
STATUTORY INSTRUMENTS

1987 No. 37

The Dangerous Substances in Harbour Areas Regulations 1987

PART I

INTERPRETATION AND APPLICATION

Citation and commencement

1. These Regulations may be cited as the Dangerous Substances in Harbour Areas Regulations 1987 and shall come into force on 1st June 1987.

Interpretation

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

“approved list” means the list described in regulation 4 of the Classification, Packaging and Labelling of Dangerous Substances Regulations 1984⁽¹⁾;

“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, 21(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) Regulations 1981⁽²⁾, or
 - (ii) the Classification, Packaging and Labelling of Dangerous Substances Regulations 1984 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 to these Regulations corresponding to the most hazardous of the characteristic properties of that substance specified in column 1 of that Part;

“Compatibility Group” and “Compatibility Group letter” have the same meaning as in regulation 2(1) of the Classification and Labelling of Explosives Regulations 1983⁽³⁾;

“consignor” means the original consignor;

“dangerous substance” means a substance or article described in regulation 3;

(1) S.I. 1984/1244, amended by S.I. 1986/1922.

(2) S.I. 1981/1747, amended by S.I. 1986/1069.

(3) S.I. 1983/1140.

“Division” and “Division number” have the same meaning as in regulation 2(1) of the Classification and Labelling of Explosives Regulations 1983;

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

“explosive” means in relation to an article or substance which falls within regulation 3, either goods of Class 1 in the IMDG Code or explosives of Class 1 in Part I of Schedule 1;

“explosives licence” means a licence issued by the Health and Safety Executive for the purposes of Part IX of these Regulations;

“freight container” means a container as defined in regulation 2(1) of the Freight Containers (Safety Convention) Regulations 1984(4) other than 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—

- (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) above, 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 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 1(2) of the Merchant Shipping (Dangerous Goods) Regulations 1981;

“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;

“military explosive” has the same meaning as in regulation 2(1) of the Classification and Labelling of Explosives Regulations 1983;

“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 1928⁽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 1981⁽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 57 of the Harbours Act 1964⁽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

⁽⁵⁾ 1928 c. 32.

⁽⁶⁾ S.I. 1981/1059.

⁽⁷⁾ 1964 c. 40.

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 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) 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) 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.

(5) Unless the context otherwise required, any reference in these Regulations to—

- (a) a numbered regulation or Schedule is a reference to the regulation or Schedule in these Regulations so numbered;
- (b) a numbered paragraph is a reference to the paragraph so numbered in the regulation or Schedule in which the reference appears; and
- (c) any specified document shall operate as a reference to that document as revised or re-issued from time to time.

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 1(2) of the Merchant Shipping (Dangerous Goods) Regulations 1981.

(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 1984 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 section 131(1) of the Food Act 1984⁽⁸⁾ or section 58(1) of the Food and Drugs (Scotland) Act 1956⁽⁹⁾ and which if it is intended for use as an additive within the meaning of the Food Labelling Regulations 1980⁽¹⁰⁾ or the Food Labelling (Scotland) Regulations 1981⁽¹¹⁾, 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⁽¹²⁾;
 - (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⁽¹³⁾ (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⁽¹⁴⁾, 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⁽¹⁵⁾ 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 enactment.
- (4) Substances and articles, including those mentioned in Schedule 2 and similar substances and articles which, when assembled in large mass, are liable to spontaneous oxidative heating over a long period of time shall not be treated as dangerous substances of Class 4.2 (spontaneously combustible substances) for the purposes of these Regulations.
- (5) For the purposes of these Regulations vessels which have carried a liquid dangerous substance in bulk and portable tanks which have contained a liquid dangerous substance shall be deemed to be still carrying or containing that dangerous substance, as the case may be, until in the case of a vessel it has been gas-freed, inerted or cleaned and in the case of a portable tank it has been purged or cleaned, so that any of the substance or its vapour that remains is not sufficient to create a risk to the health or safety of any person.

(8) 1984 c. 30.
(9) 1956 c. 30.
(10) S.I. 1980/1849.
(11) S.I. 1981/137.
(12) 1970 c. 40.
(13) S.I. 1984/1260.
(14) 1968 c. 67.
(15) 1971 c. 38.

Meaning of “operator”

- 4.—(1) “Operator” means in relation to a road vehicle—
- (a) a person who holds, or is required by section 60 of the Transport Act 1968⁽¹⁶⁾ to hold, a licence for the use of that vehicle for the carriage of goods on a road; or
 - (b) where no such licence is required, the keeper of the vehicle.
- (2) “Operator” means in relation to any other mode of transport and in relation to a berth or a storage tank, the person who has for the time being day-to-day control of its running.
- (3) “Operator” means in relation to a portable tank (other than the carrying tank of a road tanker) which is being conveyed by road, either—
- (a) the owner of the tank or his agent, if that person—
 - (i) has a place of business in Great Britain; and
 - (ii) is identified as the owner of or, as the case may be, as the agent of the owner of the tank on the portable tank itself or on a document carried on the vehicle; or
 - (b) if no person satisfies the requirements set out in sub-paragraph (a) above, the operator of the vehicle on which the portable tank is carried.
- (4) For the purpose of paragraph (3), a person to whom a portable tank is leased or hired shall be treated as the owner of that portable tank.

Application of these Regulations

- 5.—(1) These Regulations shall apply in every harbour and harbour area in Great Britain and to any premises or activities in any part of a harbour area in the territorial waters adjacent to Great Britain to which or in relation to which sections 1 to 59 and 80 to 82 of the Health and Safety at Work etc. Act 1974⁽¹⁷⁾ apply by virtue of Article 5 (but only in so far as it relates to monobuoys) and 7 of the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) order 1977⁽¹⁸⁾, but not (except as provided in regulation 33) elsewhere.
- (2) These Regulations shall apply to or in relation to any dangerous substance except to—
- (a) petroleum-spirit, intended for use as a fuel for any internal combustion engine and not wholly or partly for the purpose of sale, in a receptacle which conforms to the requirements of either—
 - (i) the Petroleum-spirit (Motor Vehicles, &c.) Regulations 1929⁽¹⁹⁾, or
 - (ii) the Petroleum-spirit (Plastic Containers) Regulations 1982⁽²⁰⁾,
 and which does not exceed the quantity specified in those Regulations;
 - (b) a dangerous substance used solely in connection with the operation of a vessel of less than 50 tons gross tonnage or a vehicle and carried in—
 - (i) a tank forming part of or attached to that vehicle or vessel,
 - (ii) the fuel tank of an outboard motor or in a battery, or
 - (iii) fuel pipes associated with any of the above;
 - (c) a dangerous substance when carried—
 - (i) by a vessel as part of the stores of that vessel,

⁽¹⁶⁾ 1968 c. 73.

