

EXPLANATORY MEMORANDUM TO
THE PORT SERVICES REGULATIONS 2019
2019 No. 575

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The objective of this instrument is to support the operation of Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports ('the PSR') in order to ensure that the PSR is workable and enforceable in the United Kingdom. The PSR applies to Member States from 24 March 2019. This instrument is therefore required to ensure that the United Kingdom fully complies with its obligations under the Regulation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The PSR sets out rules on financial transparency, provision of port services and infrastructure charges. The PSR entered into force on 23 March 2017 and shall apply to Member States from 24 March 2019. By virtue of section 3 of the European Union (Withdrawal) Act 2018 ('the 2018 Act') the PSR will form part of domestic law on and after exit day.

- 6.2 Although the PSR will be directly applicable in United Kingdom law, certain measures require domestic legislation to ensure that the United Kingdom fully complies with its obligations under the Regulation. The purpose of this instrument is to fulfil that requirement using powers in section 2(2) of the European Communities Act 1972. The effect of section 2 of the 2018 Act will be to ensure these regulations continue to have effect in domestic law on and after exit day.
- 6.3 The instrument will also implement two discretionary elements of the PSR. The first enables Member States to allow smaller ports to limit the number of service providers operating at those ports (Article 6). The second enables Member States to relieve smaller ports of the financial transparency measures (Article 11) where compliance could result in a disproportionate administrative burden.
- 6.4 Explanatory memorandum on European Legislation 13764/14¹, submitted by the Department for Transport to Parliament on 7 October 2014, sets out the scrutiny history of the PSR up until that point. Since then, further Ministerial letters have been provided to the House of Commons European Scrutiny Committee in January and February 2016 – the first in advance of a discussion of the proposal by the European Parliament's Transport and Tourism (TRAN) Committee and the latter reporting on the outcome of the discussion.
- 6.5 The European Scrutiny Committee considered the matter further at its meeting on 10 February 2016 and noted that it would give port employers and unions the opportunity to comment further before reporting further.
- 6.6 John Hayes MP, the relevant Transport Minister, gave evidence to the European Scrutiny Committee on 14 December 2016. He confirmed the Government's intention to vote against the adoption of the proposal². He subsequently wrote to the Committee and to the House of Lords European Union Committee in December 2014 to confirm the Government's intention. The United Kingdom duly voted against the Regulation and entered a minute statement. However, all other Member States voted in favour so the Regulation was carried.

7. Policy background

What is being done and why?

- 7.1 The aim of the PSR is to encourage competition between ports in Member State countries by establishing a framework for the provision of port services, common rules on financial transparency and on port service and port infrastructure charges.
- 7.2 The port services covered by the PSR are bunkering (provision of fuel), cargo-handling, mooring, passenger services, collection of ship-generated waste and cargo residues, pilotage, and towage. Dredging is only covered to the extent that the PSR requires ports to keep separate accounts of public funding received for dredging.
- 7.3 Chapter II of the PSR provides that access to the market for the provision of port services in maritime ports may be subject to: minimum requirements for the provision of port services; limitations on the number of providers; public service obligations and restrictions related to internal operators. It provides safeguards for employees' rights

¹ [Explanatory Memorandum on European Legislation](#) submitted by the Department for Transport - Proposal for a Regulation of the European Parliament and of the Council establishing a framework on market access to port services and financial transparency of ports (7 October 2014)

² [European Scrutiny Committee evidence session on Ports](#) (14 December 2016)

and an exemption from the requirements of Chapter II for cargo-handling, passenger services and pilotage.

