STATUTORY INSTRUMENTS

2016 No. 721

HEALTH AND SAFETY

The Dangerous Goods in Harbour Areas Regulations 2016

Made - - - -	*7th July 2016*
Laid before Parliament	*11th July 2016*
Coming into force - -	*1st October 2016*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 15(1), (2), (3)(a) and (c), (4), (5)(a) and (b), 6(a) and (b), (9), 43(2), (4) to (6) and (9), 80(1) and (4) and 82(3)(a) of, and paragraphs 1(1)(b), 2(1), 3, 4, 6, 9, 15(1), 16, 18(a), 20, 21(a) to (c) and 22 of Schedule 3 to, the Health and Safety at Work etc. Act 1974(**1**)("the 1974 Act").

Apart from the modifications referred to in the next paragraph, the Secretary of State makes these Regulations for the purpose of giving effect to the proposals submitted by the Health and Safety Executive under section 11(3)(**2**) of the 1974 Act having consulted in accordance with section 50(3)(**3**) of that Act.

It appears to the Secretary of State that—

(a) the amendments to secondary legislation referred to in Schedule 5; and

(b) the revocation of the Regulations referred to in regulation 33,

are expedient as set out in section 80(1) of the 1974 Act.

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.

(**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. Section 15(2) was amended by paragraphs 1 and 5 of Schedule 12 to the Energy Act 2013 (c.32). Section 15(3)(c) was amended by paragraph 5 of Schedule 12 to the Energy Act 2013. Section 15(4)(a) was amended by S.I. 2008/960. Section 80(4) was substituted by paragraph 19 of Schedule 15 to the Employment Protection Act 1975.

(**2**) Section 11(3) was inserted by the Legislative Reform (Health and Safety Executive) Order 2008 (S.I. 2008/960).

(**3**) Section 50(3) was amended by paragraph 16(3) of Schedule 15 to the Employment Protection Act 1975 (c.71); it was further amended by paragraph 6 of Schedule 7 to the Health and Social Care Act 2012 (c.7); and also by S.I. 2008/960.

Interpretation

2.—(1) In these Regulations—

"the 1987 Regulations" means the Dangerous Substances in Harbour Areas Regulations 1987(**4**);

"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(**5**) other than a container within the definition of "portable tank" in those Regulations;

"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—

(**4**) S.I. 1987/37.
(**5**) S.I. 1984/1890.

(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(**6**);

"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(**7**);

"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—

(a) a GB nuclear site (within the meaning given in section 68 of the Energy Act 2013(**8**));

(b) an authorised defence site (within the meaning given in regulation 2(1) of the Health and Safety (Enforcing Authority) Regulations 1998(**9**)); 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(**10**);

"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(**11**);

(**6**) 1964 c.5.
(**7**) ISBN: 978-92-801-1597-0.
(**8**) 2013 c.32.
(**9**) 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.
(**10**) ISBN: 978-92-1-139149-7.
(**11**) 1964 c.40.

"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(**12**).

(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;

(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(**13**) 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;

(**12**) 1952 c.67.
(**13**) S.I. 2013/240.

(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(**14**), 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

(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.

(**14**) 1995 c.21: Schedule 3A was inserted by Schedule 1 to the Marine Safety Act 2003 (c.16).