⁽¹⁷⁾ 1974 c. 37.

⁽¹⁸⁾ S.I. 1977/1232.

⁽¹⁹⁾ S.R. & O. 1929/952, amended by S.I. 1982/630.

⁽²⁰⁾ S.I. 1982/630.

- (ii) by a vehicle or vessel or in a freight container as part of the equipment of that vehicle, vessel or freight container or for safety purposes,
 - (iii) by a vessel as a result of the use of a fumigant;
 - (d) a small quantity of a dangerous substance for the personal use of any person within the harbour or harbour area;
 - (e) a dangerous substance which—
 - (i) passes through a harbour or harbour area by land to or from a storage facility or a factory within the meaning of section 175, excluding sub-section (2)(n), of the Factories Act 1961(21) whether within or adjacent to the harbour or harbour area,
 - (ii) is stored on land, or
 - (iii) is within a factory as defined above,other than a dangerous substance which is to be, or which has been, loaded on board or unloaded from a vessel within the harbour or harbour area or which is used ancillary to such loading or unloading;
 - (f) a dangerous substance, other than an explosive, when carried by a harbour craft in the course of harbour engineering operations;
 - (g) a nuclear explosive device or any component thereof.
- (3) Only regulation 16 shall apply to or in relation to a liquid petroleum fuel, other than petroleum-spirit, which is carried in a tank (and associated fuel pipes) which forms part of or is attached to, and which is used solely in connection with the operation of, a vessel.
- (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 ship board activities of a ship's crew under the direction of the master.
- (5) These Regulations shall not prejudice—
- (a) 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;
 - (b) any action duly taken by a person in pursuance of a direction given to him under section 12 of the Prevention of Oil Pollution Act 1971(22), or any action taken under subsection (4) or (5) of that section.

PART II

ENTRY OF DANGEROUS SUBSTANCES INTO HARBOUR AREAS

Notice of entry of dangerous substances

- 6.—(1) Subject to paragraphs (4) and (5) and to regulation 9, a dangerous substance shall not be brought into 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,

(21) 1961 c. 34.

(22) 1971 c. 60.

has given to the harbour master and, if the substance is 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 substance is 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 a dangerous substance 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 substance is 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 substance to the health and safety of any person and, in the case of a notice given by the master or agent of a vessel, shall in addition contain the following information, namely—

- (a) where the International Maritime Organisation recommends that the vessel should have a certificate of fitness, whether it has a current certificate of fitness;
- (b) in the case of a vessel which is an oil tanker required to have valid cargo–ship safety construction and safety equipment certificates under a Safety of Life at Sea Convention whether it has such valid safety certificates.

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

- (a) a radioactive substance in a package which is exempt from the requirements of Part II of the Radioactive Substances (Carriage by Road) (Great Britain) Regulations 1974⁽²³⁾ by virtue of regulation 20 of those Regulations;
- (b) a dangerous substance 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;
- (c) a dangerous substance in a pipeline;
- (d) a dangerous substance carried by a British or foreign warship; or
- (e) without prejudice to sub-paragraph (d) above, 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 condition to which the entry into or the carrying or handling within the harbour or harbour area of explosives will be subject, or
 - (ii) 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.

(5) Where it appears to a harbour master necessary for securing the health or safety of any person, he may exempt any person from the prohibition in paragraph (1) in so far as it relates to the giving of notice to him or to a berth operator in his harbour or harbour area and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time.

(6) A harbour master granting or revoking an exemption shall make a record thereof as soon as is reasonably practicable thereafter including any conditions and limit of time attached thereto.

(23) S.I. 1974/1735.

Harbour master's powers of prohibition, removal and regulation relating to dangerous substances

7.—(1) Subject to paragraph (7) and without prejudice to any powers that may be given to him by byelaws made under regulation 43, a harbour master may if in his opinion the condition of any dangerous substance is such as to create a risk to the health or safety of any person and having regard to the matters set out in paragraph (3) give directions as set out in paragraph (5) to the person having control of that substance or of any freight container, portable tank or receptacle containing that substance or of any vehicle or vessel carrying that substance.

(2) Subject to paragraph (7) and without prejudice to any powers that may be given to him by byelaws made under regulation 43, a harbour master may if in his opinion the condition of—

- (a) any freight container, portable tank or receptacle containing a dangerous substance;
- (b) any vehicle or vessel carrying a dangerous substance,

is such as to create a risk to the health or safety of any person from that substance and having regard to the matters set out in paragraph (3) give directions as set out in paragraph (5) to the person having control of that freight container, portable tank, receptacle, vehicle or vessel or of any dangerous substance contained or carried therein.

(3) In determining whether to give any directions under paragraph (1) or (2) in any particular case, a harbour master shall have regard to all the circumstances of that case and, in particular, he shall have regard to the safety of any person, whether that person is within or outside the harbour or harbour area.

- (a) (4) (a) Where a harbour master has given directions under paragraph (1) or (2) or both, the Secretary of State may, for the purposes of securing the safety of any person, give directions to that harbour master requiring him to give such other directions under this paragraph as may be specified by the Secretary of State.
- (b) The directions given by the harbour master under this paragraph shall be given to such person having control of a dangerous substance or of a freight container, portable tank or receptacle containing a dangerous substance or of a vehicle or vessel carrying a dangerous substance as may be specified by the Secretary of State and shall concern such of the matters set out in paragraph (5) as may be specified by the Secretary of State and when given shall cause the directions originally given by the harbour master under paragraph (1) or (2) or both to cease to have effect.

(5) The directions referred to in paragraphs (1), (2) and (4) may—

- (a) regulate or prohibit the entry into;
- (b) require the removal from;
- (c) regulate the handling, movement or position within;

the harbour or harbour area of that substance, freight container, portable tank, receptacle, vehicle or vessel.

(6) Where the harbour master intends to give a direction requiring a dangerous substance to be removed by land from the harbour or harbour area, he shall, before giving the direction, consult the chief officer of police for the police district in which the harbour or harbour area is situated.

(7) A person to whom directions are given under this regulation shall comply with those directions.

