
STATUTORY INSTRUMENTS

2017 No. 325

HEALTH AND SAFETY

The Freight Containers (Safety Convention) Regulations 2017

<i>Made</i>	- - - -	<i>8th March 2017</i>
<i>Laid before Parliament</i>		<i>13th March 2017</i>
<i>Coming into force</i>	- -	<i>6th April 2017</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 15(1), (2), (3)(a) and (c), (4), (5)(b), (6)(a), (b) and (9), 82(3)(a) and (b), 84(3) and paragraphs 1(1) (a) and (c), (2) and (3), 3, 4(1), and 6(1) of Schedule 3 to, the Health and Safety at Work etc. Act 1974(1) (“the 1974 Act”).

These Regulations give effect without modifications to proposals submitted by the Health and Safety Executive under section 11(3)(2) of the 1974 Act after carrying out consultation in accordance with section 50(3)(3) of the 1974 Act.

Citation and commencement

1. These Regulations may be cited as the Freight Containers (Safety Convention) Regulations 2017 and come into force on 6th April 2017.

Interpretation

2. In these Regulations—

“the 1974 Act” means the Health and safety at Work etc. Act 1974;

“the 1984 Regulations” means the Freight Containers (Safety Convention) Regulations 1984;(4)

“the Convention” means the International Convention for Safe Containers 1972, as amended(5);

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- (1) 1974 c. 37; section 15(1) was substituted by paragraph 6 of Schedule 15 to the Employment Protection Act 1975 (c. 71) and amended by S.I. 2002/794.
- (2) Section 11 was substituted by the Legislative Reform (Health and Safety Executive) Order 2008 (S.I. 2008/960) and amended by the Energy Act 2013 (c. 32), Schedule 12, paragraph 2.
- (3) Section 50(3) was amended by the Employment Protection Act 1975 (c.71), Schedule 15, paragraph 16(3); by the Health and Social Care Act 2012 (c. 7), Schedule 7 paragraph 6; by the Energy Act 2013, Schedule 12, paragraph 11; and by S.I. 2008/960.
- (4) S.I. 1984/1890.
- (5) The Convention was signed at Geneva on 2nd December 1972 and ratified by the United Kingdom on 8th March 1978. It has been amended by resolution MSC.310(88) which came into force on 1st January 2012, and by resolution MSC.355 (92)

“container” means an article of transport equipment, excluding a vehicle or packaging or any article of transport equipment designed solely for use in air transport, 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) a container when carried on a chassis; and
- (b) a swap body that is carried by or on board a sea-going ship, and that is not mounted on a road vehicle or rail wagon;

“corner fittings” means an arrangement of apertures and faces at either the top or the bottom or both at the top and the bottom of the container for the purposes of handling, stacking and securing or any of those purposes;

“the Executive” means the Health and Safety Executive;

“maintained” means maintained in an efficient state in efficient working order and in good repair;

“maximum operating gross mass” means the maximum allowable sum of the mass of the container and its cargo;

“safety approval plate” means a plate in the form and containing the information specified by the Schedule;

“swap body” means a container which is specially designed for carriage by road only or by rail and road only and is without stacking capability and top lift facilities;

“use” means use for the purpose for which the container is designed but does not include—

- (a) movement to a place for remedial action if—
 - (i) so far as is reasonably practicable the movement is without risk to the safety of any person, and
 - (ii) the remedial action is carried out before the container is repacked with goods;
- (b) in the case of an empty container—
 - (i) transport to a place for testing to obtain approval under regulation 5; or
 - (ii) delivery to its purchaser by the vendor or their agent.

Application of Regulations

3. These Regulations apply to any container used at work, or supplied for use at work and which—

- (a) is in Great Britain; or

- (b) is outside Great Britain in circumstances in which sections 1 to 59 and 80 to 82 of the 1974 Act apply by virtue of the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2013(6).

