



Marine Notice No. 07 of 2019

Notice to all Port Authorities, all Port Service Providers and Port users.

Regulation (EU) No 352/2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports.

The purpose of this Marine Notice is to draw attention to Regulation (EU) No 352/2017 of the European Parliament and of the Council of 15th February 2017 (EU Regulation) establishing a framework for the provision of port services and common rules on the financial transparency of ports which applies fully from 24 March 2019.

The Regulation applies to the following Ports in Ireland: Dublin Port, Port of Cork, Shannon Foynes, Port of Waterford, Rosslare Europort and Drogheda Port.

The Regulation applies to the provision of certain port services in the above ports, including; bunkering, cargo-handling, mooring, passenger services, collection of ship-generated waste and cargo residues, pilotage and towage.

The relevant Ports and Port Service Providers should familiarise themselves with the provisions of the EU Regulation and review the services they provide to bring them into line with the relevant requirements of the EU Regulation to ensure full compliance.

The Regulation provides for

- a framework for the provision of port services whereby port services may, in accordance with the Regulation, be subject to: (a) minimum requirements for the provision of port services; (b) limitations on the number of providers; (c) public service obligations; (d) restrictions related to internal operators;
- common rules on the financial transparency of ports and on port service and port infrastructure charges;
- a neutral complaints handling procedure;
- the right to appeal against decisions of the port authorities and other relevant national authorities;
- safeguarding of employees' rights and training of employees;
- consultation of port users and other stakeholders.

S.I. No. 128 of 2019 - European Union (Port Services) Regulations 2019 designates the Irish Maritime Development Organisation and the Health and Safety Authority as the relevant authorities for the handling of complaints in relation to the provision of port services and common rules on the financial transparency of ports.

Failure to comply with the requirements of the EU Regulation can lead to prosecution and on summary conviction to a class A fine, and/or imprisonment for a term not exceeding 12 months; or on conviction on indictment to a fine not exceeding €250,000; or to imprisonment for a term not exceeding 2 years, or both.

The Department of Transport, Tourism and Sport has prepared an information note , see Appendix 1, containing general information on the EU Regulation and the requirements it imposes on port authorities and port service providers.

Any queries in relation to the regulations should be directed to:

The Irish Maritime Development Office
Wilton Park House
Wilton Place
Dublin 2
D02 NT99

The Health and Safety Authority
The Metropolitan Building
James Joyce Street
Dublin 1
D01 K0Y8

T: +353 1 775 39 00
E: imdo@imdo.ie
W: <https://www.imdo.ie>

T: +353 1 6147000
E: wcu@hsa.ie
W: <https://www.hsa.ie>

Nothing in this Regulation or implementing S.I. shall affect the application of existing national competition and employment law. Complaints under existing competition and employment law can still be made to the Competition and Consumer Protection Commission and the Workplace Relations Commission.

Irish Maritime Administration,
Department of Transport, Tourism and Sport,
Leeson Lane, Dublin 2, D02TR60, Ireland.

03 /04/2019

Encl.: Appendix 1

For general enquiries, please contact the Maritime Transport Division, tel: +353-(0)1-678 3474.

Written enquiries concerning this Marine Notice should be addressed to:
Maritime Transport Division, Dept. of Transport, Tourism and Sport, Leeson Lane, Dublin, D02 TR60, Ireland.
Email maritimetransport@dtas.gov.ie or visit us at: www.dttas.gov.ie



**An Roinn Iompair,
Turasóireachta agus Spóirt**
Department of Transport,
Tourism and Sport

Ports Services Regulation

Information on the provisions of EU Regulation 2017/352 of the European Parliament and of the Council of 15th February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports

Port Services Regulation

EU Regulation 2017/352 is effective from 24 March 2019 and all relevant requirements of the Regulation must be met in full.

S.I. No. 128 of 2019 designates the Irish Maritime Development Office (IMDO) and Health and Safety Authority (HSA) as the responsible national bodies for the handling of complaints for the purposes of the Regulation in Ireland.

