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STATUTORY INSTRUMENTS

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**2017 No. 325**

**HEALTH AND SAFETY**

**The Freight Containers (Safety Convention) Regulations 2017**

*Made* - - - - 8th March 2017

*Laid before Parliament* 13th March 2017

*Coming into force* - - 6th April 2017

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 15(1), (2), (3)(a) and (c), (4), (5)(b), (6)(a), (b) and (9), 82(3)(a) and (b), 84(3) and paragraphs 1(1) (a) and (c), (2) and (3), 3, 4(1), and 6(1) of Schedule 3 to, the Health and Safety at Work etc. Act 1974<sup>(1)</sup> (“the 1974 Act”).

These Regulations give effect without modifications to proposals submitted by the Health and Safety Executive under section 11(3)(2) of the 1974 Act after carrying out consultation in accordance with section 50(3)(3) of the 1974 Act.

**Citation and commencement**

1. These Regulations may be cited as the Freight Containers (Safety Convention) Regulations 2017 and come into force on 6th April 2017.

**Interpretation**

2. In these Regulations—

“the 1974 Act” means the Health and safety at Work etc. Act 1974;

“the 1984 Regulations” means the Freight Containers (Safety Convention) Regulations 1984;<sup>(4)</sup>

“the Convention” means the International Convention for Safe Containers 1972, as amended<sup>(5)</sup>;

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- (1) 1974 c. 37; section 15(1) was substituted by paragraph 6 of Schedule 15 to the Employment Protection Act 1975 (c. 71) and amended by S.I. 2002/794.
- (2) Section 11 was substituted by the Legislative Reform (Health and Safety Executive) Order 2008 (S.I. 2008/960) and amended by the Energy Act 2013 (c. 32), Schedule 12, paragraph 2.
- (3) Section 50(3) was amended by the Employment Protection Act 1975 (c. 71), Schedule 15, paragraph 16(3); by the Health and Social Care Act 2012 (c. 7), Schedule 7 paragraph 6; by the Energy Act 2013, Schedule 12, paragraph 11; and by S.I. 2008/960.
- (4) S.I. 1984/1890.
- (5) The Convention was signed at Geneva on 2nd December 1972 and ratified by the United Kingdom on 8th March 1978. It has been amended by resolution MSC.310(88) which came into force on 1st January 2012, and by resolution MSC.355 (92)

“container” means an article of transport equipment, excluding a vehicle or packaging or any article of transport equipment designed solely for use in air transport, which is—

- (a) of a permanent character and accordingly strong enough for repeated use;
- (b) designed to facilitate the transport of goods by one or more modes of transport without intermediate reloading;
- (c) designed to be secured or readily handled or both, having corner fittings for these purposes; and
- (d) of a size such that the area enclosed by the outer bottom corners is either—
  - (i) if the container is fitted with top corner fittings, at least 7 square metres, or
  - (ii) in any other case, at least 14 square metres,

and includes—

- (a) a container when carried on a chassis; and
- (b) a swap body that is carried by or on board a sea-going ship, and that is not mounted on a road vehicle or rail wagon;

“corner fittings” means an arrangement of apertures and faces at either the top or the bottom or both at the top and the bottom of the container for the purposes of handling, stacking and securing or any of those purposes;

“the Executive” means the Health and Safety Executive;

“maintained” means maintained in an efficient state in efficient working order and in good repair;

“maximum operating gross mass” means the maximum allowable sum of the mass of the container and its cargo;

“safety approval plate” means a plate in the form and containing the information specified by the Schedule;

“swap body” means a container which is specially designed for carriage by road only or by rail and road only and is without stacking capability and top lift facilities;

“use” means use for the purpose for which the container is designed but does not include—

- (a) movement to a place for remedial action if—
  - (i) so far as is reasonably practicable the movement is without risk to the safety of any person, and
  - (ii) the remedial action is carried out before the container is repacked with goods;
- (b) in the case of an empty container—
  - (i) transport to a place for testing to obtain approval under regulation 5; or
  - (ii) delivery to its purchaser by the vendor or their agent.

### **Application of Regulations**

**3.** These Regulations apply to any container used at work, or supplied for use at work and which—

- (a) is in Great Britain; or

- (b) is outside Great Britain in circumstances in which sections 1 to 59 and 80 to 82 of the 1974 Act apply by virtue of the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2013(6).