Conditions of use and enforcement

4.—(1) The owner or lessee of a container must not use or permit that container to be used unless—

- (a) it has valid approval in accordance with regulation 5;
- (b) it has a valid safety approval plate fixed to it in accordance with regulation 6;
- (c) it is properly maintained;
- (d) the examination requirements in regulation 8 are met in respect of that container;
- (e) all markings on the container showing maximum operating gross mass are consistent with the maximum operating gross mass information on the safety approval plate; and
- (f) it meets the conspicuous marking requirements in regulation 9.

(2) Any other person using or permitting the use of a container must, so far as is reasonably practicable, ensure that—

- (a) a valid safety approval plate is fixed to it in accordance with regulation 6;
- (b) all markings on the container showing maximum operating gross mass are consistent with the maximum operating gross mass information on the safety approval plate; and
- (c) it meets the conspicuous marking requirements in regulation 9.

(3) Where it is an express term of a bailment of a container that the bailee is responsible for ensuring that the container is maintained or examined, the bailee must, in addition to any duty placed on them by paragraph (2), ensure that—

- (a) the container is properly maintained; and
- (b) the examination requirements in regulation 8 are met.

(4) In proceedings for an offence of using or permitting a container to be used which is not properly maintained or examined, it is a defence that at the time of the contravention a bailment or lease was in force in respect of the container and—

- (a) in the case of an owner, that it was an express term that the bailee or lessee was responsible for ensuring that the container is maintained or examined;
- (b) in the case of a lessee—
 - (i) that it was not an express term of the lease that the lessee was responsible for ensuring that the container is maintained or examined, or
 - (ii) under a further lease it was an express term that the further lessee was responsible for ensuring that the container is maintained or examined;
- (c) in the case of a bailee who is a bailor under a further bailment, that it was an express term of the further bailment that the further bailee was responsible for ensuring that the container is maintained or examined.

(5) In this regulation “owner” includes the owner’s agent.

Approval of containers—either by design type or individually

5.—(1) An approval referred to in regulation 4(1)(a) (whether relating to a design type or to an individual container) is valid only if—

- (a) it has been issued—
 - (i) by the Executive;
 - (ii) by a person or organisation appointed for the time being by the Executive in accordance with paragraph (2), or
 - (iii) by or under the authority of a Government which has ratified, accepted, approved or acceded to the Convention; and
 - (b) it has not been withdrawn in writing by—
 - (i) the person or organisation who issued the approval; or
 - (ii) the Executive, whether or not it was issued by the Executive.
- (2) An appointment by the Executive for the purpose of issuing approvals under paragraph (1) must be in writing and may be—
- (a) for a specified period;
 - (b) subject to conditions; and
 - (c) varied or revoked at any time by the Executive in writing.

Fixing of safety approval plate

6. A container has a valid safety approval plate fixed to it if—
- (a) the safety approval plate is marked and fixed to it in accordance with—
 - (i) the Schedule; or
 - (ii) where regulation 7 applies, the 1984 Regulations, and
 - (b) the information on the safety approval plate is correct and relates to a valid approval.

Containers constructed before 1st July 2014

7. A container constructed prior to 1st July 2014 may retain the safety approval plate required by the 1984 Regulations, provided that no structural modifications have been or are made to that container.

Examination of containers

- 8.—(1) The examinations in regulation 4(1)(d) and (3)(b) must be in accordance with an examination scheme or programme approved by the Executive for the purposes of this regulation.
- (2) There must be clearly marked on the container either on or as close as practicable to the safety approval plate all matters which the examination scheme or programme requires to be marked.
- (3) The examination requirements in paragraph (1) do not apply in the case of an owner if—
- (a) examinations comply with the procedure adopted by the State where the owner is permanently resident or incorporated;
 - (b) the procedure has been approved or prescribed by the Government of that State, or by any organisation authorised by such a Government to act on its behalf, for the purpose of the Convention; and
 - (c) that Government has ratified, accepted, approved or acceded to the Convention.

Marking in accordance with British Standard

9.—(1) Where the stacking or racking values are less than 192,000kg or 150kN, respectively, the container must be conspicuously marked as required under British Standard Freight Containers

– Coding, identification and marking(7), as revised or reissued from time to time, at or before the next scheduled examination.