(8) Paragraphs (1) and (2) shall not apply to any vessel in the service of the Crown or to any dangerous substance, freight container, portable tank or receptacle being carried by such a vessel.

(9) A harbour master shall not by virtue of this regulation be under any duty to examine the condition of any substance, freight container, portable tank, receptacle, vehicle or vessel.

(10) Directions may be given by the harbour master under paragraphs (1) and (2) in any such reasonable manner as he may think fit.

PART III

MARKING AND NAVIGATION OF VESSELS

Flags and lights to be displayed by vessels

8.—(1) Subject to regulation 9, where a vessel is carrying a dangerous substance specified in Schedule 3 in at least the quantity, if any, specified in that Schedule, the master of that vessel shall ensure that it displays—

- (a) in the case of a vessel with a mast—
 - (i) during the day between sunrise and sunset, a flag complying with the requirements of Parts I and II of Schedule 4, and
 - (ii) when moored or anchored at night between sunset and sunrise and also during the day in restricted visibility an all-round red light giving a clear, uniform and unbroken light visible in conditions of good night-time visibility all round the horizon for a distance of at least 2 nautical miles;
- (b) in the case of a vessel without a mast—
 - (i) during the day between sunrise and sunset, a flag complying with the requirements of Parts I and III of Schedule 4, and
 - (ii) when moored or anchored at night between sunset and sunrise and also during the day in restricted visibility, an all-round red light.

(2) Any flag or light required by paragraph (1) to be displayed shall be positioned so as to be as conspicuous as is reasonably practicable and, in the case of a light, so that it is above any other light being displayed by the vessel.

- (3) it shall be a sufficient compliance with this regulation if—
- (a) when a dumb craft is being towed, the towing vessel displays the flag required under the foregoing paragraphs; or
 - (b) when a dumb craft is moored or anchored that flag or light is displayed by an attendant vessel.

Regulation 6 and 8 not to apply to certain ferry-boats

9. Regulations 6 and 8 shall not apply to any ferry-boat which for the time being operates entirely within smooth or partially smooth waters within the meaning of the Merchant Shipping (Smooth and partially Smooth Waters) Rules 1977(24).

Vessels to keep a safe distance from moored or anchored vessels displaying the flag or light required by regulation 8

10.—(1) A master shall not bring his vessel alongside a moored or anchored vessel which is displaying any flag or light required by regulation 8 without—

- (a) the permission of the berth operator and the master of that vessel if it is at a berth;
- (b) the permission of the harbour master and the master of that vessel if it is elsewhere, and

shall otherwise keep his vessel at a safe distance from that vessel.

(2) The permission, referred to in paragraph (1), of the berth operator and of the harbour master may relate to a named vessel, to a class of vessels or to vessels generally.

Marking of barges

11.—(1) The operator of a barge which is carrying 3,000 kilograms or more of one or more dangerous substances, or in the case of a tank barge any quantity of a dangerous substance, shall ensure that it displays hazard warning panels which shall be arranged so as to be visible on each side of the barge and each such panel shall—

- (a) be weather resistant and durably marked so as to comply with the provisions of Schedule 5 (which relates to the required form, colour, information and specification);
- (b) be either rigid or fixed so as to be rigid;
- (c) be marked on or securely attached to the barge in a substantially vertical plane and if that means of attachment is by a frame that frame shall carry no other hazard warning panel; and
- (d) have its lower edge at least one metre above the deck or if that is not reasonably practicable as high above the deck as is reasonably practicable.

(2) In addition to complying with paragraph (1), where a tank barge is carrying different dangerous substances in separate tanks, the operator of that tank barge shall ensure that each tank which contains a dangerous substance displays two labels which shall—

- (a) be weather resistant and durably marked on one side only so as to comply with the provisions of Schedule 5;
- (b) be marked on or securely attached to the outside of the tank, or on a frame immediately above the tank, in a substantially vertical plane so that there is a label visible on each side of the barge; and
- (c) have their centres as close as is reasonably practicable to a position midway between the front and rear of the tank in which the dangerous substance to which the labels relate is being carried.

(3) Where one or more dangerous substances have been carried and all tanks and compartments have been emptied and cleaned or purged so that any dangerous substance or its vapour which remains is not sufficient to create a risk to the health or safety of any person, then the operator shall ensure that the hazard warning panels and labels are either—

- (a) completely covered or completely removed; or
- (b) in the case of hazard warning panels only, partly covered or partly removed so as to leave visible only the telephone number and the text referred to in paragraph 3(c) and (d) of Schedule 5 respectively.

(4) Where two or more dangerous substances have been carried and the tanks or compartments which were carrying one of them have been emptied and cleaned or purged so that any of the dangerous substance or its vapour which remains is not sufficient to create a risk to the health or safety of any person, then the operator shall ensure that—

- (a) the labels referring to the substance which has been removed are completely covered or completely removed; and
- (b) the hazard warning panels are changed, if necessary, so as to comply with paragraph 3 of Schedule 5.

Control of harbour craft

12.—(1) The operator of a harbour craft which is carrying a dangerous substance or which is towing a vessel which is carrying a dangerous substance shall ensure that—

- (a) the master of that harbour craft is competent to perform the duties required of him; and
- (b) the master and any other person on duty on the harbour craft are not under the influence of drink or a drug to such an extent that their capacity to carry out their duties is impaired.

(2) The master of any harbour craft referred to in paragraph (1) shall control that craft and any vessel being towed by it with due care and diligence.

Provision and use of radios

13.—(1) This regulation applies to—

- (a) a vessel, other than a dumb craft, of 50 tons gross tonnage or more carrying a dangerous substance;
- (b) a vessel towing one or more dumb craft where the combined gross tonnage of all the dumb craft being towed is 50 tons or more and at least one is carrying a dangerous substance.

(2) The master of a vessel to which this regulation applies shall ensure that all times it is in a harbour or harbour area it is provided with a radio capable of receiving and transmitting in the very high frequency band.

(3) The master of a vessel to which this regulation applies shall ensure that a listening watch is kept on the operational frequency of the harbour authority at all times except—

- (a) when the vessel is at a berth; or
- (b) for short periods when the radio is tuned to another frequency for operational purposes.

Anchoring and mooring of vessels

14.—(1) The master of a vessel which is carrying a dangerous substance or on board which any dangerous substance is to be loaded shall anchor or moor his vessel only at such places and at such times as the harbour master may from time to time direct and shall ensure that any conditions the harbour master may impose with regard to anchoring or mooring are complied with.

