
STATUTORY INSTRUMENTS

2019 No. 575

TRANSPORT

HARBOURS, DOCKS, PIERS AND FERRIES

COMPETITION

The Port Services Regulations 2019

<i>Made</i>	- - - -	<i>11th March 2019</i>
<i>Laid before Parliament</i>		<i>15th March 2019</i>
<i>Coming into force</i>	- -	<i>6th April 2019</i>

The Secretary of State is a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ (“the 1972 Act”) in relation to measures relating to maritime transport.

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

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Port Services Regulations 2019 and come into force on 6th April 2019.

Application

2. These Regulations apply to maritime ports in the United Kingdom to which Regulation (EU) 2017/352 of the European Parliament and of the Council establishing a framework for the provision of port services and common rules on the financial transparency of ports⁽³⁾ applies.

(1) [S.I. 1994/757](#). See articles 2 and 3 and the Schedule.

(2) [1972 c. 68](#). Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act [2006 \(c. 51\)](#) and by Part 1 of the Schedule to the European Union (Amendment) Act [2008 \(c. 7\)](#).

(3) OJ No. L 57, 3.3.2017, p. 1; see Article 1(4).

Interpretation

3.—(1) In these Regulations—

“comprehensive network” means the comprehensive network referred to in Article 9 of Regulation (EU) No 1315/2013 of the European Parliament and of the Council on Union guidelines for the development of the trans-European transport network⁽⁴⁾;

“enforcement authority” means—

- (a) in the case of ports in England and reserved trust ports, the Secretary of State;
- (b) in the case of ports in Wales except reserved trust ports, the Welsh Ministers;
- (c) in the case of ports in Scotland, the Scottish Ministers;
- (d) in the case of ports in Northern Ireland, the Department for Infrastructure;

“notice” means a written notice;

“port” means a port referred to in regulation 2;

“port body” means—

- (a) a managing body of a port;
- (b) an internal operator; or
- (c) a provider of port services;

“reserved trust port” has the meaning given in section 32 of the Wales Act 2017⁽⁵⁾;

“serve” means send by ordinary first class post or any other form of communication that the sender and recipient agree to in writing; and

“small port” means a port which is part of the comprehensive network but whose total annual cargo volume, either for bulk or for non-bulk cargo handling, does not exceed 0.1% of the corresponding annual cargo volume handled in all maritime ports of the European Union where the reference amount for this total volume is the latest available three-year average, based on the statistics published by Eurostat⁽⁶⁾; and

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

(2) Expressions and words used in these Regulations which are used in the EU Regulation have the same meaning as in the EU Regulation unless otherwise stated.

PART 2

Port management

Limit on the number of providers of port services at small ports

4. The managing body of a small port may limit the number of providers of port services for a given port service in accordance with the provisions of Article 6 of the EU Regulation.

⁽⁴⁾ OJ No. L 348, 20.12.2013, p. 1.

⁽⁵⁾ 2017 c. 4.

⁽⁶⁾ Eurostat: <https://ec.europa.eu/eurostat>.

Transparency of financial relations at small ports

5.—(1) Where the managing body of a small port considers that the obligations imposed under paragraph 2 of Article 11 of the EU Regulation would result in a disproportionate administrative burden on that managing body, it may submit a written request to the enforcement authority asking the authority to relieve it of those obligations.

(2) Each such request must be accompanied by—

- (a) a statement of the reasons for making the request; and
- (b) supporting evidence.

(3) During the period of 60 days beginning with the day on which the enforcement authority receives such a request, it must—

- (a) consider that request; and
- (b) inform the managing body of its decision.

(4) If the enforcement authority grants the request, the managing body of the small port—

- (a) is not required to comply with the obligations arising under paragraph 2 of Article 11 of the EU Regulation; but
- (b) must ensure that the following items are shown in the accounts of that port in a way that is fully transparent—
 - (i) the amount of any public funds received; and
 - (ii) the uses to which those funds are put in the provision of port services.