(2) In this regulation “scheduled examination” means the next examination conducted in accordance with regulation 8.

Revocation

10. The 1984 Regulations are revoked.

Review

11.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations, and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 6th April 2022.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015(8) requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the obligations under the Convention are implemented in other countries which are subject to the obligations.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),
- (b) assess the extent to which those objectives are achieved,
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

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

8th March 2017

Penny Mordaunt
Minister of State,
Department for Work and Pensions

(7) BS EN ISO 6346:1995 + A3:2012 (ISBN 978 0 580 80120 4) is published by BSI Standards Limited 2013, under the authority of the Standards Board and came into effect on 15th April 1996.

(8) 2015 c. 26. Section 30(3) was amended by the Enterprise Act 2016 (C. 12), section 19.

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SCHEDULE

Regulations 2 and 6

Safety Approval Plate Specifications

Location

1. The safety approval plate required by regulation 6 must be permanently fixed to the container in such a position that it is—

- (a) readily visible;
- (b) adjacent to any other officially approved plate carried on the container; and
- (c) not likely to be easily damaged.

Construction and content

2. The safety approval plate must—

- (a) be in the form prescribed by Figure 1;
- (b) consist of a permanent, non-corroding, fireproof, rectangular plate measuring at least 200mm by 100mm;
- (c) be marked in a permanent, clear and legible manner with—
 - (i) the legend “CSC Safety Approval” in letters of at least 8mm in height, and
 - (ii) the other legends and information prescribed by sub-paragraph (d) and by Figure 1 of this Schedule in letters of at least 5mm in height,

but nothing in this sub-paragraph prevents any markings for the purposes of an examination scheme or programme being by means of a decal;

- (d) contain the following information in at least the English or French language—
 - (i) line 1—the country of approval and approval reference;
 - (ii) line 2—the month and year of manufacture;
 - (iii) line 3—the manufacturer’s identification number in respect of the container, or in the case of containers for which that number is unknown the number allotted by the Government or organisation that has granted approval;
 - (iv) line 4—the maximum operating gross mass in kilograms and pounds;
 - (v) line 5—the allowable stacking load for 1.8g in kilograms and pounds (that is to say, the designed maximum superimposed static stacking load);
 - (vi) line 6—the transverse racking test force in newtons;
 - (vii) line 7—if the end-walls are designed to withstand a force of less or greater than 0.4 times the gravitational force by maximum permissible payload, i.e. 0.4Pg, the end-wall strength;
 - (viii) line 8—if the side-walls are designed to withstand a force of less or greater than 0.6 times the gravitational force by maximum permissible payload, i.e. 0.6Pg, the side-wall strength;
 - (ix) line 9—if the approved examination scheme or programme so requires—
 - (aa) a legend indicating that the container is subject to a continuous examination programme, or
 - (bb) the date (expressed in month and year only) before which the container shall next be thoroughly examined;

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Lines 7 and 8 may be used for the above purposes (aa) and (bb) if they are not required to contain other information; and

(x) in the case of a container approved for one door off operation, the stacking and racking strengths, which must be marked as follows—

(aa) ALLOWABLE STACKING LOAD ONE DOOR OFF FOR 1.8g (...KG... LBS);

This marking must be displayed immediately near the stacking test value (see line 5); and

(bb) TRANSVERSE RACKING TEST FORCE ONE DOOR OFF (...newtons);

This marking must be displayed immediately near the racking test value (see line 6).

Figure 1

CSC SAFETY APPROVAL	
1	
2	DATE MANUFACTURED.....
3	IDENTIFICATION No.....
4	MAXIMUM OPERATING GROSS MASS.....kg.....lb
5	ALLOWABLE STACKING LOAD FOR 1.8g.....kg.....lb
6	TRANSVERSE RACKING TEST FORCE.....newtons
7
8
9

Interpretation

3. In this Schedule—

“g” means the standard acceleration of gravity; g equals 9.8 m/s^2 ;

“load”, when used to describe a physical quantity to which units may be ascribed, signifies “mass”;

“Maximum permissible payload” means the difference between maximum operating gross mass or Rating and the mass of the empty container including permanently affixed ancillary equipment;

“P” means maximum permissible payload; and

“R” means “Rating” which has the same meaning as maximum operating gross mass.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Freight Containers (Safety Convention) Regulations 1984 (S.I. 1984/1890) (“the 1984 Regulations”). These Regulations and new Guidance implement the UK obligations under the International Convention for Safe Containers, 1972, as amended by resolutions MSC.310 (88) and resolution MSC.355(92) (“the Convention”).

