



Department
for Transport

Consultation on amendments to the Port Security Regulations (S.I. 2009/2048) which transposed Directive 2005/65/EC on enhancing port security DfT-2013-17

July 2013

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Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR
Telephone 0300 330 3000

Website www.gov.uk/dft

General email enquiries: <https://www.dft.gov.uk/about/contact/form/>

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Foreword

The purpose of this consultation document is to seek comments on minor amendments proposed to S.I. No. 2048/2009 the Port Security Regulations 2009 (“**the PSRs**”) which transposed Directive 2005/65/EC (“**the Directive**”) on enhancing port security. The proposed amendments add clarity and in one instance reduce the regulatory burden on industry by placing the onus of carrying out the port security assessment from the PSA back on the Secretary of State, in so doing aligning the PSRs more closely with the Directive.

The proposed amendments do not in any way affect the main requirements under the PSRs for port security authorities (“**PSAs**”) to be established at ports considered in scope of the Directive and for PSAs to fulfil their obligations under it.

Links to relevant legislation:

[S.I. 2009 No. 2048](#)

[Directive 2005/65/EC](#)

Executive summary

The purpose of this consultation document is to seek comments on minor amendments proposed to S.I. No. 2048/2009 the Port Security Regulations 2009 (“**the PSRs**”) which transposed Directive 2005/65/EC (“**the Directive**”) on enhancing port security.

The Directive extended the existing robust port security regime with formal arrangements to ensure security co-ordination beyond the immediate ship/port interface to the wider port area. It requires Member States to legally designate Port Security Authorities (“**PSAs**”) for ports where the provisions of the Directive apply, principally where port facilities are co-located, and delineate the PSA area. The PSA’s will replace existing, non-statutory, Port Security Committees, set up informally at ports to coordinate between security-relevant stakeholders (including Port Facility Security Officers for the individual port facilities at a port) and advisors (such as Departmental and Agency officials, and the police). The Directive also requires the appointment of a port security officer (PSO), the carrying out of a port security assessment and the compilation and implementation of a Port Security Plan (PSP) based on it.

The proposed amendments **add clarity to the PSRs through the insertion of a new definition to describe what exists in the first instance before a “port”¹ as defined in the PSRs can be said to exist and a standard five year review clause** to be in line with the Coalition Government’s Better Regulation principles. **There is also one proposed deregulatory amendment: the PSRs as currently drafted place the onus on the PSA to carry out the port security assessment – it is proposed to transfer this onus back onto the Secretary of State, in so doing aligning the PSRs more closely with the Directive.**

However, the proposed amendments to the PSRs do not in any way affect the main requirements under the Directive as described in the second paragraph above or the ongoing implementation process at ports considered in scope of the Directive.

¹ “port” is defined in Regulation 3 of the PSRs as:

“an area of land and water –

(a) within boundaries that have been identified by the Secretary of State in an Order made under section 2(2) of the 1972 Act, and

(b) that contains at least one port facility that is covered by an approved port facility security plan and every reference to a port includes a reference to any port related area that has been designated in relation to that port.”

How to respond

The consultation period began on 31 July and will run until 11 September. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at (web address) or you can contact (name) if you would like alternative formats (Braille, audio CD, etc).

Please send consultation responses:

By e-mail to:

MARITIMESECURITY@dft.gsi.gov.uk

Please quote “Port Security (Amendment) Regulations - DfT-2013-17” in the subject box.

or

By post to:

Caroline Wall
Zone 2/32
Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

A list of those consulted is attached at Annex D. If you have any suggestions of others who may wish to be involved in this process please contact us.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The proposals

Background

1. The EU Directive on enhancing port security (2005/65/EC) came into force on 14 December 2005. It extended the existing port security regime for EU Member States (Regulation (EC) No 725/2004 on enhancing ship and port security “**the EC Regulation**”) beyond the immediate ship/port interface to include the wider port area and any port-related areas. It takes into account any areas adjacent to the port that have an impact on security in the port. This Directive was transposed into UK law by the Port Security Regulations 2009 (S.I. 2009/2048 - “**the PSRs**”) which came into force on 1 September 2009.
2. The PSRs require the establishment of Port Security Authorities (“**PSAs**”) for qualifying ports across the UK. Under the PSRs as currently drafted, each port security authority has responsibility for carrying out a port security assessment and will also be responsible for developing, implementing and maintaining an agreed port security plan (“**PSP**”) based on the assessment.

Rationale for proposed minor amendments

3. It is proposed to amend the PSRs for the following reasons
 - To align the regulations more closely with the the Directive which requires the port security assessment to be done before the boundary of the port is drawn

In Regulation 14 (Port security assessment) of the PSRs as currently worded the responsibility of carrying out the port security assessment is allocated to the PSA. There is also a presumption in the wording that the assessment is carried out by the PSA after its designation has come into force and a timescale of 9 months within which the PSA must request Secretary of State approval for the port security assessment is introduced. Regulation 14 transposed Article 6 of the Directive. Article 6(4) of the Directive requires only that port security assessments be approved by the Member State concerned – there is no allocation of responsibility to the PSA, nothing stipulating that the carrying out of the assessment can only occur after its designation, and no imposition of any timeframe within which approval of the assessment must be sought. It is proposed to revoke Regulation 14 and replace it with a new Regulation 3A with modified wording regarding the approval of the assessment more

in line with the wording of the Directive. In practice Department for Transport port security compliance inspectors have been giving prospective PSA's free assistance in carrying out the assessment and drawing up the PSP. This has both informed the process of determining the PSA boundary and enabled the inaugural meeting of a new PSA to be held shortly after designation at which the PSO and PSA chair (which could be the same person) are formally sworn in.

► To add clarity

- The definition of “port”² in the PSRs effectively represents the “end product” arrived at after the PSA has been designated and the boundary of the PSA area, the “port” for the purposes of the PSRs, delineated - there is no term for what exists in the first instance. The Directive uses the word “port” to mean both what exists prior to the boundary being drawn and what exists within the boundary once the boundary is drawn. It would be confusing if the regulations did the same thing, so the label “port facility locality” is proposed and will be substituted for “port” in the PSRs wherever it seems that the Directive is talking about what exists prior to the boundary being drawn. Wherever it appears that the Directive is talking about the area inside the boundary once the boundary is drawn, the regulations will continue to refer to “port”. This distinction between “port facility locality” and “port” is purely a drafting device necessitated by the fact that the “port” within the meaning of the regulations does not exist until after the boundary has been drawn. It is not a change of substance.
- There is no “review clause” in the PSRs. It is proposed to insert a standard 5 year review clause in the PSRs to bring them in line with the Coalition Government’s Better Regulation principles.

Proposed amendments in more detail

4. A draft of the Port Security (Amendment) Regulations 2013 is at **Annex A**: this will effect the above main amendments and the very minor consequential amendments arising from them.

² “port” is defined in Regulation 3 of the PSRs as:

“an area of land and water –

(c) within boundaries that have been identified by the Secretary of State in an Order made under section 2(2) of the 1972 Act, and

(d) that contains at least one port facility that is covered by an approved port facility security plan and every reference to a port includes a reference to any port related area that has been designated in relation to that port.”

5. Annex B is a version of the PSRs with the text to be substituted colour-coded green and struck-through. The proposed textual insertions are colour-coded blue. The following extract is shown as an example of both strike-through text and inserted text:

“port security assessment” ~~means an assessment carried out by the Port Security Authority under regulation 14~~ means an assessment carried out under regulation 3A;

The footnotes have been placed marked with red text and are translated at the very end (at the foot of Schedule 6).

6. The definition of “port” has been transferred out of Regulation 3(2) to join the other definitions in Regulation 2 (Interpretation). The new definition “port facility locality” has been inserted in Regulation 2 after the definition of “port facility”. **Annex C** is a table putting the text of Article 6 of the Directive (Port security assessment) alongside the text of existing Article 14 of the PSRs which transposed it. The text has been colour-coded to more clearly show related text. In particular the pink-coloured text shows the transposition of Article 6(4) of the Directive which has become Regulation 14(6)-(12) inclusive in the PSRs.

7. Annex D compares the text of existing Regulation 14 (Port security assessment) of the PSRs and proposed new Regulation 3A (Port security assessment) which replaces it. Again the text has been colour-coded to match up sections of text. Regulation 3A(1) which replaces Regulation 14(1) (see text colour-coded orange) now states that the Secretary of State must ensure that a port security assessment is carried out for every port facility locality (the term introduced for what exists in the first instance) placing the responsibility of carrying out the port security assessment on the Secretary of State rather than on the PSA. Paragraph (6) in regulation 3A is new compared with the existing regulations – it requires the Secretary of State to supply the PSA with a copy of the port security assessment as soon as is reasonably practicable after designation. It is consequential on the change to put the onus on the Secretary of State to ensure that the port security assessment is carried out. This change is needed in view of the requirement in paragraph 1(b) of Schedule 2 of the PSRs that the PSA retain the assessment for not less than five years after its creation or latest amendment. Old Regulation 14(6) required the PSA to request approval from the Secretary of State for the port security assessment within 9 months of being designated. It is replaced by new Regulation 3A(4) which merely requires that the port security assessment (including the identification of PSA boundaries in the designation order) must be approved by the Secretary of State. This removes the presumption that the port security assessment can only be carried out post-designation as well as removing the 9 month timeframe. Former paragraphs 14(7)-14(10) inclusive will be reproduced as paragraphs 7, 7A, 7B and 7C of Regulation 18 in the amended PSRs.

