

## Guidance Note

# Regulation No. 1371/2007 of the European Parliament and of the Council

## Rail Passengers Rights and Obligations

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# Introduction

Regulation 1371/2007 on Rail Passengers' Rights and Obligations ('the Regulation') became law in Great Britain (GB) on 4 December 2009 – although some parts of it are currently not applied to GB domestic services.

These notes are intended to assist:-

- railway undertakings (passenger train operators)
- station managers
- rail ticket vendors
- tour operators (where incorporating relevant rail travel elements in the tour package)
- passenger representative bodies

Although the Regulation is applicable across the EU, these notes are specifically designed to apply in England, Scotland and Wales.

It should be noted that only the courts can give a definitive interpretation of the legislation and these notes do not change the obligations or rights created by the Regulation itself or the Statutory Instruments (SI) associated with the Regulation.

This document is divided into three parts:-

- 1 Part One sets the context and makes clear which services are within the scope of the Regulation and explains the difference between the 'core' and 'non core' elements.
- 2 Part Two deals with 'core' elements
- 3 Part Three deals with 'non core' elements

# Part One

## What is the Regulation intended to do?

1.1 The Regulation is aimed at enhancing and strengthening the rights of rail passengers particularly in the areas of information and ticketing provision, compensation and assistance, and provides rights for disabled persons and persons with reduced mobility. It also contains provision for the enforcement of those rights.

## Which services are covered by the Regulation?

1.2 The Regulation covers both GB international and most domestic passenger services – although currently, not all parts of it apply to domestic services and there are some exceptions.

1.3 The permanent exceptions are services which are not licensed in accordance with Directive 95/18/EC. This primarily means some local services serving urban and suburban areas and heritage lines. The services beyond the scope of the Regulation in GB include those consisting of or running on the:-

- Dockland Light Railway
- Glasgow Subway
- Heathrow Express
- London Underground
- Merseyrail Electrics
- Tyne and Wear Metro
- All local tramway systems (Croydon, Sheffield etc)

1.4 A full list of railway services which are licensed under 95/18/EC and are therefore 'in scope' is shown on the Office of Rail Regulation website:

<http://www.rail-reg.gov.uk/server/show/nav.1857>

1.5 The UK Government has decided that the non-core elements of the Regulation will not apply to GB domestic services. This exemption was activated by a Statutory Instrument (SI 2009/2970) and will run for five years up to 3 December 2014. It could then be extended for two further periods of five years should the UK Government decide to exercise this right.

1.6 Ticket vendors of international tickets must comply with the Regulation for international journeys. Ticket vendors of domestic tickets are only obliged to comply with the relevant core obligations for domestic services.

## What is covered by the Regulation and when do different aspects come into force?

1.7 The Regulation has both core (mandatory) and non-core provisions.

1.8 The core elements, defined in Article 2 (3), have applied from 4 December 2009 to both domestic and international services. They are listed below. A further explanation can be found in Part Two of this guidance:

- Article 9: availability of tickets, through tickets and reservations
- Article 11: liability for passengers and luggage
- Article 12: insurance
- Articles 19 & 20(1): rights of passengers with reduced mobility
- Article 26: personal security of passengers

1.9 The non core elements of the Regulation only apply to international services as a result of the domestic exemption explained in paragraph 1.5 above. They are listed below. A further explanation can be found in Part Three of this guidance:

- Article 4: transport contract
- Article 5: bicycles
- Article 6: exclusion of waiver and stipulation of limits
- Article 7: information regarding discontinuance of services
- Article 8: information for passengers
- Article 10: travel information and reservation systems
- Article 13: advance payments of compensation to those injured or the dependants of those killed in an accident
- Article 14: assistance in seeking compensation from third parties when a railway undertaking contests its own liability for an accident
- Article 15: compensation in the event of delays, missed connections and cancellations
- Article 16: reimbursement and re-routing in the event of delays
- Article 17: compensation of the ticket price (refunds in the case of delays)

