STATUTORY RULES OF NORTHERN IRELAND

# 1991 No. 509

# HEALTH AND SAFETY

## Dangerous Substances in Harbour Areas Regulations (Northern Ireland) 1991

*Made - - - - 28th November 1991*

*Coming into operation 1st June 1992*

Whereas under Article 54(1) of the Health and Safety at Work (Northern Ireland) Order 1978(**1**) ("the Order of 1978") it appears to the Department of Agriculture, the Department of Economic Development, the Department of the Environment and the Department of Health and Social Services ("the Department concerned")(**2**) that the repeals and modifications of the local Acts, Regulations and bye-laws referred to in regulation 37(2) and (3) and Part II of Schedule 7 are expedient in connection with the other provisions of these Regulations.

Now, therefore, the Department concerned, in exercise of the powers conferred by Articles 17(1), (2), (3), (4), (5) and (6), 54(1) and 55(2) of, and paragraphs l(1) to (4), 2, 3, 5,6, 8, 10, 11, 12(2), 13, 14(1), 15, 17(a), 19, 20(a) to (c) and 21 of Schedule 3 to, the Order of 1978 and of every other power enabling it in that behalf, after consultation in accordance with Articles 46(1) and 54(5) of that Order with the Health and Safety Agency for Northern Ireland and such other bodies as appeared to it to be appropriate, hereby makes the following Regulations:—

## PART I

## INTERPRETATION AND APPLICATION

### Citation and commencement

**1.** These Regulations may be cited as the Dangerous Substances in Harbour Areas Regulations (Northern Ireland) 1991 and shall come into operation on 1st June 1992.

### Interpretation

**2.**—(1) In these Regulations—

(**1**) S.I. 1978/1039 (N.I. 9)
(**2**) *See* Article 2(2) of S.I. 1978/1039 (N.1. 9)

"approved list" means the list described in regulation 4 of the Classification, Packaging and Labelling of Dangerous Substances Regulations (Northern Ireland) 1985(**3**);

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

"berth" means any dock, pier, jetty, quay, wharf or similar structure (whether floating or not) or buoy berth in each case within a harbour or harbour area, 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 loading or unloading of a dangerous substance within the curtilage of that berth, but

(b) does not include a monobuoy or in regulations 18,2 l(6) and 27(1) any other buoy berth;

"classification" where the reference is to the classification of a dangerous substance means either—

(a) the classification for the purposes of—

  (i) the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1990(**4**), or

  (ii) the Classification, f Packaging and Labelling of Dangerous Substances Regulations (Northern Ireland) 1985 in relation to substances which are dangerous for conveyance within the meaning of those Regulations; or

(b) the classification specified in column 2 of Part I of Schedule 1 corresponding to the most hazardous of the characteristic properties of that substance specified in column 1 of that Part;

"consignor" means the original consignor;

"dangerous substance" means a substance or article described in regulation 3;

"the Department" means the Department of Economic Development;

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

"freight container" means a container as defined in Article 1 of the International Convention for Safe Containers (CSC) other than—

(a) a container specially designed for air transport or a skip or cage used in a mine or quarry; or

(b) a container within the definition of "portable tank" in these Regulations;

"handling" in relation to a dangerous substance includes the operations of loading, unloading and transferring that substance and cleaning, purging, gas-freeing and ballasting any tank on a vessel which contains a dangerous substance or its vapour;

"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;

(c) a monobuoy connected to one or more storage facilities in a harbour as defined above and its monobuoy area;

"harbour area" means—

(**3**) S.R. 1985 No.81, amended by S.R. 1988 No.288, S.R. 1989 No. 182, S.R. 1990 No. 120 and S.R. 1990 No. 303
(**4**) S.I. 1990/2605

(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 any dangerous substance 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,

(iv) a monobuoy connected to one or more storage facilities in a harbour area as defined above and its monobuoy area.

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—

(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 5;

"hazard warning sign" means in relation to a dangerous substance, the hazard warning sign specified and coloured as in column 3 of Part I of Schedule 1 for the classification of the substance 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 l(3) of the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1990;

"liquid" includes liquefied gas except in Schedule 1;

"loading" and "unloading" in relation to a dangerous substance means the actual operations of loading and unloading a vessel and includes any acts of ullaging, sounding or sampling carried out in connection with such operations and the handling of substances ancillary to such operations;

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

"monobuoy" means a mooring buoy at which a dangerous substance may be loaded onto or unloaded from a vessel and which is connected to one or more storage facilities in a harbour or harbour area and includes the pipeline or pipelines by which it is so connected;

"monobuoy area" means the area of water surrounding a monobuoy where loading or unloading of dangerous substances takes place but does not extend to the area of water surrounding the pipeline or pipelines connected to it;