Consultation questions

Q1. Do you consider that the Port Security Regulations 2009 should be amended?

Q2. Do you agree that the wording in the port security assessment Regulation (current Regulation 14) should be amended, as per the wording of new Regulation 3A (see Annexes B and D) to be more in line with the Directive which only requires Secretary of State approval of the port security assessment?

Q3 Do you agree with the suggested instances where “port facility locality” is to be substituted for “port”.

Q4 Do you consider that the references to “port” in the following provisions of regulation 2 should be replaced by “port facility locality”: the definition of "controlled building", the last line of the definition of "port facility", the definition of "port related area" and paragraph (f) of the definition of "UK control authorities"?

Q5 Are there any other references to “port” which you consider should be substituted by the term “port facility locality”?

Impact Assessment

As the minor amendments proposed do not in any way affect the main requirements under the PSRs for PSA's to be established at ports considered in scope of the Directive and to fulfil their obligations under the PSRs, no Impact Assessment has been carried out.

What will happen next

A summary of responses, including the next steps, will be published within three months of the consultation closing on (www.gov.uk/dft). Paper copies will be available on request.

Question and answer brief

Below is a list of frequently asked questions about these proposals. If you still have questions after you have read this section please contact:

Name: Caroline Wall

Address: Zone 2/32 Great Minster House,
33 Horseferry Road, London SW1P 4DR

Email: MARITIMESECURITY@dft.gsi.gov.uk

Will the proposals affect the current implementation of the Port Security Regulations at ports considered in scope of the Directive?

No, the proposed minor amendments in no way change the main requirements of the PSRs that a Port Security Authority must be designated at all in-scope ports and a PSA boundary delineated, a Port Security Officer appointed, a port security assessment carried out and a port security plan based on it compiled, implemented and maintained.

Name

Address

Phone Number

Fax

Email address

Further background information can be found at (web address)

<https://www.gov.uk/government/policies/managing-the-risk-to-transport-networks-from-terrorism-and-other-crimes/supporting-pages/maritime-security>

Annex A – the Port Security (Amendment) Regulations 2013

2013 No. 0000

MERCHANT SHIPPING

MARITIME SECURITY

The Port Security (Amendment) Regulations 2013

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

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⁽³⁾.

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⁽⁴⁾, to measures relating to the safety of ships and the health and safety of persons on them⁽⁵⁾ and to measures relating to maritime transport⁽⁶⁾.

Citation and commencement

1. These regulations may be cited as the Port Security (Amendment) Regulations 2013 and come into force on [INSERT DATE] 2013.

Amendment of the Port Security Regulations 2009

2. The Port Security Regulations 2009⁽⁷⁾ 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 the port related area”;

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

⁽³⁾ 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).

⁽⁴⁾ S.I. 2004/706.

⁽⁵⁾ S.I. 1993/595.

⁽⁶⁾ S.I. 1994/757.

⁽⁷⁾ S.I. 2009/2048.

““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⁽⁸⁾ 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.”.

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
- (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.

⁽⁸⁾ O.J. No. L 310, 25.11.2005, p 28.

(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 “must consist of a review of the matters that the Port Security Authority is required to take into account by regulation 14(2)” substitute “must consist of a review of the matters 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 23rd November 2018.

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

Amendment of Schedule 3

11. In Schedule 3 (port security assessment), 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”;
and

(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

Date

Name
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations amend the Port Security Regulations 2009 (S.I. 2009/2048).

Annex B – marked up version of S.I. 2009/2048 showing amendments

Text to be removed has been colour-coded green and struck out. New insertions are colour-coded blue. The footnotes have been place-marked in red text and are translated at the foot of Schedule 6 – page 46.

STATUTORY INSTRUMENTS

2009 No. 2048

MERCHANT SHIPPING

MARITIME SECURITY

The Port Security Regulations 2009

Made

21st July 2009

Laid before Parliament

24th July 2009

Coming into force

1st September 2009

The Secretary of State for Transport makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽¹⁾.

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, measures relating to the safety of ships and the health and safety of persons on them, and maritime transport⁽²⁾.

It appears to the Secretary of State that it is necessary or expedient for certain references to provisions of the International Ship and Port Facility Security Code⁽³⁾, in so far as those provisions are integrated in Community maritime legislation in accordance with Article 2 and Article 10 of Regulation (EC) No. 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security⁽⁴⁾, to be construed as references to those provisions as amended from time to time.

PART 1
Preliminary

Citation and commencement

1. These Regulations may be cited as the Port Security Regulations 2009 and come into force on 1st September 2009.

Interpretation

2. In these Regulations—

“1972 Act” means the European Communities Act 1972;

“AMSA” means the Aviation and Maritime Security Act 1990⁽⁵⁾;

“AMSA facility” means a harbour area or a harbour operation that is subject to a direction of the Secretary of State under Part III of AMSA which is in force, and for this purpose “harbour area” has the meaning given in section 18 of AMSA and “harbour operation” has the meaning given in section 46 of AMSA;

“controlled building” means a building or part of a building in a port that has been—

(a) described as a controlled building in a port facility security plan that has been integrated into a port security plan, or

(b) designated as a controlled building;

“designated” means designated by the Secretary of State in an Order under section 2(2) of the 1972 Act;

“directed party” means a person who has been served with a direction of the Secretary of State under Part III of AMSA, in relation to an AMSA facility, while that direction remains in force;

“EC Regulation” means Regulation (EC) No. 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security;

“ISPS Code” means the International Ship and Port Facility Security Code as amended from time to time, in so far as those amendments are integrated in Community maritime legislation in accordance with Article 2 and Article 10 of the EC Regulation and are published in the Official Journal of the European Union;

“owner of the port facility security plan” means the person who submits the port facility security plan (or the person on whose behalf that plan is submitted) to the Secretary of State for approval in accordance with section 16.2 of Part A of the ISPS Code;

“port” ~~has the meaning given in regulation 3(2);~~ 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 the port related area;

“port facility” means a location where the ship/port interface takes place, and this includes areas such as anchorages, waiting berths and approaches from seaward, as appropriate and for this purpose “ship/port interface” means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons or goods or the provision of port services to or from the ship;

“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;

“port facility security officer” means a person identified as responsible for the development, implementation, revision and maintenance of a port facility security plan and for liaison with the ship security officers and company security officers in accordance with section 17.1 of Part A of the ISPS Code;

“port facility security plan” means a plan developed under the EC Regulation in accordance with the provisions of section 16 of Part A of the ISPS Code, and “approved port facility security plan” means a plan that has been approved by the Secretary of State in accordance with the requirements of section 16.2 of Part A of the ISPS Code;

“port related area” means an area of land or property that is affecting or is likely to affect the security of a port and has been designated as a port related area in relation to that port;

“port related area security plan” means a plan developed in accordance with Schedule 1;

“port security assessment” ~~means an assessment carried out by the Port Security Authority under regulation 14~~ means an assessment carried out under regulation 3A;

“Port Security Authority” means a body that has been designated as a Port Security Authority for a port;

“the Port Security Directive” means Directive 2005/65/EC⁽⁹⁾ of the European Parliament and of the Council of 26th October 2005 on enhancing port security;

⁽⁹⁾ O.J. No. L 310, 25.11.2005, p 28.

“port security officer” means a person appointed under regulation 12;

“port security plan” means a plan prepared and maintained by a Port Security Authority under regulation 15;

“prohibited article” means—

(a) any firearm, or any article having the appearance of being a firearm, whether capable of being discharged or not,

(b) any explosive, any article manufactured or adapted so as to have the appearance of being an explosive, whether it is capable of producing a practical effect by explosion or not, and any article marked or labelled so as to indicate that it is or contains an explosive, or

(c) any article (not falling within paragraph (a) or (b)) which is capable of use for causing injury to or incapacitating a person or for destroying or damaging property, or intended by the person having it with them for such use, whether by that person or by any other person;

“recognised security organisation” means an organisation that has been appointed by the Secretary of State for the purposes of these Regulations under regulation 23;

“restricted area” means an area that has been—

(a) described, in accordance with section 16.3.2 of Part A of the ISPS Code, as a restricted area in a port facility security plan that has been integrated into a port security plan, or

(b) designated as a restricted area;

“security manager” means a person appointed under Schedule 1;

“transport security inspector” means a person authorised in writing by the Secretary of State to act as an authorised person for the purposes of—

(a) part III of AMSA,

(b) part III of the Channel Tunnel (Security) Order 1994⁽⁶⁾,

(c) part II of the Aviation Security Act 1982⁽⁷⁾, or

(d) part III of the Railways Act 1993⁽⁸⁾;

“UK control authorities” means—

(a) the Department for Transport, including the Maritime and Coastguard Agency,

(b) Her Majesty’s Revenue and Customs,

(c) the UK Border Agency, an executive agency of the Home Office,

(d) the Serious Organised Crime Agency⁽⁹⁾,

(e) the Department for Environment Food and Rural Affairs, and

(f) any police service that has an interest in the port concerned.

