

**GOVERNMENT RESPONSE TO THE CONSULTATION
ON THE IMPLEMENTATION OF EU REGULATION
1177/2010 CONCERNING THE RIGHTS OF
PASSENGERS WHEN TRAVELLING BY SEA AND
INLAND WATERWAY AND AMENDING REGULATION
(EC) No 2006/2004**

SUMMARY OF RESPONSES AND GOVERNMENT'S REPLY

1. Overview

1.1 The consultation sought views on the Government's draft Regulations and impact assessment that provide for the enforcement of rights and entitlements under EU Regulation No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterways and amending Regulation (EC) No 2006/2004.

1.2 Due to the size and limited scope of the draft Regulations and the specialised nature of the subject matter, a targeted consultation of 6 weeks duration was conducted. The consultation closed on 16 November 2012.

1.3 The consultation asked whether the Government's proposed approach to implementing the EU Regulation would achieve the right outcomes. Also, consultees were asked whether they were able to provide any additional evidence relating to the costs and benefits associated with the draft Regulations, and the impact assessment invited consultees to submit any additional evidence on the costs and benefits of the draft Regulations and the costs and benefits of the EU Regulation.

1.4 The comments of those organisations that responded are set out in the following document.

1.5 Draft guidance on the EU Regulation was also placed on the Department for Transport's website at the time of the launch of the consultation. Comments were also invited on this guidance separately from the public consultation. See Part 3 below.

2. Summary of Responses and Government Reply

2.1 Fifty seven organisations representing the maritime industry and other interested parties were notified upon launch of the consultation, of which seven responded (approximately 12%). A further six consultation responses were also received from other parties. The following summary of consultation responses is based on the questions posed in the Consultation Document. A list of those consultees who provided comments is set out at Part 4.

2.2 Those that responded were generally supportive of the Government's approach to implementation of the EU Regulation.

2.3 There are no references in this summary note to comments made about the Regulations that were of a purely editorial or presentational nature.

Part 1

Question 1

Question 1: Do you agree with the proposed approach for complaint handling? If not, please provide your reason(s).

The consultation proposal

The consultation proposal was based on a three tier approach. It is a requirement of the EU Regulation (Article 24) for a carrier or terminal operator to set up / have in place an accessible complaint handling mechanism for rights and obligations covered by this EU Regulation. So in the first instance, a passenger to which the EU Regulation applies should raise their complaint direct with the carrier or terminal operator (stage 1).

If the complaint cannot be resolved, the complaint may then be referred to a complaint handling body operating on a voluntary basis (stage 2).

The Government consulted on the basis that (i) the Passenger Shipping Association would act as the voluntary complaint handling body for England and Wales; and (ii) that the Scottish Government and the Consumer Council for NI (CCNI) take up this role in their respective areas.

It was also proposed in the consultation that the Maritime and Coastguard Agency will undertake the role of national enforcement body for the EU Regulation in the UK (stage 3). The MCA will not look at complaints unless the person making the complaint has followed the complaint handling process outlined above. However, an exception to this rule would be if a significant and clear breach of the EU Regulation has been identified (such as the carrier or terminal operator not having an accessible complaint handling mechanism in place) then the matter could be considered by the national enforcement body in the first instance.

Consultation responses

Responses were generally supportive of the Government's proposed three tier approach, whereby a passenger will make their complaint to the carrier or operator in the first instance.

Passenger Focus, however, suggested that it would consider taking on the complaint handling role for maritime passengers.

In addition, some concern was expressed about the appropriateness of the Passenger Shipping Association undertaking the voluntary complaint handling role for England and Wales on the basis that it is a trade association (thereby questioning its neutrality), while others also questioned how the complaint handling role would work in London given that London TravelWatch currently undertakes a similar role under an existing legal remit with Transport for London, leading to unnecessary duplication of effort.

Government Response

Although welcoming its offer, the Government currently has no plans to extend Passenger Focus's legislative remit to enable it to become a complaint handling body.