"operator" shall be construed in accordance with regulation 4;

"petroleum-spirit" means petroleum-spirit within the meaning of section 23 of the Petroleum (Consolidation) Act (Northern Ireland), 1929(**5**);

"portable tank" means—

(a) a portable tank with a capacity of 450 litres or more, and

(b) a tank container and the carrying tank of a road tanker both as defined in the Dangerous Substances (Conveyance by Road in Road Tankers and Tank Containers) Regulations (Northern Ireland) 1988(**6**);

"receptacle" includes any form of packaging used for the transport of a dangerous substance, but does not include a freight container, a portable tank or a vehicle;

"statutory harbour authority" means a "harbour authority" within the meaning of section 38 of the Harbours Act (Northern Ireland) 1970(**7**), 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,

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

"storage tank" means a fixed tank designed for the storage of substances in bulk;

"tank barge" means a barge constructed or adapted to carry liquids in bulk;

"towing" includes the propulsion of a dumb craft by pushing;

"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) Where in these Regulations a duty is imposed upon the master of a vessel, then, in relation to a dumb craft. that duty shall be imposed—

(a) while 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) For the purpose of these Regulations a substance is—

(a) carried by, loaded into or unloaded from a vessel in bulk if it is. without any intermediate form of containment, carried in, loaded into or unloaded from the vessel's hold, tank or cargo space, which is a structural part of or permanently attached to the vessel;

(b) stored in bulk if it is stored without any intermediate form of containment in a storage tank.

(4) Unless the context otherwise requires, any reference in these Regulations to any specified document shall operate as a reference to that document as revised or re-issued from time to time.

(**5**) 1929 c. 13 (N.I.)
(**6**) S.R. 1988 No. 24
(**7**) 1970 c. 1 (N.I.)

**Meaning of "dangerous substance"**

**3.**—(1) Subject to paragraphs (2) and (3), "dangerous substance" 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 and includes, whether or not it would otherwise be a dangerous substance, any substance or article which is within the definition of "dangerous goods" in regulation l(3) of the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1990; except that nothing in those Regulations shall be construed as defining a marine pollutant in Class 9 of the IMDG Code under UN number 3077 or 3082 or any substance otherwise included in Class 9 of the IMDG Code solely! by reason of its being a marine pollutant. as a dangerous substance for the purpose of these Regulations.

(2) Nothing in paragraph (1) shall require a substance or article which is brought into a harbour or harbour area from inland and which is not or is not to be loaded onto a vessel as cargo, to be defined as a dangerous substance to which these Regulations apply, unless either—

(a) it has characteristic properties, being properties specified in column 1 of Part I of Schedule 1, which create a risk to the health or safety of any person when the substance is in the harbour or harbour area; or

(b) it is "dangerous for conveyance" within the meaning of sub-paragraph (b) in the definition of "dangerous substance" in regulation 2(1) of the Classification, Packaging and Labelling of Dangerous Substances Regulations (Northern 'Ireland) 1985 as extended by regulation 3(5) of those Regulations.

(3) The following are not dangerous substances within the meaning of these regulations—

(a) a substance which is intended for use as food within the meaning of Article 2(2) of the Food Safety (Northern Ireland) Order 1991(**8**) and which, if it is intended for use as an additive within the meaning of the Food Labelling Regulations (Northern Ireland) 1984(**9**), is intended to be supplied to the public;

(b) a substance which is intended for use as an animal feeding stuff within the meaning of section 66(1) of the Agriculture Act 1970(**10**);

(c) a substance which is intended for use as a cosmetic product within the meaning of regulation 4(1) of the Cosmetic Products (Safety) Regulations 1984(**11**) (including any aerosol containing a cosmetic product);

(d) a substance which is intended for use as—

(i) a medicinal product as defined in section 130 of the Medicines Act 1968(**12**), or

(ii) a substance specified in an order made under section 104 or 105 of the Medicines Act 1968 which is for the time being in force and which directs that specified provisions of that Act shall have effect in relation to that substance as such provisions have effect in relation to medicinal products within the meaning of that Act;

(e) a substance which is a controlled drug within the meaning of the Misuse of Drugs Act 1971(**13**) and which is not excepted from section 4(1)(b) of that Act (which makes it unlawful to supply a controlled drug) by Regulations made under section 7(1)(a) of the Act;

(f) a substance which is a sample taken by an authority responsible for the enforcement of any requirement imposed by or under any statutory provision.

(**8**) S.I. 1991/762 (N.I. 7)
(**9**) S.R. 1984 No. 407 to which there are amendments not relevant to these Regulations
(**10**) 1970 c. 40
(**11**) S.I. 1984/1260
(**12**) 1968 c. 67
(**13**) 1971 c. 38