Application of the Regulations

~~3.—(1) These Regulations apply to ports in the United Kingdom.~~

~~(2) For the purposes of these Regulations “port” means an area of land and water—~~

~~(a) within boundaries that have been identified by the Secretary of State in an Order made under section 2(2) of the 1972 Act, and~~

~~(b) that contains at least one port facility that is covered by an approved port facility security plan;~~

~~and every reference to a port includes a reference to any port related area that has been designated in relation to that port.~~

~~(3) These Regulations do not apply to installations used by Her Majesty's armed forces or members of a visiting force, in ports.~~

~~(4) In this regulation—~~

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

~~(b) "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.~~

~~(5) Where a port contains only one port facility that is covered by an approved port facility security plan, and no port related area has been designated in relation to that port, and the boundaries of that port facility are effectively the same as those of that port, the relevant provisions of the EC Regulation take precedence over these Regulations.~~

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."

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

(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.

Port related areas

4. Schedule 1, which makes provision for port related areas, has effect.

PART 2

Port Security Authorities

Port Security Authorities

5.—(1) A body may be designated as the Port Security Authority for more than one port.

(2) Schedule 2, which makes provision about Port Security Authorities, has effect.

Duty to apply for or nominate membership of a Port Security Authority

6. An application for membership of the Port Security Authority for a port must be made to the Secretary of State by—

(a) the port facility security officer of each port facility within the port, or an individual nominated by that port facility security officer or by the owner of the port facility plan to represent the port facility on the Port Security Authority;

(b) an individual nominated by the directed party of each AMSA facility (if any) within the port to represent the AMSA facility on the Port Security Authority; and

(c) the security manager of each port related area (if any) designated in relation to the port, or an individual nominated by that security manager to represent the port related area on the Port Security Authority.

Port Security Authority: Objection to decisions

7.—(1) A person affected by a decision of a Port Security Authority (“the objector”) may require the Secretary of State to consider an objection to that decision by serving on the Secretary of State a notice in writing within 30 days of the date on which the decision was made.

(2) A notice under paragraph (1) must be copied to the Port Security Authority.

(3) A notice under paragraph (1), and the copy served on the Port Security Authority under paragraph (2), must be accompanied by a statement in writing—

(a) specifying the grounds on which the objector is objecting to the decision; and

(b) providing such further information as may be appropriate.

(4) The Port Security Authority may provide the Secretary of State with a response to the objector's notice under paragraph (1) within 30 days of receipt of that notice, and a copy of any such response must be sent at the same time by that Port Security Authority to the objector.

(5) If the Secretary of State requests any further information that the Secretary of State considers necessary from either party that information must be provided to the Secretary of State within 30 days of receipt of such a request or such longer time as the Secretary of State may allow.

(6) If the information requested under paragraph (5) is not supplied within 30 days, or such longer time as the Secretary of State may have allowed, the Secretary of State may serve a notice in writing either—

- (a) confirming the decision;
- (b) directing the Port Security Authority to reconsider the decision; or
- (c) imposing a new or modified decision on the Port Security Authority.

(7) If, no later than 30 days after the latest of—

- (a) the date of service of a notice under paragraph (1),
- (b) the date of service of a response (if any) under paragraph (4), and
- (c) the date that information requested under paragraph (5) is provided,

either party so requests in writing to the Secretary of State, the Secretary of State must allow both parties the opportunity of appearing before and being heard by a person appointed by the Secretary of State for that purpose.

(8) After considering the notice and statement served under paragraphs (1) and (3), any response provided under paragraph (4), any further information provided under paragraph (5) and the report of any person appointed under paragraph (7), the Secretary of State must serve on both parties a notice in writing either—

- (a) confirming the decision;
- (b) directing the Port Security Authority to reconsider the decision; or
- (c) imposing a new or modified decision on the Port Security Authority.

(9) A notice served by the Secretary of State under paragraph (8) shall be binding on the Port Security Authority and the objector.

(10) For the purposes of this regulation "a decision" is a decision of the Port Security Authority—

- (a) that will result in the adoption or amendment of a port security plan; or
- (b) regarding the charging of fees.

Port Security Authority: Fees

8.—(1) Subject to paragraph (2), a Port Security Authority may charge a port facility security officer, directed party or security manager such a fee in connection with, or incidental to, carrying out any function under these Regulations as it may decide.

(2) The fee charged under paragraph (1) must not exceed the costs reasonably incurred or to be incurred by the Port Security Authority in carrying out the function in question.

(3) A fee charged under paragraph (1) shall be—

- (a) due upon written demand; and
- (b) recoverable only as a civil debt.

Power to require information from a Port Security Authority

9.—(1) The Secretary of State may, by notice in writing, require a Port Security Authority to provide information and documentation relating to—

- (a) the security of the port;
- (b) the proceedings of that Authority; or
- (c) the membership of that Authority.

(2) A Port Security Authority must provide the Secretary of State with any information or documentation requested under paragraph (1) within 30 days of the notice being served on it, or such longer period as the Secretary of State may allow.

Power of the Port Security Authority to require information

10.—(1) A Port Security Authority may, by notice in writing, require a port facility security officer, directed party or security manager, to furnish it with such information relating to the security of the port in relation to which that Authority has been designated, as that Authority may consider necessary for the carrying out of its functions.

(2) A person served with a notice under paragraph (1) must provide the Port Security Authority with the information requested in that notice within 30 days of that notice being served on that person, or such longer period as the Port Security Authority specifies in that notice.

Co-operation with UK control authorities

11. A Port Security Authority must ensure that there is adequate liaison and cooperation with UK control authorities.

PART 3

Port Security Officer

Port security officer

12.—(1) A Port Security Authority must appoint a person to be the port security officer for the port.

(2) The Port Security Authority must notify the Secretary of State of any appointment made under paragraph (1) within 30 days of that appointment and request approval for the appointment.

(3) If the Secretary of State fails to give or refuse approval within 30 days of receipt of a request under paragraph (2), the Secretary of State shall be deemed to have approved that appointment.

(4) If, within 30 days of receipt of a request made under paragraph (2) the Secretary of State gives the Port Security Authority notice of refusal to approve the appointment, the appointment of the port security officer terminates and the Port Security Authority must appoint under paragraph (1) a new person to be the port security officer for the port within 30 days of receiving that notice.

(5) A person may be appointed and approved as a port security officer under this regulation for more than one port.

Functions of the port security officer

13.—(1) A port security officer for a port—

- (a) is the point of contact for port security related issues; and
- (b) must co-operate with—
 - (i) port facility security officers of port facilities situated in the port;
 - (ii) directed parties of AMSA facilities (if any) situated in the port; and
 - (iii) security managers of port related areas (if any) for the port.

(2) A port security officer for a port may require a port facility security officer of a port facility situated in the port, a directed party of an AMSA facility situated in the port or a security manager of a port related area for the port, to furnish him with such information as he may consider necessary to carry out his functions.

PART 4 General Requirements

Port security assessment

~~14.—(1) A Port Security Authority must complete a port security assessment in respect of each port for which it has been designated.~~

~~(2) The port security assessment must be carried out taking into account—~~

- ~~(a) the provisions of Schedule 3;~~
- ~~(b) the port facility security assessments carried out for the port facilities situated within the port;~~
- ~~(c) specificities of different sections of—~~
 - ~~(i) the port; and~~
 - ~~(ii) any areas adjacent to the port referred to in a notice under paragraph (3).~~

~~(3) The Secretary of State may by notice in writing require a Port Security Authority to include in its port security assessment any area adjacent to the port that the Secretary of State considers could have an impact on the security of the port.~~

~~(4) Where international maritime transport services operate from a port, the Port Security Authority must, when conducting the port security assessment, co-operate with the authorities of the other Member States to which those services operate.~~

~~(5) The Port Security Authority may appoint a recognised security organisation to carry out the port security assessment on its behalf.~~

~~(6) A Port Security Authority must request approval from the Secretary of State for the port security assessment within 9 months of the designation of that Port Security Authority coming into force.~~

~~(7) A request for approval under paragraph (6) must be made in writing and be accompanied by information demonstrating that the assessment has been carried out in accordance with paragraph (2).~~

~~(8) 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.~~

~~(9) 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.~~

~~(10) 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.~~

~~(11) Paragraphs (7), (8), (9) and (10) apply to a further request made under paragraph (10) as they do to a request made under paragraph (6).~~

~~(12) In this regulation “port facility security assessment” means an assessment of a port facility carried out pursuant to the EC Regulation.~~

Port security plan

15.—(1) A Port Security Authority must develop, maintain and update the port security plan for each port for which it has been designated.

(2) The Port Security Authority must ensure that the port security plan—

- (a) addresses the specificities of different sections of the port;
- (b) has integrated into it—
 - (i) the approved port facility security plans for every port facility situated in that port;
 - (ii) the port related area security plans created for all port related areas (if any) designated in relation to the port; and
 - (iii) the AMSA facility contingency plans created for all AMSA facilities (if any) in the port;
- (c) where and to the extent appropriate, sets out the security measures to be applied to passengers and vehicles set for embarkation on seagoing vessels;
- (d) identifies for each of the security levels set out in regulation 20—
 - (i) the procedures to be followed,
 - (ii) the measures to be put in place, and
 - (iii) the actions to be taken,for the port, or where appropriate, for each part of the port,
- (e) takes into account the requirements of Schedule 4; and
- (f) identifies the person or persons responsible for each of the measures contained in that plan.