- 7.4 Chapter III of the PSR sets out requirements for transparency of public sector funding of ports and port services, and requires Member States to ensure that ports impose charges for the use of infrastructure, facilities and services.
- 7.5 Chapter IV sets out general requirements for the training of staff; consultation with port users and other stakeholders; and the handling of complaints, appeals and penalties.
- 7.6 The PSR applies to all maritime ports of the trans-European transport network ('TEN-T') as listed in Annex II to Regulation (EU) No. 1315/2013 ('the TEN-T Regulation'). There are approximately 45 TEN-T ports in the United Kingdom.
- 7.7 United Kingdom ports already operate in a competitive environment and receive very little public funding. The Government argued that the application of the PSR to such ports was unnecessary. The United Kingdom voted against adoption of the PSR – the only Member State to do so. The United Kingdom argued that, while the PSR was significantly less onerous than originally proposed, its provisions (other than those promoting transparency of public funding) were unnecessary and largely inappropriate for promoting investment and efficiency at European ports, and particularly those in the United Kingdom. This remains the Government's view.
- 7.8 Nonetheless, the United Kingdom must comply with its EU legal obligations whilst it is still a member of the EU, and supplementary domestic legislation is required in order to implement the PSR fully.
- 7.9 To that end this instrument will:
 - implement discretionary aspects of the PSR to enable smaller ports to place limits on the number of service providers operating at those ports (Article 6) and relieve them of the financial transparency measures contained in Article 11 where compliance with those measures would result in a disproportionate administrative burden;
 - fulfil the United Kingdom's obligation under Article 13 of the PSR to ensure that a port infrastructure charge is levied;
 - ensure compliance with Article 17 of the PSR which requires that port stakeholders are informed of the identity of public authorities that have the power to demand information concerning financial transparency, port service charges and port infrastructure charges under Articles 11(5), 12(3) and 13(6) of the PSR;
 - provide a procedure for handling complaints arising from the application of the PSR (as required by Article 16) with complaints about non-compliance being made to the Secretary of State, Ministers in Wales and Scotland and the Department for Infrastructure in Northern Ireland as appropriate.
 - provide an appeals procedure (as required by Article 18 of the PSR);
 - provide for the investigation and resolution of contraventions of the instrument and of the PSR;
 - fulfil the United Kingdom's obligation under Article 19 of the PSR by giving enforcement authorities the power to impose civil penalties where the complaints and contraventions procedures have been exhausted.

8. European Union (Withdrawal) Act

- 8.1 This instrument does not relate to withdrawal from the European Union nor trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 There are no plans to consolidate the legislation at this time.

10. Consultation outcome

- 10.1 The Department consulted the ports and shipping sectors during negotiations on the PSR. The settled view of the United Kingdom ports sector was that the PSR was unnecessary in United Kingdom circumstances. The UK Chamber of Shipping did not dissent. United Kingdom ports already operate competitively and are different from those in some parts of the Continent which receive significant public funding. Although the proposal was changed significantly and the burdens reduced, the sector continues to believe that the PSR should not apply to United Kingdom ports.
- 10.2 The Government has not carried out a formal consultation on this instrument because it only supplements the PSR on which, as noted above, there was extensive consultation with the industry. However, the Government has had regular discussions with the industry before and since the PSR came into force on 23 March 2017 (it will apply to Member States from 24 March 2019), and has discussed its broad approach during such meetings. No objections have been received to this proposed approach.
- 10.3 The Government has consulted the devolved administrations in Wales and Scotland and the Northern Ireland Executive on this instrument. The instrument includes provisions which have been agreed with the relevant bodies on how the instrument should apply in Northern Ireland, Scotland and Wales.

11. Guidance

- 11.1 The Department does not propose to issue guidance on this instrument nor on the PSR.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies. The effects will be largely administrative regarding the transparency of public finances.
- 12.2 There is no, or no significant, impact on the public sector. The effects will be largely administrative, concerning the transparency of public finances.
- 12.3 An Impact Assessment has not been prepared for this instrument because of the relatively low level of impact per business.

13. Regulating small business

- 13.1 The legislation applies indirectly to activities that are in some cases undertaken by small businesses, but is not expected to have a significant effect on such businesses.

14. Monitoring & review

- 14.1 The Regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Nusrat Ghani has made the following statement:

“Having had regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 and the Statutory Guidance under s.31 of that Act, I have decided that it is not appropriate to make provision for review of this instrument because it would be disproportionate to do so taking into account the economic impact of the Regulations. The impact on businesses is expected to be minimal and would not reach the threshold impact of greater or less than +/- £5 million (net annualised). There are no additional factors which would make it desirable to include such a clause.”

15. Contact

- 15.1 Philip Grindrod (Maritime International and Trade) at the Department for Transport Telephone: 020 7944 4412 or email: Philip.Grindrod@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Haroona Chughtai, Deputy Director for Maritime International and Trade, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Nusrat Ghani MP, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.