STATUTORY RULES OF NORTHERN IRELAND

1995 No. 87

HEALTH AND SAFETY

The Explosives in Harbour Areas Regulations (Northern Ireland) 1995

Made - - - -	*6th March 1995*
To be laid before Parliament	*17th April 1995*
Coming into operation	

The Secretary of State, in pursuance of Articles 17(1), (2), (3), (4), (5), (6)(a) and (b), 40(2), (4) and (6), 54(1) and (3) and 55(2) of, and paragraphs 1(1) to (4), 2, 3, 5, 6, 8, 10, 11, 12(1), 13, 14(1), 15, 17(a), 19, 20(a) to (c), and 21 of Schedule 3 to the Health and Safety at Work (Northern Ireland) Order 1978(**1**) ("the 1978 Order") as applied and modified by Article 53 of that Order and after consulting, in accordance with Article 46 of that Order as so applied and modified, the Health and Safety Agency for Northern Ireland and such other bodies as appeared to him to be appropriate, hereby makes the following regulations:

PART I

INTERPRETATION AND APPLICATION

Citation and commencement

1. These Regulations may be cited as the Explosives in Harbour Areas Regulations (Northern Ireland) 1995 and shall come into operation on 17th April 1995.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

"barge" includes any lighter or similar vessel whether self-propelled or not;

"the 1991 Regulations" means the Classification and Labelling of Explosives Regulations (Northern Ireland) 1991(**2**);

(**1**) 1978 No. 1039 (N.I. 9)
(**2**) S.R. 1991 No. 516

"berth" means any dock, pier, jetty, quay, wharf or similar structure (whether floating or not) in each case within a harbour or harbour area, at which a vessel may tie up and includes any plant or premises, other than a vessel used for purposes ancillary or incidental to the loading or unloading of explosives within the curtilage of that berth;

"classification" means the classification specified in column 2 of Part 1 of Schedule 1 corresponding to the most hazardous of the characteristic properties of those explosives specified in column 1 of that Part;

"Compatibility Group" and "Compatibility Group letter" have the same meaning as in regulation 2 of the 1991 Regulations;

"consignor" means the original consignor;

"Division" and "Division number" have the same meaning as in regulation 2 of the 1991 Regulations;

"dumb craft" means a vessel not possessing mechanical means of propulsion and includes a dumb barge;

"explosives" means any substance (including any preparation or other mixture) which by reason of its characteristic properties, being properties specified in column 1 of Part I of Schedule 1, creates a risk to the health or safety of any person when the substance is in a harbour or harbour area;

"explosives licence" means a licence issued by the Secretary of State for the purposes of Part II;

"freight container" means a container as defined in regulation 2 of the Freight Containers (Safety Convention) Regulations (Northern Ireland) 1992(**3**);

"handling" includes the operations of loading, unloading and transferring explosives;

"harbour" means any harbour , whether natural or artificial, and any port, haven, estuary, tidal or other river, canal or inland navigation waterway navigated by sea-going vessels, in each case outside a harbour area, and includes—

(a) a dock, wharf or other works in or at which vessels can obtain shelter, or ship and unship goods or passengers,

(b) harbour land, being land adjacent to a harbour as defined above and occupied wholly or mainly for the purposes of activities carried on within the harbour;

"harbour area" means—

(a) (i) all areas of water within the statutory jurisdiction of a statutory harbour authority, other than the areas of water referred to in sub-paragraph (b),

(ii) any berth, abutting any of the areas of water falling within head (i), where the loading or unloading of explosives takes place (whether or not that berth is for other purposes under the statutory jurisdiction of the harbour authority),

(iii) any land, within the statutory jurisdiction of a statutory harbour authority or occupied by a statutory harbour authority, used in connection with the loading or unloading of vessels,

but excluding—

(b) areas of water which are within the statutory 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 harbour authority (for the purpose of these Regulations the harbour area of that other statutory harbour authority is known as "an overlapping harbour area");

"harbour authority" means—

(**3**) S.R. 1992 No. 2

(a) in relation to a harbour area, the statutory harbour authority by reference to which that harbour area is defined,