(3) Nothing in this regulation requires the Port Security Authority to carry out work that has been carried out in the course of developing a port facility security plan, a port related area security plan or an AMSA facility contingency plan.

(4) The Port Security Authority may appoint a recognised security organisation to develop the port security plan on its behalf.

(5) The Port Security Authority must ensure that, if a recognised security organisation has carried out a port security assessment or review of a port security assessment **for a port**, that

recognised security organisation does not develop or review ~~the port security plan for that port~~ ~~the port security plan for the port to which that assessment relates.~~

(6) In this regulation “AMSA facility contingency plan” means a contingency plan created by a directed party pursuant to an AMSA direction.

Approval of the port security plan

16.—(1) A Port Security Authority must request approval from the Secretary of State for the port security plan within 12 months of the designation of that Port Security Authority.

(2) The Secretary of State may, in respect of a request under paragraph (1)—

- (a) approve,
- (b) refuse to approve, or
- (c) approve subject to amendment,

the port security plan.

(3) When, or at any time after, approving a port security plan (whether or not subject to amendment), the Secretary of State may notify the Port Security Authority of types of amendments to the port security plan that must be submitted to the Secretary of State for approval before those amendments are implemented.

(4) Where a Port Security Authority has received a notification under paragraph (3), that Port Security Authority must request an approval from the Secretary of State before implementing an amendment to the port security plan of any type specified in that notification and must not implement that amendment until an approval has been obtained.

(5) The Secretary of State may in respect of a request under paragraph (4)—

- (a) approve,
- (b) refuse to approve, or
- (c) approve subject to further amendment,

an amendment to a port security plan.

(6) Any request under this regulation must be in writing, and a request for approval under—

- (a) paragraph (1) must be accompanied by a copy of the port security plan;
- (b) paragraph (4) must be accompanied by a copy of the port security plan and an explanation of the proposed amendments.

(7) The Secretary of State may request additional information in support of a request for approval under paragraph (1) or paragraph (4).

(8) If the Secretary of State fails to give or refuse approval within 30 days of the date of receipt of a request under paragraph (1) or (4), or of the date on which the Secretary of State requested additional information under paragraph (7), whichever is later, the Secretary of State shall be deemed to have refused to give approval for the plan or amendment in question.

(9) If the Secretary of State has, or is deemed to have, refused to approve a request made under paragraph (1) the Port Security Authority must, within 30 days of that refusal or deemed refusal, revise the port security plan and submit a further request for approval.

(10) Paragraphs (2), (6), (7), (8) and (9) apply to a further request made under paragraph (9) as they do to a request made under paragraph (1).

Implementation of the port security plan

17.—(1) A Port Security Authority must satisfy itself that the port security plan is implemented.

(2) Any person who is identified as being responsible for a measure contained in a port security plan, as required by regulation 15(2)(f), must implement that measure.

Review of the port security assessment and port security plan

18.—(1) A Port Security Authority must complete a review of the port security assessment and the port security plan—

- (a) at each meeting of the Port Security Authority;
- (b) within 30 days of a major operational change in the port;
- (c) within 30 days of a major structural change in the port;
- (d) within 30 days of a major security incident at the port;
- (e) within 30 days of any written request of the Secretary of State; and
- (f) not more than 5 years after that assessment was last approved or that plan was last approved.

(2) A review of a port security assessment under paragraph (1)(a) must consist of a review of the security risks highlighted in the port security assessment, the likelihood of the security risks occurring, the impact such an occurrence would have and the actions to be taken to address those security risks.

(3) A review of a port security assessment under paragraph (1)(b), (c), (d), (e) or (f) ~~must consist of a review of the matters that the Port Security Authority is required to take into account by regulation 14(2)~~ must consist of a review of the matters that are required by regulation 3A(2) to be taken into account.

(4) A review of a port security plan under paragraph (1) must consist of a review of the matters that the Port Security Authority is required to comply with under regulation 15(2).

(5) Following a review under paragraph (1) the Port Security Authority must amend the port security assessment and port security plan as appropriate.

(6) Where a port security plan or a port security assessment has been reviewed under paragraph (1)(b), (c), (d), (e) or (f), the Port Security Authority must request approval from the Secretary of State for the port security plan or port security assessment (as amended if appropriate under paragraph (5)) no later than 30 days after the deadline for undertaking the review specified in that provision.

~~(7) The provisions of regulation 14(7), (8), (9) and (10) apply to a request for approval from the Secretary of State of a port security assessment following a review of that port security assessment under paragraph (1)(b), (c), (d), (e) or (f) as they apply to a request for approval under regulation 14(6).~~

(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.

(8) The provisions of regulation 16(2),(6),(7),(8) and (9) apply to a request for approval from the Secretary of State of a port security plan following a review of that port security plan under paragraph (1)(b),(c),(d), (e) or (f) as they apply to a request for approval under regulation 16(1).

(9) The Port Security Authority may appoint a recognised security organisation to carry out a review of the port security assessment or port security plan on its behalf.

(10) In this regulation—

(a)“major operational change” means a major change to a commercial maritime transport operator or its operations that will have an impact on the security of the port; and

(b)“major structural change” means a major change to any physical structures in the port that will have an impact on the security of the port.

Security training

19. A Port Security Authority must ensure that adequate training exercises are carried out that take into account the requirements of Schedule 5.

Security levels

20.—(1) Where the Secretary of State gives a Port Security Authority notice of the security level that is to apply to a port or part of a port, the Port Security Authority must ensure that the security measures required for that level and set out in the port security plan are in place at that port or that part of a port—

(a)within such time as is specified in the notice; or

(b)if no time is specified in the notice, within 24 hours of that notice being given.

(2) The three security levels are—

(a) security level 1;

(b) security level 2; and

(c) security level 3.

(3) In this regulation—

(a)“security level 1” means the level for which minimum appropriate protective security measures are to be maintained at all times;

(b)“security level 2” means the level for which appropriate additional protective security measures are to be maintained for a period of time as a result of a heightened risk of a security incident;

(c)“security level 3” means the level for which further specific protective security measures are to be maintained for a limited period of time when a security incident is probable or imminent, even if it is not possible to identify the specific target.

Security clearance and protective marking of documents

21.—(1) A person who carries out security inspections of a port, or handles confidential information relating to the security of a port, must be approved for such work by the Secretary of State.

(2) A person who creates pursuant to these Regulations any document that relates to the security of a port must ensure that the document is clearly marked so as to indicate the degree of sensitivity with which that document is to be treated.

(3) In determining whether paragraph (2) has been complied with, account shall be taken of any Guidance issued by the Secretary of State on the protective marking of documents.

Monitoring of port security plans

22.—(1) For the purpose of verifying that a port security plan is being implemented in accordance with these Regulations, a transport security inspector, may, on production (if required) of their credentials, inspect—

- (a) any part of a port;
- (b) any land, building or works within a port; and
- (c) any vehicle, vessel, train or freight container in a port.

(2) A transport security inspector carrying out an inspection under paragraph (1) may, so far as he or she considers necessary for the purpose for which the inspection is carried out—

(a) subject any part of the port or any property found by that inspector there or on such land or in that building or in those works, to tests;

(b) subject any vehicle, vessel, train or freight container, or any apparatus or equipment installed in it, to tests;

(c) take steps—

(i) to ascertain what practices or procedures are being followed in relation to security; and

(ii) to test the effectiveness of any practice or procedure relating to security;

(d) require—

(i) the Port Security Authority,

(ii) the port security officer,

(iii) the port facility security officer or the owner of the port facility security plan of a port facility in the port,

(iv) the directed party of an AMSA facility in the port,

(v) the security manager of a port related area,

(vi) any person whose place of work is in the port, or

(vii) any person acting on behalf of any of the persons listed in sub-paragraphs (i) to (vi),

to furnish that inspector with information.

(3) Subject to paragraphs (4) and (5), a transport security inspector may, for the purpose of exercising any power conferred on that inspector by paragraph (1) or (2), enter any land, building or works in a port.

(4) The powers conferred by paragraph (3) do not include power for a transport security inspector to use force for the purpose of entering any land, building or works.

(5) The powers conferred by paragraphs (1) to (3) do not apply in the case of premises used only as a private dwelling.

(6) For the purpose of this regulation “freight container” means an article of transport equipment 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 container when carried on a chassis but does not include a vehicle or packaging, or any article of transport equipment designed solely for use in air transport, or a swap body except when it is carried by or on board a sea-going ship and is not mounted on a road vehicle or rail wagon.

Recognised security organisations

23.—(1) The Secretary of State may appoint a person as a recognised security organisation for the purposes of these Regulations.

(2) The Secretary of State must not appoint a person under paragraph (1) unless the Secretary of State is satisfied that the person meets the conditions set out in Schedule 6.

PART 5
Controlled buildings and restricted areas

Entering a controlled building

24.—(1) A person must not enter a controlled building except with the permission of a relevant person, and in accordance with any conditions imposed with that permission.

(2) A person must not remain in a controlled building after being instructed to leave by a relevant person.

(3) A relevant person may use such force as is reasonable in the circumstances to remove a person who by remaining in a controlled building is in contravention of paragraph (2).