(2) The harbour master shall, before giving any directions as to the berthing of a vessel at a berth not operated by the harbour authority, consult the operator of that berth.

(3) When he has anchored or moored his vessel, the master shall ensure that it is not moved except—

- (a) if the harbour master, after consultation with the berth operator if the vessel is at a berth, so permits or directs;
- (b) in an emergency or for the safety of persons on the vessel or on the berth; or
- (c) to comply with the terms of an explosives licence.

(4) The master shall ensure that any directions given by the harbour master as to the movement of his vessel are complied with.

(5) While the vessel is at a berth, the berth operator shall ensure that adequate fenders are kept between the vessel and the berth.

(6) This regulation shall not apply in respect of any vessel on which the only dangerous substance or substances are one or more explosives in Division 1.4.

(7) Nothing in paragraph (2) or (3)(a) shall prejudice the power of the harbour master to give directions under any other enactment which applies to the case.

Mobility of vessels

15.—(1) The master of a vessel, other than a dumb barge, carrying a dangerous substance specified in Schedule 3 in the quantity, if any, specified in that Schedule shall ensure that the vessel is in a state of readiness to be moved at any time tidal conditions permitting.

(2) The harbour master may, if he is satisfied that the health or safety of any person will not be prejudiced, exempt by a certificate in writing, a master, other than the master of a vessel carrying any explosive specified in sub-paragraph (a) of Schedule 3, from the requirements of paragraph (1), and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing.

PART IV

HANDLING DANGEROUS SUBSTANCES

General duties of persons handling dangerous substances

16. Every person who has to any extent control of, or who is engaged in, the handling of a dangerous substance shall ensure that, so far as is reasonably practicable, nothing in the manner in which that substance is handled is such as might create a risk to the health or safety of any person.

Additional duties of employers, self-employed persons and berth operators

17.—(1) The employer of a person engaged in the handling of a dangerous substance shall—

- (a) ensure that that employee is provided with such information, instruction, training and supervision as are necessary to ensure his health and safety and to enable him to perform any operation in which he is involved with due regard to the health and safety of others;
- (b) provide that employee, where necessary, with adequate safety equipment and protective clothing; and
- (c) keep a record of the training received by that employee in accordance with this paragraph while that employee is in his employment and on request by that employee give a copy of that record to him.

(2) A self-employed person engaged in the handling of a dangerous substance shall ensure that—

- (a) he has such information, instruction, training and supervision as are necessary to ensure his health and safety and to enable him to perform any operation in which he is involved with due regard to the health and safety of others; and
- (b) he has, where necessary, adequate safety equipment and protective clothing.

(3) The operator of a berth where any dangerous substance is loaded or unloaded shall ensure that—

- (a) the handling of dangerous substances on the berth is adequately supervised, and
- (b) persons present on the berth are provided with such information and instruction as are necessary to ensure their health and safety and to enable them to perform any operation in which they are involved with due regard to the health and safety of others.

Precautions to be taken against fire or explosion

18.—(1) Where a dangerous substance may give rise to a risk of fire or explosion, every person engaged in the handling of that substance and both the owner and the operator of any berth on which

that substance is kept or handled, shall observe all the precautions necessary for preventing, and for minimising the effect of, any such fire or explosion.

(2) Without prejudice to the generality of paragraph (1)–

- (a) the owner of the berth shall ensure that adequate means for fighting fires are available;
- (b) the berth operator shall ensure that adequately trained personnel are available sufficient to operate the fire-fighting equipment that would be required to provide first-aid fire-fighting appropriate to the type and quantity of the dangerous substance being loaded or unloaded;
- (c) the operator and the owner of the berth shall ensure that ready access by the emergency services is available at all times to any vessel at a berth which is carrying, loading or unloading any such dangerous substance.

(3) No person shall smoke, use naked lights or any other source of ignition or carry any source of ignition within any area in which such activities have been prohibited by the harbour authority or the berth operator.

(4) In this regulation, “owner of the berth” means any person having overall control and management of the berth, and includes a lessee.

PART V

LIQUID DANGEROUS SUBSTANCES IN BULK

Fitness of vessels

19.—(1) The master of a vessel to which any of the Codes mentioned in paragraph (2) applies shall not carry, load or unload any liquid dangerous substance in bulk in a harbour or harbour area unless either–

- (a) the vessel has a valid certificate of fitness for the carriage of the substance in bulk issued under the terms of whichever is appropriate of those Codes issued under the authority of the government of the country of registration of the vessel and he complies with any conditions of carriage laid down in that certificate; or
- (b) the harbour master has given his permission in writing.

(2) The Codes referred to in paragraph (1)(a) are the following–

- (a) “Bulk Chemical Code” namely, the IMO Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk;
- (b) “Gas Carrier Code” namely, the IMO Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk;
- (c) “Gas Carrier Code for Existing Ships” namely, the IMO Code for Existing Ships Carrying Liquefied Gases in Bulk;
- (d) “International Bulk Chemical Code” namely, the IMO International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk; and
- (e) “International Gas Carrier Code” namely, the IMO International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk,

all published by the International Maritime Organisation (formerly the Inter-Governmental Maritime Consultative Organisation).

(3) The operator of a vessel which is a barge shall ensure that the barge does not carry, load or unload any liquid dangerous substance in bulk in a harbour or harbour area unless either–

- (a) the barge–

- (i) has been approved for the carriage of the substance in question by a recognised classification society, a naval architect or some other person who, by reason of his qualifications, training and experience is competent to do so; and
 - (ii) complies with any conditions imposed by the harbour authority;
- or
- (b) the harbour master has given his permission in writing.

Permission for transfer between vessels

20. The master of a vessel carrying a liquid dangerous substance in bulk shall not cause or permit that substance to be transferred by pipeline to another vessel unless the harbour master and, where the vessel is at a berth, the berth operator have given permission in writing for that transfer to take place.

Safety precautions for loading, unloading or transfer

21.—(1) The operator of any berth where any liquid dangerous substance is loaded or unloaded in bulk shall, after consultation with the harbour authority, prepare a list showing the main safety precautions to be taken before and during such loading or unloading but this duty shall not extend to any transfer to which paragraph (4) applies.

(2) The master of the vessel and the operator of the berth where any liquid dangerous substance is loaded or unloaded in bulk shall ensure that the safety precautions in the list referred to in paragraph (1) are carried out.