Port infrastructure charge

6. The managing body of a port must ensure that a port infrastructure charge (as referred to in Article 13 of the EU Regulation) is levied in such a way as to benefit that managing body either directly or indirectly.

Relevant authorities

7. The managing body of a port must provide readily accessible details of the relevant authorities referred to in Articles 11(5), 12(3) and 13(6) of the EU Regulation on its website.

PART 3

Complaints and appeals

Complaints

8. In this Part, “complaint” means a complaint arising from the application of the EU Regulation which concerns the acts or omissions of a port body.

Complaints handling procedure

9.—(1) During the period of 45 days beginning with the day on which the act or omission complained of took place, a person may serve notice of a complaint (“complaint notice”) on the enforcement authority.

(2) During the period of 14 days beginning with the day on which the enforcement authority receives a complaint notice (“notification period”), it must serve a copy of the complaint on the port body whose act or omission is complained of (“respondent”).

(3) During the notification period, the enforcement authority must serve a notice on the respondent requiring the respondent to publish the complaint notice during the period of 14 days beginning with the day on which the enforcement authority serves such a notice on the respondent (“publication period”).

(4) During the publication period, the respondent must publish the complaint notice in publications and locations likely to come to the attention of the following persons and bodies (“interested parties”)—

- (a) persons having a legitimate interest in the complaint; and
- (b) representative bodies of persons having a legitimate interest in the complaint.

(5) During the period of 60 days beginning with the day on which the enforcement authority receives a complaint (“preliminary consideration period”)—

- (a) the respondent and interested parties may make representations regarding the complaint to the enforcement authority; and
- (b) the enforcement authority may serve notices (“complaint information notices”) on port bodies and port users (“potential contributors”) requiring them to provide information that may be relevant to the complaint (“complaint information”).

(6) During the period of 30 days beginning with the day on which the enforcement authority serves a complaint information notice (“complaint information period”), potential contributors on whom a complaint information notice is served must use reasonable endeavours to provide the enforcement authority with the complaint information specified in that notice.

(7) The enforcement authority may, if it sees fit, set up an inquiry to investigate and advise on a complaint.

(8) The enforcement authority must make its decision on the complaint (“complaint decision”) during the period of 60 days beginning with the later of—

- (a) the day on which the preliminary consideration period ends; and
- (b) the day on which the complaint information period ends.

(9) In its complaint decision, the enforcement authority may—

- (a) uphold or dismiss one or more of the elements of the complaint; and
- (b) order the respondent to take steps to remedy those elements of the complaint that it upholds (“corrective steps”).

(10) In coming to a complaint decision, the enforcement authority must take account of—

- (a) the substance of the complaint;
- (b) representations made under paragraph (5)(a);
- (c) complaint information received from potential contributors;
- (d) the findings of an inquiry set up under paragraph (7); and
- (e) the obligations of the respondent under—
 - (i) the EU Regulation; and
 - (ii) these Regulations.

(11) During the period of 14 days beginning with the day on which the enforcement authority makes the complaint decision, the enforcement authority must—

- (a) serve notice of the complaint decision (“complaint decision notice”) on the parties to the complaint; and
- (b) publish the complaint decision notice.

(12) Unless the respondent appeals against the complaint decision in accordance with regulation 11(1), the respondent must, within the period of 180 days beginning with the day on which the enforcement authority serves the complaint decision notice on the respondent (“compliance period”), take the corrective steps set out in the complaint decision.

(13) The enforcement authority may extend the compliance period where it considers it reasonable to do so.

Approach to complaints handling

10. Complaints must be handled in a way that—

- (a) is impartial and transparent;
- (b) duly respects the right of the respondent to freely conduct business; and
- (c) is otherwise consistent with the requirements of the EU Regulation.

Appeals against complaint decisions

11.—(1) During the period of 30 days beginning with the day on which the enforcement authority serves a complaint decision notice on the parties to a complaint, the following persons may appeal against the decision by serving a notice of appeal (“appeal notice”) on the enforcement authority—

- (a) the parties to the complaint; and
- (b) other persons with a legitimate interest in the outcome of the complaint decision.