(4) For the purposes of this regulation “a relevant person” means—

(a) a constable,

(b) the port security officer,

(c) the port facility security officer, if the controlled building is situated in a port facility,

(d) the directed party, if the controlled building is situated in an AMSA facility,

(e) the security manager, if the controlled building is situated in a port related area,

or a person acting on behalf of that port security officer, port facility security officer, directed party or security manager.

Searching people or property entering or in a restricted area or controlled building

25.—(1) A relevant person may search any person attempting to enter a controlled building or restricted area, or any baggage, cargo, vehicle, vessel or other moveable property of any description which is entering or about to enter a controlled building or restricted area.

(2) Neither a person who refuses to submit to such a search nor that person’s baggage, cargo, vehicle, vessel or other moveable property, may enter a restricted area or controlled building.

(3) A relevant person who has reasonable cause to suspect that a prohibited article is in, or may be brought into, a controlled building or restricted area, may, without a warrant, search any part of—

(a) the controlled building or any baggage, cargo, vehicle, vessel or other moveable property of any description which, or any person who, is for the time being in any part of the controlled building; and

(b) the restricted area, or any baggage, cargo, vehicle, vessel or other moveable property of any description which, or any person who, is for the time being in any part of the restricted area.

(4) For the purpose of paragraph (3) a relevant person may stop any person, baggage, cargo, vehicle, vessel or other moveable property of any description and detain it or that person for so long as may be necessary for that purpose.

(5) For the purpose of paragraph (3) a relevant person may enter any controlled building or any building or works in the restricted area or enter upon any land in the restricted area, if need be by force.

(6) If, in the course of a search carried out under this regulation, a prohibited article is found on a person (“A”), and a relevant person has reasonable cause to suspect that A does

not have lawful authority or reasonable excuse to have that article in a controlled building or restricted area, a relevant person may—

(a) detain A, and

(b) confiscate the prohibited article,

for so long as may be necessary except that if detention is by a relevant person other than a constable, the police must be contacted as soon as reasonably practicable and the relevant person can then continue to detain A only if the police have indicated that they will attend and only until the police arrive.

(7) Subject to paragraph (8), searches undertaken under this regulation must be carried out in public and may not require a person to remove clothing other than an outer coat or jacket and any gloves and hats.

(8) Where—

(a) a person so requests, or

(b) it is necessary to require the removal of more than an outer coat or jacket and any gloves or hat in order to establish whether a prohibited article is being carried by a person,

the search must be undertaken in private and in the presence of two or more relevant persons who must be the same sex as the person being searched.

(9) In this regulation “relevant person” means—

(a) a constable,

(b) an officer of the UK Border Agency, an executive agency of the Home Office,

(c) the port security officer for the port concerned,

(d) the port facility security officer, if the controlled building or restricted area is situated in a port facility,

(e) the directed party, if the controlled building or restricted area is situated in an AMSA facility, or

(f) the security manager, if the controlled building or restricted area is situated in a port related area,

or a person acting on behalf of that port security officer, port facility security officer, directed party or security manager.

PART 6

Enforcement

Enforcement notices

26.—(1) Where a transport security inspector is of the opinion that a person has failed to comply with a requirement of regulation 6, 8, 10(2), 13(1)(b) or 13(2), 17(2), 21(1) or (2), paragraphs 1(2), 2, 3 or 4 of Schedule 1, or paragraph 3 of Schedule 2, the transport security inspector may serve on that person a notice (referred to in this Part as an “enforcement notice”).

(2) An enforcement notice must state the matters which appear to the transport security inspector to constitute a failure to comply with the requirement in question.

(3) An enforcement notice must specify the steps which the transport security inspector requires to be taken, or the activity which the transport security inspector requires to be ceased in order to achieve compliance with the requirement in question within the time specified in the enforcement notice.

(4) An enforcement notice may be framed so as to give the person on whom it is served a choice of different ways of complying with the requirements set out in the notice.

(5) An enforcement notice must specify the date on which it is to take effect, and takes effect on that date.

(6) An enforcement notice must specify the period by the end of which the steps specified in that notice must be taken or the activity specified in that notice must have ceased, and may specify different periods for different steps or activities.

(7) Where different periods apply to different steps or activities, references in these Regulations to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period by the end of which the step is required to have been taken or the activity is required to have ceased.

(8) An enforcement notice requiring a person not to cause or permit anything to be done shall be construed as requiring that person to take all such steps as in any particular circumstances are practicable and necessary to prevent that thing from being done.

Objections to enforcement notices

27.—(1) A person on whom an enforcement notice is served, (“the objector”) may require the Secretary of State to consider an objection to that enforcement notice by serving on the Secretary of State a notice in writing within 7 days of the date on which the enforcement notice was served.

(2) The only grounds of objection to an enforcement notice are—

(a) that the steps required by the notice to be taken have been complied with;

(b) that the matters stated in the enforcement notice in accordance with regulation 26(2) do not constitute a failure to comply with a requirement specified in regulation 26(1);

(c) that any requirement of the notice—

(i) is unnecessary for complying with the requirements specified in regulation 26(1) and should be dispensed with; or

(ii) is excessively onerous or inconvenient and should be modified in a manner specified in the notice of objection.

(3) A notice under paragraph (1) must be accompanied by a statement in writing—

- (a) specifying the grounds on which the objector is objecting to the enforcement notice; and
- (b) providing such further information as may be appropriate.

(4) Where the objector serves a notice under paragraph (1), the Secretary of State must consider the grounds of the objection and, if so required by the objector, must afford to that objector an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose, and must then serve on the objector a notice in writing either—

- (a) confirming the enforcement notice as originally served; or
- (b) confirming the enforcement notice subject to one or more modifications specified in the notice under this paragraph; or
- (c) cancelling the enforcement notice.

(5) An enforcement notice to which an objection has been made under paragraph (1) does not take effect until it has been confirmed, with or without modification, by a notice under paragraph (4).

(6) An enforcement notice served on any person may be—

- (a) revoked by a notice, or
 - (b) varied by a further enforcement notice,
- served on that person by a transport security inspector.

Offences relating to enforcement notices

28.—(1) Any person who, without reasonable excuse, fails to comply with an enforcement notice served on that person is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

(2) Where a person is convicted of an offence under paragraph (1) and the failure in respect of which that person was convicted is continued without reasonable excuse after the conviction, that person is guilty of a further offence and liable on summary conviction to a fine not exceeding £100 for each day on which the failure continues.

Offences relating to transport security inspectors

29.—(1) Any person who—

- (a) intentionally obstructs a transport security inspector acting in the exercise of a power conferred upon that inspector by these Regulations, or
 - (b) falsely pretends to be a transport security inspector,
- commits an offence.

(2) A person guilty of an offence under paragraph (1)(a) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years.

(3) A person guilty of an offence under paragraph (1)(b) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Any person who—

- (a) without reasonable excuse, fails to comply with a requirement imposed on them under regulation 22(2)(d), or
 - (b) in furnishing any information so required makes a statement which that person knows to be false in a material particular, or recklessly makes a statement which is false in a material particular,
- commits an offence.

(5) A person guilty of an offence under paragraph (4) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years.

Offences in relation to prohibited articles

30.—(1) It is an offence for a person, without lawful authority or reasonable excuse, to have with them when attempting to enter or when in a controlled building or restricted area, any prohibited article.

(2) A person guilty of an offence under this regulation is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years.

Offence of making a false statement in relation to baggage, cargo or stores

31.—(1) It is an offence for any person without lawful authority or reasonable excuse to make a statement which that person knows to be false in a material particular, or recklessly make a statement which is false in a material particular, in answer to a question which—

(a) relates to any baggage, cargo or stores, whether or not belonging to that person, that is intended for carriage by sea—

(i) by a United Kingdom ship; or

(ii) by any other ship to or from the United Kingdom; and

(b) is put to that person for purposes to which these Regulations apply by any of the persons listed in paragraph (2).

(2) The persons referred to in paragraph (1)(b) are—

- (a) a constable,
- (b) an officer of the UK Border Agency, an executive agency of the Home Office,
- (c) a port security officer,
- (d) a port facility security officer,
- (e) a directed party,
- (f) a security manager,

or a person acting on behalf of a port security officer, port facility security officer, directed party or security manager.

(3) A person guilty of an offence under this regulation is liable on summary conviction, to a fine not exceeding level 5 on the standard scale.

False statements in connection with identity documents

32.—(1) A person commits an offence if, without lawful authority or reasonable excuse—

(a) for the purposes of, or in connection with, an application (whether or not made by that person), for the issue of an identity document to which this regulation applies, or

(b) in connection with the continued holding (whether or not by that person), of any such document which has already been issued,

that person makes to any of the people specified in paragraph (3), a statement which that person knows to be false in a material particular, or recklessly makes a statement which is false in a material particular.

(2) Paragraph (1) applies to any identity document which is to be or has been issued by any of the people listed in paragraph (3) in accordance with arrangements made in the port security plan for the control of access to a restricted area or controlled building.

(3) The people referred to in paragraph (1) are—

(a) a constable,

(b) a port security officer,

(c) a port facility security officer,

(d) a security manager,

or a person acting on behalf of that port security officer, port facility security officer, or security manager.

(4) A person guilty of an offence under this regulation is liable on summary conviction, to a fine not exceeding level 5 on the standard scale.

Interference with security measures

33.—(1) A person who intentionally interferes with security measures required by a port security plan commits an offence.