(3) The loading or unloading of any liquid dangerous substance in bulk shall not begin unless the master of the vessel or a person designated by him and the berth operator or a person designated by him (who shall not be the same person as the person designated by the master) have both signed two copies of the list referred to in paragraph (1) to confirm that the relevant precautions set out on the list have been or, in the case of those which are to continue during loading or unloading, are being taken and each shall keep one of those copies available for inspection throughout the loading or unloading.

(4) A liquid dangerous substance shall not be transferred by pipeline between two vessels unless the masters of those vessels have—

- (a) consulted each other on the appropriate safety precautions to be taken;
 - (b) prepared a list showing the main safety precautions to be taken before and during the transfer; and
 - (c) both signed two copies of that list to confirm that the relevant precautions set out therein have been or, in the case of those which are to continue during the transfer, are being taken.
- (5) The master of each vessel involved in the transfer referred to in paragraph (4) shall—
- (a) carry out the appropriate safety precautions in the list referred to in paragraph (4)(b); and
 - (b) keep one signed copy of that list available for inspection throughout the transfer.

(6) The berth operator shall ensure, so far as is reasonably practicable, that at all times when a vessel loading, carrying or unloading a liquid dangerous substance in bulk is at the berth, means of giving an effective warning of an emergency to people in the vicinity are installed at the berth.

Certain operations on vessels forbidden without prior permission

22.—(1) The master of any vessel carrying or which has recently carried a liquid dangerous substance in bulk shall ensure that none of the following operations are commenced—

- (a) the discharge from the vessel's tanks of ballast or slops contaminated with any dangerous substance;

- (b) the cleaning or ventilation of any tank which was last used to carry a dangerous substance; or
 - (c) the pumping overside of bilges contaminated with any dangerous substance,
- unless the conditions specified in paragraph (3) have been complied with.
- (2) The master of any vessel carrying or which has recently carried any flammable liquid in bulk shall ensure that none of the following operations is commenced—
- (a) the gas freeing of any tank which was last used to carry the substance;
 - (b) the cleaning of any such tank with water, steam, detergents or other chemicals;
 - (c) the purging of any such tank with an inert gas; or
 - (d) the washing of a tank with crude oil during unloading,
- unless the conditions specified in paragraph (3) have been complied with.
- (3) The conditions referred to in paragraphs (1) and (2) are as follows—
- (a) where the vessel is at a berth—
 - (i) the berth operator has given his permission, and
 - (ii) the harbour master has given his permission (which may relate to any or all of the following, namely, named vessels, named berths or specified operations), or has been notified and has not objected on grounds of safety; or
 - (b) where the vessel is not at a berth, the harbour master has given his permission.

PART VI

PACKAGING AND LABELLING

Freight containers

23.—(1) Any person bringing a freight container containing any dangerous substance into a harbour or harbour area from inland shall ensure that that container is accompanied by a certificate, given by the person responsible for loading the dangerous substance into the freight container, certifying that the substance has been safely packed inside that container.

(2) A person opening a freight container containing any dangerous substance shall take sufficient precautions to protect himself and others in the vicinity from the effect of any spillage or escape of any dangerous substance and shall adequately ventilate the interior before entering the freight container or unloading anything from that container and, if he is an employee, his employer shall also ensure that he takes such precautions.

Portable tanks and receptacles

- 24.** Where a dangerous substance is brought into a harbour or harbour area from inland in—
- (a) a portable tank, the operator of the tank shall ensure that it is correctly filled and either—
 - (i) in the case of a portable tank to which the Dangerous Substances (Conveyance by Road in Road Tankers and Tank Containers) Regulations 1981 applies, complies with the requirements of regulation 6 of those Regulations; or
 - (ii) in any other case, the portable tank is suitable for the purpose and complies with the requirements of sub-paragraphs (a) to (c) of regulation 7 of the Classification, Packaging and Labelling of Dangerous Substances Regulations 1984.
 - (b) a receptacle, the consignor of that substance shall ensure that—

- (i) the receptacle is designed, constructed, maintained and closed so as to prevent any of the contents escaping when subjected to the stresses and strains of normal handling or transport except that this shall not prevent the fitting of a suitable safety device,
- (ii) the receptacle and any fastenings are, in so far as they are likely to come into contact with the substance, made of materials which are neither liable to be adversely affected by the substance nor liable in conjunction with the substance to form any other substance which is itself a risk to health or safety,
- (iii) the receptacle is correctly filled, and
- (iv) in the case of a receptacle containing a compressed gas, the receptacle has been appropriately tested.

Labelling

25.—(1) Where a dangerous substance is brought into a harbour or harbour area from inland in a freight container, portable tank or receptacle the consignor of that freight container, portable tank or receptacle, as the case may be, shall ensure that—

- (a) any such freight container is clearly and durably labelled to show on each vertical side the hazard warning sign of each Class of dangerous substance contained therein;
- (b) any such receptacle which is liable to be individually handled while in the harbour or harbour area and any such portable tank is clearly and durably labelled to show the hazard warning signs of each Class of dangerous substance contained therein, and, in respect of each dangerous substance contained therein, either—
 - (i) the name given in the IMDG Code or the approved list or if there is no name given, the chemical name or the common name, or
 - (ii) in the case of a dangerous substance which is a mixture prepared by its manufacturer of two or more other substances, the designation for such preparations given in accordance with either the IMDG Code or the Classification, Packaging and Labelling of Dangerous Substances Regulations 1984.

(2) It shall be a sufficient compliance with paragraph (1), if a freight container, portable tank or receptacle which, while in the harbour or harbour area, is or will be required to be labelled in accordance with any of the following provisions, is labelled in accordance with those provisions, namely—

- (a) the Dangerous Substances (Conveyance by Road in Road Tankers and Tank Containers) Regulations 1981;
- (b) the Classification and Labelling of Explosives Regulations 1983;
- (c) the Classification, Packaging and Labelling of Dangerous Substances Regulations 1984 relating to the labelling for conveyance by road;
- (d) the Radioactive Substances (Carriage by Road) (Great Britain) Regulations 1974;
- (e) the Merchant Shipping (Dangerous Goods) Regulations 1981;
- (f) Regulations for the Safe Transport of Radioactive Materials published by the International Atomic Energy Agency;
- (g) the Technical Instructions for the Safe Transport of Dangerous Goods by Air published by the Council of the International Civil Aviation Organisation;
- (h) the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) signed at Geneva on 30th September 1957;
- (i) Regulations concerning the International Carriage of Dangerous Goods by Rail (RID).

