MCA ENFORCEMENT POLICY STATEMENT
CONCERNING THE APPLICATION OF
MARITIME PASSENGER RIGHTS WITHIN EU REGULATION 1177/2010

Background

1. The MCA is an Executive Agency of the Department for Transport and is the statutory authority for enforcing Merchant Shipping legislation, including EU Regulation 1177/2010 concerning passengers’ rights when travelling by sea and inland waterways. The enforcement action that can be taken is varied and the sanctions imposed can and must reflect the seriousness of the legislative breach.

2. The EU Regulation 1177/2010 identifies those engaged in providing maritime passenger services (regulated business) that are placed under an obligation to adhere to a number of requirements as defined within the regulation. The Merchant Shipping (Passengers’ Rights) Regulations 2013, statutory instrument 2013 No 425, creates offences under UK law in respect contravention of those obligations under EU Regulation 1177/2010 and defines the penalties available to the courts.

3. Those facing potential enforcement action are carriers, ticket vendors, tour operators, travel agents and port operators. Enforcement action may be taken against individuals and corporate or unincorporated bodies.

4. Where serious criminal offences are committed outside of Merchant Shipping legislation these will always be a matter for the police and possibly other Government agencies. The MCA is committed to assisting other enforcement agencies and is a signatory to the
Convention between Prosecuting Authorities and the Work Related Deaths Protocol.

5. Prosecution is the ultimate sanction and the MCA has available a range of administrative sanctions that must be considered before prosecution is initiated. It must be recognised that as soon as criminal proceedings are commenced the control over the sanction imposed has been passed to the Court.

The Enforcement Unit and Operational Procedures

6. The MCA operates under set criteria for enforcement action in respect breaches of EU Regulation 1177/2010 and SI 2013/425. The criteria for action are termed a ‘significant breach’ or ‘persistent failure to comply’.

A ‘significant breach’ is defined as:-

A serious contravention of the above legislation usually by wilful act or omission (though not limited to) that:

- Unlawfully discriminates against a particular individual or category of passenger
- Refuses to meet the obligations placed on them as defined under the Regulation
- Is an act which prevents an officer of the MCA from carrying out their statutory functions.

A ‘persistent failure to comply’ is defined as:-

- A persistent failure to comply with a particular element of the regulation after enforcement intervention
- A failure to comply with various elements of the regulation over a period of time, whether or not there has been previous enforcement intervention.
A significant breach or persistent failure to comply initiates a criminal investigation.

7. To comply with the requirements of the Criminal Justice System strict and comprehensive procedures have been adopted to control the enforcement activities of the MCA. All evidence is collected in accordance the relevant statutory provisions and legal requirements.

8. The complaint handling process, involving the various voluntary compliant handling bodies, provides a filtering system by which the investigation of possible significant breaches or persistent failures to comply will only be undertaken in respect the more serious breaches if the legislation.

9. The MCA will only investigate incidents that allege a breach of EU Regulation 1177/2010 in respect of this policy. Incidents meeting the criteria as outlined in 6 above will be subject of a criminal investigation.

10. On completion of the investigation the evidence is analysed by the investigating officer and recommendations made, which may include prosecution action. The case is reviewed by the MCA Head of Enforcement and the MCA nominated Director who, on behalf of the Secretary of State for Transport, decides whether criminal proceedings should be commenced.

11. At all stages the requirements contained in the Code for Crown Prosecutors are considered. Only if these requirements are met, including application of the full code test for prosecutors, is authority to prosecute provided by the Director.
12. The MCA prosecution activity, although not subject to direct managerial control by the Attorney General is subject to Attorney General oversight and as such the MCA make regular reports to that office.

Engagement with Business

13. The MCA will engage with regulated business in matters connected to the enforcement of the EU Regulation 1177/2010 and SI 2013/425. This will be facilitated through meetings with regulated businesses, trade associations and the voluntary complaint handling bodies. Information as to enforcement activity will be published.

14. In respect any changes to enforcement activity concerning EU Regulation 1177/2010 and SI 2013/425, discussions will be held with representatives of those businesses affected concerning any burden placed on them by the proposed changes in accordance with the principles of ‘Accountability for Regulator Impact’. Where appropriate, impact assessments will be undertaken.

Policy on prosecution of individuals

15. It is the MCA’s policy to primarily prosecute owners, directors and managers of operations as defined in 3 above and only to prosecute individual employee’s where they are personally culpable.

Offences

16. Typical offences can be broadly sub-divided:

- Failure to appropriately meet the needs of disabled passengers or those with reduced mobility

- Failure to appropriately meet the needs of passengers facing cancelled or delayed service and / or provide the required assistance for alternative means of transport / compensation
in accordance with EU Regulation 1177/2010.

Administrative Sanctions

15. Where a prosecution is not appropriate, certain administrative sanctions may be appropriate

The administrative sanctions available are:

Owners/Companies/Managers

- Inspection and follow up
- Advice / Improvement Notice
- Notifications of Concern
- Simple Caution

Individuals

- Advice Notice
- Notifications of Concern
- Simple Caution
- Inquiry into fitness to hold a Certificate of Competency