STATUTORY INSTRUMENTS

2013 No. 2815

MERCHANT SHIPPING

MARITIME SECURITY

The Port Security (Amendment) Regulations 2013

Made - - - -	*30th October 2013*
Laid before Parliament	*5th November 2013*
Coming into force - -	*29th November 2013*

The Secretary of State for Transport makes these regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**a**).

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to port security(**b**), to measures relating to the safety of ships and the health and safety of persons on them(**c**) and to measures relating to maritime transport(**d**).

Citation and commencement

1. These regulations may be cited as the Port Security (Amendment) Regulations 2013 and come into force on 29th November 2013.

Amendment of the Port Security Regulations 2009

2. The Port Security Regulations 2009(**e**) are amended as follows.

Amendment of regulation 2

3. In regulation 2 (interpretation)—

(a) in the definition of "port", for—

"has the meaning given in regulation 3(2)"

substitute—

"means any specified area of land and water at a port facility locality in the United Kingdom within boundaries that are defined by the Secretary of State in an Order made under section 2(2) of the 1972 Act, and in the case of a port for which a port related area is designated, every reference to the port includes that port related area";

(**a**) 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).
(**b**) S.I. 2004/706.
(**c**) S.I. 1993/595.
(**d**) S.I. 1994/757.
(**e**) S.I. 2009/2048.

(b) after the definition of "port facility", insert—

""port facility locality" means a locality in the United Kingdom in which one or more port facilities covered by an approved port facility security plan is or are situated;";

(c) in the definition of "port security assessment", for "means an assessment carried out by the Port Security Authority under regulation 14" substitute "means an assessment carried out under regulation 3A"; and

(d) after the definition of "Port Security Authority", insert—

""the Port Security Directive" means Directive 2005/65/EC(**a**) of the European Parliament and of the Council of 26th October 2005 on enhancing port security;".

Substitution of regulation 3

4. For regulation 3 (application of the regulations), substitute—

"**3.**—(1) These Regulations apply to port facility localities in the United Kingdom.

(2) These Regulations do not apply to military installations.

(3) The relevant provisions of the EC Regulation take precedence over Parts 2 to 6 of these Regulations where—

(a) a port facility locality contains only one port facility that is covered by an approved port facility security plan;

(b) the boundaries of the port facility are effectively the same as the boundaries identified under paragraph 2(a) of Schedule 3; and

(c) there is no area of land or property that is affecting or is likely to affect the security of the area that lies within the boundaries identified under paragraph 2(a) of Schedule 3.

(4) In this regulation—

(a) "military installation" means an installation used by Her Majesty's armed forces or members of a visiting force;

(b) "armed forces" includes the navy and air force;

(c) "visiting force" means any body, contingent or detachment of the forces of a country for the time being present in the United Kingdom on the invitation of Her Majesty's Government in the United Kingdom.".

New regulation 3A

5. After regulation 3, insert—

"Port security assessment

3A.—(1) The Secretary of State must ensure that a port security assessment is carried out for every port facility locality.

(2) Each port security assessment must take into account—

(a) the specificities of different sections of—

(i) the port facility locality; and

(ii) any area adjacent to the port facility locality which has an impact on security in the port facility locality if the Secretary of State considers that area to be relevant;

(b) the port facility security assessments carried out for the port facilities situated within the port facility locality; and

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(**a**) O.J. No. L 310, 25.11.2005, p 28.

(c) the detailed requirements in Schedule 3.

(3) Port security assessments may be carried out by a recognised security organisation.

(4) Each port security assessment (including the identification of the boundaries to be defined, for the purposes of the definition in these Regulations of "port", by the Secretary of State in an Order made under section 2(2) of the 1972 Act) must be approved by the Secretary of State.

(5) Where international maritime transport services operate from a port facility locality, the Secretary of State must ensure that the port security assessment is carried out in co-operation with the authorities of the other Member States to and from which those services operate.

(6) As soon as reasonably practicable after a Port Security Authority has been designated for a port, the Secretary of State must supply to the Port Security Authority designated for that port the port security assessment carried out under this regulation for the port facility locality in which that port is located.

