

## Marine Notice No. 51 of 2015

***(This Notice does not purport to be a legal interpretation of any legislation.)***

Notice to all Shipowners, Fishing Vessel Owners, Agents, Shipmasters, Skippers, Fishermen, Yachtsmen and Seafarers

European Union (Sulphur Content of Marine Fuels) Regulations 2015 [S.I. No. 361 of 2015]

Notice is hereby given of the making of the [*European Union (Sulphur Content of Marine Fuels) Regulations 2015 (S.I. No. 361 of 2015)*](http://www.irishstatutebook.ie/2015/en/si/0361.html), signed by the Minister for Transport, Tourism and Sport on 20 August 2015, which, from that date onwards, implement in Irish law certain provisions of *Directive 2012/33/EU of the European Parliament and of the Council of 21 November 2012 amending Council Directive 1999/32/EC* (otherwise known as the ‘*Sulphur Directive*’) *as regards the sulphur content of marine fuels*.

**Background**

The purpose of the *Sulphur Directive* is to reduce the emissions of sulphur oxides resulting from the combustion of certain types of liquid fuels within the EU and the consequent harmful effects of such emissions on people and the environment. While the ambit of the *Sulphur Directive* extends to emissions resulting from the use of both land fuels and marine fuels, the land fuel provisions have already been transposed by the [*European Union (Sulphur Content of Heavy Fuel Oil and Gas Oil) Regulations 2014 (S.I. No. 273 of 2014)*](http://www.irishstatutebook.ie/2014/en/si/0273.html), signed by the Minister for the Environment, Community and Local Government on 16 June 2014, and these Regulations also **revoked** the previous Regulations, which hitherto legislated for marine fuels, i.e., the *Sulphur Content of Heavy Fuel Oil, Gas Oil, and Marine Fuels Regulations 2008 [S.I. No. 119 of 2008]*.

One of the main objectives of *Directive 2012/33/EU* is to align EU legislation with existing global marine fuel sulphur content by mass limits or, subject to the fitting of appropriate emission abatement technology, the resultant sulphur dioxide emissions from such fuels, as set out in the *Regulations for the Prevention of Air Pollution from Ships* contained in the 2008 revised *Annex VI* to the ***International Maritime Organization (IMO)’s*** *International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocols of 1978 and 1997* (otherwise known as ‘*MARPOL*’)*,* to which Ireland and the other EU Member States are parties. The 2008 revised *MARPOL Annex VI* entered into force on 1 July 2010 and was given effect in Irish law by the [*Sea Pollution (Prevention of Air Pollution from Ships) Regulations 2010 (S.I. No. 313 of 2010)*](http://www.irishstatutebook.ie/2010/en/si/0313.html) – [**Marine Notice No. 20 of 2010 - MARPOL Annex VI amendments (Air Pollution)**](http://www.dttas.ie/sites/default/files/20%20of%202010_0.pdf) refers.

However, in some areas, *Directive 2012/33/EU* goes beyond the revised *MARPOL Annex VI* regime concerning the sulphur content of marine fuels for use on board ships, or, the resultant sulphur dioxide emissions. Therefore, in more specific terms, the purpose of the [*European Union (Sulphur Content of Marine Fuels) Regulations 2015 (S.I. No. 361 of 2015)*](http://www.irishstatutebook.ie/2015/en/si/0361.html) is:

* **firstly**, to transpose those marine fuel provisions of *Directive 2012/33/EU* which have not already been implemented in Irish law by [*S.I. No. 313 of 2010*](http://www.irishstatutebook.ie/2010/en/si/0313.html);
* **secondly**, to specify, where necessary, those provisions of [*S.I. No. 313 of 2010*](http://www.irishstatutebook.ie/2010/en/si/0313.html) which still apply in order to avoid any legal ambiguity or uncertainty; and,
* **thirdly**, to amend other relatively minor provisions in [*S.I. No. 313 of 2010*](http://www.irishstatutebook.ie/2010/en/si/0313.html) for the sake of clarity and alignment.