(2) An appeal notice must—

- (a) set out the grounds for the appeal; and
- (b) be accompanied by evidence and any other material supporting the appeal.

(3) If more than one appeal concerning a complaint decision is lodged during the appeal period, the enforcement authority may, if it considers it expedient to do so, deal with two or more of the appeals together in a single appeal procedure.

(4) During the period of 14 days beginning on the day on which the enforcement authority receives an appeal notice (“appeal notification period”), it must serve a copy of the appeal notice on—

- (a) the parties to the complaint; and
- (b) interested parties who made representations concerning the complaint under regulation 9(5)(a).

(5) During the period of 30 days beginning with the day on which the appeal notification period ends (“appointment period”), the enforcement authority must—

- (a) appoint an independent reviewer to conduct a review of the complaint decision;
- (b) draw the independent reviewer’s attention to the reviewer’s obligations under this regulation; and
- (c) serve notice of the appointment on—
 - (i) the appellant; and
 - (ii) the parties to the complaint.

(6) The enforcement authority must ensure that an independent reviewer—

- (a) is suitably qualified or experienced;
- (b) is independent of the parties to the appeal;
- (c) is impartial; and

- (d) will not stand to gain an advantage from the outcome of an appeal.
- (7) During the period of 30 days beginning on the day on which the appointment period ends (“preliminary review period”)—
 - (a) the following persons (“qualifying persons”) may make representations to the independent reviewer with regard to the appeal—
 - (i) the appellant;
 - (ii) the parties to the complaint; and
 - (iii) other persons having a legitimate interest in the complaint decision; and
 - (b) the independent reviewer may serve notices (“additional information notices”) on qualifying persons requiring them to provide additional information relevant to the appeal (“additional information”).
- (8) During the period of 30 days beginning with the day on which an independent reviewer serves an additional information notice on a qualifying person, that qualifying person must provide the independent reviewer with the additional information specified in that notice to the extent that it is—
 - (a) in their possession;
 - (b) readily accessible to them.
- (9) During the period of 90 days beginning with the day on which the preliminary review period ends, the independent reviewer must make an appeal decision.
- (10) During the period of 14 days beginning with the day on which the independent reviewer makes the appeal decision, the independent reviewer must—
 - (a) serve notice of the appeal decision on—
 - (i) the appellant;
 - (ii) the parties to the relevant complaint; and
 - (iii) the enforcement authority; and
 - (b) publish the appeal decision.
- (11) In an appeal decision, an independent reviewer may—
 - (a) uphold or dismiss one or more of the elements of the complaint; and
 - (b) direct the respondent to the complaint to take steps to remedy those elements of the complaint that the reviewer upholds (“curative steps”).
- (12) In reaching an appeal decision, an independent reviewer must take account of—
 - (a) matters referred to in the relevant complaint;
 - (b) information received by the enforcement authority in the course of investigating the complaint;
 - (c) the grounds of appeal set out in the appeal notice;
 - (d) evidence and other information provided by the appellant in the appeal notice;
 - (e) representations received from qualifying persons during the preliminary review period; and
 - (f) additional information received by the independent reviewer.
- (13) During the period of 180 days beginning on the day on which the independent reviewer serves notice of an appeal decision on the persons specified in paragraph (10)(a), the respondent to the complaint must take the curative steps specified in the notice of the appeal decision.

