmed, with or without modification, by a notice under paragraph (4).

(6) An enforcement notice served on any person may be—

- (a) revoked by a notice, or
- (b) varied by a further enforcement notice,

served on that person by a transport security inspector.

#### **Offences relating to enforcement notices**

**28.**—(1) Any person who, without reasonable excuse, fails to comply with an enforcement notice served on that person is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

(2) Where a person is convicted of an offence under paragraph (1) and the failure in respect of which that person was convicted is continued without reasonable excuse after the conviction, that person is guilty of a further offence and liable on summary conviction to a fine not exceeding £100 for each day on which the failure continues.

#### **Offences relating to transport security inspectors**

**29.**—(1) Any person who—

- (a) intentionally obstructs a transport security inspector acting in the exercise of a power conferred upon that inspector by these Regulations, or
- (b) falsely pretends to be a transport security inspector,

commits an offence.

(2) A person guilty of an offence under paragraph (1)(a) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years.

(3) A person guilty of an offence under paragraph (1)(b) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Any person who—

- (a) without reasonable excuse, fails to comply with a requirement imposed on them under regulation 22(2)(d), or
- (b) in furnishing any information so required makes a statement which that person knows to be false in a material particular, or recklessly makes a statement which is false in a material particular,

commits an offence.

- (5) A person guilty of an offence under paragraph (4) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years.

#### **Offences in relation to prohibited articles**

**30.**—(1) It is an offence for a person, without lawful authority or reasonable excuse, to have with them when attempting to enter or when in a controlled building or restricted area, any prohibited article.

- (2) A person guilty of an offence under this regulation is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months; or
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years.

#### **Offence of making a false statement in relation to baggage, cargo or stores**

**31.**—(1) It is an offence for any person without lawful authority or reasonable excuse to make a statement which that person knows to be false in a material particular, or recklessly make a statement which is false in a material particular, in answer to a question which—

- (a) relates to any baggage, cargo or stores, whether or not belonging to that person, that is intended for carriage by sea—
    - (i) by a United Kingdom ship; or
    - (ii) by any other ship to or from the United Kingdom; and
  - (b) is put to that person for purposes to which these Regulations apply by any of the persons listed in paragraph (2).
- (2) The persons referred to in paragraph (1)(b) are—
- (a) a constable,
  - (b) an officer of the UK Border Agency, an executive agency of the Home Office,
  - (c) a port security officer,
  - (d) a port facility security officer,
  - (e) a directed party,
  - (f) a security manager,

or a person acting on behalf of a port security officer, port facility security officer, directed party or security manager.

(3) A person guilty of an offence under this regulation is liable on summary conviction, to a fine not exceeding level 5 on the standard scale.

#### **False statements in connection with identity documents**

- 32.**—(1) A person commits an offence if, without lawful authority or reasonable excuse—
- (a) for the purposes of, or in connection with, an application (whether or not made by that person), for the issue of an identity document to which this regulation applies, or
  - (b) in connection with the continued holding (whether or not by that person), of any such document which has already been issued,



that person makes to any of the people specified in paragraph (3), a statement which that person knows to be false in a material particular, or recklessly makes a statement which is false in a material particular.

(2) Paragraph (1) applies to any identity document which is to be or has been issued by any of the people listed in paragraph (3) in accordance with arrangements made in the port security plan for the control of access to a restricted area or controlled building.

(3) The people referred to in paragraph (1) are—

- (a) a constable,
- (b) a port security officer,
- (c) a port facility security officer,
- (d) a security manager,

or a person acting on behalf of that port security officer, port facility security officer, or security manager.

(4) A person guilty of an offence under this regulation is liable on summary conviction, to a fine not exceeding level 5 on the standard scale.

### **Interference with security measures**

**33.**—(1) A person who intentionally interferes with security measures required by a port security plan commits an offence.

(2) A person guilty of an offence under this regulation is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years.

### **Unauthorised presence in a controlled building**

**34.**—(1) Subject to paragraph (2), a person who contravenes regulation 24(1) or (2) without lawful authority or reasonable excuse is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) A person who contravenes regulation 24(1) or (2) is not guilty of an offence unless it is proved that, at the material time, notices stating that the building concerned was a controlled building were posted so as to be reasonably seen and read by a person entering the controlled building.

### **Confidentiality of information**

**35.**—(1) Subject to paragraph (2) a person must not disclose any information which has been obtained by, or furnished to, that person under or for the purposes of these Regulations unless the disclosure is made with lawful justification.

(2) For the purposes of paragraph (1), a disclosure of information is made with lawful justification only if, and to the extent that—

- (a) the disclosure is made for the purposes of, and is necessary for, the performance of any function under these Regulations;
- (b) the disclosure is made with the consent of the person to whom, or to whose business, property or other assets, the information relates; or
- (c) the disclosure is made for the purposes of any proceedings, whether criminal or civil.

(3) Information coming into the possession of a person must not be used by that person for any purpose other than the purposes of these Regulations.

(4) A person that knowingly or recklessly discloses information in contravention of paragraph (1) or uses information in contravention of paragraph (3) is guilty of an offence and is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years.

### **Defence of due diligence**

**36.**—(1) Subject to the following provisions of this regulation, in any proceedings against any person for an offence under these Regulations it is a defence for that person to show that they took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against any person for such an offence the defence provided in paragraph (1) involves an allegation that the commission of the offence was due to—

- (a) the act or default of another, or
- (b) reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, within a period ending 7 clear days before the commencement of the hearing of the proceedings (or in Scotland, the trial diet), they have served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph is one containing all such information identifying, or assisting in the identification of, the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) A person shall not be entitled to rely on the defence provided in paragraph (1) by reason of their reliance on information supplied by another, unless they can show that it was reasonable in all the circumstances to have relied on the information, having regard in particular—

- (a) to the steps which they took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether they had any reason to disbelieve the information.

### **Offences by bodies corporate**

**37.**—(1) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

that person, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) For the purposes of paragraph (1) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Where an offence under these Regulations is committed in Scotland by a Scottish partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

### **Designation of Secretary of State as focal point for port security**

**38.**—(1) The Secretary of State is the focal point for port security for the purposes of Article 12 of the Port Security Directive.

(2) In this regulation “the Port Security Directive” means Directive [2005/65/EC](#)(6) of the European Parliament and of the Council of 26 October 2005 on enhancing port security.

Signed by the Secretary of State

21st July 2009

*Andrew Adonis*  
Secretary of State for Transport  
Department for Transport

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(6) O.J. No. L 310, 25.11.2005, p 28.