### Conditions of use and enforcement

4.—(1) The owner or lessee of a container must not use or permit that container to be used unless—

- (a) it has valid approval in accordance with regulation 5;
- (b) it has a valid safety approval plate fixed to it in accordance with regulation 6;
- (c) it is properly maintained;
- (d) the examination requirements in regulation 8 are met in respect of that container;
- (e) all markings on the container showing maximum operating gross mass are consistent with the maximum operating gross mass information on the safety approval plate; and
- (f) it meets the conspicuous marking requirements in regulation 9.

(2) Any other person using or permitting the use of a container must, so far as is reasonably practicable, ensure that—

- (a) a valid safety approval plate is fixed to it in accordance with regulation 6;
- (b) all markings on the container showing maximum operating gross mass are consistent with the maximum operating gross mass information on the safety approval plate; and
- (c) it meets the conspicuous marking requirements in regulation 9.

(3) Where it is an express term of a bailment of a container that the bailee is responsible for ensuring that the container is maintained or examined, the bailee must, in addition to any duty placed on them by paragraph (2), ensure that—

- (a) the container is properly maintained; and
- (b) the examination requirements in regulation 8 are met.

(4) In proceedings for an offence of using or permitting a container to be used which is not properly maintained or examined, it is a defence that at the time of the contravention a bailment or lease was in force in respect of the container and—

- (a) in the case of an owner, that it was an express term that the bailee or lessee was responsible for ensuring that the container is maintained or examined;
- (b) in the case of a lessee—
  - (i) that it was not an express term of the lease that the lessee was responsible for ensuring that the container is maintained or examined, or
  - (ii) under a further lease it was an express term that the further lessee was responsible for ensuring that the container is maintained or examined;
- (c) in the case of a bailee who is a bailor under a further bailment, that it was an express term of the further bailment that the further bailee was responsible for ensuring that the container is maintained or examined.

(5) In this regulation “owner” includes the owner’s agent.

### Approval of containers—either by design type or individually

5.—(1) An approval referred to in regulation 4(1)(a) (whether relating to a design type or to an individual container) is valid only if—

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(6) [S.I. 2013/240](#).

- (a) it has been issued—
  - (i) by the Executive;
  - (ii) by a person or organisation appointed for the time being by the Executive in accordance with paragraph (2), or
  - (iii) by or under the authority of a Government which has ratified, accepted, approved or acceded to the Convention; and
- (b) it has not been withdrawn in writing by—
  - (i) the person or organisation who issued the approval; or
  - (ii) the Executive, whether or not it was issued by the Executive.
- (2) An appointment by the Executive for the purpose of issuing approvals under paragraph (1)(a)(ii) must be in writing and may be—
  - (a) for a specified period;
  - (b) subject to conditions; and
  - (c) varied or revoked at any time by the Executive in writing.

#### **Fixing of safety approval plate**

- 6. A container has a valid safety approval plate fixed to it if—
  - (a) the safety approval plate is marked and fixed to it in accordance with—
    - (i) the Schedule; or
    - (ii) where regulation 7 applies, the 1984 Regulations, and
  - (b) the information on the safety approval plate is correct and relates to a valid approval.

#### **Containers constructed before 1st July 2014**

7. A container constructed prior to 1st July 2014 may retain the safety approval plate required by the 1984 Regulations, provided that no structural modifications have been or are made to that container.

#### **Examination of containers**

- 8.—(1) The examinations in regulation 4(1)(d) and (3)(b) must be in accordance with an examination scheme or programme approved by the Executive for the purposes of this regulation.
- (2) There must be clearly marked on the container either on or as close as practicable to the safety approval plate all matters which the examination scheme or programme requires to be marked.
- (3) The examination requirements in paragraph (1) do not apply in the case of an owner if—
  - (a) examinations comply with the procedure adopted by the State where the owner is permanently resident or incorporated;
  - (b) the procedure has been approved or prescribed by the Government of that State, or by any organisation authorised by such a Government to act on its behalf, for the purpose of the Convention; and
  - (c) that Government has ratified, accepted, approved or acceded to the Convention.

#### **Marking in accordance with British Standard**

9.—(1) Where the stacking or racking values are less than 192,000kg or 150kN, respectively, the container must be conspicuously marked as required under British Standard Freight Containers