PART 4

Contraventions and remedial measures

Contraventions

12. In this Part—

“contravention” means the failure of a port body to comply with—

- (a) its obligations arising under the EU Regulation, including those arising under—
 - (i) Article 3(3) (terms of access to port facilities);
 - (ii) Article 4(2) (scope of minimum requirements);
 - (iii) Article 4(4) (nature of and compliance with minimum requirements);
 - (iv) Article 4(5) (access to information about local conditions);
 - (v) Article 4(6) (publication of minimum requirements);
 - (vi) Article 5(1) (treatment of providers of port services);
 - (vii) Article 5(2) (grants and refusals of right to provide port services);
 - (viii) Article 5(3) (justification of refusal to grant right to provide port services);
 - (ix) Article 5(4) (justification for limiting or terminating right to provide port services);
 - (x) Article 6(1) (permitted reasons for limiting the number of providers of port services);
 - (xi) Article 6(2) (publication of proposals to limit the number of providers of port services);
 - (xii) Article 6(3) (publications of decisions to limit the number of providers of port services);
 - (xiii) Article 6(4) (selection procedures when limiting the number of providers of port services);
 - (xiv) Article 6(6) (minimum number of port service providers);
 - (xv) Article 7(4) (emergency measures);
 - (xvi) Article 8(3) (limits on the activities of internal operators);
 - (xvii) Article 9(2) (employees’ working conditions);
 - (xviii) Article 9(3) (transfer of employees’ rights);
 - (xix) Article 9(4) (procedures applicable to transfer of staff);
 - (xx) Article 11(1) (accounting requirements applicable to public funds);
 - (xxi) Article 11(2) (separation of accounts for publicly funded activities);
 - (xxii) Article 11(4) (retention of accounting records for public funds);
 - (xxiii) Article 11(5) (provision of information for complaints investigation);
 - (xxiv) Article 11(7) (accounting for public funds paid as compensation for public service obligations);
 - (xxv) Article 12(1) (setting of charges by internal operator);
 - (xxvi) Article 12(3) (provision of information relating to a complaint);
 - (xxvii) Article 13(2) (identification of port infrastructure charges);
 - (xxviii) Article 13(3) (compliance with competition rules and general port policy);
 - (xxix) Article 13(4) (criteria for varying port infrastructure charges);

- (xxx) Article 13(5) (provision of information about port infrastructure charges);
- (xxxi) Article 13(6) (provision of information in the event of a complaint);
- (xxxii) Article 14 (provision of training for employees);
- (xxxiii) Article 15(1) (consultation on charging policy);
- (xxxiv) Article 15(2) (consultation on essential matters);
- (xxxv) Article 15(3) (provision of information about port service charges); and
- (xxxvi) Article 15(4) (respect for confidentiality and commercially sensitive information);
- and
- (b) its obligations arising under these Regulations, including those arising under—
 - (i) regulation 5(4)(b) (accounting for public funds received by small ports);
 - (ii) regulation 6 (imposition of port infrastructure charge); and
 - (iii) regulation 7 (provision of details concerning relevant authorities).

Remedial measures

13.—(1) If the enforcement authority suspects that a contravention has taken place, it may serve a notice (“contravention notice”) on the port body concerned—

- (a) giving details of the suspected contravention: and
- (b) requiring the port body to provide the enforcement authority with information (“contravention information”) that the enforcement authority deems necessary for the purpose of determining whether or not there has been a contravention.

(2) During the period of 60 days beginning with the day on which the contravention notice is served on the port body (“information period”), the port body—

- (a) must provide the enforcement authority with the contravention information specified in the contravention notice to the extent that it is—
 - (i) in the possession of the port body;
 - (ii) readily accessible to the port body; and
- (b) may make representations to the enforcement authority concerning the suspected contravention.

(3) During the period of 60 days beginning with the day on which the information period ends, the enforcement authority must—

- (a) consider—
 - (i) contravention information provided by the port body; and
 - (ii) representations made by the port body;
- (b) make a decision (“contravention decision”) as to whether or not the suspected contravention referred to in the contravention notice has taken place; and
- (c) serve a notice (“contravention decision notice”) on the port body concerned setting out—
 - (i) the contravention decision; and
 - (ii) the enforcement authority’s reasons for reaching that decision.

(4) If, in its contravention decision notice, the enforcement authority finds that a contravention has taken place it must, at the same time it serves that notice, serve a further notice on the port body requiring it to take the steps specified in that notice (“remedial steps”) within the period specified in that notice (“remedial period”).

(5) In determining the duration of a remedial period, the enforcement authority must take account of—

- (a) the amount of time needed to execute the remedial steps;
- (b) the seriousness of the contravention; and
- (c) the probable effect of the contravention on—
 - (i) port users;
 - (ii) port service providers; and
 - (iii) competition between ports.