(7) In this regulation, "port facility security assessment" means an assessment of a port facility carried out pursuant to the EC Regulation.".

Revocation of regulation 14

6. Regulation 14 (port security assessment) is revoked.

Amendment of regulation 15

7. In regulation 15 (port security plan), in paragraph (5)—

(a) omit "for a port"; and

(b) for "the port security plan for that port" substitute "the port security plan for the port to which that assessment relates".

Amendment of regulation 18

8.—(1) Regulation 18 (review of port security assessment and port security plan) is amended as follows.

(2) In paragraph (3), for "that the Port Security Authority is required to take into account by regulation 14(2)" substitute "that are required by regulation 3A(2) to be taken into account".

(3) For paragraph (7), substitute—

"(7) A request for approval under paragraph (6) must be made in writing and be accompanied by information demonstrating that the review has been carried out in accordance with paragraph (3).

(7A) After receiving a request for approval under paragraph (6), the Secretary of State may—

(a) approve,

(b) refuse to approve, or

(c) approve subject to amendment,

the port security assessment.

(7B) If the Secretary of State fails to give or refuse approval within 30 days of receipt of a request under paragraph (6), the Secretary of State shall be deemed to have refused to approve the port security assessment.

(7C) If the Secretary of State has, or is deemed to have, refused to approve the port security assessment, the Port Security Authority must revise that assessment and submit a further request for approval within 30 days of that refusal or deemed refusal.".

Amendment of regulation 38

9. In regulation 38 (designation of Secretary of State as focal point for port security), omit paragraph (2).

Review clause

10. After regulation 38, insert—

"**Review**

39.—(1) The Secretary of State must from time to time—

(a) carry out a review of these Regulations;

(b) set out the conclusions of the review in a report; and

(c) publish the report.

(2) In carrying out the review, the Secretary of State must, so far as is reasonable, have regard to how the Port Security Directive (which is implemented by means of these Regulations) is implemented in other European Union Member States.

(3) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;

(b) assess the extent to which those objectives are achieved; and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before 29th November 2018.

(5) Reports under this regulation must afterwards be published at intervals not exceeding five years.".

Amendment of Schedule 3

11.—(1) Schedule 3 (port security assessment) is amended as follows.

(2) In the reference note at the head of the schedule, for "Regulation 14" substitute "Regulation 3A".

(3) In paragraph 2—

(a) in sub-paragraph (a), for—

"thus also defining the security relevant port areas"

substitute—

"thus also identifying the boundaries to be defined, for the purposes of the definition in these Regulations of "port", by the Secretary of State in an Order made under section 2(2) of the 1972 Act";

(b) in sub-paragraph (c), for "port personnel" substitute "port facility locality personnel";

(c) in sub-paragraph (d), for "port" substitute "port facility locality";

(d) in sub-paragraph (g), for "port" in the three places where it occurs substitute "port facility locality";

(e) in sub-paragraph (k), for "overall port security" substitute "overall security of the port facility locality";

(f) in sub-paragraph (l), for "the overarching port security" substitute "the overarching security of the port facility locality"; and

(g) in sub-paragraph (m)—

(i) for "the entire port or to specific parts of the port" substitute "the entire port facility locality or to specific parts of the port facility locality"; and

(ii) for "which may vary between port areas" substitute "which may vary between port facility locality areas".

Signed by authority of the Secretary of State for Transport

Stephen Hammond
Parliamentary Under Secretary of State
Department for Transport

30th October 2013

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations amend the Port Security Regulations 2009 (S.I. 2009/2048, "the Regulations"). The amendments further transpose Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security (OJ L 310, 25.11.2005 p 28) ("the Directive").

The amendments do two main things. They remove from the port security authority the responsibility for ensuring that the port security assessment is done and place that responsibility instead on the Secretary of State. The amendments also ensure that the first port security assessment is done prior to designation of the boundary of a port, and that that assessment informs where the boundary should lie. Both changes improve the Regulations' transposition of the Directive.

