



STATUTORY INSTRUMENTS.

S.I. No. 128 of 2019



EUROPEAN UNION (PORT SERVICES) REGULATIONS 2019

S.I. No. 128 of 2019

EUROPEAN UNION (PORT SERVICES) REGULATIONS 2019

I, Shane Ross, Minister for Transport, Tourism and Sport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving full effect to Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017¹, hereby make the following regulations:

1. These Regulations may be cited as the European Union (Port Services) Regulations 2019.

2. (1) In these Regulations -

“Act of 2005” means the Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005);

“authorised officer” means a person appointed under Regulation 7;

“EU Regulation” means Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017¹ establishing a framework for the provision of port services and common rules on the financial transparency of ports;

“inspector” has the meaning assigned to it by the Act of 2005;

“managing body of the port” means -

- (a) Iarnród Éireann - Irish Rail, insofar as it relates to the control or management of Rosslare Harbour,
- (b) the Drogheda Port Company,
- (c) the Dublin Port Company,
- (d) the Port of Cork Company,
- (e) the Port of Waterford Company, or
- (f) the Shannon Foynes Port Company;

“Minister” means the Minister for Transport, Tourism and Sport;

“relevant authority” means the body designated as the relevant authority under Regulation 4.

(2) A word or expression which is used in these Regulations and which is also used in the EU Regulation has, unless the context otherwise requires, the same meaning in these Regulations as it has in the EU Regulation.

¹ OJ No. L 57, 3.3.2017, p.1.

3. The EU Regulation and these Regulations apply to the following maritime ports in the State -

- (a) Cork,
- (b) Drogheda,
- (c) Dublin,
- (d) Rosslare,
- (e) Shannon Foynes, and
- (f) Waterford.

4. The relevant authority in the State for the purposes of the EU Regulation and these Regulations shall be -

- (a) the Health and Safety Authority, in respect of the requirement under Article 14 of the EU Regulation for providers of port services to ensure that employees receive the necessary training on health and safety matters which is essential for their work, and
- (b) the Irish Maritime Development Office, in respect all other requirements of the EU Regulation.

5. (1) A port user or other relevant stakeholder who considers that the managing body of the port or the provider of port services is not complying with the EU Regulation may make a complaint in writing to the relevant authority.

(2) The relevant authority shall investigate a complaint received by it under paragraph (1).

6. (1) Sections 64, 65 and 66 of the Act of 2005 shall apply and an inspector may exercise any of the powers specified in those sections for the purposes of -

- (a) ensuring compliance by providers of port services with the health and safety aspects of Article 14 of the EU Regulation, and
- (b) the investigation of complaints to the Health and Safety Authority received under Regulation 5(1).

(2) For the purposes of paragraph (1) and subject to any necessary modifications, section 3 of the Act of 2005 shall apply to the service of a notice or other document required or authorised to be served under sections 64, 65 and 66 of that Act.

(3) For the purposes of paragraph (1), a reference to the “relevant statutory provisions” in section 64 and section 66 of the Act of 2005 shall be construed as including the requirement, under Article 14 of the EU Regulation, for

providers of port services to ensure that employees receive the necessary training on health and safety matters which is essential for their work.

7. (1) The Irish Maritime Development Office may appoint such and so many persons as it considers appropriate to be authorised officers for the purposes of -

- (a) ensuring compliance by the managing body of the port or the provider of port services with the EU Regulation (other than the health and safety aspects of Article 14 of the EU Regulation) and these Regulations, and
- (b) the investigation of complaints to the Irish Maritime Development Office received under Regulation 5(1).

(2) The Irish Maritime Development Office shall furnish an authorised officer with a certificate of his or her appointment and, when exercising a power conferred by these Regulations, the authorised officer shall, if requested by a person affected, produce the certificate or a copy of it to that person.

(3) The Irish Maritime Development Office may terminate the appointment of an authorised officer appointed by it whether or not the appointment was for a fixed term.

(4) For the purposes of paragraph (1), an authorised officer shall have power to do any or all of the following:

- (a) at all reasonable times enter and inspect a premises or place (other than premises used as a private dwelling, except with the consent of its occupier) at which there are reasonable grounds to believe that documents, records or other information, in whatever form they are held, relevant to the EU Regulation are being kept;
- (b) require any person on the premises to produce for inspection documents, records or any other information, in whatever form they are held, within such period as the officer considers reasonable or take copies of or extracts from such or take them away for further inspection;
- (c) require any person to give the authorised officer such information and assistance as the authorised officer may reasonably require for the purposes of any investigation or complaint under these Regulations;
- (d) require by notice, at a time and place specified in the notice, any person to give the authorised officer any information that the authorised officer may reasonably require in relation to the EU Regulation, and to produce to the authorised officer any documents or records that are in that person's power, possession or control.

8. (1) Where the Irish Maritime Development Office considers, on its own initiative or following the investigation of a complaint received by it under Regulation 5(1), that the managing body of the port or the provider of port services is failing to comply with the EU Regulation or these Regulations, the Irish Maritime Development Office may give a direction to that person.

(2) A person on whom a direction is given under paragraph (1) may, within 14 days of the service of the notice, make representations in writing to the Irish Maritime Development Office in relation to the direction.

(3) Any representations made under paragraph (2) shall be considered by the Irish Maritime Development Office in deciding to confirm, modify or withdraw the direction.

(4) A direction under paragraph (1) shall -

- (a) state the grounds upon which the direction is made,
- (b) identify the provision of the EU Regulation or these Regulations that has not been or is not being complied with by the person,
- (c) specify the action to be taken by the person to whom the direction is given and where appropriate, the period within which that action shall be taken,
- (d) inform the person of the requirement to confirm compliance with the direction in accordance with paragraph (8),
- (e) inform the person of the right to appeal the direction under Regulation 9,
- (f) be signed and dated by the Irish Maritime Development Office, and
- (g) state that if the person to whom it is given fails to comply with the direction the person shall be guilty of an offence.