(6) During the remedial period, the port body must execute the remedial steps specified in the remedial notice.

(7) During the period of seven days beginning with the day on which the remedial period ends (“remedial report period”), the port body must serve a notice on the enforcement authority specifying the remedial steps taken by the port body (“remedial report notice”).

(8) During the period of seven days beginning with the day on which the remedial report period ends (“verification period”), the enforcement authority may serve a notice (“verification notice”) on the port body requiring the port body to provide the enforcement authority with evidence and other information supporting the claims made by the port body in the remedial report notice (“verification data”).

(9) During the period of seven days beginning with the day on which the verification period ends (“verification response period”), the port body must provide the enforcement authority with the verification data specified in the verification notice.

(10) A decision as to whether or not the port body has taken the remedial steps (“remedial decision”) must be taken by the enforcement authority during the period of seven days beginning with the later of—

- (a) the day on which the remedial report period ends; and
- (b) the day on which the verification response period ends.

(11) During the period of 14 days beginning with the day on which the enforcement authority makes its remedial decision, it must serve notice of that decision (“remedial decision notice”) on the port body concerned.

(12) If, in its remedial decision, the enforcement authority finds that the port body has not taken all the remedial steps during the remedial period but that there is a reasonable prospect that it will take the outstanding remedial steps if given more time to do so, it may extend the remedial period by a period specified in the remedial decision notice (“extended remedial period”).

(13) During the extended remedial period the port body must—

- (a) take the outstanding remedial steps; and
- (b) serve a notice (“second remedial report notice”) on the enforcement authority specifying the outstanding remedial steps taken during the extended remedial period.

(14) During the period of 90 days beginning with the day on which the extended remedial period ends, the enforcement authority may serve a notice (“second verification notice”) on the port body requiring the port body to provide the enforcement authority with evidence and other information supporting the claims made by the port body in the second remedial report notice (“secondary verification data”).

(15) During the period of seven days beginning with the day on which the enforcement authority serves a second verification notice on the port body (“second verification response period”), the port body must provide the enforcement authority with the secondary verification data specified in the second verification notice.

(16) During the period of 14 days beginning with the day on which the second verification response period ends, the enforcement authority must—

- (a) decide whether or not the port body has taken the outstanding remedial steps; and
- (b) serve notice of that decision on the port body.

PART 5

Infringements and penalties

Infringements

14. In this Part, “infringement” means a past or continuing failure of a person to fulfil one or more of that person’s obligations under these Regulations, including those arising under the following provisions—

- (a) regulation 9(4) (publication of complaint notices);
- (b) regulation 9(6) (provision of complaint information);
- (c) regulation 9(12) (taking the corrective steps specified in a complaint decision);
- (d) regulation 11(8) (provision of additional information);
- (e) regulation 11(13) (taking the curative steps specified in an appeal decision);
- (f) regulation 13(2)(a) (provision of contravention information);
- (g) regulation 13(6) (execution of remedial steps);
- (h) regulation 13(7) (service of a remedial report notice);
- (i) regulation 13(9) (provision of verification data);
- (j) regulation 13(13)(a) (execution of outstanding remedial steps);
- (k) regulation 13(13)(b) (service of a second remedial report notice); and
- (l) regulation 13(15) (provision of secondary verification data).

Notices of intent and penalty notices

15.—(1) During the period of 90 days beginning with the day on which the enforcement authority becomes aware of an infringement, it may serve a notice (“notice of intent”) on the infringing party—

- (a) informing the recipient that the enforcement authority—
 - (i) intends to impose a penalty on the recipient; and
 - (ii) may publish details of the penalty and the reasons for imposing it;
- (b) specifying the infringement in respect of which the enforcement authority intends to impose a penalty;
- (c) specifying the amount of the penalty that the enforcement authority intends to impose in respect of that infringement;
- (d) inviting the infringing party to make representations to the enforcement authority concerning the alleged infringement and the amount of the proposed penalty during a period of 30 days beginning with the day on which the enforcement authority serves a notice of intent on the infringing party (“penalty representation period”); and
- (e) specifying the methods by which the infringing party must make representations.