Effectively, therefore, the combined *MARPOL Annex VI* and *Sulphur Directive* regimes set out in [*S.I. No. 313 of 2010*](http://www.irishstatutebook.ie/2010/en/si/0313.html) and [*S.I. No. 361 of 2015*](http://www.irishstatutebook.ie/eli/2015/si/361/made/en/print) respectively can be thought of as a single package of measures.

**Operational requirements under combined *MARPOL Annex VI* and *Sulphur Directive* regime**

An instance of where the *Sulphur Directive* makes direct use of a mechanism in *MARPOL Annex VI* would be the provision concerning the setting up of *Emission Control Areas* (*ECA’s*) where shipping is particularly busy or where a population may be concentrated near a maritime area, and in which higher standards of emission control apply.

Accordingly, under the combined *MARPOL Annex VI* and *Sulphur Directive* regime, the following requirements pertain.

Implementation dates and implications thereof

As previously stated, [*S.I. No. 313 of 2010*](http://www.irishstatutebook.ie/2010/en/si/0313.html) entered into force on 1 July 2010 and this S.I. (as amended by relevant national legislation giving effect to *MARPOL Annex VI* legislation and Regulation 17 of [*S.I. No. 361 of 2015*](http://www.irishstatutebook.ie/eli/2015/si/361/made/en/print)) is still in force.

However, while [*S.I. No. 361 of 2015*](http://www.irishstatutebook.ie/eli/2015/si/361/made/en/print) entered into force on 20 August 2015, it still retains in force certain requirements hitherto in force under S.I. No. 119 of 2008, i.e., particular criteria with regard to marine fuel sulphur content **will continue to apply**, while other/new criteria **will henceforth enter into force** – *see below for further information with regard to specific requirements under the new regime*.

Further, **a new sampling and analysis regime with regard to the sulphur content by mass of marine fuel will apply from 01 January 2016 onwards** – *see below for further information in this specific regard*.

ALL ships **within** *ECA’s*

While there are no *ECA’s* in Irish waters, the sulphur content of marine fuel for use on board ALL Irish ships sailing through *ECA’s* wherever they may be, is not to exceed 0.10% by mass on and after 1 January 2015, as set out in Regulation 13(3)(c) of [*S.I. No. 313 of 2010*](http://www.irishstatutebook.ie/2010/en/si/0313.html) and Regulation 4(2) of [*S.I. No. 361 of 2015*](http://www.irishstatutebook.ie/eli/2015/si/361/made/en/print).

PASSENGER ships on regular services **outside** of *ECA’s*

The sulphur content of marine fuel for use on board ALL passenger ships, operating on regular services to, or from, a port in the inland waters, territorial seas, or exclusive economic zone of the State, or, in the case of Irish passenger ships, operating on regular services to, or from, a port in another Member State, is not to exceed 1.50% by mass until 31 December 2019 and thereafter should not exceed 0.50% by mass, as set out in Regulation 4(1) of [*S.I. No. 361 of 2015*](http://www.irishstatutebook.ie/eli/2015/si/361/made/en/print).

Other ships **outside** of *ECA’s*

The sulphur content of marine fuel for use on board non-passenger ships is not to exceed 3.50% by mass until 31 December 2019 and thereafter should not exceed 0.50% by mass, as set out in Regulation 13(1) of [*S.I. No. 313 of 2010*](http://www.irishstatutebook.ie/2010/en/si/0313.html) and Regulation 4 of [*S.I. No. 361 of 2015*](http://www.irishstatutebook.ie/eli/2015/si/361/made/en/print).