- Article 18: assistance to passengers in the event of delays (primarily meals and hotel accommodation)
- Article 20 (2): rights of passengers with reduced mobility
- Article 21: accessibility of stations and rolling stock
- Article 22: assistance for persons with reduced mobility at stations
- Article 23: assistance for persons with reduced mobility on trains
- Article 24: conditions under which assistance is provided
- Article 25: compensation in respect of mobility equipment – removal of any limits to liability
- Article 27: complaints handling
- Article 28: service quality standards
- Article 29: information to passengers about their rights
- Article 30: enforcement

# Part Two

## What you are required to do – ‘core’ elements

2.1 The ‘core’ elements apply to both domestic and international services.

2.2 You should read the Regulation itself and if in doubt over the interpretation, you should seek independent legal advice. However, the following paragraphs set out guidance about the requirements of the Regulation.

### **Article 9: availability of tickets, through tickets and reservations**

2.3 This sets out the requirement to offer, where available, tickets, through tickets, and reservations.

2.4 It also sets out a requirement on railway undertakings to make the tickets available through at least one of three distribution points of sale:-

- ticket office or selling machines;
- telephone, the internet or any other widely available information technology;
- on board trains.

2.5 If the service is operated under public service contracts (i.e. in franchises let by the Department for Transport or devolved administrations) operators must make tickets available through at least one of two distribution channels:-

- 1 ticket office or selling machines; and
- 2 on board trains.

2.6 Where tickets are not on sale at the station, information must be made available to passengers about how they can purchase their ticket and also about the nearest railway station or place at which ticket offices and/or selling machines are available.

2.7 In most cases it will be obvious which is the nearest station with ticket vending facilities but in the case of doubt, railway operators should consider the station that is likely to be of most help to the passenger (i.e. most likely to be able to sell the passenger the ticket he/she wants) and the ease of getting to that station. There is no reason why the information provided (most likely to be a poster) cannot give the details of more than one station.



## **Article 11: liability for passengers and luggage**

2.8 Annex I to the Regulation is an excerpt from the Uniform Rules concerning the contract for international carriage of passengers by rail (CIV) annexed to the Convention Concerning International Carriage by Rail (COTIF). Article 11 draws elements of the CIV in to the standard contract between passengers and railway undertakings.

2.9 These CIV provisions set out rules on train companies' liabilities in the event of a passenger's death or personal injury and damage to luggage and animals. These introduce in most cases liability rules that are stricter than those normally applying under English or Scottish law. The British courts do not have a ceiling on damages that can be awarded in the event of death or personal injury, and this is not affected, except in certain respects concerning compensation for damage to registered luggage. Limits are excluded where the damage was caused intentionally or recklessly. The Regulation also includes special rules about the burden of proof, presumptions, interest and liability for the acts of others.

2.10 Several of the changes that do affect train operators have been implemented through changes to the National Rail Conditions of Carriage and the intra-industry Claims Allocation and Handling Agreement (CAHA). The latter is a well established way for passengers to make a claim and to ensure that claims handling is co-ordinated within the industry. Passengers can continue to contact any operator or the CAHA Registrar about their claims, which will be dealt with by the appropriate body.

## **Article 12: insurance**

2.11 This Article makes provision for insisting on adequate insurance, but does not set an amount. However, it is already a requirement of train operators' licences and there is no immediate change to the amount required. ORR's guidance is at <http://www.rail-reg.gov.uk/upload/pdf/406.pdf>.

## **Articles 19 and 20(1): rights of disabled passengers and passengers with reduced mobility**

2.12 Article 19 mandates the establishment of non discriminatory access rules for the transport of disabled persons and persons with reduced mobility for both railway undertakings and stations managers.

2.13 GB passenger train operators' licences include an obligation to have a Disabled People's Protection Policy (DPPP). Compliance with this licence condition will discharge the obligation in Article 19(1).

2.14 Article 19 also mandates that disabled persons and people with reduced mobility should be offered reservations and tickets at no additional cost and that, other than when this is strictly necessary to comply with the access requirements above, disabled persons and people with reduced mobility should not be required to be accompanied by another person. This latter aspect should already be covered in operators' DPPPs.

2.15 Reservations and tickets at 'no additional cost' should mean that disabled passengers and passengers with reduced mobility do not pay more than other passengers in order to buy tickets and make reservations.

