

**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**

5 October 2012

Department for Transport
2/29 Great Minster House
33 Horseferry Road
London
SW1P 4DR

Web site: www.dft.gov.uk

Contents

| | |
|--|---------------------|
| Foreword | Page 3 |
| 1. Definitions | Page 4 |
| 2. The Legal Framework | Page 4 |
| 3. Application of draft Regulations | Page 4 |
| 4. Policy Objectives of draft Regulations | Page 5 |
| 5. The proposed approach for complaint handling | Page 5 |
| 6. The complaint handling bodies | Page 6 |
| 7. National Enforcement Body | Page 7 |
| 8. Draft guidance on the EU Regulation | Page 9 |
| 9. Offences and Penalties | Page 9 |
| 10. Additional powers for the Maritime and Coastguard Agency | Page 10 |
| 11. Applicability of Part 3 of the Equality Act 2010 to ships and hovercraft | Page 10 |
| 12. Impact Assessment | Page 11 |
| How to Respond | Page 11 |
| Freedom of Information | Page 11 |
| Consultation Questions | Page 12 |
| What will happen next? | Page 12 |
| The Government's Key Consultation Principles | Page 12 |
| Annex A: EU Regulation (EC) 1177/2010 | Attached separately |
| Annex B: Draft UK Regulations | Attached separately |
| Annex C: List of Consultees | Attached separately |
| Annex D: Impact Assessment | Attached separately |

Foreword

This consultation seeks views on the Department for Transport's (DfT) draft Regulations that facilitate implementation of 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 into UK law. The consultation does not seek views on the provisions of the EU Regulation itself which are directly applicable in the UK.

The EU Regulation enters into force on 18 December 2012. The EU Regulation establishes the right of all passengers to assistance in cases of cancelled or delayed departures and lays down the right, in certain circumstances, to compensation in case of delay in arrival. It also aims to provide disabled persons and persons with reduced mobility (PRMs) with the same opportunities to travel by water as they have in other transport sectors across the EU.

Please tell us your views on any issue in the draft Regulations which affects you or which you wish to comment on. We would especially welcome your feedback on the questions highlighted in bold in this consultation.

We would also welcome your feedback on any of the assumptions made, estimates presented, or evidence used in the Impact Assessment for the draft Regulations. In particular, we would welcome any new evidence that you can provide on the costs and benefits in order to strengthen and improve our evidence base.

In view of the size and limited scope of the draft Regulations and the specialised nature of the subject matter, we are conducting a targeted consultation of 6 weeks duration, which closes on 16 November 2012.

Separate draft guidance on Chapters 2 and 3 of the EU Regulation has been placed on the Department's website today. Anyone wishing to express a view about this guidance can do so separately - see section 8 for further details.

We look forward to receiving your comments

1. Definitions

1.1 For the purposes of this consultation paper:

- **The EU Regulation** refers to Regulation (EU) 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 waterway and amending Regulation (EC) No 2006/2004.

2. The Legal Framework

2.1 The EU Regulation, which is directly applicable, was adopted on 24 November 2010. The UK Government is required to facilitate implementation of the EU Regulation by 18 December 2012.

2.2 A copy of the EU Regulation is attached at Annex A

3. Application of the draft Regulations

3.1 The EU Regulation, via the adoption of the draft Regulations at Annex B, applies to the whole of UK.

3.2 The EU Regulation applies in respect of passengers travelling –

- a) on passenger services¹ where the port of embarkation is situated in the territory of an EU Member State;
- b) on passenger services where the port of embarkation is situated outside the territory of an EU Member State and the port of disembarkation is situated in the territory of an EU Member State, provided that the service is operated by a Union carrier as defined in Article 3(e);
- c) on a cruise² where the port of embarkation is situated in the territory of an EU Member State. However Articles 16(2), 18, 19, and 20(1) and (4) of the EU Regulation shall not apply to those passengers.

3.3 The EU Regulation does not apply in respect of passengers travelling –

- a) on ships certified to carry up to (and including) 12 passengers;
- b) on ships which have a crew responsible for the operation of the ship composed of not more than three persons (usually reflected in the vessel's safe manning certificate) or where the distance of the overall passenger service is less than 500 metres, one way;
- c) on excursion and sightseeing tours other than cruises; or
- d) on ships not propelled by mechanical means as well as original, and individual replicas of, historical passenger ships designed before 1965, built predominately with the original materials, certified to carry up to 36 passengers.

