

**EXPLANATORY MEMORANDUM TO**  
**THE DANGEROUS GOODS IN HARBOUR AREAS REGULATIONS 2016**  
**2016 No. 721**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Health and Safety Executive and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 The Dangerous Goods in Harbour Areas Regulations 2016 (DGHAR) contain a set of safety provisions aimed at safeguarding ports against major accidents involving dangerous goods. The instrument revokes the [Dangerous Substances in Harbour Regulations](#) 1987 (DSHAR) (S.I. 1987/37). DGHAR modernises and simplifies DSHAR, removing redundant and superseded sections while retaining proportionate protections.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage

**4. Legislative Context**

- 4.1 DGHAR replaces DSHAR following a review undertaken by the Health and Safety Executive (HSE) as part of its response to the Red Tape Challenge<sup>1</sup>. The review identified a number of provisions in DSHAR that were redundant or superseded and these are no longer contained in the new regulations. Other provisions were found not to be duplicated elsewhere and retain an important role for reducing the risks of major accidents in ports. These have been used as the basis for the new regulations. The regulations have also been simplified and updated to align with other current legislation and standards.

**5. Extent and Territorial Application**

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is to harbour areas within Great Britain, and also to parts of harbour areas in territorial waters specified in Articles 6 (in relation only to monobuoys) and 11 of the [Health and Safety at Work etc. Act \(Application outside Great Britain\) Order 2013](#) (AOGBO). Provisions on explosives apply additionally to the loading and unloading of explosives on any part of the coast of Great Britain and in territorial waters specified in Article 11 of the AOGBO.

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<sup>1</sup> The [Red Tape Challenge](#) was a review undertaken by Government in the last parliament of regulation in force with a view to reducing burdens on businesses.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy Background**

### *What is being done and why*

- 7.1 The Dangerous Substances in Harbour Areas Regulations were originally introduced in 1987 following an oil tanker explosion in Bantry Bay, Ireland in 1979. The regulations aimed to reduce the risk of such accidents by co-ordinating activities between ship and shore. They contained various provisions relating to the storage, handling, loading, unloading and transport of dangerous substances in harbour areas. 'Dangerous substances' in this context refers to materials that are, for example, explosive, flammable, toxic, corrosive, infectious or radioactive.
- 7.2 During 2014 and 2015 HSE undertook a review of DSHAR as part of its response to the Red Tape Challenge. The review found that many sections of DSHAR were redundant, duplicated by other legislation, or no longer in line with modern working practices or technologies. The redundant sections included provisions on marking and navigation of vessels, handling and storage of dangerous substances, dangerous liquid substances in bulk, and packaging and labelling of dangerous substances. These sections no longer appear in the new regulations.
- 7.3 Other sections were found not to be duplicated, but to retain an important role for reducing the risks of major accidents in ports. These include the requirements for pre-notification of dangerous goods arriving in harbour areas, provisions on licensing, safety and security of explosives, powers of direction given to harbour masters, a requirement for harbour authorities to undertake emergency planning and powers for statutory harbour authorities to make byelaws regulating dangerous goods in their harbour area. These sections have been retained and used as the basis for the new regulations.
- 7.4 The content of the regulations has also been simplified, updated and aligned with other applicable legislation and standards to make it as easy as possible for affected businesses to understand and comply with the requirements. The main changes are:
- DSHAR contained a complex and outdated definition of a 'dangerous substance', which set out what the regulations applied to. This has been replaced with a simpler definition of 'dangerous goods' based on the International Maritime Organisation's International Maritime Dangerous Goods Code (IMDG Code). The change does not substantially affect the scope of the regulations, however companies shipping many dangerous cargoes by sea already have to comply with the IMDG Code so this makes the regulations easier to apply. The regulations have been renamed the "Dangerous Goods in Harbour Areas Regulations" to reflect the change and to better reflect modern terminology for the types of cargoes being regulated.
  - Simplification of military exemptions to align with other recent explosives legislation. Several exemptions in DSHAR are replaced with a single exemption for vessels and activities under the control of the Secretary of State for Defence, provided there is a scheme in place, approved by the Secretary of State, providing for safe storage, carriage and handling. This better reflects

how the Ministry of Defence now manages explosives logistics and aligns more closely with the level of risk arising from explosives movements.