(2) During the penalty representation period, the infringing party may make representations to the enforcement authority concerning the infringement referred to in the notice of intent.

(3) During the period of 30 days beginning with the day on which the penalty representation period ends (“consideration period”), the enforcement authority must—

- (a) consider representations made by the infringing party during the penalty representation period; and
- (b) serve the infringing party with either—
 - (i) a penalty notice; or
 - (ii) a penalty withdrawal notice.

(4) A penalty notice must—

- (a) specify—
 - (i) the date of service;
 - (ii) the infringement in respect of which the enforcement authority has served the penalty notice;
 - (iii) the enforcement authority’s reasons for imposing the penalty; and
 - (iv) the amount of the penalty;
- (b) require the infringing party to pay the penalty during a period of 30 days beginning with the day on which the enforcement authority serves the penalty notice on the infringing party;
- (c) explain the methods by which the penalty must be paid;
- (d) explain the infringing party’s right (under regulation 17(1)) to object to the contents of the penalty notice; and
- (e) explain the steps that the enforcement authority may take to recover overdue penalties.

(5) A penalty withdrawal notice must inform the infringing party of the enforcement authority’s decision not to serve or publish the proposed penalty referred to in the notice of intent.

(6) If the enforcement authority fails to serve the infringing party with either a penalty notice or a penalty withdrawal notice during the consideration period, it will be deemed to have served a penalty withdrawal notice.

Penalty

16. The amount of a penalty imposed in relation to a single contravention—

- (a) must be proportionate to the seriousness of the contravention; but
- (b) must not exceed £5,000.

Objections to a penalty notice

17.—(1) During the period of 30 days beginning with the day on which the enforcement authority serves a penalty notice on the infringing party, the infringing party may serve a notice (“penalty objection notice”) on the enforcement authority objecting to—

- (a) the enforcement authority’s finding that an infringement has taken place;
- (b) the amount of the penalty.

(2) During the period of 90 days beginning with the day on which the infringing party serves a penalty objection notice on the enforcement authority, the enforcement authority must—

- (a) consider the penalty objection notice and make a decision to—
 - (i) cancel the penalty;
 - (ii) reduce the penalty; or
 - (iii) leave the penalty unaltered; and

- (b) serve on the infringing party either—
 - (i) a notice informing the infringing party of its decision to cancel the penalty; or
 - (ii) a notice informing the infringing party of its decision to reduce the penalty or leave it unaltered (“penalty confirmation notice”).
- (3) A penalty confirmation notice must—
 - (a) state—
 - (i) the amount of the penalty following the enforcement authority’s consideration of the penalty objection notice;
 - (ii) the enforcement authority’s reasons for reducing the penalty or leaving it unaltered;
 - (b) require the infringing party to pay the penalty during a period of 30 days beginning with the day on which the enforcement authority serves the penalty confirmation notice on the infringing party;
 - (c) explain the methods by which the penalty must be paid;
 - (d) explain the infringing party’s right (under regulation 18(1)) to appeal against the penalty confirmation notice; and
 - (e) explain the steps that the enforcement authority may take to recover overdue penalties.

Penalty appeals

18.—(1) During a period of 30 days beginning with the day on which the enforcement authority serves a penalty confirmation notice on the infringing party, the infringing party may appeal to the court against the contents of the penalty confirmation notice.

- (2) On appeal, the court may—
 - (a) cancel the penalty;
 - (b) reduce the penalty; or
 - (c) confirm the penalty.
- (3) So far as is compatible with any rule that applies to proceedings in the court concerned, an appeal—
 - (a) is to be a re-hearing of the enforcement authority’s decision to impose a penalty; and
 - (b) may be determined having regard to matters which the enforcement authority was unaware of when serving the penalty notice and the penalty confirmation notice.
- (4) In this regulation, “court” means—
 - (a) in England and Wales, the county court;
 - (b) in Scotland, a sheriff court; and
 - (c) in Northern Ireland, a county court.
- (5) Proceedings under this regulation may be transferred as follows—
 - (a) in England and Wales, from the county court to the High Court; and
 - (b) in Northern Ireland, from a county court to the High Court.