(2) A person guilty of an offence under this regulation is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years.

Unauthorised presence in a controlled building

34.—(1) Subject to paragraph (2), a person who contravenes regulation 24(1) or (2) without lawful authority or reasonable excuse is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) A person who contravenes regulation 24(1) or (2) is not guilty of an offence unless it is proved that, at the material time, notices stating that the building concerned was a controlled building were posted so as to be reasonably seen and read by a person entering the controlled building.

Confidentiality of information

35.—(1) Subject to paragraph (2) a person must not disclose any information which has been obtained by, or furnished to, that person under or for the purposes of these Regulations unless the disclosure is made with lawful justification.

(2) For the purposes of paragraph (1), a disclosure of information is made with lawful justification only if, and to the extent that—

(a) the disclosure is made for the purposes of, and is necessary for, the performance of any function under these Regulations;

(b) the disclosure is made with the consent of the person to whom, or to whose business, property or other assets, the information relates; or

(c) the disclosure is made for the purposes of any proceedings, whether criminal or civil.

(3) Information coming into the possession of a person must not be used by that person for any purpose other than the purposes of these Regulations.

(4) A person that knowingly or recklessly discloses information in contravention of paragraph (1) or uses information in contravention of paragraph (3) is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years.

Defence of due diligence

36.—(1) Subject to the following provisions of this regulation, in any proceedings against any person for an offence under these Regulations it is a defence for that person to show that they took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against any person for such an offence the defence provided in paragraph (1) involves an allegation that the commission of the offence was due to—

(a) the act or default of another, or

(b) reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, within a period ending 7 clear days before the commencement of the hearing of the proceedings (or in Scotland, the trial diet), they have served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph is one containing all such information identifying, or assisting in the identification of, the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) A person shall not be entitled to rely on the defence provided in paragraph (1) by reason of their reliance on information supplied by another, unless they can show that it was reasonable in all the circumstances to have relied on the information, having regard in particular—

(a) to the steps which they took, and those which might reasonably have been taken, for the purpose of verifying the information; and

(b) to whether they had any reason to disbelieve the information.

Offences by bodies corporate

37.—(1) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) any director, manager, secretary or other similar officer of the body corporate, or

(b) any person who was purporting to act in any such capacity,

that person, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) For the purposes of paragraph (1) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Where an offence under these Regulations is committed in Scotland by a Scottish partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

Designation of Secretary of State as focal point for port security

38.—(1) The Secretary of State is the focal point for port security for the purposes of Article 12 of the Port Security Directive.

~~(2) In this regulation “the Port Security Directive” means Directive 2005/65/EC⁽⁴⁰⁾ of the European Parliament and of the Council of 26 October 2005 on enhancing port security.~~

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 23 November 2018.

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

Signed by authority of the Secretary of State for Transport

Name
Parliamentary Under Secretary of State
Department for Transport

[Date]

SCHEDULE 1**Port Related Area****Notification of port related area**

1.—(1) Within 30 days of designating an area as a port related area the Secretary of State must give notice of the designation to the port security officer and—

- (a) the principal operator of that port related area; or
- (b) if there is no principal operator of that port related area, the owner of that area.

(2) The Secretary of State may, by notice in writing require any person the Secretary of State believes may—

- (a) own land, a building or works within an area identified in the notice, or
- (b) carry out operations in such an area,

to provide the Secretary of State with such information specified in the notice as the Secretary of State may require in order to determine whether that person is the principal operator or the owner of an area that the Secretary of State is considering designating as a port related area.

(3) A notice under paragraph (2)—

- (a) must specify a date before which the information required by that notice is to be provided to the Secretary of State; and
- (b) may at any time be—
 - (i) revoked by a notice in writing served on that person by the Secretary of State, or
 - (ii) varied by a further notice under paragraph (2).

Appointment of security manager

2. Within 30 days of the notification under paragraph 1(1) of this Schedule—

- (a) the principal operator of that port related area, or
- (b) if there is no principal operator of that port related area, the owner of that area, must appoint a security manager for that port related area.

Duties of security manager

3. The security manager must—

- (a) develop and maintain a port related area security plan;
- (b) implement the port related area security plan;
- (c) undertake regular security inspections of the port related area to ensure the continuation of appropriate security measures;
- (d) recommend and incorporate, as appropriate, modifications to the port related area security plan in order to correct deficiencies and to update the plan to take into account relevant changes to the port related area or to the port, and to security issues affecting the port related area or the port;
- (e) enhance security awareness and vigilance of the port related area's personnel;

- (f) ensure adequate training has been provided to personnel responsible for the security of the port related area;
- (g) report to the UK control authorities and maintain records of occurrences which threaten the security of the port related area, and occurrences in the port related area which threaten the security of the port;
- (h) coordinate implementation of the port related area security plan with the Port Security Authority, port security officer, port facility security officers, and security managers for other port related areas; and
- (i) ensure that security equipment (if any) is properly operated, tested, calibrated and maintained.

Port related area security plan

4. A port related area security plan must include—

- (a) measures designed to prevent weapons or any other dangerous substances or devices intended for use against persons, ships or ports, where the carriage of these items is not authorised, from being introduced into the port related area or the port;
- (b) measures designed to prevent unauthorised access to the port related area, to the port, and to any restricted areas or controlled buildings in the port or port facilities;
- (c) procedures for responding to security threats or breaches of security, including provisions for maintaining critical operations of the port related area or the port;
- (d) the duties of port related area personnel assigned security responsibilities;
- (e) the duties in relation to security of other port related area personnel;
- (f) procedures for interfacing port related area security activities with port security activities;
- (g) procedures for the periodic review of that plan and updating of that plan;
- (h) procedures for reporting security incidents;
- (i) identification of the security manager including 24 hour contact details;
- (j) measures to ensure the security of the information contained in that plan; and
- (k) procedures for checking that the measures specified in that plan are carried out to the standards specified in that plan.

SCHEDULE 2**Port Security Authority****Information**

1. A Port Security Authority must retain—

- (a) the port security plan in respect of each port for which it has been designated as the Port Security Authority,
- (b) the port security assessment in respect of each port for which it has been designated as the Port Security Authority,
- (c) minutes of meetings of the Port Security Authority, and
- (d) accounts and accounting records created under paragraph 2 of this Schedule, **for not less than five years after the date of that document's creation or latest amendment.**

Accounts

2. A Port Security Authority which charges fees under Regulation 8 must keep proper audited accounts and proper accounting records.

Duties of Port Security Authority members

3. Each member of a Port Security Authority and, where a member of a Port Security Authority is acting as a representative of the owner or operator of a port facility, an AMSA facility or a port related area, or as a representative of any other person who has an interest in the security at a port, the person which the Port Security Authority member is representing, shall have a duty to ensure that the functions of the Port Security Authority under these Regulations are carried out.

SCHEDULE 3

Port Security Assessment

General

1.—(1) The port security assessment is the basis for the port security plan and its implementation.

(2) The port security assessment must cover at least—

- (a) identification and evaluation of important assets and infrastructure which it is important to protect;
- (b) identification of possible threats to the assets and infrastructure and the likelihood of their occurrence, in order to establish and prioritise security measures;
- (c) identification, selection and prioritisation of counter-measures and procedural changes and their level of effectiveness in reducing vulnerability; and
- (d) identification of weaknesses, including human factors in the infrastructure, policies and procedures.

Detailed requirements

2. For this purpose the assessment must at least—

- (a) identify all areas which are relevant to port security, ~~thus also defining the security relevant port areas.~~ ~~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.~~ This includes port facilities which are already covered by the EC Regulation and whose risk assessment will serve as a basis;
- (b) identify security issues deriving from the interface between port facility and other port security measures;
- (c) identify which ~~port personnel~~ ~~port facility locality~~ ~~personnel~~ will be subject to background checks and/or security vetting because of their involvement in high-risk areas;
- (d) subdivide, if useful, the ~~port~~ ~~port facility locality~~ according to the likelihood of security incidents. Areas are to be judged not only upon their direct profile as a potential target, but also upon their potential role of passage when neighbouring areas are targeted;
- (e) identifying risk variations, e.g. those based on seasonality;
- (f) identify the specific characteristics of each sub-area, such as location, accesses, power supply, communication system, ownership and users and other elements considered security-relevant;
- (g) identify potential threat scenarios for the ~~port~~ ~~port facility locality~~. The entire ~~port~~ ~~port facility locality~~ or specific parts of its infrastructure, cargo, baggage, people or transport equipment within the ~~port~~ ~~port facility locality~~ can be a direct target of an identified threat;
- (h) identify the specific consequences of a threat scenario. Consequences can impact on one or more sub-areas. Both direct and indirect consequences must be identified. Special attention must be given to the risk of human casualties;
- (i) identify the possibility of cluster effects of security incidents;
- (j) identify the vulnerabilities of each sub-area;

- (k) identify all organisational aspects relevant to ~~overall port security~~ overall security of the port facility locality, including the division of all security-related authorities, existing rules and procedures;
- (l) identify vulnerabilities of the ~~overarching port security~~ the overarching security of the port facility locality related to organisational, legislative and procedural aspects;
- (m) identify measures, procedures and actions aimed at reducing critical vulnerabilities. Specific attention must be paid to the need for, and the means of, access control or restrictions to ~~the entire port or to specific parts of the port~~ the entire port facility locality or to specific parts of the port facility locality, including identification of passengers, port employees or other workers, visitors and ship crews, area or activity monitoring requirements, cargo and luggage control. Measures, procedures and actions must be consistent with the perceived risk, ~~which may vary between port areas~~ which may vary between port facility locality areas;
- (n) identify how measures, procedures and actions will be reinforced in the event of an increase of security level;
- (o) identify specific requirements for dealing with established security concerns, such as 'suspect' cargo, luggage, bunker, provisions or persons, unknown parcels and known dangers (e.g. bomb). These requirements must analyse desirability conditions for clearing the risk either where it is encountered or after moving it to a secure area;
- (p) identify measures, procedures and actions aimed at limiting and mitigating consequences;
- (q) identify task divisions allowing for the appropriate and correct implementation of the measures, procedures and actions identified;
- (r) pay specific attention, where appropriate, to the relationship with other security plans (e.g. port facility security plans) and other existing security measures. Attention must also be paid to the relationship with other response plans (e.g. oil spill response plan, port contingency plan, medical intervention plan, nuclear disaster plan, etc);
- (s) identify communication requirements for implementation of the measures and procedures;
- (t) pay specific attention to measures to protect security-sensitive information from disclosure; and
- (u) identify the need-to-know requirements of all those directly involved as well as, where appropriate, the general public.

