



STATUTORY INSTRUMENTS.

S.I. No. 656 of 2010

EUROPEAN COMMUNITIES (PORT STATE CONTROL)
REGULATIONS 2010

(Prn. A10/1952)

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I, NOEL DEMPSEY, Minister for Transport, 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 effect to Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009¹ and Commission Directive 96/40/EC of 25 June 1996², hereby make the following regulations:

Citation

1. (1) These Regulations may be cited as the European Communities (Port State Control) Regulations 2010.

(2) These Regulations come into operation on 1 January 2011.

Interpretation

2. (1) In these Regulations—

“Act of 1996” means Harbours Act 1996 (No. 11 of 1996);

“inspector” means an officer of the competent authority appointed under Regulation 5(1) to be an inspector;

“Mandatory Surveys Directive” means Council Directive 1999/35/EC of 29 April 1999³ as amended by—

(a) Directive 2002/84/EC of the European Parliament and of the Council of 5 November 2002⁴,

(b) Regulation (EC) No. 219/2009 of the European Parliament and of the Council of 11 March 2009⁵, and

(c) Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009⁶;

“marine notice” means a notice described as such and issued by the Department of Transport;

“Marine Survey Office” means that part of the Department of Transport which is known by that name;

¹OJ No. L 131, 28.5.2009, p. 57

²OJ No. L 196, 7.8.1996, p. 8

³OJ No. L 138, 1.6.1999, p.1

⁴OJ No. L 324, 29.11.2002, p. 53

⁵OJ No. L 87, 31.3.2009, p. 109

⁶OJ No. L 131, 28.5.2009, p. 114

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 7th January, 2011.*

“Minister” means Minister for Transport;

“night time” means the period between 8 p.m. and 8 a.m. on the following day;

“pilot” means any person not belonging to a ship who has the conduct of the ship;

“port authority” means—

- (a) in the case of a port to which the Harbours Acts 1946 to 2005 apply, a harbour authority within the meaning of those Acts,
- (b) in the case of a port under the control of a company established pursuant to section 7 of the Harbours Act 1996, the company concerned,
- (c) in the case of a port under the control of a local authority, the local authority concerned,
- (d) in the case of a port under the management of Iarnród Éireann — Irish Rail, that body, and
- (e) in the case of any other port, its owner;

“Port State Control Directive” means Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009¹ on port state control;

“risk profile” means risk profile of a ship determined in accordance with Article 10 of and Annex I and II to the Port State Control Directive and appearing in the inspection database;

“SafeSeasIreland” means the maritime information exchange system comprising a data exchange network and standardising of the main information available on ships and their cargo developed by the Minister under Article 22a of and Annex III to Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002⁷ and known by that name;

“inspection” includes an inspection of a ship carried out at a place other than at a port;

“port” includes—

- (a) a harbour within the meaning of section 2 of the Harbours Act 1946 (No. 9 of 1946),
- (b) a harbour within the meaning of section 2 of the Act of 1996,
- (c) a fishery harbour centre within the meaning of section 1 of the Fishery Harbour Centres Act 1968 (No. 18 of 1968), and
- (d) a harbour transferred to a relevant local authority under section 88(2) of the Act of 1996.

⁷OJ No. L 208, 5.8.2002, p.10

(2) A word or expression that is used in these Regulations and is also used in the Port State Control Directive has, unless the contrary intention appears, the same meaning in these Regulations as it has in that Directive.

(3) In these Regulations—

(a) a reference to an Article is to an Article of the Port State Control Directive, and,

(b) a reference to an Annex is to an Annex to the Port State Control Directive.

Application

3. (1) These Regulations apply to any ship and its crew calling at a port or anchorage in the State in order to engage in a ship/port interface other than fishing vessels, warships, naval auxiliaries, wooden ships of a primitive build, government ships used for non-commercial purposes and pleasure yachts not engaged in trade.

Competent authority

4. The Marine Survey Office is designated as the competent authority in the State for the purposes of these Regulations and the Port State Control Directive.