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The Regulations update and modernise the freight containers safety approvals regime established by the 1984 Regulations. The Regulations set out the new container marking requirements and align physical dimensions and units to the international system of units, the globally recognised SI system. The Regulations apply to containers which have top corner fittings and a bottom area of at least 7 square metres or, if they do not have top corner fittings, a bottom area of at least 14 square metres.

These Regulations require owners and lessees and others in control of freight containers used at work or supplied for use at work to comply with conditions of use, in accordance with the Convention.

Regulations 4 and 5 impose a condition that a container must have a valid approval issued by the Health and Safety Executive (“the Executive”) or by a person or an organisation which it has appointed for that purpose, or by or under the authority of a foreign Government which has acceded to the Convention. Guidance on the arrangements for the approval of containers in Great Britain is set out in a document entitled “Approval of Freight Containers – Arrangements in Great Britain (The Green Guide)” obtainable from the Health and Safety Executive, Redgrave Court, Merton Road, Merseyside, L20 7HS and is published with the Explanatory Memorandum alongside these Regulations on www.legislation.gov.uk.

Regulation 4 prohibits the use of containers unless the conditions set out in that regulation are met. All containers must display a valid safety approval plate as described in regulation 6. The detailed requirements about content and form of the safety approval plate are set out in the Schedule.

Under regulation 4, containers must be properly maintained and meet the examination requirements set out in regulation 8. For examination requirements to be met, periodic examination schemes or continuous examination programmes must be approved by the Executive. Guidance entitled “Freight Container Examination Schemes or Programmes – Conditions for Approval (The Yellow Guide)” is obtainable from the Executive.

Under these Regulations it is a defence to criminal proceedings if responsibility for maintenance and examination has passed to another person under express terms set out in a lease, sublease or bailment (regulation 4).

Regulation 7 provides transitional arrangements for containers constructed before 1st July 2014. Safety approval plates that complied with the 1984 Regulations prior to 1st July 2014 may be retained until any structural modifications are made to that container.

Regulation 9 requires containers with limited stacking or racking capacity to be marked under British Standard, Freight Containers – Coding, identification and marking BS EN ISO 6346: 1995. This standard is published by British Standards Limited 2013, ISBN 978 0 580 80120 4 and is available from www.bsigroup.com/shop or telephone +44 (0)20 8996 9001 or fax: +44 (0)20 8996 7001. Copies can also be obtained from the British Standards institute at Davy Avenue, Milton Keynes, Buckinghamshire, MK5 8PP.

Regulation 10 revokes the 1984 Regulations.

Regulation 11 introduces a provision which requires the Secretary of State to review the operation and effect of the Regulations and publish a report by 6th April 2022, which is five years after the date on which these Regulations come into force, and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended.

The Schedule provides that the safety approval plate must be in the form prescribed in Figure 1 which will be reproduced in the published printed copy of these Regulations. Figure 1 may not be reproduced in online or electronic formats. The Schedule paragraphs describe the safety approval plate specifications including that the plate must be made out of non-corroding material and how and where on the container it should be displayed. Paragraph 2 describes the dimensions and information that must be included on the safety approval plate.

Paragraph 3 of the Schedule defines technical provisions relevant to the Schedule.

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A full impact assessment of the effect that these Regulations would have on the costs of business and the voluntary sector is available from the Executive.

The Regulations and the two sets of guidance were notified in draft (Notification No.2016/0616/UK, Notification No. 2016/0617/UK and Notification No. 2016/0618/UK) on 28th November 2016) to the European Commission in accordance with 2015/1535/EC of the European Parliament and of the Council (2015 O.J. L241/1).