(3) As soon as is practicable after all the dangerous substances and any residue have been removed from any freight container or portable tank the person in charge of that removal shall ensure that all labels which indicate that dangerous substances are contained therein are obliterated or removed from any such freight container or portable tank.

PART VII

EMERGENCY ARRANGEMENTS AND UNTOWARD INCIDENTS

Preparation of emergency plans by harbour authorities

26.—(1) A harbour authority shall, before dangerous substances are handled in the harbour or harbour area, prepare and keep up to date, after consulting the emergency services and any other body which appears to it to be appropriate, an effective emergency plan for dealing with emergencies which involve, affect or could affect dangerous substances that are brought into or are handled in the harbour or harbour area as the case may be.

(2) Port users and berth operators shall if requested by the harbour authority co-operate with the harbour authority in preparing its plan.

(3) A harbour authority shall notify the contents of its plan to those responsible for putting it into effect.

(4) Until 1st December 1987 it shall be a sufficient compliance with paragraph (1) if the harbour authority prepares its emergency plan in accordance with that paragraph by that date.

Emergency arrangements at berths

27.—(1) The berth operator shall ensure that at all times when a vessel loading, carrying or unloading a dangerous substance is at the berth and at any other time when there are risks from dangerous substances—

- (a) means of rapid communication with the emergency services are available; and
- (b) adequate means of escape from that berth are provided for use in an emergency.

(2) Subject to paragraph (5), as soon as practicable after the berthing of a vessel which is carrying or is to be loaded with any dangerous substance, and before the loading or unloading of that substance begins, the berth operator shall notify the master of that vessel of emergency arrangements at the berth and the means by which the alarm can be raised, and shall provide him with a written notice of the signals to be used in an emergency and of the arrangements for summoning the emergency services.

(3) The operator of any berth where any dangerous substance is being loaded on board or unloaded from a vessel in bulk or where any such substance is stored in bulk before loading or after unloading, shall ensure that such information is immediately available to the emergency services as will enable them to know—

- (a) the identity, quantity and location of each such substance which is for the time being on the berth; and
- (b) the nature of the dangers to which each such substance may give rise and the emergency action that should be taken.

(4) Subject to paragraph (5), the operator of any berth where any dangerous substance other than in bulk is being loaded on board or unloaded from a vessel or where any such substance is stored before loading or after unloading, shall ensure that such information is immediately available to the emergency services as will enable them to know the identity, quantity and location of each such substance which is for the time being on the berth.

(5) Paragraphs (2) and (4) shall apply to any quantity of explosives and to 25 kilograms or more of one or more dangerous substances.

Untoward incidents

28.—(1) In this regulation, “untoward incident” means an incident involving or threatening the containment of a dangerous substance which might, irrespective of where such incident occurs, create in the harbour or harbour area a risk of serious personal injury or a risk to the safety of a vessel.

(2) The master of a vessel carrying a dangerous substance shall immediately inform the harbour master and, if the vessel is at a berth, the berth operator of any untoward incident which occurs or has occurred on the vessel.

(3) The berth operator shall immediately inform the harbour master and the master of any vessel at the berth of any untoward incident which occurs on the berth.

(4) Where an untoward incident occurs during the operation of handling a dangerous substance, the person having control of that operation shall stop the operation as soon as it is safe to do so and shall immediately report the incident to the harbour master, to the operator of any berth and the master of any vessel which might be affected by the incident and, where appropriate, the emergency services.

(5) Where an operation has been stopped in accordance with paragraph (4), it shall not be resumed until such corrective measures have been taken as make it safe to resume the operation and the harbour master has authorised resumption of the operation.

PART VIII

STORAGE OF DANGEROUS SUBSTANCES

Application of this Part

29. The provision of this Part shall apply to the storage of any dangerous substance within a harbour or harbour area ancillary to loading or unloading within that harbour or harbour area, except that regulations 30 and 31 shall not apply—

- (a) where the Highly Flammable Liquids and Liquefied Petroleum Gases Regulations 1972(**25**) apply to that storage;
- (b) in the case of petroleum-spirit, or any other substance to which the provisions of section 1 of the Petroleum (Consolidation) Act 1928 were applied by the Petroleum (Carbide of Calcium) Order 1929(**26**), the Petroleum (Mixtures) Order 1929(**27**) and the Petroleum (Liquid Methane) Order 1957(**28**), to the extent that the storage is regulated by or under the Petroleum (Consolidation) Act 1928.

Storage tanks

30.—(1) The operator of any storage tank and, where the tank is on a berth, the berth operator shall, before it is used for the storage of a dangerous substance in bulk, consult the appropriate fire authority with respect to the fire precautions that should be taken.

(25) S.I. 1972/917.

(26) S.R. & O. 1929/992.

(27) S.R. & O. 1929/993.

(28) S.I. 1957/859.

(2) Where before 1st June 1987 a storage tank was used for the storage of a dangerous substance in bulk, it shall be a sufficient compliance with paragraph (1) if the berth operator consults the fire authority in accordance with that paragraph before 1st December 1987.

(3) The operator of any storage tank shall both before it is used for the storage of any dangerous substance in bulk and during such use ensure that the tank (including any associated equipment) is—

- (a) properly designed, of adequate strength and of good construction from sound and suitable materials;
- (b) suitable for the storage in bulk of that substance;
- (c) properly maintained; and
- (d) sited in a safe place.

(4) The operator of a storage tank who transfers a dangerous substance into that tank shall ensure that—

- (a) the substance is compatible with any other substance (whether dangerous or not) already in the tank;
- (b) the substance does not cause a risk to the health or safety of any person by chemical or physical attack on the tank (including any associated equipment); and
- (c) the tank is filled safely and is not over-filled.

Storage of freight containers, portable tanks and receptacles containing dangerous substances

31. A person who stores a freight container, portable tank or receptacle containing a dangerous substance shall ensure that—

- (a) so far as is reasonably practicable the conditions under which that freight container, portable tank or receptacle is stored are not such as might create a risk from that dangerous substance to the health or safety of any person; and
- (b) the area in which it is stored is kept free from rubbish, vegetation and other matter where that might create any such risk.