2.16 Article 20 states that on request, train operators, ticket vendors and tour operators will be expected to tell potential passengers about the accessibility of trains to be used on services and the facilities on board. Whilst it is accepted that rolling stock may have to be substituted on occasion, passengers should be given the best information available to assist in their travel planning even if this has to include caveats about the limitations of that information.

#### **Article 26: personal security of passengers**

2.17 This Article mandates that railway authorities, infrastructure managers and stations managers shall take adequate measures to ensure passengers' personal security in railway stations and on trains. Provided that the railway authorities, infrastructure managers and stations managers have a current Police Services Agreement, they will be deemed to have discharged their duties in this respect.

#### **Article 30: enforcement and information to passengers regarding their rights under this Regulation**

2.18 The Office of Rail Regulation (ORR) has been designated as the national enforcement body by virtue of SI 2010/1504.

2.19 With the exception of Article 26, all of the core and non-core elements will be enforced by ORR through the relevant operators' licences. For those entities which are not licensed by ORR, such as tour operators and ticket vendors, ORR will use enforcement mechanisms which mirror those available for licence enforcement. These mechanisms and ORR's licence enforcement policy can be found at: <http://www.rail-reg.gov.uk/upload/pdf/395.pdf>.

2.20 Article 26 will be enforced using the normal legal processes for failing to comply with a statutory duty. The core test for compliance is the existence of a valid current Police Services Agreement with the British Transport Police.

2.21 Some requirements under the Regulation sit under franchises and existing regulated industry arrangements such as the Ticketing and Settlement Agreement. Franchising authorities will continue to carry out their monitoring roles as now liaising with ORR as appropriate.

2.22 By virtue of the same statutory instrument (SI 2010/1504 Part 3, section 18), the Rail Passengers Council and London Transport Users Committee (known as Passenger Focus and LondonTravelwatch) are designated as the official complaints handling bodies for the purposes of this Regulation. Should a passenger believe that a train operator, ticket vendor, station manager or tour operator has infringed the Regulation they should initially complain to the relevant party (train operator etc). If this does not lead to a satisfactory outcome, they may take their complaint to Passenger Focus or (when appropriate) London TravelWatch.

2.23 It should be noted that ticket vendors, railway undertakings, station managers and tour operators are obliged to inform passengers of their rights under this Regulation by virtue of Article 29.

2.24 Amendments to the National Rail Conditions of Carriage (for domestic services) and to Eurostar's Conditions of Carriage (for Eurostar services) have been made to incorporate into the contract between the passenger and the railway undertaking the individual passenger rights within the Regulation.

2.25 Amendments to the Claims Allocation and Handling Agreement have also been made to incorporate the obligations relating to liability.

# Part Three

## What you are required to do - 'non core' elements

3.1 These elements currently apply to international services operating in GB (at present only the services operated by Eurostar are applicable). The current SI (2009/2970) exempting domestic services from the non-core elements runs for five years up to 3 December 2014. It could then be extended for two further periods of up to five years should the UK Government decide to exercise this right.

3.2 As with the 'core' elements, you should read the Regulation itself and if in doubt over the interpretation, you should seek independent legal advice.

### **Article 4: transport contract**

3.3 This Article means that, except where overridden by the Regulation itself, the transport contract, provision of information to passengers and the conditions associated with tickets will be governed by Titles II and III of Annex I to the Regulation. This is an extract from the contract for international carriage of passengers and luggage by rail (CIV) and consists of Appendix A of the Convention Concerning International Carriage by Rail as modified 3rd June 1999 and normally referred to as COTIF.

3.4 Title II covers the contract for carriage for passengers and contains six Articles as set out below:-

- Article 6 (of COTIF) refers to the Contract of Carriage;
- Article 7 (of COTIF) refers to tickets;
- Article 8 (of COTIF) refers to payments for carriage;
- Article 9 (of COTIF) refers to the right to be carried and exclusion from carriage;
- Article 10 (of COTIF) refers to administrative formalities (customs etc);
- Article 11 (of COTIF) cancellation and late running and missed connections (requirement to certify the circumstances on a ticket).