(5) A direction shall be complied with within such period as may be specified in the direction.

(6) A direction may specify the measures to be taken to remedy the non-compliance with the EU Regulation or these Regulations or to otherwise comply with the direction.

(7) A person to whom a direction has been given may appeal the direction under Regulation 9.

(8) A person to whom a direction has been given who is of the opinion that the direction has been complied with shall confirm such compliance in writing to the Irish Maritime Development Office, as soon as practicable after so complying.

(9) The Irish Maritime Development Office shall, not later than one month from receiving confirmation under paragraph (8), on being satisfied that the person has so complied, give notice to the person concerned confirming that compliance.

(10) The Irish Maritime Development Office may, where it considers it appropriate to do so, by notice in writing to the person to whom a direction was given, withdraw a direction.

9. (1) A person aggrieved by -

- (a) a direction given by the Irish Maritime Development Office under Regulation 8(1), or
- (b) a decision taken by the managing body of the port under the EU Regulation,

may appeal against the direction or decision to the Circuit Court.

(2) An appeal under paragraph (1) shall be made to a judge of the Circuit Court for the circuit in which the port the subject of the direction or decision is located.

(3) A notice of an appeal shall contain a statement of the grounds on which the appeal is made and be made by written notice, which shall be lodged with the appropriate office of the Court by the appellant not later than 21 days from the date upon which the direction was given under Regulation 8(1), or confirmed or modified under Regulation 8(3), or the decision was taken by the managing body of the port under the EU Regulation.

(4) A copy of the notice by which a person makes an appeal under this Regulation shall be given by him or her to the Irish Maritime Development Office or the managing body of the port as the case may be, not less than 48 hours before the hearing of the appeal and the respondent shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal and at the hearing of any application referred to in paragraph (5).

(5) The bringing of an appeal shall not have the effect of suspending the operation of the direction or decision as the case may be, but the Court may, on application to it by the appellant, suspend its operation until the appeal is determined or withdrawn.

(6) On the hearing of an appeal the Court may confirm, vary or revoke the direction or decision as the case may be.

10. (1) A direction, notice or other document that is required to be given to a person by these Regulations shall be addressed to the person concerned by name, and may be given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address;
- (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address; or

- (d) by electronic means, in a case in which the person has given notice in writing to the person giving the direction, notice or document concerned of his or her consent to the direction, notice or document (or documents of a class to which the direction, notice or document belongs) being given to him or her in that manner.

(2) For the purpose of this Regulation, a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

(3) Where an opinion, finding, statement or decision of the Irish Maritime Development Office is contained in a document which -

- (a) purports to have been made by or at the direction of the Irish Maritime Development Office, and
- (b) is produced in evidence by an authorised officer appointed under Regulation 7(1) in any proceedings,

such document shall be admissible in evidence and shall be evidence of any such opinion, finding, statement or decision in such proceedings without further proof.

11. (1) A person shall be guilty of an offence where he or she -

- (a) fails to comply with Article 4, 5, 6, 7, 8, 9, 11, 12, 13, 14 (other than the health and safety aspects) or 15 of the EU Regulation,
- (b) fails to comply with a direction under Regulation 8(1),
- (c) prevents, obstructs, impedes or delays an authorised officer in the performance of his or her functions under Regulation 7,
- (d) fails to comply with a request, instruction or direction from an authorised officer under Regulation 7(4), or
- (e) gives to an authorised officer any information which is false or misleading in any material respect, knowing it to be so false or misleading.

(2) A provider of port services shall be guilty of an offence where the provider -

- (a) fails to ensure that employees receive the necessary training on health and safety matters which is essential for their work under Article 14 of the EU Regulation,
- (b) fails to submit or implement an improvement plan under section 65 of the Act of 2005 where required by an inspector for the purposes of Regulation 6(1), or
- (c) contravenes any requirement of an improvement notice served under section 66 of the Act of 2005 for the purposes of Regulation 6(1).

- (3) A person shall be guilty of an offence where he or she -
- (a) prevents, obstructs, impedes or delays an inspector from exercising any functions under sections 64, 65 and 66 of the Act of 2005 for the purposes of Regulation 6(1),
 - (b) fails to comply with a request, instruction or direction from an inspector in the exercise of his or her functions under sections 64, 65 and 66 of the Act of 2005 for the purposes of Regulation 6(1), or
 - (c) gives to an inspector any information, obtained by the inspector for the purposes of Regulation 6(1), which is false or misleading in any material respect, knowing it to be so false or misleading.
- (4) A person guilty of an offence under these Regulations shall be liable -
- (a) on summary conviction to a class A fine, or to imprisonment for a term not exceeding 12 months, or both, or
 - (b) on conviction on indictment to a fine not exceeding €250,000, or to imprisonment for a term not exceeding 2 years, or both.

(5) Where an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person, being a director, manager, secretary, or other officer of the body corporate, or a person who was purporting to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(6) Summary proceedings for an offence under paragraph (1) may be brought and prosecuted by the Irish Maritime Development Office.

(7) Summary proceedings for an offence under paragraph (2) or (3) may be brought and prosecuted by the Health and Safety Authority.



GIVEN under my Official Seal,
29 March, 2019.

SHANE ROSS,
Minister for Transport, Tourism and Sport.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
(Teil: 01 - 6476834 nó 1890 213434)

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434)

€3.00



(MTD-1) 75. 4/19. Propylon.