¹ A 'passenger service' means a commercial passenger transport service by sea or inland waterways operated according to a published timetable. In practice this will include ferry services in the UK, some of which may include an overnight sailing.

² A 'cruise' means a transport service by sea or inland waterway, operated exclusively for the purpose of pleasure or recreation, supplemented by accommodation and other facilities, exceeding two overnight stays on board.

3.4 Given that no comparable guarantees on the rights of passengers can be given under existing national law, the derogations afforded by Articles 2(3) and 2(4) of the EU Regulation will not be taken up.

4. Policy Objectives of the draft Regulations

4.1 The aim of the draft Regulations is to facilitate the successful application and implementation of the EU Regulation by providing the necessary enforcement mechanism to ensure compliance.

4.2 Each Member State is required to designate a body responsible for the enforcement of the EU Regulation (Article 25). This national enforcement body is also required to publish a report on its activities every 2 years (Article 26).

4.3 Member states are also required to introduce appropriate penalties for infringements (Article 28).

4.4 The EU Regulation allows for each Member State to decide whether as part of the complaints process the passenger as a first step shall submit the complaint covered by the EU Regulation to the carrier or terminal operator. See Article 25. The UK Government has decided to take up this option.

4.5 However, as a result of taking up the option outlined in paragraph 4.4 above, the further option of setting up an appeals body is not being followed up by the UK Government. Therefore this is not assessed in the Impact Assessment attached at Annex D. The EU Regulation allows for the national enforcement body or any other competent body designated by the Member State to act as an appeal body for complaints (Article 25). However, there is currently no all encompassing regulator of consumer activity in the maritime sector in the UK that could act as an appeals body for maritime passenger rights. Neither is it being proposed that the national enforcement body for the UK should undertake this role.

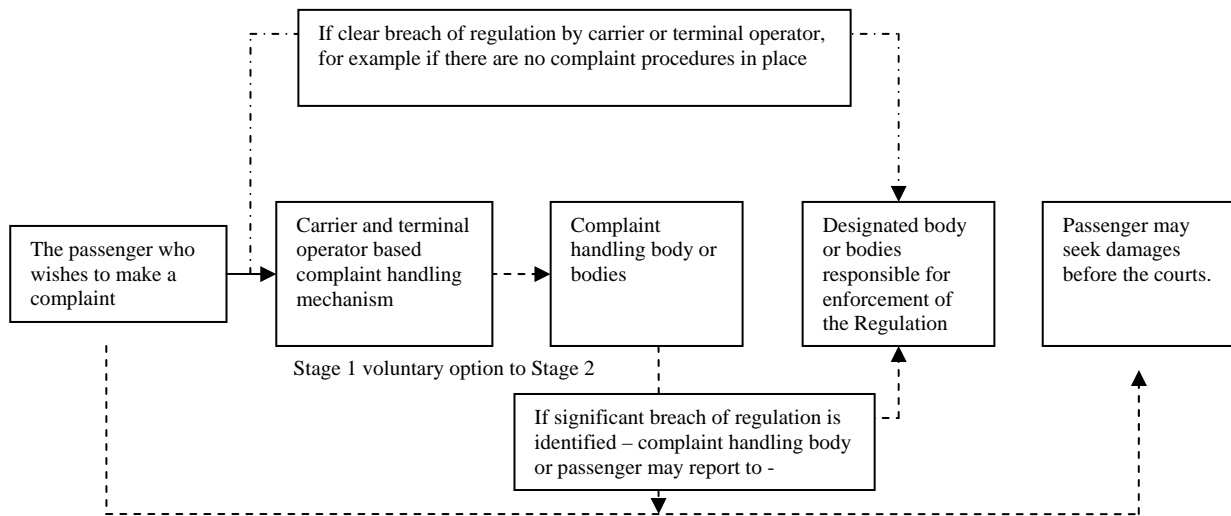
5. The proposed approach for complaint handling

5.1 It is a requirement of the EU Regulation (Article 24) for a carrier / 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 / terminal operator.

5.2 If the complaint cannot be resolved, the complaint may then be referred to a complaint handling body operating on a voluntary basis (see section 6).

5.3 It is proposed that the national enforcement body will not look at complaints unless the person making the complaint has followed the complaint handling process outlined below. However, the exception to this would be if a significant breach of the EU Regulation has been identified (such as the carrier / 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.

5.4 The proposed approach for complaint handling is represented in diagrammatic form below.



5.5 In the majority of cases, we would expect passengers covered by the EU Regulation to submit their complaint through the complaint handling process of the EU Member State in which they embarked upon their journey.