Inspectors

5. (1) Subject to paragraph (5), the Minister may appoint such and so many officers who fulfil the qualification criteria specified in Annex XI as the Minister thinks necessary to be inspectors for the purposes of the Port State Control Directive and these Regulations and may revoke any such appointment.

(2) The Minister shall issue to every inspector appointed under paragraph (1) a warrant of appointment and the competent authority shall issue to every such inspector a personal document in the form of an identity card in accordance with Commission Directive 96/40/EC of 25 June 1996² and, when exercising a power or performing a function under the Port State Control Directive or these Regulations, the inspector shall, on being so requested by a person affected, produce the identity card to that person.

(3) Subject to paragraph (5), and to any directions of the competent authority, an inspector has such powers as are necessary to perform such functions as are conferred on him or her by, or as are necessary to enable him or her to perform his or her duties under, the Port State Control Directive or these Regulations including the power to—

(a) enter any port, including any location where ship/port interface takes place including anchorages, waiting berths and approaches from seaward,

(b) board and inspect any ship,

- (c) require a person on the ship to furnish him or her with information, to make a statement or to produce any documents and records regarding the ship,
- (d) inspect, take samples and take copies of, or take extracts from, any books, documents, certificates or records, including those in electronic form, relevant to the inspection (including in the case of information in non-legible form a copy of or extract from such information in permanent legible form),
- (e) require the master, owner or operator of a ship to provide the relevant information and certificates, the inspection of which is considered by the inspector to be necessary for the purpose of enabling him or her to carry out the inspection,
- (f) there, or at any other place, carry out or have carried out such examinations, inspections or tests of equipment or other device found on the ship and, if the inspector thinks fit, remove or have removed any such equipment or other device and retain it for a reasonable period to facilitate such examinations, testing or inspection, and
- (g) detain a ship or secure for later inspection the ship or part of it.

(4) If an inspector does not have the required professional expertise in a matter necessary for the performance of a particular function under the Port State Control Directive or these Regulations, the inspector may be assisted by any person with the required expertise as directed by the competent authority.

(5) An inspector, and any persons assisting him or her, shall not perform any functions under these Regulations or the Port State Control Directive if he or she has any commercial interest either in the port or in the ships in respect of which the functions are performed, nor shall the inspector be employed by or undertake work on behalf of non-governmental organisations which issue statutory and classification certificates in respect of ships or which carry out the surveys necessary for the issue of those certificates.

(6) The competent authority shall ensure that inspectors receive appropriate training in relation to changes to the port state control system applied in the European Union as laid down in the Port State Control Directive and amendments to the Conventions.

(7) A person who—

- (a) without reasonable excuse fails to comply with any request or requirement made by an inspector under these Regulations,
- (b) obstructs or interferes with an inspector in the performance of his or her functions under these Regulations, or

(c) gives an inspector false or misleading information,
commits an offence.

Inspection system and annual inspection commitment

6. (1) The competent authority shall ensure that inspections are carried out in accordance with these Regulations.

(2) The competent authority shall—

- (a) inspect all ships which are due for a mandatory inspection (referred to in these Regulations as “Priority I” ships) referred to in Regulation 9(2)(b) calling at ports and anchorages in the State, and
- (b) carry out annually a total number of inspections of Priority I ships referred to in Regulation 9(2)(b) and ships which are eligible for inspection (referred to in these Regulations as “Priority II” ships) referred to in Regulation 9(3)(b), corresponding at least to the State’s share of the total number of inspections to be carried out annually within the European Union and the Paris MOU region.

Postponement of inspections and exceptional circumstances

7. (1) The competent authority may decide to postpone the inspection of a Priority I ship if the inspection may be carried out—

- (a) at the next call of the ship in the State, but only if the ship does not call at any other port in the European Union or the Paris MOU region in between and the postponement is for not more than 15 days, or
- (b) in another port of call within the European Union or the Paris MOU region within 15 days, but only if the competent authority in the state in which that port of call is located has agreed in advance to carry out the inspection.