The objective of the Regulation is to allow for an open market in providing port services and to ensure an appropriate financial framework to attract investment in the maritime ports of the trans-European network. The aim is to level the playing field in the sector, protect port operators against uncertainties and create a climate more conducive to efficient public and private investments.

About this document

This document is for information purposes only, it is not part of Regulation No. 2017/352, and does not purport to be a legal interpretation of the Regulation. It is recommended, if the Regulation applies to your port or terminal, that you read the full text of the Regulation, which is available at:

<https://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32017R0352&from=EN>

In addition to general information on the Regulation, this document contains a list of sample questions and answers to help port authorities and port service providers understand what is required of them under the Regulation. It also contains information for port users on the mechanisms available for making a complaint under the Regulation.

Which Ports does the Regulation apply to?

- The Regulation applies to all maritime ports within the trans-European transport core and comprehensive networks.
- In Ireland, the maritime TEN-T ports include the “Core Ports”, Dublin Port, Port of Cork, Shannon Foynes, the “Comprehensive Ports”, Port of Waterford and Rosslare Europort and also Drogheda Port, which handles commercial shipping, and which falls within the Greater Dublin Area Port Cluster.

What does the Regulation provide for?

- a framework for the provision of port services
- common rules on the financial transparency of ports and on port service and port infrastructure charges
- a neutral complaints handling procedure
- the right to appeal against decisions of the port authorities and other relevant national authorities
- safeguarding of employees’ rights and training of employees
- consultation of port users and other stakeholders

Which port services are covered by the Regulation?

- The Regulation applies to the provision of certain port services, including:
 - Bunkering¹,
 - Cargo-handling²
 - Mooring³
 - Passenger services⁴
 - Collection of ship-generated waste and cargo residues⁵
 - Pilotage⁶
 - Towage⁷

Exemptions

- There are specific exemptions for
 - cargo-handling
 - passenger services
 - pilotage
- Chapter II (Articles 3 to 9) and Article 21 of the Regulation do not apply to cargo-handling and passenger services. There is an option allowing Member States to apply them to pilotage. It is important to note that Ireland has decided NOT to apply these articles to pilotage.
- It should be noted that Articles 11 to 20 of the Regulation apply to all services, including cargo-handling, passenger services and pilotage.

Key Provisions of the Regulation

1. Minimum Qualifying Requirements

- a) Ports should allow open market access for port service providers to operate within their ports; however, the Regulation does allow ports to impose certain minimum qualifying requirements or to limit the number of service providers in certain circumstances.
- b) The port must publish the minimum requirements and the procedure for the granting of the right to provide port services under those requirements by 24 March 2019 or in the case of minimum requirements that are to apply after that date, at least 3 months before the date from which those requirements are to apply. The port must also, in advance, inform providers of port services of any change in the criteria and of the procedure.

2. Limitation on Number of Providers

- a) Ports may limit the number of providers of port services for a given port service for one or more specified reasons, including the scarcity of space, characteristics of the port infrastructure or the nature of the port traffic, and the need to ensure safe, secure and environmentally sustainable port operations.
- b) Ports must publish any such proposal at least 3 months in advance.

3. Internal Operator

- a) Where a port decides to provide a port service itself or through a legally distinct entity over which it has control, then the provider of port services is considered to be an internal operator for the purpose of the Regulation.
- b) A port is permitted to do this provided that there is equal treatment of all operators providing the service concerned.

4. Safeguarding Employee Rights

- a) Under Article 9(2) the ports are responsible for ensuring that their service providers comply with national legislation for safeguarding employee rights.
- b) It is advised that Ports ensure that they include this requirement in procurement and contract documentation with their service providers and seek confirmation of such in writing on an annual basis.

5. Port Infrastructure Charges and Port Service Charges

- a) Whether imposed by a port or a port service provider, port service charges must be set in a transparent, objective and non-discriminatory manner.
- b) A port must levy a charge, referred to as a port infrastructure charge, for the use of its infrastructure, facilities and services, including the waterway access and access to the processing of passengers and cargo.
- c) Ports must keep port users informed about the nature and level of these charges and of any changes in the nature and level of these charges at least two months in advance.
- d) It is recommended that Ports and Port service providers publish their charges online.