The phrase "port facility locality" is introduced by the amendments. This is to refer to the geographical area that exists prior to a "port" within the meaning of the Regulations coming into existence. It is in relation to that geographical area that the first port security assessment is done. From that assessment, a boundary is identified and by order designated to produce a "port" within the meaning of the Regulations. A port security authority is also then designated by order, by reference to that port. The phrase "port facility locality" is merely a drafting device to distinguish between, on the one hand, the area that exists prior to the coming into existence of a "port" within the meaning of the Regulations and, on the other hand, the area ("the port") which comes into existence by the designation by order of the port boundary.

Regulation 1 provides for citation and commencement.

Regulation 2 introduces the amendments.

Regulation 3 moves the definition of "port" into regulation 2 and makes a consequential amendment to that definition to include the new phrase "port facility locality". The definition of "port" is also amended to use the word "defined" instead of "identified" because "defined" is the word used by articles 2(3) and 3(1) of the Directive. The word "specified" is introduced into the definition of "port" because that word is used in article 3(1) of the Directive. The part of the original definition of "port" that says "that contains at least one port facility that is covered by an approved port facility security plan" is omitted in the new definition; that phrase is now contained in the new definition of "port facility locality" by reference to which the "port" will be defined. Regulation 3 introduces into regulation 2 the definition of "port facility locality" (the starting point by reference to which the first port security assessment is done). Regulation 3 also amends the definition of "port security assessment" in regulation 2 to reflect that the assessment is now to be done under new regulation 3A. Finally, regulation 3 (with regulation 9) moves the definition of the

Directive out of regulation 38(2) and into regulation 2 now that "the Directive" is used more than once in the Regulations.

Regulation 4 substitutes a new regulation 3. The only change of substance is to refer to "port facility locality" instead of "port". The substituted regulation 3(3) duplicates the reference in the original regulation 3(5) of the Regulations to "the relevant provisions of the EC Regulation". This phrase is taken from article 2(4) of the Directive.

Regulation 5 replaces regulation 14 with a new regulation 3A. The changes move responsibility from the port security authority to the Secretary of State for ensuring that the port security assessment is done. New regulation 3A effectively replicates regulation 14 but with consequential changes reflecting that the Secretary of State rather than the port security authority ensures that the port security assessment is done. New regulation 3A(6) introduces a new requirement, reflecting that change, for the Secretary of State to supply to the port security authority the port security assessment. New regulation 3A also includes changes consequential on the new phrase "port facility locality".

Regulation 6 revokes regulation 14 (which is replaced by new regulation 3A, see above).

Regulation 7 clarifies regulation 15 in light of the other amendments.

Regulation 8 makes consequential amendments to regulation 18. These include amendments consequential on the move of responsibility to the Secretary of State for the port security assessment.

Regulation 9 removes from regulation 38(2) the definition of the Directive (which now appears in regulation 2 instead, see above).

Regulation 10 inserts a review clause as new regulation 39. New regulation 39 requires the Secretary of State to review the operation and effect of the Regulations and publish a report before 29th November 2018 and within every five years after that. Following a review, it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

Regulation 11 makes consequential amendments to Schedule 3.

A full impact assessment has not been produced for this instrument as no impact on industry, the public sector, charities or voluntary bodies is foreseen. The amendments lift a burden by removing from the port security authority the requirement to conduct the port security assessment (the port security authority will still have to conduct reviews of the port security assessment, but that is not a change from what the Regulations currently require). The impact assessment done in relation to the Regulations when they were made is available at http://www.legislation.gov.uk/uksi/2009/2048/pdfs/uksiem_20092048_en.pdf.

A transposition note was prepared in relation to the Regulations when they were made. No additional transposition note has been prepared in relation to these amending regulations. The original one is available from Caroline Wall at zone 2/32, Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR, telephone 020 7 944 6251, email caroline.wall@dft.gsi.gov.uk and is also available at http://www.legislation.gov.uk/uksi/2009/2048/pdfs/uksiem_20092048_en.pdf.

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