(2) The competent authority may decide not to carry out an inspection on a Priority I ship if—

- (a) carrying out the inspection would create a risk to the safety of inspectors, the ship, the ship’s crew, the port, or to the marine environment, or
- (b) subject to paragraph (3), the ship call takes place only during night time.

(3) The competent authority shall take the measures necessary to ensure that Priority I ships which call regularly during night time are inspected.

Notification of arrival of ships

8. (1) The operator, agent or master of a ship which is eligible for an expanded inspection in accordance with Regulation 11 and which is bound for a port or anchorage in the State shall notify its arrival to the competent authority

using SafeSeasIreland, or where SafeSeasIreland is unavailable for technical reasons by telephone, fax, email or other electronic means—

- (a) at least 72 hours in advance,
- (b) if the voyage time is less than 72 hours, at the latest, at the time the ship leaves the previous port, or
- (c) if the port of call is not known or it is changed during the voyage, as soon as the information is available,

in accordance with Annex III.

(2) The operator, agent or master of a ship who fails to comply with paragraph (1) each commits an offence.

Selection of ships for inspection

9. (1) The competent authority shall select ships for inspection based on the ships' risk profiles.

(2) The following ships shall be selected for inspection:

- (a) ships to which overriding factors listed in Annex I Part II, 2A apply;
- (b) Priority I ships in accordance with the selection scheme described in Annex I, Part II 3A.

(3) The following ships may be selected for inspection:

- (a) ships to which unexpected factors listed in Annex I, Part II 2B apply;
- (b) Priority II ships in accordance with Annex I, Part II 3B.

Initial and more detailed inspections

10. (1) An inspector shall carry out an initial inspection or a more detailed inspection on any ship selected under Regulation 9 and shall, in the case of an initial inspection, as a minimum—

- (a) check the certificates and documents listed in Annex IV required to be kept on board in accordance with European Union maritime legislation and Conventions relating to safety and security,
- (b) verify, where appropriate, whether outstanding deficiencies found during the previous inspection carried out by a Member State or by a state signatory to the Paris MOU have been rectified, and
- (c) satisfy himself or herself of the overall condition (including the hygiene) of the ship, including the engine room and accommodation.

(2) Where, after the initial inspection referred to in paragraph (1), an inspector has clear grounds to believe that the condition of a ship or of its equipment or crew does not substantially meet the relevant requirements of one or more

of the Conventions he or she shall carry out a more detailed inspection, including further checking of compliance with on-board operational requirements.

(3) For the purposes of paragraph (2), 'clear grounds' exist when the inspector finds evidence which, in his or her professional judgement, warrants a more detailed inspection of the ship, its equipment or its crew, and the matters set out in Annex V shall constitute such evidence.

(4) Without prejudice to paragraph (2), an inspector shall carry out an initial or more detailed inspection of a Priority I ship in accordance with Annex I, Part II 3A.

(5) Without prejudice to paragraph (2), where an inspector has decided to inspect a Priority II ship, or in the case of an unexpected factor, an inspector shall carry out an initial or more detailed inspection in accordance with Annex I, Part II 3B.

Expanded inspection

11. (1) The competent authority shall carry out expanded inspections, as set out in Annex VII, in accordance with this Regulation.

(2) The following categories of ships are eligible for an expanded inspection in accordance with Annex I, Part II 3A and 3B:

- (a) ships with a high risk profile;
- (b) passenger ships, oil tankers, gas or chemical tankers or bulk carriers, older than 12 years of age;
- (c) ships with a high risk profile or passenger ships, oil tankers, gas or chemical tankers or bulk carriers, older than 12 years of age, in cases of overriding or unexpected factors;
- (d) ships subject to a re-inspection following a refusal of access order issued in accordance with Regulation 13.

(3) The competent authority shall carry out an expanded inspection of Priority I ships in accordance with Annex I, Part II 3A.