5.6 In certain circumstances, there may also be a case when a complaint handling body feels that it is appropriate to take up the complaint on behalf of the passenger in the first instance. For example, this could be when the passenger could be considered vulnerable.

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

6. The complaint handling body or bodies

6.1 The Department is supporting a voluntary undertaking by the Passenger Shipping Association (PSA) to act as the complaint handling body for England and Wales. This role will cover passenger complaints relating to both ferries and cruises. It is envisaged that the Consumer Council for Northern Ireland and the Scottish Government will take up similar voluntary roles in their respective areas, subject to being able to reach final agreement with them.

6.2 The PSA is the trade association for the cruise and ferry industry in the UK. The PSA represents passenger shipping interests, and is run by a London-based team which is supported by a Council of Management drawn from cruise and ferry operator representatives. The PSA already has experience of settling disputes between consumers and its members following the introduction of the Package Travel and Package Holiday Tours Regulations in 1992. The PSA also has an existing conciliation service in place, and this will be made available to all.

6.3 There are a number of reasons why the Scottish Government is best placed to undertake the voluntary complaint handling role in Scotland. These include:

- Some ferry services are already managed by the Scottish Government under public service contracts;

- Responsibility for policy relating to ports in Scotland rests with the Scottish Government;
- Tourism is an important part of Scotland's economy and it is in the Scottish Government's best interests to satisfactorily resolve any complaints themselves; and
- The Scottish Government better understands the operations, the facilities and the local environment and would be able to react to, and advise on, local events and situations and be well placed to advise the national enforcement body on local trends.

6.4 The Consumer Council was established in 1985 with a statutory remit to protect and promote the interests of all passengers travelling to, from or within Northern Ireland³.

6.5 The complaint handling bodies will be expected to provide all passengers (in the case of the PSA, not just those with complaints relating to their members) with an evidence-based reply to a complaint within a reasonable period of time. The complaint handling bodies will also monitor the number of complaints received and any associated trends, and will work closely with the national enforcement body to help ensure compliance by the industry.

6.6 There is no mandatory requirement in the EU Regulation to set up the role / function of a complaint handling body or bodies. Therefore, being voluntary undertakings, the role of the complaint handling bodies will not be established in law in our Regulations and the costs and benefits associated with these roles have not been considered as part of the Impact Assessment at Annex D.

6.7 Memorandum of Understandings (MoUs) between industry and complaint handling bodies could be produced to set out arrangements for handling complaints, ensuring consistent protection for passengers and reporting functions to the enforcement body.

An alternative option

6.8 The PSA has offered 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.

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

7. National Enforcement Body

7.1 Each Member State is required to designate a body or bodies responsible for the enforcement of the EU Regulation (Article 25). It is therefore intended that the Maritime and Coastguard Agency (MCA) will undertake the role of the national enforcement body

³ General Consumer Council (NI) Order 1984, Sections 4 and 5

for the whole of the UK. The MCA is an executive agency of the Department for Transport, and as such has jurisdiction for the whole of the UK.

7.2 The MCA will be responsible for investigating whether there has been a breach of the EU Regulation in individual cases, and will be required to take the measures necessary to ensure compliance with the EU Regulation. The MCA will not act on individual claims for compensation or act as an appeals body.

7.3 The MCA will also be required to publish a report on its activity every 2 years, containing in particular a description of actions taken in order to facilitate the implementation of the provisions of the EU Regulation, details of sanctions applied and statistics on complaints and sanctions applied. The MCA will also be required to co-operate with other national enforcement bodies in other Member States, through the exchange of information and best practice. This will be particularly important in relation to those Member States at the other end of the UK's international ferry routes.

7.4 The European Commission's impact assessment reports that following the introduction of similar legislation in respect of air transport, complaints were received by national enforcement bodies at a rate equivalent to 44 for every million passengers departing from EU airports. If there is a similar rate of complaints submitted for maritime purposes, this could be in the region of 2000 a year⁴. The national enforcement body is expected to consider only a small minority of these cases where it is perceived that there has been an actual breach of the EU Regulation. We accept, however, that such comparisons between the different sectors is very difficult, and that ultimately the rate of complaints may be different.

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?