There is also nothing in the EU Regulation that requires the complaint handling bodies to be independent of commercial interests. The latter requirement only applies to the national enforcement body, which is why the Maritime and Coastguard Agency is undertaking this role for the whole of the UK.

The Government agrees with the comments made about the complaint handling role in London. As a result, the Minister Stephen Hammond announced on 18 December 2012¹ that the Passenger Shipping Association will act as the voluntary complaint handling body for England and Wales, and that the Scottish Government and the Consumer Council for Northern Ireland will take up this role in their respective areas. It was also announced that there will be a complaint handling role for London TravelWatch for services operated and licensed by Transport for London.

Question 2

Question 2: Do you have any views on the alternative approach outlined in section 6.8?

The consultation proposal

The alternative approach outlined in section 6.8 of the consultation document was for the Passenger Shipping Association to undertake an extended role to deal with passenger complaints for all cruises in the UK, as well as dealing with passenger complaints relating to ferries in England and Wales. This would mean that the Scottish Government and the Consumer Council for Northern Ireland could concentrate solely on passenger complaints relating to ferries in their respective areas.

Consultation responses

Most of those responding whilst sympathetic, felt that they were not in a position to comment on the basis that it was for the relevant voluntary complaint handling bodies to decide the coverage of their roles.

Nevertheless, there was some support for the proposal. It was felt that given the nature of the cruise industry, where cruise liners will often call at several ports within Great Britain, it made sense for one complaint handling body (the Passenger Shipping Association) to undertake this role.

However, the Scottish Government indicated in their consultation response that, in the interests of consumers, they had a strong preference to act as the voluntary complaint handling body for both ferries and cruises in Scotland.

¹ <https://www.gov.uk/government/news/new-rights-for-maritime-passengers>

Government Response

On the basis of the responses received, the Government has decided not to act on the particular proposal outlined in section 6.8 of the consultation document.

Question 3

Question 3: Are you able to provide any data or other evidence on the rate of complaints the national enforcement body for this EU Regulation is likely to receive?

Consultation responses

The majority of responses did not provide any comment or evidence or data in reply to this question.

Where information was provided through the consultation process it was limited in nature. Some operators identified a very low percentage of complaints per passenger travelled. Others suggested that the number of complaints received could potentially be higher, given that passenger's awareness of their rights may increase once the EU Regulation entered into force.

Government Response

It is clear from the responses received that the number of complaints the Maritime and Coastguard Agency (and hence cost to the Agency) is likely to receive is very difficult to estimate. The estimates of the costs of establishing and operating the national enforcement body and the associated sensitivity analysis have been reviewed when finalising the Impact Assessment following the consultation and a number of changes have been made. However, the estimates provided remain sensitive to the assumptions that have been made.

Question 4

Question 4: Do you think that the level of penalty is appropriate for each of the offences described above?

Consultation responses

The majority of responses did not comment on this question, and those that did offered mixed views.

Some responses expressed the view that the level of penalties was appropriate for the offences described, and were content that the Regulations were in line with the similar Aviation Passenger Rights Regulations.

On the other hand, two responses did not welcome the inclusion of an 'unlimited fine' for certain breaches of the EU Regulation, with one expressing preference that the Maritime and Coastguard Agency, as the national enforcement body, should adopt a more flexible approach to penalties. It was suggested that the proposal for unlimited penalties appeared to be at variance with the policy of not imposing undue costs on operators, and also that all offences in relation to the EU Regulation should carry a liability to a penalty of a fine not exceeding Level 5 on the standard scale.

Government Response

In the UK, the Government has made most offences subject to a fine, on conviction in the Magistrates' Court, not exceeding Level 5 (currently £5,000). However, there are certain breaches that are considered so fundamental that heavier penalties should be available. One example is including provisions in the travel contract which restrict or waive passengers' rights under the EU Regulation. In these cases, it is considered appropriate that the option of taking the matter to the Crown Court, where an unlimited fine may be imposed, is justified. This is in line with the penalties imposed for similar breaches in the similar Civil Aviation Regulations.

Question 5

Question 5: Are you able to provide any additional evidence relating to the costs and benefits associated with the draft Regulations?