3.5 Title III covers carriage of luggage, animals and vehicles and contains 15 chapters.

3.6 With respect to international services, these regulations have applied for some years and so no action is required as a result of this Regulation.

#### **Article 5: bicycles**

3.7 Railway undertakings must allow passengers to bring bicycles on trains – but only if this does not adversely affect the rail service and if the rolling-stock permits. A charge may be made for carrying the bicycle. Similar requirements are in the National Rail Conditions of Carriage.

#### **Article 6: exclusion of waiver and stipulation of limits**

3.8 Obligations under the Regulation cannot be limited by the transport contract with the passenger but railway undertakings can offer contract conditions more favourable to the passenger than required by the Regulation.

#### **Article 7: information regarding discontinuance of services**

3.9 Advance notice must be given regarding the discontinuance of services. In GB this is already mandated by the closure process under the Railways Act 2005 and within timetabling provisions in licences which require operators to participate in the timetabling process so that Network Rail can publish changes to the timetable. There are also obligations in franchises to provide timely information about changes to services.

#### **Article 8: information for passengers**

3.10 This places an obligation on railway undertakings and separately, ticket vendors working on their behalf, to provide on request specified information prior to travel. Ticket vendors working on their own account and tour operators must provide the same information where available. The specified information is set out in Annex II of the Regulation and includes:-

- General conditions applicable to the contract;
- Time schedules and conditions for the fastest trip;
- Time schedules and conditions for the lowest fares;
- Accessibility, access and availability of facilities for people with disabilities and people with reduced mobility;
- Accessibility and access conditions for bicycles;
- Availability of seats in smoking/non smoking accommodation;
- Any activities likely to disrupt/delay services;
- Availability of on-board services;
- Procedures for reclaiming lost luggage;
- Procedures for the submission of complaints.

3.11 The Article goes on to specify information to be made available during the journey including:-

- On-board services;
- Next station;
- Delays;
- Main connecting services; and
- Security and safety issues.

3.12 The format of the information should take into consideration the needs of people with disabilities.

#### **Article 10: travel information and reservation systems**

3.13 This mandates the use of a Computerised Information and Reservation System for Rail Transport (CIRSRT). The technical specification for this is governed by the Technical Specification for Interoperability referred to in Directive 2001/16/EC.

3.14 The article also limits the ability to disclose personal information on individual bookings to other railway undertakings and/or ticket vendors (except for statutory disclosure requirements for example to certain law enforcement authorities including the police).

#### **Article 13: advance payments of compensation to those injured or the dependants of those killed in an accident**

3.15 This mandates the provision of immediate financial assistance in the event of an accident. The Regulation places responsibility on TOCs to offer immediate financial assistance but this can be provided through Network Rail or existing industry arrangements.

#### **Article 14: assistance in seeking compensation from third parties when a railway undertaking contests its own liability for an accident**

3.16 This is in line with current GB practice (under CAHA) and mandates that where a railway undertaking contests its own liability for an accident, it will make every effort to assist a passenger in making a claim.

#### **Article 15: compensation in the event of delays, missed connections and cancellations**

3.17 This draws CIV provisions from Annex I: Chapter II of Title IV. It provides that the carrier shall be liable to the passenger for the loss or damage resulting

from the fact that the journey cannot be continued on the same day. The damages under this Regulation shall comprise the reasonable costs of accommodation and the reasonable cost occasioned by having to notify people expecting the passenger. UK law shall determine whether any further damages shall be due.

3.18 There are limitations to liability where the late running/cancellation/missed connection was the result of:-

- Circumstances not connected with the operation of the railway which the carrier could not avoid;
- Fault on the part of the passenger;
- Behaviour of a third party (outside the railway industry).

There are no limitations on train operator obligations to their passengers in respect of compensation and assistance requirements set out in Articles 16 to 18. This means that train operators are obliged to give passengers compensation or assistance even in situations which they consider are outside of their, or the rail industry's control.