Ships at berth or at anchor

Irish and foreign ships at berth or anchored in a port in the State, or, Irish ships at berth or anchored in a port in another EU Member State, are to use marine fuel with a sulphur content not exceeding 0.10% by mass, unless such ships are berthed for less than two hours according to published timetables, or, are using shore-side electricity, as set out in Regulation 5 of [*S.I. No. 361 of 2015*](http://www.irishstatutebook.ie/eli/2015/si/361/made/en/print).

Vessel records, including bunker delivery notes

Vessels entering ports in the State are required to maintain correctly completed records in respect of all operations, including fuel change-over operations, for the sake of compliance with this combined legislative regime as a condition of port entry. This requirement includes retaining bunker delivery notes (BDN’s) on-board so as to be readily available for inspection at all reasonable times and for a minimum period of three years, as set out in Regulation 17 of [*S.I. No. 313 of 2010*](http://www.irishstatutebook.ie/2010/en/si/0313.html) and Regulation 4 of [*S.I. No. 361 of 2015*](http://www.irishstatutebook.ie/eli/2015/si/361/made/en/print).

**Compulsory** sampling and analysis regime

Under the *MARPOL Annex VI* regime only, as provided for by Regulation 17 of [*S.I. No. 313 of 2010*](http://www.irishstatutebook.ie/2010/en/si/0313.html), inspectors had discretion in deciding whether or not to analyse any marine fuel representative sample taken, in accordance with the relevant IMO Guidelines, at the time of the respective fuel delivery. However, the *Sulphur Directive* requires EU Member States **to implement (and report regularly to the Commission on the implementation of)** a **compulsory** system of sampling and analysis of marine fuel for use on board ships and, as stated above, this **compulsory sampling and analysis regime will come into effect on 1 January 2016**. The exact procedure laying down the rules concerning the **sampling** (and reporting) as regards the sulphur content of marine fuels, is set out in [*Commission Implementing Decision (EU) 2015/253*](http://www.dttas.ie/sites/default/files/publications/maritime/english/commission-implementing-decision-eu-2015/253/commission-implementing-decision-eu-2015-253-pdf.pdf)*.*

Approved emission abatement methods

Regulation 9(1) of [*S.I. No. 361 of 2015*](http://www.irishstatutebook.ie/eli/2015/si/361/made/en/print) legislates specifically for criteria for the use of ship emission abatement methods that continuously achieve reductions of sulphur dioxide emissions that are at least equivalent to the reductions that would be achieved by using marine fuels that meet the requirements of that S.I., or Regulation 13 of [*S.I. No. 313 of 2010*](http://www.irishstatutebook.ie/2010/en/si/0313.html). Schedules 1 and 2 respectively of [*S.I. No. 361 of 2015*](http://www.irishstatutebook.ie/eli/2015/si/361/made/en/print) set out the equivalent emission values for, and the criteria for the use of, such emission abatement methods.

Regulation 9(2) of [*S.I. No. 361 of 2015*](http://www.irishstatutebook.ie/eli/2015/si/361/made/en/print) sets out the criteria for applying for Ministerial approval to conduct trials of new ship emission abatement methods.

Marine / bunker fuel oil suppliers

Marine / bunker fuel suppliers in the State are required to (i) **register** with the ***Sustainable Energy Authority of Ireland (SEAI)*** – in order to enable that body maintain a publicly available register of marine fuel suppliers – and (ii) **provide** an annual report to the ***SEAI*** within three months of the end of the preceding year, concerning the nature of the marine fuel which that supplier provided for use on board ships during the preceding year, as set out in Regulation 7 of [*S.I. No. 361 of 2015*](http://www.irishstatutebook.ie/eli/2015/si/361/made/en/print).

Accordingly, marine / bunker fuel suppliers should download from the ***SEAI*** webpage – <http://www.seai.ie/Energy-Data-Portal/Marine-Fuel-Supply-Register/>, template forms in respect of the afore-mentioned items (i) and (ii) and return the completed forms by email, fax or post to the ***SEAI***, as per the contact details immediately below:

Mr. Martin Howley or Ms. Mary Holland,

Energy Policy Statistical Support Unit,

Sustainable Energy Authority of Ireland,

Building 2100,

Cork Airport Business Park,

Co. Cork, T12 KV8R.

