**EXPLANATORY MEMORANDUM TO**

**THE FREIGHT CONTAINERS (SAFETY CONVENTION) REGULATIONS 2017**

**2017 No. 325**

## 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 This statutory Instrument gives effect to an international treaty The International Convention for Safe Containers 1972 ("the Convention") - which the UK ratified in 1978. It revokes The Freight Containers (Safety Convention) Regulations 1984 ("the 1984 Regulations"), which previously gave effect to the Convention, and replaces them with regulations giving effect to the current version of the Convention, which has been amended several times since 1984.

## 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 This instrument is subject to negative resolution procedure, we believe that no other matters of interest to the House of Commons arise at this stage.

## 4. Legislative Context

4.1 The Convention was introduced by the International Maritime Organisation and has been subject to a number of amendments in response to incidents or concerns raised by signatories to the Convention. Four minor amendments were adopted in 1981, 1983, 1991 and 1993. Two further amendments in 2012 and 2014 introduced more significant changes such as additional safety tests. As the UK is bound by the Convention, it should implement the amendments.

4.2 The Health and Safety Executive (HSE) reviewed the 1984 Regulations in 2012 as part of its response to the Red Tape Challenge[1]. HSE recommended that the regulations be retained, given they implement a ratified Convention, without going beyond it. [This instruments updates the 1984 Regulations in line with the amendments made to the Convention]

## 5. Extent and Territorial Application

5.1 The extent of this instrument is Great Britain. It also extends outside Great Britain by virtue of the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2013, for example on offshore installations.

[1] 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.

5.2 The territorial application of this instrument is to the manufacture, design or use of containers in Great Britain with the exception of containers specifically designed for carriage by air.

5.3 The UK implements the Convention in Northern Ireland through the Freight Containers (Safety Convention) Regulations (Northern Ireland) 1992. Northern Ireland aims to revoke and replace these Regulations before the end of 2017.

## 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

7.1 The Convention is aimed at maintaining a high level of safety in the transport and handling of containers by providing internationally acceptable test procedures and related strength requirements.

7.2 HSE considered amending the 1984 Regulations but decided instead to introduce a set of new regulations, using modern drafting practice, to assist affected businesses to understand and comply with the new requirements.

7.3 The main changes to the Convention implemented by this instrument are:

- Updating terminology on Safety Approval Plates. Containers with limited stacking or racking capacity must be conspicuously marked in accordance with ISO 6346 standard (ISO being the International Organization for Standardization).
- Requiring containers operating with one door removed to undergo additional tests.
- Requiring approved examination schemes to be evaluated by audit at least once every 5 years and reviewed by HSE once every 10 years.

7.4 The Technical Standards and Regulations Directive 2015/1535/EU requires measures imposing technical standards on products to be notified to the European Commission (EC). Drafts of this instrument and of the supporting guidance were notified to the EC on 28 November 2016, and no observations were received.

***Consolidation***

7.5 The instrument revokes and replaces the Freight Containers (Safety Convention) Regulations 1984.

## 8. Consultation outcome

8.1 Prior to consultation, HSE carried out engagement work with stakeholders and industry experts to obtain initial evidence on the expected impact of amendments to the 1984 Regulations. This revealed that companies had largely applied the changes required by the Convention, given the international nature of their work and the large costs likely to be incurred if the structural integrity of a container were to be compromised during use.

8.2 HSE ran a public consultation in January 2016 on an amended version of the 1984 Regulations. After considering the responses, HSE reviewed its policy and decided to introduce additional measures. As this would have meant substantial changes to the 1984 Regulations, HSE consulted in October 2016 on a proposal to replace them with

new regulations, which resulted in changes to the draft regulations and the supporting guidance.

## 9. Guidance

9.1 The supporting guidance documents Approval of Freight Containers - Arrangements in Great Britain (The Green Guide) and Freight Container Examination Schemes or Programmes - Conditions for Approval (The Yellow Guide) have been updated to reflect the changes to the Convention and the new regulations. New industry guidance will be published by group Ports Skills and Safety. HSE operational guidance is available for inspectors who are expected to perform the role of Authorised Officer and will be available before the SI comes into force. The Green and Yellow guides will be published in a free, downloadable format on HSE's website in advance of 6th April 2017.

## 10. Impact

10.1 The impact on business, charities and the voluntary sector is expected to be £1.6m net present value over the 10 year appraisal period. The costs arise as follows: 97% of the costs are to container operators for 'conspicuous marking'; 2% are initial one-off familiarisation costs; 1% are for changing Safety Approval Plates on containers manufactured from 1st July 2014 and responding to an audit on their approved examination programmes (including reviewing these every five years and 10 years respectively). It has an equivalent annual net direct cost to business (EANDCB) of £0.2m.

10.2 The impact on the public sector is expected to be minimal and relates to a one-off cost of £0.002m for familiarisation of the new operational guidance.

10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

## 11. Regulating small business

11.1 The legislation affects some small container owners and operators. There is no legal basis for exempting small businesses from the Regulations as the Convention applies to containers regardless of the size of the business.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses, given the above and the results of the initial stakeholder and expert engagement referred to in paragraph 8.1. More detail on this can be found in at paragraphs 24 – 37 of the Impact Assessment referred to above.

## 12. Monitoring & review

12.1 The instrument includes a statutory review provision to comply with the requirements of the Small Business Enterprise and Employment Act 2015.

## 13. Contact

Janice Martin at the Health and Safety Executive can answer any queries regarding the instrument. Telephone: 020 3028 4361 or email: Janice.martin@hse.gov.uk