Parking of road vehicles carrying dangerous substances

32.—(1) Every berth operator shall so far as is reasonably practicable designate a suitable parking area for road vehicles carrying dangerous substances that use the berth and in so far as the berth operator is unable to designate a suitable parking area for such vehicles he shall notify the harbour authority thereof who shall take all reasonably practicable steps to designate such a parking area.

(2) The driver of any vehicle which is carrying a dangerous substance shall not—

- (a) where a parking area has been designated by the berth operator or the harbour authority, leave his vehicle unattended except in that area;
- (b) park the vehicle (whether attended or not) at a place or in a manner as may be liable to create a risk to the health or safety of any person.

PART IX EXPLOSIVES

Application of this Part

33.—(1) Subject to paragraph (2), regulations 34 to 36 shall, in addition to their application in every harbour and harbour area under regulation 5, apply to—

- (a) 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⁽²⁹⁾) of any explosive on any part of the coast of Great Britain or in any tidal water; and
- (b) the loading on board or unloading from a vessel of any explosive within territorial waters to which sections 1 to 59 and 80 to 82 of the Health and Safety at Work etc. Act 1974 are applied by article 7 of the Health and Safety and Work etc. Act 1974 (Application outside Great Britain) Order 1977.

(2) Regulations 34 to 36 shall not apply in relation to—

- (a) explosives—
 - (i) in Division 1.4; or
 - (ii) in any other division (except explosives in Compatibility Group L), where the total quantity of explosive involved does not exceed 10 kilograms;
- (b) explosives that are to be used immediately by a vessel at sea;
- (c) 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⁽³⁰⁾ or, in the case of a military explosive, with the consent of the Secretary of State;
- (d) explosive of less than 1 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 1979⁽³¹⁾;
- (f) explosives carried by a British or foreign warship;
- (g) without prejudice to sub-paragraph (f) above, 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⁽³²⁾ or within the limits of the Marchwood berth and anchorage at Southampton.

Need for an explosives licence

34.—(1) Subject to paragraph (2), a person shall not—

⁽²⁹⁾ 1971 c. 61; section 1 was substituted by section 24 of the Oil and Gas Enterprise Act 1982 (c. 23.).

⁽³⁰⁾ 1985 c. 48.

⁽³¹⁾ S.I. 1979/1378.

⁽³²⁾ 1865 c. 125.

- (a) bring any explosive into a harbour or harbour area;
- (b) carry or handle any explosive within a harbour or harbour area; or
- (c) load or unload any explosive in circumstances to which this regulation applies by virtue of regulation 33(1),

unless there is in existence an explosives licence permitting that activity and the conditions attached to the licence are complied with.

(2) If an application for an explosives licence is made before 6th April 1988, then explosives may be carried or handled in circumstances where, but for the provisions of this paragraph, an explosives licence would be required, until such time as the licence is issued or refused or until 31st December 1991 whichever is the earlier, if the explosives are carried or handled in accordance with the byelaws relating to such explosives which were in force immediately before the coming into operation of these Regulations or, in the case of military explosives, in accordance with the Conveyance in Harbours of Military Explosives Regulations 1977(33) as in force immediately before the coming into operation of these Regulations.

Applications for explosives licences

35.—(1) An application for an explosives licence or for any alteration in the terms of an existing explosives licence shall be made to the Health and Safety Executive and the applicant shall be—

- (a) in a case to which regulation 34(1)(a) and (b) relates, the harbour authority or, if he informs the harbour authority of his intention, a berth operator; or
- (b) in a case to which regulation 34(1)(c) relates, a person having an interest in the activities for which the licence is required,

and in either case the application shall be made in accordance with the procedure specified in Schedule 7 unless the Executive otherwise agrees.

(2) The Executive may make a charge for work carried out in connection with an application for an explosives licence or for any alteration in the terms of an existing licence of £150 plus £25 for each man-hour expended (excluding time spent in travelling and any typing, messenger or ancillary work) and that charge shall be payable by the applicant prior to the issue of the decision.

Consideration of licence applications

36.—(1) In considering an application for an explosives licence or for any alteration in the terms of an existing licence, the Health and Safety Executive shall take account of any comments or objections received by it pursuant to paragraphs 3 and 5 of Schedule 7 and may reject the application altogether or may grant the licence or amending licence which may be subject to such conditions as it thinks fit and any such licence or amending licence may be with or without limit of time and may be varied or revoked in writing at any time.

(2) Nothing in paragraph (1) shall prevent the Executive from granting a provisional explosives licence or a provisional amending licence in cases of urgency and any such licence or amending licence may have effect for a period of up to 6 months from the date on which it was granted unless revoked in writing by the Executive before its date of expiry.

Security of explosives

37.—(1) The operator of a berth at which explosives are carried or handled shall appoint a berth explosives security officer who shall ensure in respect of the berth that adequate precautions are taken to secure explosives against loss, theft or wrongful use and a harbour authority in whose harbour

or harbour area explosives are carried or handled shall appoint a harbour explosives security officer who shall do likewise in respect of those parts of the harbour or harbour area for which there is no berth explosives security officer.

(2) Any person handling or having custody of explosives in a harbour or harbour area shall take adequate precautions to secure those explosives against loss, theft or wrongful use, and shall comply with any instructions given to him for that purpose by an explosives security officer and shall cooperate with the explosives security officer in the execution of his duties.

(3) Any person having custody of explosives in a harbour or harbour area who transfers the custody of those explosives to some other person shall obtain a written receipt from that other person recording that transfer.

(4) Where explosives are dropped overboard (otherwise than intentionally as part of the activities of persons at work) or lost, the person who had previously had custody of those explosives shall forthwith report the occurrence to the harbour master and either to the berth explosives security officer, if the incident took place at a berth, or to the harbour explosives security officer and shall take such steps as are reasonably practicable to recover those explosives.

Vessels and vehicles loaded with explosives to be taken out of harbours and harbour areas

38. When loading of a vessel or a vehicle with explosives has been completed, the master of the vessel or the operator of that vehicle, as the case may be, shall ensure that the vessel or vehicle is taken out of the harbour or harbour area as soon as is reasonably practicable unless the harbour master and, where the vessel or vehicle is at a berth, the berth operator otherwise agree.

Harbour craft carrying explosives not to carry passengers

39.—(1) Subject to paragraph (2), the master of a harbour craft shall ensure that while the harbour craft is carrying explosives it does not carry any passengers.