6. Financial Transparency

- a) The Regulation seeks to ensure that any port in receipt of public funds reflects those funds in a transparent manner in its accounts (Article 11).
- b) Article 11(2) applies to dredging.
- c) However, in accordance with National Ports Policy 2013, there is no State funding for any commercial port company. Therefore, this Article does not apply currently.

7. Training

- a) Port service providers must ensure that employees receive adequate training.
- b) Where a port itself is a port service provider, it will be required to fulfil this training requirement.

8. Consultation

- a) The port must consult port users on its charging policy as per Art. 15(1) and must consult port users and other relevant stakeholders on essential matters within its competence as specified in Art.15(2)

The following is a list of Questions and Answers to help you understand what is required of you under this Regulation.

Question

What types of Port Services are affected by Regulation No. 2017/352?

Answer

The Regulation applies to the provision of the following port services

Bunkering;
Cargo-handling;
Mooring;
Passenger services;
Collection of ship-generated waste and cargo residues;
Pilotage;
Towage.

However, it is important to note the following: Articles 3 to 9 and Article 21 of the Regulation do not apply to cargo-handling, passenger services and pilotage.

Articles 11 to 20 of the Regulation do apply to all services, including cargo-handling, passenger services and pilotage.

Question

What minimum requirements may a Port Authority impose on the providers of port services?

Answer

The minimum requirements laid down by ports may only relate to the categories of requirements set out in Article 4 (2), which are as follows:

- A) the professional qualifications of the provider of port services, its personnel or the natural persons who actually and continuously manage the activities of the provider of port services;
- B) the financial capacity of the provider of port services;
- C) the equipment needed to provide the relevant port service in normal and safe conditions and the capacity to maintain this equipment at the required level;
- D) the availability of the relevant port service to all users, at all berths and without interruptions, day and night, throughout the year;
- E) compliance with requirements on maritime safety or the safety and security of the port or access to it, its installations, equipment and workers and other persons;
- F) compliance with local, national, Union and international environmental requirements;
- G) compliance with obligations in the field of social and labour law that apply in the Member State of the port concerned, including the terms of applicable collective agreements, manning requirements and requirements relating to hours of work and hours of rest for seafarers, and with applicable rules on labour inspections;
- H) the good repute of the port service provider, as determined in accordance with any applicable national law on good repute, taking into consideration any compelling grounds to doubt the reliability of the provider of port services.

Question

What is the time period for consideration to grant or refuse the right to provide a port service?

Answer

Ports must grant or refuse the right to provide port services on the basis of the minimum requirements within a reasonable period, which shall not exceed 4 months, from receiving a request for the granting of such a right.

Question

What if a Port Service Provider does not meet the set minimum requirements?

Answer

The port may refuse the right to provide a port service but it must justify any such refusal on the basis of the established minimum requirements. It must also clearly demonstrate that all providers of port services have been treated fairly.

Question

Can a Port Authority limit the number of providers for a Service?

Answer

Yes. Ports may limit the number of providers of port services for a given port service for one or more specified reasons. These reasons are listed in Article 6(1). However, any limitation on the number of providers of port services should be justified by clear and objective reasons and should not introduce disproportionate market barriers.

- If Ports do limit the number of providers they must

- a) Publish any proposal to limit the number of providers of port services together with the grounds justifying it at least three months in advance of the adoption of the decision to limit the number of providers of port services.
- b) They must publish this decision to limit the number of providers of port services.
- c) They must follow an open, transparent and non-discriminatory selection procedure. The port must publish information on the port service to be provided and on the selection procedure, and ensure that all necessary information and adequate time is given for the preparation of applications normally, a minimum of 30 days.

Question

What about the Public Service Obligations that a Member States may impose referred to in Article 7?