Tel: + 353 1 808 2056

Fax: + 353 21 240 7987

Email: epssu@seai.ie

Marine / bunker fuel suppliers in the State delivering marine fuel to ships for use on board such ships are still required to record the relevant details of such fuel in a bunker delivery note (BDN) and provide the BDN together with a sealed sample as required by Regulation 17 of [*S.I. No. 313 of 2010*](http://www.irishstatutebook.ie/2010/en/si/0313.html), certified by the fuel oil supplier that the fuel oil meets the requirements of Regulations 13 and 17 of [*S.I. No. 313 of 2010*](http://www.irishstatutebook.ie/2010/en/si/0313.html), as set out in Regulation 4 of [*S.I. No. 361 of 2015*](http://www.irishstatutebook.ie/eli/2015/si/361/made/en/print).

Marine / bunker fuel suppliers are further required to retain a copy of the BDN for a minimum period of 3 years for inspection and verification by an inspector as necessary.

Also, neither marine diesel oil with a sulphur content exceeding 1.50% by mass, nor marine gas oil with a sulphur content exceeding 0.10% by mass, may be sold or supplied (other than for export) to a ship, as set out in Regulation 8 of [*S.I. No. 361 of 2015*](http://www.irishstatutebook.ie/eli/2015/si/361/made/en/print).

Enforcement regime

As stated above, in order to ensure that marine fuel with the correct sulphur content by mass is used by all ships, the *Sulphur Directive* requires Member States to fully implement **a mandatory sampling and analysis regime**. The sampling is to be carried out periodically with sufficient frequency and quantities in such a way that the samples are representative of marine fuel being used by vessels while in relevant sea areas and ports, and, to that end, the procedure in *Commission Implementing Decision (EU) 2015/253* **will apply as from 1 January 2016**.

The *Sulphur Directive* obliges Member States to use the following means of sampling, analysis and inspection:

(a) inspection of ships' logbooks and bunker delivery notes;

and, as appropriate, the following means of sampling and analysis:

(b) sampling of the marine fuel for on-board combustion while being delivered to ships, in accordance with the Guidelines for the sampling of fuel oil for determination of compliance with the revised *MARPOL Annex VI* adopted on 17 July 2009 by Resolution 182(59) of the ***Marine Environment Protection Committee (MEPC)*** of the ***IMO***, and analysis of its sulphur content; or

(c) sampling and analysis of the sulphur content of marine fuel for on-board combustion contained in tanks, where technically and economically feasible, and in sealed bunker samples on board ships.

Therefore, in order to ensure compliance with the afore-mentioned marine fuel sulphur content by mass limits (as set out in Regulations 4 and 5 of [*S.I. No. 361 of 2015*](http://www.irishstatutebook.ie/eli/2015/si/361/made/en/print) and Regulation 13 of [*S.I. No. 313 of 2010*](http://www.irishstatutebook.ie/2010/en/si/0313.html)) imposed on Member States by the *Sulphur Directive*, [*S.I. No. 361 of 2015*](http://www.irishstatutebook.ie/eli/2015/si/361/made/en/print) provides for the appointment of inspectors (as set out in Regulation 11 of that S.I.) who will have wide-ranging powers (as set out in Regulation 12 of that S.I.) in order to implement the sampling and analysis requirements, including requiring a marine fuel supplier to take appropriate remedial action to bring any non-compliant marine fuel discovered into compliance (as set out in Regulation 13 of that S.I.).

Also, in accordance with Regulation 6 of [*S.I. No. 361 of 2015*](http://www.irishstatutebook.ie/eli/2015/si/361/made/en/print), in the event that non-compliant marine fuel is found by an inspector to have been used on board any ship, an inspector may require such ship’s owner or master to provide certain documentation and evidence in order to demonstrate that reasonable efforts were made to obtain compliant fuel and when such documentation has been provided by such ship’s owner or master, it shall be considered when deciding whether or not control actions are required in those particular circumstances.