(b) in relation to a harbour, any person being, or claiming to be—

(i) the proprietor of that harbour, or

(ii) entrusted with the duty, or invested with the duty, or invested with the power of improving, managing, maintaining or regulating that harbour;

"harbour craft" means a self-propelled craft which is used wholly or mainly within a harbour or harbour area or within such places and on adjoining inland waterways;

"harbour master" means the harbour master, dock master or other officer duly appointed by the harbour authority to act in such capacity or any person having authority so to act;

"hazard warning panel" means the panel required by regulation 11 and specified in Schedule 4;

"hazard warning sign" means the hazard warning sign specified and coloured as in column 3 of Part 1 of Schedule 1 for the classification of explosives specified in the corresponding entry in column 2 of that Part and which is further described in Part II of that Schedule;

"the IMDG Code" has the same meaning as in regulation 1(3) of the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1990(**4**);

"loading" and "unloading" means the actual operations of loading and unloading a vessel and the handling of explosives ancillary to such operations;

"master" includes any person, other than a pilot, having charge of a vessel;

"military explosive" has the same meaning as in regulation 2 of the 1991 Regulations;

"operator" means—

(a) the operator of any vehicle which is engaged in the carriage of explosives and shall be—

(i) any person who is required to hold a road freight vehicle licence under section 17(2) of the Transport Act (Northern Ireland) 1967(**5**) other than a person described in sub-section (1)(b) or (c) of that section, or

(ii) where no such licence is held (in the case of a foreign goods vehicle) the driver of the vehicle; (in the case of any other vehicle) the keeper of the vehicle, and for this purpose, where the vehicle is on hire or lease to any person, that other person shall be treated as its keeper,

(b) in relation to any other mode of transport and in relation to a berth, the person who has for the time being day-to-day control of its running;

"receptacle" includes any form of packaging used for the transport of explosives but does not include a freight container or a vehicle;

"statutory harbour authority" means a "harbour authority" within the meaning of section 38 of the Harbours Act (Northern Ireland) 1970(**6**) except that a person shall not be a statutory harbour authority for the purposes of these Regulations in respect of a harbour area which is inside the harbour area of another statutory harbour authority and which is used wholly or mainly for vessels bringing or receiving goods of either or both of the following descriptions, that is to say goods which have been manufactured or produced by that person or which are to be used by that person for the manufacture or production of goods or electricity, and for this purpose there shall be treated as carried on by a company the activities of manufacture or production carried on by—

(a) a holding company or subsidiary of that company,

(**4**) S.I. 1990/2605
(**5**) 1967 c. 37 (N.I.)
(**6**) 1970 c. 1 (N.I.)

(b) the members of a consortium who between them own, directly or indirectly, more than half the issued share capital of that company;

"UN list" means Chapter 2 of the Recommendations prepared by the United Nations Committee of Experts on the Transport of Dangerous Goods;

"vessel" means every description of vessel, however propelled or moved, and includes a hovercraft, a hydrofoil vessel, anything constructed or adapted to carry persons or goods by water and a flying boat or seaplane on or in the water.

(2) Any reference in these Regulations to the quantity of any explosive shall be construed as a reference to the net mass of explosive substance therein contained.

Application

3.—(1) These Regulations shall apply, in every harbour and harbour area in Northern Ireland and to any premises or activities in any part of a harbour area in the territorial waters adjacent to Northern Ireland.

(2) Subject to paragraph 3(3) regulations 6 to 8 shall in addition to their application in every harbour and harbour area apply to the loading on board or unloading from a vessel (other than a vessel which is an offshore installation within the meaning of section 1(4) of the Mineral Workings (Offshore Installations) Act 1971(**7**) of any explosive on any part of the coast or in any tidal water.