(2) Paragraph (1) shall not apply—

- (a) where the only explosives carried are—
 - (i) explosives in Division 1.4, Compatibility Group S, or
 - (ii) ships' pyrotechnic signals which are being carried to another vessel and which contain a total of less than 1 kilogram of explosives; or
- (b) where the only passengers carried are carried in connection with the harbour works for which the explosives are carried or who are to handle the explosives being carried.

Electro-explosive devices

40. A person shall not bring an electro-explosive device into a harbour or harbour area unless it is so constructed and packed as to be safe for carriage.

Deteriorated explosives

41. Where in any harbour or harbour area explosives have deteriorated or have undergone any change which might significantly increase the risks attendant upon their carriage and handling within the harbour or harbour area, the person having custody of those explosives shall—

- (a) notify the Health and Safety Executive and the harbour master and, where the explosives are at a berth, the berth operator of the deterioration or change;
- (b) agree with the harbour master any additional precautions to be taken before moving or handling them; and
- (c) take those precautions.

Records relating to explosives to be kept

42.—(1) The harbour authority shall keep a record of all explosives handled within the harbour or harbour area, other than shop goods fireworks, in any calendar year and that record shall distinguish between exports, imports and explosives in transit and be preserved for 5 years after making.

(2) The berth operator shall co-operate with the harbour authority in the preparation of such record.

(3) In a case to which regulation 34(1)(c) relates, the licensee shall keep a record of all explosives, other than shop goods fireworks, loaded or unloaded there in any calendar year and that record shall distinguish between exports, imports and explosives in transit and be preserved for 5 years after making.

PART X

MISCELLANEOUS AND GENERAL

Power of a statutory harbour authority to make byelaws

43.—(1) Subject to the provisions of Schedule 6, a statutory harbour authority may make in respect of the harbour area, byelaws prohibiting the entry or regulating the entry, carriage, handling and storage of dangerous substances.

(2) Byelaws shall not conflict with these Regulations or with any other relevant statutory provision.

(3) Byelaws shall be restricted to matters relating to the harbour area.

(4) Byelaws may contain their own provisions for enforcement.

Enforcement of these Regulations

44.—(1) Subject to paragraph (2), the Health and Safety Executive shall be responsible for enforcing these Regulations.

(2) A statutory harbour authority shall be responsible for enforcing Parts II and III of these Regulations and regulations 19, 20, 32(2) and 38 in the harbour area against persons other than itself.

Defence in proceedings for contravening these Regulations or byelaws

45. In any proceedings for an offence of contravening these Regulations (other than for an offence under regulation 16, 31(a) or 32(1)) or of contravening any byelaw made under these Regulations, it shall be a defence for any person to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of that offence.

Power to grant exemptions from these Regulations

46.—(1) Subject to paragraph (2), the Health and Safety Executive may, by a certificate in writing, exempt any person or class of persons, from any requirement or prohibition imposed by or under these Regulations, and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing.

(2) The Executive shall not grant any such exemption unless, having regard to the circumstances of the case and in particular to—

- (a) the conditions, if any, which it proposes to attach to the exemption; and
- (b) any other requirements imposed by or under any enactment which apply to the case;

it is satisfied that neither the health or safety of persons, nor the security of any explosive, likely to be affected by the exemption, will be prejudiced in consequence of it.

(3) The Secretary of State for Defence may, in the interests of national security by a certificate in writing, exempt from all or any requirements or prohibitions imposed by these Regulations—

- (a) Her Majesty’s forces;
- (b) visiting forces within the meaning of any of the provisions of Part 1 of the Visiting Forces Act 1952(34);
- (c) any headquarters or organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964(35);
- (d) any person engaged in the carriage, keeping or supply of any military explosives, if that person is under the direct supervision of a representative of the Ministry of Defence,

and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time.

Repeals, revocations, modifications and savings

47.—(1) Subject to paragraph (3), the following provisions and the byelaws made thereunder are hereby repealed except in so far as they apply to Northern Ireland—

- (a) sections 34, 36 (only in so far as that section applies within harbours and harbour areas) and 115 of the Explosives Act 1875;
- (b) section 4 of the Explosives Act 1923(36);
- (c) sections 7 and 8 of the Petroleum (Consolidation) Act 1928(37); and
- (d) section 71(5) of the Harbours Docks and Piers Clauses Act 1847(38).

(2) The Conveyance in Harbours of Military Explosives Regulations 1977 are hereby revoked except in so far as they apply to Northern Ireland.

(3) The provisions mentioned in column 2 Part I of Schedule 8 of the byelaws mentioned in the corresponding entry in Column 1 of that Part (being byelaws made under section 7 of the Petroleum (Consolidation) Act 1928) shall continue in force after the commencement of these Regulations as if that section had not been repealed, but shall cease to have effect on 31st December 1989 unless they have been repealed before that date.

(4) In the Fire Certificates (Special Premises) Regulations 1976(39) after regulation 3 there shall be inserted the following regulation—

“Premises for which a fire certificate is not required

3A. Notwithstanding regulation 3(1), a fire certificate shall not be required for any berth to which the Dangerous Substances in Harbour Areas Regulations 1987 (S.I. 1987/37) apply”.

(5) The provisions mentioned in column 2 of Part II of Schedule 8 of the local Acts and byelaws (being Acts passed and byelaws made before 31st July 1974) mentioned in column 1 of that Part are hereby repealed in so far as they apply within harbours and harbour areas and, within those harbours and harbour areas to the extent that they apply in relation to dangerous substances to which these Regulations apply.

(34) 1952 c. 67.

(35) 1964 c. 5.

(36) 1923 c. 17.

(37) 1928 c. 32.

(38) 1847 c. 27.

(39) S.I. 1976/2003.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(6) The provisions mentioned in column 2 of Part III of Schedule 8 of the byelaws (being byelaws made before 31st July 1974) mentioned in column 1 of that Part are hereby repealed with effect from 31st December 1989, in so far as they apply within harbours and harbour areas and, within those harbours and harbour areas to the extent they they apply in relation to dangerous substances to which these Regulations apply.

(7) The provisions of any local Act passed before 31st July 1974 or of any byelaws made before 31st July 1974 which conflict with the provisions of these Regulations or of any explosives licence granted under these Regulations shall cease to have effect and that Act or those byelaws shall be modified accordingly.

Signed by authority of the Secretary of State

Department of Transport
15th January 1987

Michael Spicer
Parliamentary Under Secretary of State,