Penalties

[*S.I. No. 361 of 2015*](http://www.irishstatutebook.ie/eli/2015/si/361/made/en/print) provides for a variety of offences; however, certain offences are deemed more serious than others and, therefore, liable—

(i) on summary conviction, to a class A fine, or

(ii) on conviction on indictment, to a fine not exceeding €300,000.

Instances of such offences are as follows:

* a relevant passenger ship using non-compliant marine fuel, be it inside, or outside, an *ECA.* [However, it should be noted that ALL ships are liable, on conviction on indictment, to harsher penalties under the *MARPOL Annex VI* regime only.];
* any ship using non-compliant marine fuel while at berth in a port in the State, or, an Irish ship doing so in a port of another EU Member State, unless such ship is berthed for less than two hours according to a published timetable, or, is using shore-side electricity;
* a marine / bunker fuel supplier failing to register with the ***SEAI***, or, failing to provide an annual report to the ***SEAI*** within three months of the end of the preceding year, concerning the nature of the marine fuel which that supplier provided for use on board any ships during the preceding year;
* a person who places on the market prohibited marine fuels; and
* a ship that uses any emission abatement method that has not been approved by the Minister.

Less serious offences, e.g., a ship not carrying a written procedure showing how a fuel change-over operation is to be done prior to entering/exiting an *ECA*, or, the incorrect completion of a ship’s logbook in respect of on-board use of marine fuel, are liable, on summary conviction, to a class A fine.

***Non-compliance with the requirements of*** [*S.I. No. 313 of 2010*](http://www.irishstatutebook.ie/2010/en/si/0313.html) ***or*** [*S.I. No. 361 of 2015*](http://www.irishstatutebook.ie/eli/2015/si/361/made/en/print) ***may result in prosecution.***

The combined *MARPOL Annex VI* and *Sulphur Directive* regime applies to all ships when they are in the inland waters, territorial seas, or exclusive economic zone of the State and, unless otherwise stated, to Irish ships everywhere.

**Role of the *Marine Survey Office* and Appointment and Powers of Inspectors**

The ***Marine Survey Office (MSO)*** of the ***Department of Transport, Tourism and Sport*** is responsible for the enforcement of the *Sulphur Directive’s* requirements and ***MSO*** surveyors will be appointed, and empowered, as inspectors under Regulations 11 and 12 respectively of [*S.I. No. 361 of 2015*](http://www.irishstatutebook.ie/eli/2015/si/361/made/en/print). The ***MSO*** will also continue to carry out the relevant responsibilities under [*S.I. No. 313 of 2010*](http://www.irishstatutebook.ie/2010/en/si/0313.html). Any queries concerning the requirements of the Regulations should be directed to the ***MSO***, as per the contact details in the text-box at the end of this Notice.

Please note that **Marine Notice No. 17 of 2010** entitled ‘**Sulphur content of marine fuels**’ is superseded by this Marine Notice.

Irish Maritime Administration,

Department of Transport, Tourism and Sport,

Leeson Lane, Dublin 2, D02 TR60, Ireland.

16/12/2015

For any technical assistance in relation to this Marine Notice, please contact:

The Marine Survey Office, Leeson Lane, Dublin 2, tel: +353-(0)1-678 3400.

For general enquiries, please contact the Maritime Safety Policy Division, tel: +353-(0)1-678 3418.

Written enquiries concerning Marine Notices should be addressed to:

Maritime Safety Policy Division, Dept. of Transport, Tourism and Sport, Leeson Lane, Dublin 2, D02 TR60 Ireland.

Email marinenotices@dttas.ie or visit us at: [www.dttas.ie](http://www.dttas.ie)