Payment

19. The infringing party must pay the penalty during the period (“penalty payment period”) of 30 days beginning with such of the following days as is appropriate—

- (a) where the infringing party does not serve a penalty objection notice under regulation 17(1), the day on which the enforcement authority serves the penalty notice;

- (b) where the infringing party—
 - (i) serves a penalty objection notice under regulation 17(1); and
 - (ii) is served with a penalty confirmation notice under regulation 17(2)(b)(ii); and
 - (iii) does not appeal against the penalty confirmation notice under regulation 18(1), the day on which the enforcement authority serves the penalty confirmation notice;
- (c) where the infringing party appeals against a penalty confirmation notice under regulation 18(1) and the court does not cancel the penalty, the day on which the court either—
 - (i) reduces the penalty; or
 - (ii) confirms the penalty.

Publication

20. During the period of 90 days beginning on the first day of the penalty payment period, the enforcement authority may publish a notice—

- (a) stating that the enforcement authority has served a penalty notice on the infringing party;
- (b) identifying—
 - (i) the enforcement authority; and
 - (ii) the infringing party; and
- (c) specifying—
 - (i) the date on which the penalty notice was served;
 - (ii) the infringement in respect of which the penalty notice was served; and
 - (iii) the amount of the penalty.

Enforcement of payment

21.—(1) In England and Wales, an overdue penalty is recoverable as if it were payable under an order of the county court in England and Wales.

(2) In Scotland, an overdue penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by a sheriff court.

(3) In Northern Ireland, an overdue penalty is recoverable as if it were payable under an order of a county court in Northern Ireland.

Signed by authority of the Secretary of State for Transport

11th March 2019

Nusrat Ghani
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement discretionary and mandatory elements of Regulation (EU) 2017/352 of the European Parliament and of the Council establishing a framework for the provision of port services and common rules on the financial transparency of ports (OJ No L 57, 3.3.2017, p.1) (“the EU Regulation”).

Regulation 4 exercises the United Kingdom’s discretion to allow ports with volumes of cargo-handling below the otherwise applicable threshold (“small ports”) to place limits on the number of service providers operating at those ports (see Article 6 of the EU Regulation).

Regulation 5 exercises the United Kingdom’s discretion to relieve small ports of the financial transparency measures contained in Article 11 of the EU Regulation where compliance with those measures would result in a disproportionate administrative burden.

Regulation 6 fulfils the United Kingdom’s obligation under Article 13 of the EU Regulation to ensure that port infrastructure charges are levied.

Regulation 7 fulfils the United Kingdom’s obligation under Article 17 of the EU Regulation to ensure 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 EU Regulation.

As required by Articles 16 and 18 of the EU Regulation, Part 3 of these Regulations provides a right to—

- make formal complaints to the enforcement authority about the acts or omissions of port management bodies and service providers; and
- appeal against decisions of the enforcement authority.

Part 4 of these Regulations provides the enforcement authority with the power to investigate suspected contraventions of these Regulations and the EU Regulation and, if necessary, require remedial action to be taken.

As required by Article 19 of the EU Regulation, Part 5 of these Regulations provides the enforcement authority with the power to impose civil penalties where the complaints and contraventions procedures have been exhausted.

The official version of the EU Regulation is published in the electronic edition of the Official Journal of the European Union, access to which is currently available free of charge on the EUR-Lex website (<http://eur-lex.europa.eu>). Printed copies may be ordered from the Publications Office of the European Union either by email (bookshop@publications.europa.eu) or by post (The Publications Office of the European Union, 2 rue Mercier, 2985 Luxembourg, LUXEMBOURG).

A full impact assessment has not been produced for this instrument as no significant impact on the costs of the private, voluntary or public sectors is foreseen.

The Explanatory Memorandum is published alongside this instrument on www.legislation.gov.uk.