(4) Where the competent authority has decided to inspect a Priority II ship the competent authority shall carry out an expanded inspection of that ship in accordance with Annex I, Part II 3B.

(5) Where an expanded inspection is to be carried out the operator and master of the ship shall each ensure that sufficient time is available in the operating schedule to allow it to take place.

(6) Without prejudice to control measures required for security purposes, the operator and master of the ship shall each ensure that it remains in the port until any expanded inspection is completed.

(7) On receipt of a pre-notification provided by a ship eligible for a periodic expanded inspection, the competent authority shall inform the operator, agent or master of the ship if no expanded inspection will be carried out.

(8) This Regulation also applies to ro-ro ferries and high-speed passenger craft, referred to in Article 2(a) and (b) of the Mandatory Surveys Directive.

(9) An operator or master of a ship who fails to comply with paragraph (5) or (6) each commits an offence.

Safety and security guidelines and procedures

12. (1) Inspectors shall follow the procedures and guidelines for the control of ships as specified in Annex VI.

(2) In relation to security checks the competent authority shall apply the relevant procedures set out in Annex VI to all ships referred to in Articles 3(1), (2) and (3) of Regulation (EC) No. 725/2004 of the European Parliament and of the Council of 31 March 2004⁸ calling at a port or anchorage in the State, unless the ship is registered in the State.

(3) Without prejudice to a prevention of operation of a ro-ro ferry or a high-speed passenger craft decided in accordance with Article 10 of the Mandatory Surveys Directive, the provisions of these Regulations concerning rectification of deficiencies, detention, refusal of access, follow-up to inspections, detentions and refusal of access, as appropriate, shall apply.

Refusal of access measures concerning certain ships

13. (1) In circumstances other than those set out in Regulation 18(8), the competent authority shall issue a refusal of access order to any ship which—

- (a) flies the flag of a state whose detention rate falls into the black list, adopted in accordance with the Paris MOU on the basis of information recorded in the inspection database, and as published annually, by the Commission and has been detained or has been issued with a prevention of operation order under the Mandatory Surveys Directive more than twice in the course of the preceding 36 months in a port or anchorage of a Member State or of a state signatory of the Paris MOU, or
- (b) flies the flag of a state whose detention rate falls into the grey list adopted in accordance with the Paris MOU on the basis of information recorded in the inspection database, and as published annually, by the Commission and has been detained or has been issued with a prevention of operation order under the Mandatory Surveys Directive more than twice in the course of the preceding 24 months, in a port or anchorage of a Member State or of a state signatory of the Paris MOU,

and shall notify port authorities that such ship is to be refused access to ports and anchorages in the State.

⁸OJ No. L 129, 29.4.2004, p. 6

(2) Refusal of access shall be applicable as soon as—

- (a) the ship leaves the port or anchorage where it has been the subject of a third detention, and
- (b) a refusal of access order has been issued.

(3) The competent authority may lift a refusal of access order only after a period of 3 months, or in the case of a second refusal of access order 12 months, has passed from the date of issue of the order and when the conditions in paragraphs 3 to 9 of Annex VIII have been met.

(4) Any subsequent detention in a port or anchorage within the European Union shall result in the ship being refused access to any port or anchorage in the State. This third refusal of access order may be lifted only if—

- (a) a period of 24 months has passed from the date of issue of the order,
- (b) the ship flies the flag of a state which falls neither into the black list nor the grey list referred to in paragraph (1),
- (c) the statutory and classification certificates of the ship are issued by an organisation or organisations recognised under Regulation (EC) No. 391/2009 of the European Parliament and of the Council of 23 April 2009⁹ on common rules and standards for ship inspection and survey organisations,
- (d) the ship is managed by a company with a high performance according to Annex I, Part I 1, and
- (e) the conditions in paragraphs 3 to 9 of Annex VIII have been met.