SCHEDULE 4

Port Security Plan

General

1.—(1) The port security plan sets out a port's security arrangements.

(2) A port security plan must have the following features—

- (a) it must be based on the findings of the port security assessment;
- (b) it must clearly set out detailed measures; and
- (c) it must contain a control mechanism allowing, where necessary, for appropriate corrective measures to be taken.

(3) The port security plan must be based on the following general aspects—

- (a) defining all areas relevant to port security. Depending on the port security assessment, measures, procedures and actions may vary from sub-area to sub-area. Indeed, some sub-areas may require stronger preventive measures than others. Special attention must be paid to the interfaces between sub-areas, as identified in the port security assessment;
- (b) ensuring coordination between security measures for areas with different security characteristics;
- (c) providing, when necessary, for varying measures both with regard to different parts of the port, changing security levels, and specific intelligence;
- (d) identifying an organisational structure supporting the enhancement of port security.

Tasks and work plans

2. Based on the general aspects set out in paragraph 1(3), the port security plan must attribute tasks and specify work plans in the following fields—

- (a) access requirements. For some areas, requirements must only enter into force when security levels exceed minimal thresholds. All requirements and thresholds must be comprehensively included in the port security plan;
- (b) ID, luggage and cargo control requirements. Requirements may or may not apply to sub-areas; requirements may or may not apply in full to different sub-areas. Persons entering or within a sub-area may be liable to control. The port security plan must appropriately respond to the findings of the port security assessment, which is the tool by which the security requirements of each sub-area and at each security level must be identified. When dedicated identification cards are developed for port security purposes, clear procedures must be established for the issue, the use-control and the return of such documents. Such procedures must take into account the specificities of certain groups of port users allowing for dedicated measures in order to limit the negative impact of access control requirements. Categories must at least include seafarers, authority officials, people regularly working in or visiting the port, residents living in the port and people occasionally working in or visiting the port;
- (c) liaison with cargo control, baggage and passenger control authorities. Where necessary, the plan is to provide for the linking up of the information and clearance systems of these authorities, including possible pre-arrival clearance systems;

- (d) procedures and measures for dealing with suspect cargo, luggage, bunker, provisions or persons, including identification of a secure area; as well as for other security concerns and breaches of port security;
- (e) monitoring requirements for sub-areas or activities within sub-areas. Both the need for technical solutions and the solutions themselves will be derived from the port security assessment;
- (f) signposting. Areas with access and/or control requirements must be properly signposted. Control and access requirements must appropriately take into account all relevant existing law and practices. Monitoring of activities must be appropriately indicated;
- (g) communication and security clearance. All relevant security information must be properly communicated according to security clearance standards included in the plan. In view of the sensitivity of some information, communication must be based on a need-to know basis, but it must include where necessary procedures for communications addressed to the general public. Security clearance standards must form part of the plan and are aimed at protecting security sensitive information against unauthorised disclosure;
- (h) reporting of security incidents. With a view to ensuring a rapid response, the port security plan must set out clear reporting requirements to the port security officer of all security incidents and/or to the Port Security Authority;
- (i) integration with other preventive plans or activities. The plan must specifically deal with integration with other preventive and control activities in force in the port;
- (j) integration with other response plans and/or inclusion of specific response measures, procedures and actions. The plan must detail interaction and coordination with other response and emergency plans. Where necessary conflicts and shortcomings must be resolved;
- (k) training and exercise requirements;
- (l) operational port security organisation and working procedures. The port security plan must detail the port security organisation, its task division and working procedures. It must also detail the coordination with port facility and ship security officers, where appropriate. It must delineate the tasks of the port security committee, if this exists; and
- (m) procedures for adapting and updating the port security plan.

SCHEDULE 5**Basic security training exercise requirements****Frequency and participants**

1.—(1) Various types of training exercises (which may involve participation of port facility security officers, in conjunction with the UK control authorities, company security officers, and ship security officers, if available) must be carried out at least once in each calendar year with no more than 18 months elapsing between the training exercises.

(2) Requests for the participation of company security officers or ship security officers in joint training exercises must be made bearing in mind the security and work implications for the ship.

(3) In this paragraph—

(a) “company” means the owner of the ship or any other organisation or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the International Safety Management (ISM) Code 2002⁽¹¹⁾;

(b) “company security officer” means a person designated by the company in accordance with the ISPS Code for ensuring that a ship security assessment is carried out; that a ship security plan is developed, submitted for approval, and thereafter implemented and maintained, and for liaison with port facility security officers and the ship security officer (as defined in section 2.1.7 of Part A of the ISPS Code);

(c) “ship security officer” means the person on board a ship, accountable to the master, who has been designated by the company as responsible for the security of the ship, including implementation and maintenance of the ship security plan, and for liaison with the company security officer and port facility security officers (as defined in section 2.1.6 of Part A of the ISPS Code).

Nature of training exercises

2.—(1) These training exercises must test communication, coordination, resource availability and response.

(2) These training exercises may be—

(a) full scale or live;

(b) tabletop simulation or seminar;

(c) combined with other exercises held such as emergency response exercises or other exercises involving ports.

SCHEDULE 6**Conditions to be fulfilled by a recognised security organisation**

A recognised security organisation must be able to demonstrate—

- (a) expertise in relevant aspects of port security;
- (b) appropriate knowledge of port operations, including knowledge of port design and construction;
- (c) appropriate knowledge of other security relevant operations potentially affecting port security;
- (d) capability to assess the likely port security risks;
- (e) ability to maintain and improve the port security expertise of its personnel;
- (f) ability to monitor the continuing trustworthiness of its personnel;
- (g) the ability to maintain appropriate measures to avoid unauthorised disclosure of, or access to, security-sensitive material;
- (h) knowledge of relevant national and international legislation and security requirements;
- (i) knowledge of current security threats and patterns;
- (j) ability to recognise and detect weapons, dangerous substances and devices;
- (k) ability to recognise, on a non-discriminatory basis, characteristics and behavioural patterns of persons who are likely to threaten port security;
- (l) knowledge of techniques used to circumvent security measures; and
- (m) knowledge of security and surveillance equipment and systems and their operational limitations.

Footnotes

(1) 1972 c.68 as amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 28.

(2) S.I. 1993/595, 1994/757 and 2004/706.

(3) Published by the International Maritime Organisation Publishing Service (London, 2003, ISBN 9789280151497).

(4) O.J. No. L 129, 29.4.2004, p 6.

(5) 1990 c. 31.

(6) S.I. 1994/570.

(7) 1982 c.36.

(8) 1993 c.43.

(9) Established by the Serious Crime and Police Act 2005 (c.15) section 1.

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

(11) Published by the International Maritime Organisation Publishing Service (London, 2002, ISBN 9789280151237)

EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations implement, in relation to the whole of the United Kingdom, 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 purpose of that Directive is to introduce Community measures to enhance port security and to ensure that security measures taken under Regulation [\(EC\) 725/2004](#) of the European Parliament and Council of 31 March 2004 on enhancing ship and port facility security (OJ L129, 29.4.2004, p 6), benefit from enhanced port security.

In Part 1, regulation 1 provides for the commencement of the Regulations.

Regulation 2 deals with interpretation and regulation 3 sets out the application of the Regulations.

Regulation 4 and Schedule 1 provide for the notification of port related areas, the appointment of security managers and their duties, including the development and implementation of port related area security plans.

Part 2 and Schedule 2 make provision for port security authorities, including their designation and membership, an appeal procedure to address objections to their decisions, their fees and for the provision of information.

Part 3 makes provision for the appointment and functions of port security officers.

Part 4 sets out the main requirements of the Regulations.

Regulation 14 requires a port security assessment to be carried out and for approval for the port security assessment to be obtained from the Secretary of State.

Regulations 15, 16, 17 and 22 set out requirements for the preparation, maintenance, approval, implementation and monitoring of the port security plan.

Regulation 18 requires reviews of port security assessments and port security plans.

Regulation 19 and Schedule 5 contain security training requirements.