#### **Article 16: reimbursement and re-routing in the event of delays**

3.19 Where there is a reasonable expectation that a delay that will lead to arrival at the final destination 60 minutes or more late, passengers may choose:-

- refund of the fare when the journey will no longer serve the passenger's originally planned purpose. The refund will include the return journey where appropriate; or
- continuation or re-routing under comparable transport conditions to the final destination at the earliest opportunity; or
- continuation or re-routing under comparable transport conditions to the final destination at a later date at the passenger's convenience.

#### **Article 17: compensation of the ticket price (refunds in the case of delays)**

3.20 This sets compensation in the event of delays to the journey (and where the passenger has not been reimbursed under Article 16):-

- 1 25% of the ticket price for a delay of 60 to 119 minutes;
- 2 50% for a delay over 120 minutes.

3.21 Where a passenger has a return ticket, the calculation for a delay on one leg will be half the return fare paid. The compensation rate will be as shown in 3.20 above (i.e. 25% or 50%)

3.22 Voucher payments are acceptable, but where a passenger requests cash, this must be paid.

3.23 The compensation must be paid within a month of the compensation request and no administration or similar fee may be deducted. The Regulation allows for a minimum threshold before compensation is paid, but this must not exceed 4 Euros.

3.24 The passenger will not have a right to compensation when they are informed of the delay before buying their ticket or if the delay is less than 60 minutes due to continuation on a different service or re-routing.

**Article 18: assistance to passengers in the event of delays (primarily meals and hotel accommodation)**

3.25 Passengers must be kept informed of the situation including current estimated departure and arrival times as soon as such information is available.

3.26 In the case of delays over 60 minutes, the passenger shall be offered free of charge:-

- 1 meals and refreshments in reasonable relation to the waiting time if these are available on the train or station or can be reasonably\* supplied.
- 2 hotel or other accommodation and transport between the station and the accommodation in cases where a stay of one or more nights becomes necessary. This is only where and when physically possible.
- 3 transport from the train to the station if the train is blocked on the track, to an alternative departure point or the final destination of the service. Again this is where physically possible.

(\*Reasonable will depend on the circumstances. Operators will be expected to behave with a degree of flexibility in respect of their passenger's individual circumstances. However, operators are not expected to behave unreasonably, for example, where disruption is causing delays to a very large number of passengers, it may not be possible to distribute refreshments to a large number of passengers. In such circumstances operators should put in place reasonable procedures to allow them properly to discharge this duty which may include, for example, a voucher system.).

3.27 Where the railway service cannot be provided, the railway undertakings shall provide alternative transport as soon as possible.

3.28 Where there is disruption, the railway undertaking shall certify the same on the ticket when requested by the passenger.

3.29 When discharging these duties, the railway undertaking shall pay particular attention to the needs of people with a disability and others with reduced mobility.

**Article 20 (2): information for disabled passengers and passengers with reduced mobility where the right to travel is refused**



3.30 In these circumstances, where requested, railway undertakings should notify in writing to the disabled passenger or passenger with reduced mobility of the reason for refusal to travel.

### **Article 21: accessibility of stations and rolling stock**

3.31 This refers to:-

- compliance with the Technical Specification for Interoperability for persons with reduced mobility; and
- in the absence of accompanying on-train staff or staff at a station, railway undertakings and station operators shall make all reasonable efforts to enable people with reduced mobility/people with disabilities to travel by rail.

3.32 In practice station operators and railway undertakings are obliged to comply with the Technical Specification for Interoperability when introducing new facilities or engaging in major refurbishment works. With regard to staffing and reasonable efforts to enable passengers with reduced mobility/disabled passengers to travel, train operators and station managers will already have in place DPPP's which sets out how they plan to comply with this requirement.

### **Article 22: assistance for disabled passengers and passengers with reduced mobility at stations**

3.33 At staffed stations the station manager shall provide assistance with boarding or alighting trains for people with reduced mobility/people with disabilities. This assistance shall be provided free of charge.

3.34 Member States may provide a derogation where alternative facilities or arrangements guaranteeing an equivalent or higher level of accessibility of transport services are in place.

3.35 At unstaffed stations the station manager shall make easily available information regarding the nearest staffed station and directly available assistance for people with reduced mobility/people with disabilities. Current DPPPs should be consistent with or compliant with this Article.