(5) Any ship that is the subject of a third refusal of access order referred to in paragraph (4) and that, after a period of 24 months has passed from the date of issue of the order, does not meet the criteria specified in subparagraphs (a) to (e) of paragraph (4) shall be permanently refused access to any port or anchorage in the State.

(6) Any subsequent detention in a port or anchorage within the European Union after the third refusal of access shall result in the ship being permanently refused access to any port or anchorage in the State.

(7) For the purpose of this Regulation, the competent authority shall comply with the procedures laid down in Annex VIII.

Report of inspection to ship's master

14. On completion of an initial inspection, a more detailed inspection or an expanded inspection of a ship, the inspector shall draw up a report in accordance with Annex IX and shall furnish a copy to the ship's master.

⁹OJ No. L 131, 28.5.2009, p.11

Complaints

15. (1) The competent authority shall carry out a rapid initial assessment of any complaint it receives in order to determine whether or not it is justified.

(2) Where the competent authority decides a complaint is manifestly unfounded, the competent authority shall inform the complainant of its decision and of the reasons for it.

(3) Where the competent authority decides that a complaint is justified, the competent authority shall take whatever action is necessary on foot of the complaint, in particular, it shall ensure that any person directly concerned by the complaint has an opportunity to make his or her views known.

(4) The identity of any person making a complaint to the competent authority shall not be revealed to the master or the owner of the ship concerned and an inspector shall ensure confidentiality during any interviews with crew members.

(5) The competent authority shall inform the flag state administration, and where appropriate the International Labour Organisation, of complaints not manifestly unfounded and of follow-up actions taken.

Rectification and detention

16. (1) Where an inspection confirms or reveals deficiencies in a ship which are clearly hazardous to safety, health or the environment, the competent authority shall ensure that the ship is detained or that the operation in the course of which the deficiencies were revealed is stopped.

(2) For the purposes of paragraph (1) the competent authority may cause a direction to be given to the owner or master of a ship, or to a port authority or harbour master and the owner or master, or port authority or harbour master, as the case may be, shall comply with the direction.

(3) In determining whether or not a ship is to be detained an inspector shall apply the criteria set out in Annex X.

(4) If the inspection reveals that the ship is not equipped with a functioning voyage data recorder, when use of such recorder is compulsory in accordance with Directive 2002/59/EC⁷, the competent authority shall ensure that the ship is detained or, where the deficiency cannot be readily rectified in the port of detention, the competent authority may—

(a) allow the ship to proceed to the appropriate repair yard nearest to the port of detention where it may be readily rectified, or

(b) require the deficiency to be rectified within a maximum period of 30 days, as provided for in the guidelines developed by the Paris MOU,

and for these purposes the procedures laid down in Regulation 18 shall apply.

(5) In exceptional circumstances, where the overall condition of a ship is obviously substandard, the competent authority may suspend the inspection of

that ship until the responsible parties take the steps necessary to ensure that it complies with the relevant requirements of the Conventions.

(6) When a ship is detained, the competent authority shall immediately inform in writing and provide with a copy of the report of inspection—

- (a) the flag state administration,
- (b) when this is not possible, the Consul of that state, or
- (c) in his or her absence, the nearest diplomatic representative of that state, and
- (d) where relevant, nominated surveyors or recognised organisations responsible for the issue of classification certificates or statutory certificates in accordance with the Conventions,

of all the circumstances in which intervention was considered necessary.

(7) If a ship is unduly detained or delayed by the exercise of port state control under these Regulations, the owner or operator is entitled to compensation for any loss or damage suffered.

(8) The burden of proving that a ship is unduly detained or delayed lies with the owner or operator of the ship.

(9) The competent authority may allow a detained ship to be moved to another part of the port if it is safe to do so, in order to alleviate port congestion.

(10) The competent authority shall inform the port authority at the earliest convenience when a ship is detained.

(11) An owner or a master of a ship, or a port authority or harbour master, who fails to comply with a direction under paragraph (2) commits an offence.