Consultation responses

The majority of responses did not offer a view on this question.

Where information relating to the costs and benefits associated with the draft Regulations or the EU Regulation was forthcoming, it was limited in nature, and no estimates or data were provided in response to this question.

Government Response

The analysis in the Impact Assessment has been reviewed when finalising the Impact Assessment following the consultation and a number of changes have been made. This includes taking account of the evidence that was forthcoming as part of the consultation.

Part 2

Additional time constraint for initiating claims in Regulations

Although not specifically raised in the consultation responses, the Government has decided, in line with the Civil Aviation Regulations for passenger rights, to provide for a six month time period within which a passenger will be able to bring forward court action for compensation if they feel that there has been a breach of the EU Regulation. This can be

extendable by a further three months under certain circumstances, for example, where the dispute concerned is referred to conciliation before the end of the period of six months.

Other general concerns raised during the consultation

A few other general concerns were raised in responses during the consultation, the key ones of which are considered below.

(i) Equality Act

Some concern was expressed at Government for not announcing how and when Part 3 of the Equality Act will be applied in relation to transporting people by ship or hovercraft.

Government Response

The Government has yet to commence the anti-discrimination legislation in Part 3 of the Equality Act 2010 as it applies to ships and hovercraft, so the previous anti-discrimination legislation with regards to transporting people by, or a service provided on, a ship or hovercraft continues to apply.

The Government is continuing to consider its commencement strategy for applying Part 3 in light of the implementation of the EU Regulation on maritime passenger rights.

The EU Regulation will enhance existing legislation by providing passengers with the right to assistance in cases of cancelled or delayed departures. It also provides disabled persons and those with reduced mobility the same rights and accessibility assistance when travelling by water as they have in other transport sectors.

(ii) Closer working arrangements and Memorandum of Understanding

Closer working relationships were supported by some responses to the consultation. One also suggested that a Memorandum of Understanding between the voluntary complaint handling bodies, the Maritime and Coastguard Agency (as the national enforcement body) and the Department for Transport is essential.

Government Response

The Government strongly supports close working relationships between all parties, and a Memorandum of Understanding between the voluntary complaint handling bodies, the Maritime and Coastguard Agency (as the national enforcement body) and the Department for Transport, is actively being taken forward.

Part 3

Draft Guidance on the EU Regulation

Draft guidance on Chapter 2 and 3 of the EU Regulation was published alongside the public consultation in October 2012.

Chapter 2 of the EU Regulation provides for the rights of disabled persons and persons with reduced mobility when travelling by sea and inland waterway; and Chapter 3 sets out the obligations of carriers and terminal operators in the event of interrupted travel. The draft guidance can be found on the www.gov.uk website².

Although this draft guidance has been generally well received, some advocated the use of examples to promote best practice in the guidance notes.

Government Response

Adopting such an approach would mean going beyond the actual requirements of the EU Regulation - and could potentially lead to increased costs to industry. This would be inconsistent with Government policy as it would also mean “gold plating” the implementation of EU legislation.

Part 4

List of Respondents who provided comments on the consultation

Organisations or Institutions:

1. ABTA – The Travel Association
2. British Ports Association (BPA)_
3. Chamber of Shipping
4. Consumer Council
5. Disabled Persons Transport Advisory Committee (DPTAC)
6. Economic Development Department - State of Jersey
7. Equality and Human Rights Commission (EHRC)
8. London TravelWatch
9. Passenger Focus
10. Scottish Government (including response from the Mobility and Access Committee for Scotland)
11. Transport for London
12. TravelWatch Isle of Man
13. Windermere Lake Cruises

List of Respondents who provided comments on the draft guidance

Organisations or Institutions:

² <https://www.gov.uk/government/publications/draft-guidance-notes-relating-to-regulation-eu-no-1177-2010>

1. Chamber of Shipping
2. Consumer Council
3. Department for Environment, Food and Rural Affairs (Defra)
4. Disabled Persons Transport Advisory Committee (DPTAC)