Answer

Public Service Obligations do not apply to port services in Ireland.

Question

Are Ports still permitted to provide Port services themselves or through their subsidiaries?

Answer

Yes. Ports can still be a provider of Port services and where this is the case the provider will be considered an internal operator for the purposes of the Regulation. There are however a number of conditions

- a) There must be equal treatment of all operators providing the service concerned. This means that the minimum requirements for the provision of port services (Article 4) must apply equally to all operators including an internal operator.
- b) The internal operators are limited to performing the port service in their own ports.

Question

Do Ports have obligations with regards the safeguarding of employees' rights?

Answer

Yes. Under Article 9(2) of the Regulation the ports are responsible for ensuring that their service providers comply with national legislation for safeguarding employee rights.

To ensure compliance, it is advised that ports include this requirement in procurement and contract documentation with their service providers and seek confirmation of such on an annual basis.

Nothing in the Regulation affects the application of existing national employment law.

Question

Does the Regulation have implications for the charging structure in Ports?

Answer

Yes. The Regulation now makes it mandatory for the Port to charge a Port Infrastructure Charge. This is a charge for the use of its infrastructure, facilities and services, including the waterway access and access to the processing of passengers and cargo. The Regulation also requires that Ports and the providers of port services must make adequate information about the nature and level of the port service charges available to port users. It is recommended that Ports and Port service providers publish their charges online.

Question

What if our Port currently integrates the charge for the use of its facilities and services within a broader charge or payment?

Answer

A Port may continue to integrate its infrastructure charge into other payments but must ensure that the amount of the port infrastructure charge is easily identifiable.

Question

Does the Regulation impose rules or limits on how much a Port can charge?

Answer

The structure and the level of port infrastructure charges shall continue to be determined according to the port's own commercial strategy and investment plans, and must comply with competition rules.

Question

Are Ports still permitted to give discounts to certain customers?

Answer

Ports may still vary these charges to different users for different reasons. However criteria used to vary the charges must be relevant, objective, transparent and non-discriminatory. The Regulation does not require the port to disclose differentiations in the charges as a result of individual negotiations.

Question

Do Port Authorities need to make any changes to their Financial Statements as referred to in Article 11?

Answer

No. In accordance with National Ports Policy 2013, there is no State funding for any commercial port company. Therefore, this Article does not apply currently.

Irish ports are limited companies and their annual audited accounts are published yearly and are available in the public domain.

Question

Do Ports have any obligations in regard to training that is referred to in Article 14?

Answer

In accordance with Article 14, it is port service providers that must ensure that employees receive adequate training. Where a port itself is a port service provider, which is the case for some Irish ports, it will be required to fulfil this training requirement for its employees.

Question

What information must a Port Authority provide to port users and stakeholders?

Answer

The port must consult port users on its charging policy as per Art. 15(1) and must consult port users and other relevant stakeholders on essential matters within its competence as specified in Art. 15(2).

Ports and port service providers must respect the confidentiality of commercially sensitive information as per Art. 15(4).

Question

If a Port Authority has pre-existing ports service contracts in place, how are these affected?

Answer

The Regulation does not apply to port service contracts which were concluded before 15 February 2017 and are limited in time.

Port service contracts concluded before 15 February 2017 which are not limited in time must be amended in order to comply with the Regulation by 1 July 2025.

Question

How should ports and port service providers prepare for any possible complaints made under the Regulation?

Answer

Port authorities and port service providers must have effective procedures in place to deal with complaints and should publish these procedures. Ports and Port service providers should also keep a record of the number and type of complaints received.

It should be noted that the EU will conduct a review of the operation of the Regulation in 2022 and Port and Port Service providers will be required to provide statistics and documentation on how complaints are handled.

Question

Which bodies can handle complaints made under the Regulation?

Answer

The Regulation sets a requirement that there must be a mechanism for the handling of complaints and Article 16 requires each member state to have effective procedure in place to handle complaints. In Ireland the bodies designated to handle complaints are as follows

- a) The HSA for complaints relating to the health and safety training aspects only of Article 14 (*Training of Staff*)
- b) The IMDO for complaints relating to all other Articles of the Regulation.