Right of appeal

17. (1) The owner or operator of a ship, or his or her representative in the State, shall have a right of appeal against a detention or refusal of access by the competent authority but the lodging of such an appeal shall not cause the detention or refusal of access to be suspended.

(2) The competent authority shall notify the master of a ship so detained, or refused access, of the practical arrangements for lodging an appeal.

(3) An appeal under this Regulation shall be made to a judge of the Circuit Court in whose Circuit the port in which the ship is, or has been, detained is located and shall be made within 7 working days of the commencement of the detention or refusal of access, unless the Court considers that there is good and sufficient reason for extending that period.

(4) On hearing an appeal under paragraph (1), the Court may confirm or vary the detention, or refusal of access, or allow the appeal.

(5) A decision of the Circuit Court on an appeal under paragraph (1) shall be final, save that, by leave of the Court, an appeal from its decision shall lie to the High Court on a specified question of law.

(6) When, as a result of an appeal or of a request made by the owner or the operator of a ship or his or her representative, a detention or a refusal of access order is revoked or amended, the competent authority shall—

- (a) ensure that the inspection database is amended accordingly without delay, and
- (b) within 24 hours of such a decision, ensure that the information published in accordance with Article 26 is rectified.

Follow-up to inspections and detention

18. (1) Where deficiencies referred to in Regulation 16(1) cannot be rectified in the port of inspection, the competent authority may allow the ship to proceed without undue delay to the appropriate repair yard nearest to the port of detention, as chosen by the master and the competent authorities concerned, where follow-up action can be taken, subject to any conditions determined by the competent authority of the flag state, and agreed by the competent authority, to ensure that the ship can proceed without risk to the safety and health of passengers or crew, or risk to other ships, and without there being an unreasonable threat of harm to the marine environment.

(2) In the circumstances referred to in paragraph (1), the competent authority shall notify the competent authority of the state where the repair yard is situated, the parties mentioned in Regulation 16(6) and any other appropriate authority of all the conditions for the voyage.

(3) If the competent authority receives, from the competent authority of another Member State, a notification referred to in paragraph (2), the competent authority shall inform the notifying authority of any action taken.

(4) Where a decision is made to send a ship to a repair yard due to a lack of compliance with International Maritime Organization Resolution A. 744(18), either with respect to its documentation or structural failures and deficiencies, the competent authority may require that the necessary thickness measurements be carried out in the port of detention before the ship is allowed to sail.

(5) The port authority at any port in the State shall, if so instructed by the competent authority, refuse entry into the port or an anchorage to any ship referred to in paragraph (1) which—

- (a) proceeds to sea without complying with the conditions determined by the competent authority of a Member State in the port of inspection, or
- (b) refuses to comply with the applicable requirements of the Conventions by not calling into the indicated repair yard,

until the owner or operator provides evidence, to the satisfaction of the competent authority in the Member State where the ship was found defective, demonstrating that the ship fully complies with all applicable requirements of the Conventions and that competent authority has advised the port authority accordingly.

(6) In the circumstances referred to in paragraph (5)(a), where the ship was found to be defective in the State, the competent authority shall immediately alert the competent authorities of all other Member States.

(7) In the circumstances referred to in paragraph (5)(b), where the indicated repair yard is in the State, the competent authority shall immediately alert the competent authorities of all other Member States.

(8) Notwithstanding paragraph (5), a port authority may permit access to the port or a specific anchorage—

- (a) in the event of force majeure or overriding safety considerations,
- (b) to reduce or minimise the risk of pollution, or
- (c) to have deficiencies rectified,

but only if adequate measures, to the satisfaction of the competent authority, have been implemented by the owner, the operator or the master of the ship to ensure safe entry and the competent authority has advised the port authority.

(9) Subject to paragraph (8), a port authority which fails to comply with an instruction from the competent authority under paragraph (5) commits an offence.

(10) Subject to paragraph (8), where a ship is refused entry to the port or anchorage under paragraph (5) but enters or attempts to enter such a port or anchorage, the master and the owner or operator of the ship each commits an offence.