(3) Regulations 6 to 8 shall not apply in relation to—

(a) explosives—

(i) in Division 1.4; or

(ii) in any other division (extent explosives in Compatibility Group L), where the total quantity of explosive involved does no't exceed 10 kilograms;

(b) the unloading at sea of explosives that are to be used immediately by a vessel at sea;

(c) the unloading at sea of explosives to be dumped at sea in accordance with the terms of a licence granted under Part II of the Food and Environment Protection Act 1985(**8**) or, in the case of a military explosive, with the consent of the Secretary of State;

(d) explosives of less than one tonne in quantity intended for immediate use in connection with harbour works or for wreck dispersal in the harbour or harbour area, if—

(i) the consent in writing of the harbour master has been obtained, and

(ii) the explosives are carried and used in accordance with any conditions attached to that consent;

(e) a berth which forms part of a factory or magazine either licensed under the Explosives Act 1875 or lawfully existing whether under that Act or by virtue of a certificate of exemption granted pursuant to the Explosives Act 1875 (Exemptions) Regulations (Northern Ireland) 1875(**9**);

(f) explosives carried by a British or foreign warship;

(g) without prejudice to sub-paragraph (f), explosives carried by any other vessel in the service of the Crown, where those explosives are for use at sea and no handling of the explosives takes place while the vessel is in the harbour or harbour area;

(h) explosives within the limits of any dockyard port defined by an Order in Council made under the Dockyard Ports Regulation Act 1865(**10**).

(**7**) 1971 c. 61; section 1 was substituted by section 24 of the Oil and Gas Enterprise Act 1982 (c. 23)
(**8**) 1985 c. 48
(**9**) S.R. 1983 No. 326
(**10**) 1865 c. 125

(4) The duties imposed by regulations 16, 17(1) and 18 shall not extend to—

(a) the master or crew of a sea-going ship; or

(b) the employer of such persons,

in relation to the normal shipboard activities of a ship's crew under the direction of the master.

(5) These Regulations shall not prejudice any action of Her Majesty's Commissioners of Customs and Excise or any requirement for approval of, authority from, clearance by or notification to, Her Majesty's Commissioners of Customs and Excise or the necessity to comply with any order or conditions imposed by Her Majesty's Commissioners of Customs and Excise.

PART II

ENTRY OF EXPLOSIVES INTO HARBOUR AREAS

Notice of entry of explosives

4.—(1) into Subject to paragraphs (4) and (5), explosives shall not be brought a harbour or harbour area unless—

(a) in the case of a vessel, the master or agent, or

(b) in the case of any other mode of transport, the operator,

has given to the harbour master and, if the explosives are to be brought to a berth, to the berth operator, notice containing the particulars referred to in paragraph (3) not less than 24 hours, or such longer time in respect of both notices as the harbour master may for operational reasons require but which shall not exceed 14 days, before the explosives are brought in or, if it is not reasonably practicable to give 24 hours notice, such shorter time in respect of both notices as the harbour master and berth operator may together agree.

(2) Where a vessel carrying explosives is to enter a harbour area not to load or unload there but on the way to loading or unloading in an overlapping harbour area or in an abutting harbour area, then the notice required under paragraph (1) shall be given to the harbour master of that harbour area and to the harbour master and, if the explosives are to be brought to a berth, to the berth operator of that overlapping or abutting harbour area.

(3) Any notice required under paragraph (1) may be given up to six months in advance and shall be in writing or in such other form as the harbour master may agree and shall contain such information as is adequate to evaluate the risk created by the explosives to the health and safety of any person and, in the case of a notice given by the master or agent of a vessel, where the International Maritime Organisation recommends that the vessel should have a certificate of fitness, shall in addition state whether it has a current certificate of fitness.

(4) Notice need not be given under paragraph (1) in respect of—

(a) explosives carried by a vessel which is to pass through the harbour area and will not load or unload either in that harbour area or in an overlapping harbour area or in an abutting harbour area;

(b) explosives carried by a British or foreign warship; or

(c) without prejudice to sub-paragraph (b), explosives carried by any other vessel in the service of the Crown, where either—

(i) the master of the vessel has informed the harbour master that the quantity of explosives carried is within the limit of any conditions to which the entry into or the carrying or handling within the harbour or harbour area of explosives will be subject, or