Each of these bodies has the power to request and obtain information from a Port Authority or Port Service Provider.

Question

How do I make a Complaint?

Answer

For Complaints in relation to the health and safety training aspects of Article 14 Training of Staff

The Health and Safety Authority

www.hsa.ie

For Complaints in relation to all other Articles of the Regulation

The Irish Maritime Development Office

www.imdo.ie

Question

What are the penalties for non-compliance with the requirements of the Regulation?

Answer

S.I. No. 128 of 2019 specifies the penalties that apply for failure to comply with the Requirements/Directions of the Relevant Authorities.

Question

Can I appeal a direction of the IMDO and HSA or a decision of a managing body of the port under the EU Regulation?

Answer

Yes. A person may appeal against the direction of the IMDO or decision of the managing body of a port to a judge of the Circuit Court in whose circuit the port is located.

A person may appeal against an improvement notice of the HSA to a judge of the District Court in the district court district in which the notice was served..

Question

Where can I obtain a copy of Regulation EU 2017/352?

Answer

A copy of the Regulation can be downloaded from:

<https://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32017R0352&from=EN>

How to Make a Complaint

All Port Authorities and Port Service Providers should have an accessible complaint-handling mechanism in place. Nothing in this Regulation or the Implementing S.I. precludes a person from availing of these complaint-handling mechanisms in the first instance.

For Complaints in relation to the health and safety training aspects only of Article 14 (Training of Staff)

The Health and Safety Authority
The Metropolitan Building
James Joyce Street
Dublin 1
D01 KOY8
T: +353 1 6147000
E: wcu@hsa.ie
W: <https://www.hsa.ie>

For Complaints in relation to all other Articles of the Regulation

The Irish Maritime Development Organisation
Wilton Park House
Wilton Place
Dublin
D02 NT99
T: +353 1 775 39 00
E: imdo@imdo.ie
W: <https://www.imdo.ie>

Please Note

Nothing in this Regulation or implementing S.I. shall affect the application of existing national competition and employment law. Complaints under existing competition and employment law can still be made to the Competition and Consumer Protection Commission and the Workplace Relations Commission.

Appendix 1

Definitions

(Endnotes)

- 1 Bunkering means the provision of solid, liquid or gaseous fuel or of any other energy source used for the propulsion of the waterborne vessel as well as for general and specific energy provision on board of the waterborne vessel whilst at berth;
- 2 Cargo-Handling means the organisation and handling of cargo between the carrying waterborne vessel and the shore, whether it be for import, export or transit of the cargo, including the processing, lashing, unlashng, stowing, transporting and temporary storage of the cargo on the relevant cargo-handling terminal and directly related to the transporting of the cargo, but excluding, unless the Member State determines otherwise, warehousing, stripping, repackaging or any other value added services related to the cargo;
- 3 Mooring means the berthing and unberthing services, including shifting along the quayside, that are required for the safe operation of a waterborne vessel in the port or in the waterway access to the port;
- 4 Passenger services means the organisation and handling of passengers, their luggage and their vehicles between the carrying waterborne vessel and the shore, and also includes the processing of personal data and the transport of passengers inside the relevant passenger terminal;
- 5 Collection of ship-generated waste and cargo residues' means the reception of ship-generated waste and cargo residues by any facility, which is fixed, floating or mobile and capable of receiving ship-generated waste or cargo residues as defined in Directive 2000/59/EC of the European Parliament and of the Council (1);
- 6 Pilotage means the guidance service of a waterborne vessel by a pilot or a pilotage station in order to allow for safe entry or exit of the waterborne vessel in the waterway access to the port or safe navigation within the port;
- 7 Towage means the assistance given to a waterborne vessel by means of a tug in order to allow for a safe entry or exit of the port or safe navigation within the port by providing assistance to the manoeuvring of the waterborne vessel.

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