Reports from pilots and port authorities

19. (1) If a pilot engaged in berthing or unberthing a ship in the State, or engaged on a ship bound for a port in, or in transit to, another Member State, learns in the course of the pilot's normal duties that there are apparent anomalies which may prejudice the safe navigation of the ship or which may pose a threat of harm to the marine environment, the pilot shall immediately inform the competent authority by the quickest means possible.

(2) If a port authority, when exercising its normal duties, learns that a ship within its port has apparent anomalies which may prejudice the safety of the ship or poses an unreasonable threat of harm to the marine environment, it shall immediately inform the competent authority.

(3) In informing the competent authority under paragraph (1) or (2), a pilot or a port authority shall, using SafeSeasIreland, or where SafeSeasIreland is

unavailable for technical reasons by telephone, fax, email or other electronic means, report at least the following information—

- (a) ship information (name, IMO identification number, call sign and flag);
 - (b) sailing information (last port of call, time of arrival, time of departure, port of destination); and
 - (c) description of apparent anomalies found on board.
- (4) The competent authority shall ensure that follow-up action is taken on apparent anomalies notified by pilots and port authorities and shall record the details of action taken.
- (5) A pilot who fails to comply with paragraph (1) or (3) commits an offence.
- (6) A port authority that fails to comply with paragraph (2) or (3) commits an offence.

Inspection database information

20. (1) The operator, agent or master of a ship, other than a ship fitted with an operational automatic identification system which meets the standards drawn up by the International Maritime Organization and complies with the European Communities (Vessel Traffic Monitoring and Information Systems) Regulations 2010 (S.I. No. 573 of 2010), bound for a port or anchorage in the State shall notify the actual time of arrival and the relevant port identifier, as specified by marine notice, to the competent authority using SafeSeasIreland or such other method as is specified for that purpose from time to time by marine notice.

(2) The operator, agent or master of a ship, other than a ship fitted with an operational automatic identification system which meets the standards drawn up by the International Maritime Organization and complies with the European Communities (Vessel Traffic Monitoring and Information Systems) Regulations 2010 (S.I. No. 573 of 2010), leaving a port or anchorage in the State shall notify the actual time of departure and the relevant port identifier, as specified by marine notice, to the competent authority using SafeSeasIreland or such other method as is specified for that purpose from time to time by marine notice.

(3) The competent authority shall ensure that information related to inspections carried out in accordance with the Port State Control Directive is transferred to the inspection database as soon as an inspection report is completed or a detention lifted.

(4) The operator, agent or a master of a ship who fails to comply with paragraph (1) or (2) each commits an offence.

Exchange of information

21. (1) Port authorities shall provide the competent authority with the following types of information in their possession:

- (a) information notified in accordance with Regulation 8 and Annex III;
- (b) information concerning ships which have failed to notify any information according to the requirements of the Port State Control Directive, Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000¹⁰, Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002⁷, and, if appropriate, Regulation (EC) No. 725/2004 of the European Parliament and of the Council of 31 March 2004⁸;
- (c) information concerning ships which have proceeded to sea without having complied with Articles 7 or 10 of Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000¹⁰;
- (d) information concerning ships which have been denied entry or expelled from a port on security grounds;
- (e) information on apparent anomalies in accordance with Regulation 19.

(2) Where the Minister is not satisfied that adequate arrangements are in place to ensure that the competent authority can obtain all relevant information, the Minister may direct a port authority or other relevant body to put in place such arrangements as the Minister considers necessary.

(3) A port authority or other body that fails to comply with paragraph (1), or with a direction by the Minister under paragraph (2), commits an offence.

Reimbursement of costs

22. (1) If the inspections referred to in Regulations 10 and 11 confirm or reveal deficiencies in relation to the requirements of one or more of the Conventions warranting the detention of a ship, all costs relating to the inspections in any normal accounting period (including any statutory fees for its detention and reinspection) are payable by the owner or operator of the ship or his or her representative in the State.