Regulation 20 requires port security authorities to ensure that appropriate security levels are in place.

Regulation 21 contains provisions for security clearance and protective marking of documents and regulation 23 and Schedule 6 allow for the appointment of recognised security organisations.

In Part 5 Regulation 24 contains provisions in respect of controlled buildings and regulation 25 provides for the search of people entering, or in, a restricted area or a controlled building.

Part 6, sets out the enforcement provisions.

Regulation 38 specifies that the Secretary of State is the focal point for port security.

An impact assessment in respect of this instrument has been prepared. A Transposition Note which sets out how Directive [2005/65/EC](#) is to be transposed into UK law has also been prepared. Both documents are available from the Department for Transport (Maritime Security Policy Branch), Zone 5/5th Floor, Southside, 105 Victoria Street, London SW1E 6DT and are annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk). Copies of each document have been placed in the library of each House of Parliament.

Copies of the ISPS Code and the International Safety Management (ISM) Code may be obtained from the International Maritime Organisation Publishing Service, 4 Albert Embankment, London SE1 7SR (www.imo.org).

Annex C – Comparison Directive Article 6 with PSRs Regulation 14

PORT SECURITY ASSESSMENT: ARTICLE 6 OF DIRECTIVE 2005/65/EC ON ENHANCING PORT SECURITY AND REGULATION 14 OF S.I. 2009/2048 THE PORT SECURITY REGULATIONS 2009 WHICH TRANSPOSED IT

ARTICLE 6 OF PORT SECURITY DIRECTIVE	REGULATION 14 OF PORT SECURITY REGULATIONS 2009
<p>Port security assessment</p> <p>1. Member States shall ensure that port security assessments are carried out for the ports covered by this Directive. These assessments shall take due account of the specificities of different sections of a port and, where deemed applicable by the relevant authority of the Member State, of its adjacent areas if these have an impact on security in the port and shall take into account the assessments for port facilities within their boundaries as carried out pursuant to Regulation (EC) No 725/2004.</p> <p>2. Each port security assessment shall be carried out taking into account as a minimum the detailed requirements laid down in Annex I.</p> <p>3. Port security assessments may be carried out by a recognised security organisation as referred to in Article 11.</p> <p>4. Port security assessments shall be approved by the Member State concerned.</p>	<p>Port security assessment</p> <p>14.—(1) A Port Security Authority must complete a port security assessment in respect of each port for which it has been designated.</p> <p>(2) The port security assessment must be carried out taking into account—</p> <p>(a) the provisions of Schedule 3;</p> <p>(b) the port facility security assessments carried out for the port facilities situated within the port;</p> <p>(c) specificities of different sections of—</p> <p>(i) the port; and</p> <p>(ii) any areas adjacent to the port referred to in a notice under paragraph (3).</p> <p>(3) The Secretary of State may by notice in writing require a Port Security Authority to include in its port security assessment any area adjacent to the port that the Secretary of State considers could have an impact on the security of the port.</p> <p>(4) Where international maritime transport services operate from a port, the Port Security Authority must, when conducting the port security assessment, co-operate with the authorities of the other Member States to which those services operate.</p> <p>(5) The Port Security Authority may appoint a recognised security organisation to carry out the port security assessment on its behalf.</p> <p>(6) A Port Security Authority must request approval from the Secretary of State for the port security assessment within 9 months of the designation of that Port Security Authority coming into force.</p> <p>(7) A request for approval under paragraph (6) must be made in writing and be accompanied by information demonstrating that the assessment has been carried out in accordance with paragraph (2).</p> <p>(8) After receiving a request for approval under paragraph (6) the Secretary of State may—</p> <p>(a) approve,</p> <p>(b) refuse to approve, or</p> <p>(c) approve subject to amendment,</p> <p>the port security assessment.</p> <p>(9) 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.</p> <p>(10) 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.</p> <p>(11) Paragraphs (7), (8), (9) and (10) apply to a further request made under paragraph (10) as they do to a request made under paragraph (6).</p> <p>(12) In this regulation “port facility security assessment” means an assessment of a port facility carried out pursuant to the EC Regulation.</p>

Annex D – Comparison – PSRs Reg. 14 and Reg.3A which will replace it

**S.I. 2009/2048 the Port Security Regulations 2009
 Comparison between existing Regulation 14 (Port security assessment) proposed
 to be revoked by amending S.I. and proposed new Regulation 3A (Port security
 assessment).**

S.I. 2009/2048 Regulation 14	PSR 2009 Amending S.I.- new Regulation 3A
<p>Port security assessment 14.—(1) A Port Security Authority must complete a port security assessment in respect of each port for which it has been designated.</p> <p>(2) The port security assessment must be carried out taking into account—</p> <p>(a) the provisions of Schedule 3;</p> <p>(b) the port facility security assessments carried out for the port facilities situated within the port;</p> <p>(c) specificities of different sections of—</p> <p>(i) the port; and (ii) any areas adjacent to the port referred to in a notice under paragraph (3).</p> <p>(3) The Secretary of State may by notice in writing require a Port Security Authority to include in its port security assessment any area adjacent to the port that the Secretary of State considers could have an impact on the security of the port.</p> <p>(4) Where international maritime transport services operate from a port, the Port Security Authority must, when conducting the port security assessment, co-operate with the authorities of the other Member States to which those services operate.</p> <p>(5) The Port Security Authority may appoint a recognised security organisation to carry out the port security assessment on its behalf.</p> <p>(6) A Port Security Authority must request approval from the Secretary of State for the port security assessment within 9 months of the designation of that Port Security Authority coming into force.</p> <p>(7) A request for approval under paragraph (6) must be made in writing and be accompanied by information demonstrating that the assessment has been carried out in accordance with paragraph (2).</p> <p>(8) After receiving a request for approval under paragraph (6) the Secretary of State may—</p> <p>(a) approve, (b) refuse to approve, or (c) approve subject to amendment, the port security assessment.</p> <p>(9) 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.</p> <p>(10) 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.</p> <p>(11) Paragraphs (7), (8), (9) and (10) apply to a further request made under paragraph (10) as they do to a request made under paragraph (6).</p> <p>(12) In this regulation “port facility security assessment” means an assessment of a port facility carried out pursuant to the EC Regulation.</p>	<p>Port security assessment 3A.—(1) The Secretary of State must ensure that a port security assessment is carried out for every port facility locality.</p> <p>(2) Each port security assessment must take into account—</p> <p>(a) the specificities of different sections of—</p> <p>(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;</p> <p>(b) the port facility security assessments carried out for the port facilities situated within the port facility locality; and</p> <p>(c) the detailed requirements in Schedule 3.</p> <p>(3) Port security assessments may be carried out by a recognised security organisation.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(7) In this regulation, “port facility security assessment” means an assessment of a port facility carried out pursuant to the EC Regulation.</p>

Annex E - Consultation principles

The consultation is being conducted in line with the Government's key consultation principles which are listed below. Further information is available on the Better Regulation Executive website at <https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

Consultation Co-ordinator
Department for Transport
Zone 1/14 Great Minster House
London SW1P 4DR
Email consultation@dft.gsi.gov.uk

Consultation principles

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
- departments will need to give more thought to how they engage with and consult with those who are affected;
- consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and
- the principles of the Compact between government and the voluntary and community sector will continue to be respected.

The draft Port Security (Amendment) Regulations 2013 will only effect minor changes to the PSRs which add clarity and bring the PSRs more into line with the Directive: the main requirements of the PSRs remain unchanged. Accordingly a 6 week timescale is considered appropriate. To assist the reader in determining the amendments to be made we have marked up a version of the PSRs (Annex B) to clearly show the proposed insertions and deletions. Annex C shows the text of Article 6 (Port security assessment) of the Directive alongside Article 14 (Port security assessment) of the PSRs which transposed it enabling easy comparison. Similarly, Annex D shows the text of Article 14 of the PSRs against proposed new Article 3A which will replace it.

Annex F List of those consulted

National Organisations

Association of Chief Police Officers (ACPO)
Associated British Ports (ABP)
Association of Port Health Authorities (APHA)
British Ports Association (BPA)
Department for Regional Development, Northern Ireland (DRDNI)
Downstream Fuel Association (DFA)
Home Office Immigration Enforcement
Maritime and Coastguard Agency (MCA)
Oil and Gas UK
Scottish Office
Tank Storage Association (TSA)
UK Major Ports Group (UKMPG)
UKLPG
United Kingdom Petroleum Industry Association (UKPIA)
Welsh Office

UK Ports considered in scope of Port Security Directive as at 30 July 2013

(* ports with formally designated Port Security Authority to date)

Aberdeen*
Barrow
Belfast
Bristol*
Cardiff
Clyde (Glasgow)
Coleraine
Cromarty Firth
Dover*
Falmouth*
Felixstowe/Harwich/Ipswich
Fowey
Grangemouth*
Great Yarmouth
Humber ports (Hull, Immingham, Grimsby, New Holland).
Ipswich
Liverpool
London ("Thames")

Londonderry
Manchester Ship Canal
Medway
Methil
Milford Haven*
Newhaven*
Oban
Peterhead
Plymouth
Portland*
Portsmouth
Rosyth
Shoreham
Southampton
Sullom Voe
Swansea*
Tees & Hartlepool*
Troon
Tyne
Workington*