- Harbour masters are now given greater flexibility to accept a shorter notice period for dangerous goods arriving in the harbour area when it is safe to do so, taking into account feedback from some ports that the current requirements are not always practicable.
- DSHAR required harbours to be licensed by HSE to handle explosives when ships are passing through without loading or loading. This has been replaced with a requirement for ships carrying explosives to notify the harbour master before passing through. This ensures harbour masters have information they need on explosives movements but is more proportionate to the risk presented.

7.5 Overall the proposals will achieve deregulation by removing redundant provisions and simplifying the regulations, while retaining proportionate health and safety protections.

### ***Consolidation***

7.6 The instrument revokes and replaces the Dangerous Substances in Harbour Areas Regulations 1987 with a single instrument.

## **8. Consultation outcome**

8.1 HSE held a public consultation on DGHAR, together with a new supporting Approved Code of Practice (ACOP), from 28 October to 23 December 2015. The consultation built on extensive informal consultation throughout the initial review with a wide range of stakeholders with an interest, including small and large ports, trades unions, local authorities, shippers, hauliers and relevant industry associations.

8.2 The consultation document (CD277) was published on the HSE website and widely publicised through stakeholder networks and trade media, leading to around 1000 downloads of the document. There were 21 responses to the consultation, of which 19 made substantive comments. Most responses were from industry, though a charity, a trade union, a trade association representing hauliers, a local government body and two consultancies also responded. Apart from one issue described below, all the proposals were supported either unanimously or by a large majority (79% or over) of respondents.

8.3 The main substantive change to the proposals following consultation related to provisions requiring ships carrying specified quantities of certain dangerous goods to display warning flags and lights. HSE's proposal at consultation was to remove this requirement on the grounds that technological developments and other powers available to harbour masters made it redundant. However credible evidence was provided during consultation, and in subsequent discussions with stakeholders, that the requirement for flags and lights is not redundant and remains an essential safety provision. Therefore this requirement has been retained in the final regulations.

8.4 Other points raised during the consultation have been addressed through changes to the draft regulations, the supporting guidance and where appropriate through post consultation discussions. The consultation document and an analysis of the responses are available on the HSE website at <http://www.hse.gov.uk/consult/condocs/cd277.htm>.

## **9. Guidance**

- 9.1 A new ACOP has been developed in close collaboration with a working group of industry and trade union representatives to give practical advice on compliance with the new regulations. The ACOP will be published in a free, downloadable format on HSE's website in advance of 1 October 2016, when the regulations will take legal effect. As many smaller ships do not have internet access hard copies will also be made available.

## **10. Impact**

- 10.1 The impact on businesses, charities and the voluntary sector is that there will be initial one-off familiarisation costs on businesses, estimated to be around £617,000 (ten-year present value), but these will be offset by ongoing savings as a result of the shorter and simpler guidance material. This means there will be zero net costs overall.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 11.3 HSE has consulted with businesses with up to 50 employees, both directly and via trade associations representing them, throughout policy development to ensure their needs are taken into account in the new regulations. An exemption from the regulations was considered for small and micro businesses, but judged inappropriate due to the high-hazard nature of the operations being regulated and the potential for major accidents, regardless of business size. No specific actions have been taken to minimise burdens on small businesses as the instrument is expected to impose zero net costs on such businesses. More detail is in the Small and Micro business assessment at paragraphs 75-78 of the Impact Assessment.

## **12. Monitoring & review**

- 12.1 The regulations include a review clause and will be reviewed in line with Government policy, i.e. before the fifth anniversary of the regulations.
- 12.2 The changes proposed in this instrument are aimed at simplifying the legislation, removing redundant material and making it easier for dutyholders to comply, while maintaining standards of health and safety protection. The review will assess whether this objective has been achieved and whether the assessment of zero net costs on businesses is borne out.

## **13. Contact**

- 13.1 Pierre Cruse at the Health and Safety Executive can answer any queries regarding the instrument. Telephone: 020 7556 3534 or email: [pierre.cruse@hse.gov.uk](mailto:pierre.cruse@hse.gov.uk)