(2) All costs relating to inspections carried out under Regulation 13 and Regulation 18(5) by the competent authority are payable by the owner or operator of the ship.

(3) In the case of the detention of a ship, all costs relating to the detention in port are payable by the owner or operator of the ship.

(4) The detention of the ship shall not be lifted until full payment has been made or a sufficient security which is satisfactory to the competent authority has been given for the reimbursement of the costs.

Fixed penalty notice

23. (1) If an inspector has reasonable grounds for suspecting that a person is committing or has committed an offence under these Regulations, he or she may serve a notice in writing on that person stating that—

¹⁰OJ No. L 332, 28.12.2000, p. 81

- (a) the person is alleged to have committed the offence,
 - (b) the person may during the period of 28 days from the date of the notice make a payment of €300 to the Minister accompanied by the notice, and
 - (c) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.
- (2) If notice is given under paragraph (1)—
- (a) a person to whom the notice applies may, during the period specified in the notice, make to the Minister at the address specified in the notice the payment specified in the notice accompanied by the notice,
 - (b) the Minister may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable by the person who made it, and
 - (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.
- (3) In a prosecution for an offence under these Regulations, the onus of proving that a payment pursuant to a notice under this Regulation has been made lies on the defendant.

Offences and Penalties

24. (1) Where an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to have been attributable to the 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 any such capacity, that person as well as the body corporate commits an offence and is liable to be proceeded against and punished as if he or she were guilty of first-mentioned offence.

(2) Proceedings for an offence under these Regulations may be brought and prosecuted by the Minister.

(3) A person guilty of an offence under Regulation 5(7), 8(2), 11(9), 16(11), 18(9) or (10), 19(5) or (6), 20(4) or 21(3) is liable on summary conviction, to a fine not exceeding €5,000.

References to earlier Directive

25. References in existing laws, regulations and administrative provisions to Council Directive 95/21/EC of 19 June 1995¹¹, as amended, shall be construed as references to Directive 2009/16/EC of the European Parliament and of the

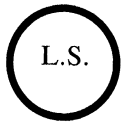
¹¹OJ No. L157, 7.7.1995, p. 1

Council of 23 April 2009¹ and shall be read in accordance with the correlation table set out in Annex XVI to that Directive.

Revocations

26. The following are revoked:

- (a) European Communities Merchant Shipping (Port State Control) Regulations 1998 (S.I. No. 145 of 1998);
- (b) European Communities Merchant Shipping (Port State Control) (Amendment) Regulations 1998 (S.I. No. 557 of 1998);
- (c) European Communities Merchant Shipping (Port State Control) (Amendment) Regulations 2001 (S.I. No. 213 of 2001);
- (d) European Communities Merchant Shipping (Port State Control) (Amendment) Regulations 2003 (S.I. No. 243 of 2003);
- (e) European Communities Merchant Shipping (Port State Control) (Amendment) (No. 2) Regulations 2003 (S.I. No. 640 of 2003);
- (f) European Communities (Port State Control) (Amendment) Regulations 2007 (S.I. No. 112 of 2007);
- (g) European Communities Merchant Shipping (Port State Control) (Amendment) Regulations 2009 (S.I. No. 258 of 2009).



GIVEN under my Official Seal,
23 December 2010.

NOEL DEMPSEY,
Minister for Transport.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations give effect to Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control and to Commission Directive 96/40/EC of 25 June 1996 establishing a common model for an identity card for inspectors carrying out port State control.

The Directive is a recast of previous directives governing port State control with the addition of new provisions. The main objective of the Directive is to reinforce and improve the effectiveness of port State control through establishing a new inspection regime relating to standards for ship safety, pollution prevention and shipboard living and working conditions. Under the new regime all ships will be inspected, with high risk ships being inspected more frequently than low risk ships. These Regulations come into operation on 1st January 2011.

BAILE ÁTHA CLIATH
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Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
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€4.57



Wt. (B28176). 405. 1/11. Cahill. Gr. 30-15.