### **Article 23: assistance for disabled passengers and passengers with reduced mobility on trains**

3.36 This requires provision of assistance (free of charge) whilst on the train or boarding or alighting.

3.37 The railway undertaking must make all reasonable efforts to allow people with reduced mobility/people with disabilities to have independent access to train facilities (catering etc). Again current DPPPs should be consistent with or compliant with this Article.

## **Article 24: conditions under which assistance is provided**

3.38 This imposes a duty on railway undertakings, station managers, ticket vendors and tour operators to co-operate to provide assistance. Passengers needing assistance may be required to give at least 48 hours notice of their need for assistance.

3.39 Where a ticket permits multiple journeys (e.g. a season ticket) one notification shall be sufficient to trigger the arrangement of assistance on all relevant journeys provided that the person requiring assistance provides adequate information on the timing of journeys. This may require some operators to change the way that they deal with regular travellers as it will not be acceptable to insist that a passenger books assistance each time that they require it.

3.40 If a disabled person/person with reduced mobility fails to notify the railway undertaking or station provider of their need for assistance, the railway undertaking or station manager is still required to make all reasonable efforts to provide assistance so that they can still travel.

3.41 The station manager should designate a point or points within and outside the station at which people with reduced mobility/people with disabilities can announce their arrival (at least 30 minutes before the published departure time) and, if need be, request assistance. If possible, a time should be agreed with the railway undertaking or station manager providing such assistance not more than 60 minutes before the published departure time or the time at which passengers are asked to check in.

## **Article 25: compensation in respect of mobility equipment – removal of any limits to liability**

3.42 This means that where a railway undertaking is liable for loss of or damage to mobility or other special equipment, there is no cap on the financial compensation payable. ..

## **Article 27: complaints handling**

3.43 Railway undertakings shall set up a complaint handling mechanism for rights and obligations covered by this Regulation. They also need to publicise the contact details.

3.44 The operator shall respond within one month – though there is some scope for holding replies should there be good reasons why a response cannot be provided earlier. In that case the date can be extended to three months from the date of the complaint.

3.45 The railway undertaking shall publish in its annual report on service quality (see Article 28):-

- The number and categories of received complaints
- Processed complaints
- Response time
- Improvement actions undertaken.

3.46 In practice existing train operators already have complaints handling policies and it should not be necessary to make wholesale changes to existing systems.

3.47 If a passenger believes that a train operator, ticket vendor, station manager, or tour operator has infringed the Regulation, they should initially complain to that party. Should this not lead to a satisfactory outcome, they may take their complaint to Passenger Focus or London TravelWatch (as appropriate). These official complaints handling bodies will then consider the matter and where appropriate, refer it to ORR for further consideration.

#### **Article 28: service quality standards**

3.48 Railway undertakings are required to set out minimum standards in respect of the following:-

- Information and tickets;
- Punctuality of services, and general principles to cope with disruptions to services;
- Cancellation of services;
- Cleanliness of rolling stock and station facilities (air quality in carriages, hygiene of sanitary facilities etc);
- Customer satisfaction survey;
- Complaints handling, refunds and compensation for non compliance with service quality standards;
- Assistance provided to disabled persons and persons with reduced mobility.

3.49 In most cases, this information is currently published as part of franchised train operators' Passenger's Charters, DPPPs or annual reports.

3.50 Railway undertakings will have to publish a report on their service quality with their annual report. This will also have to be made available on the railway undertaking's website and also on the website of the European Rail Agency (ERA).

#### **Article 29: information to passengers about their rights**

3.51 This mandates the provision of information to passengers about their rights under this Regulation. The National Conditions of Carriage are an appropriate means of advising passengers of their rights but rail operators, station managers and tour operators will need to ensure that passengers are aware of and have access to copies.

3.52 Railway undertakings and station managers must also inform passengers of the contact details of the complaints handling bodies (Passenger Focus and London TravelWatch). It is expected that this will be done by updating the existing system of advising passengers of the complaints handling procedures as currently displayed on trains, at stations and on websites.