7.5 Based on discussions with the MCA, it is assumed that an additional full time post at either the Senior Executive Officer (SEO) or the "S" Level SEO/MS1 pay bands would be required to oversee the extra enforcement functions. On the basis of these assumptions, the cost to the MCA of establishing and operating a national enforcement body has been estimated at around £44,000 to £50,000⁵ per year in 2012 prices, with a best estimate of around £47,000 per year (the mid-point of this range). The appraisal period is 10 years. The present value of the total cost to the MCA over the 10 year appraisal period has been estimated at around £0.38 to £0.43 million, with a best estimate of £0.40 million. However, it should be noted that the cost to the MCA is uncertain at this stage and that this estimate is sensitive to the assumptions that have been made in the Impact Assessment at Annex D.

⁴ The European Commission's Impact Assessment reports that following the introduction of similar measures for air passengers, complaints were received at a rate equivalent to 44 for every million passengers departing from EU airports. According to DfT statistics, in 2010 UK domestic and international ferry services handled 45 million passengers. Assuming 44 complaints per million journeys, this suggests that up to 2000 complaints could be received annually in the UK or around 9 cases per staff working day (220 per year).

⁵ This range is based on the mid-points of Department for Transport and MCA pay scales for these pay bands, which have been uplifted by around 21% in line with the Department for Transport's Transport Analysis Guidance to account for non-wage labour costs

(<http://www.dft.gov.uk/webtag/documents/expert/unit3.5.6.php>)

7.6 Furthermore, there are also likely to be other costs associated with publishing a report on the MCA's actions at least every two years which we are not able to monetise at this point. In addition, there could potentially be additional costs related to recruitment, training and travel and expenses which it has not been possible to monetise at this stage due to the uncertainties involved.

8. Draft Guidance on the EU Regulation

8.1 Today, we are also publishing draft guidance on Chapter 2 and 3 of the EU Regulation itself. We have been working closely with, and informally consulting, industry and disability groups to produce guidance on Chapter 2 of the EU Regulation which provides for the rights of disabled persons and persons with reduced mobility when travelling by sea and inland waterway; and Chapter 3 which sets out the obligations of carriers and terminal operators in the event of interrupted travel. This draft guidance can be found on the DfT website alongside this consultation.

8.2 Although this draft guidance is linked to this consultation, **it does not form part of the consultation itself**. However, we wish to invite comments on this draft guidance during the consultation period and then right up until 18 December 2012 when the EU Regulation enters into force. Initially we will look to update the draft guidance at the end of the consultation period, and thereafter on a regular basis. Comments on the draft guidance should be sent to the following address -

Damian de Niese
Draft Guidance on EU Regulation 1177/2010
Department for Transport - Zone 2/29
Great Minster House
33 Horseferry Road
London
SW1P 4DR

E-mail address: damian.de_niese@dft.gsi.gov.uk

9. Offences and Penalties

9.1 The EU Regulation will have the force of law in the UK so there will be a need to incorporate a number of offences and penalties into domestic legislation to ensure compliance. These offences and penalties will mirror the well-established structure of maritime regulatory enforcement which already exists in the UK and which is well understood in the maritime community.

9.2 Subject to the agreement of the Secretary of State for Justice, it is proposed that the following offences and penalties be established.

- (a) failure to comply with the obligations imposed by the following Articles of the EU Regulation will lead to a penalty not exceeding Level 5 on the standard scale: **Articles 4(1), 9, 11(3) and (4) and (5), 12(1) and 12(2), 13, 14, 15(4), 16, 17, 18, 19(5), 22, and 23.**

(b) failure to comply with the obligations imposed by the following Articles of the EU Regulation will lead, on summary conviction, to a fine not exceeding the statutory maximum (£5,000), or on conviction on indictment, to an unlimited fine: **Articles 4(2), 6, 7, 8(2) and (3) and (4) and (5), 10, 11(1), 12(3), and 24.**

9.3 The proposed offences and penalties are set out in more detail in the draft Regulations at Annex B.

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

10. Additional powers for the Maritime and Coastguard Agency

10.1 The MCA already has extensive powers of investigation in relation to its other roles relating to maritime safety. However, the MCA's existing remit does not extend to the rights of passengers or consumer protection. The draft Regulations therefore provide the MCA with the specific power to request information from ship owners or terminal operators and others who have obligations under the EU Regulation, to assist the MCA with its enforcement functions.

11. Applicability of Part 3 of the Equality Act 2010 to ships and hovercraft

11.1 The Department for Transport consulted in January 2011 on applying Part 3 of the Equality Act 2010 in relation to transporting people by ship or hovercraft. The Equality Act 2010 has two main purposes which are to harmonise discrimination law and to strengthen the law to support progress on equality. The Equality Act brings together and re-states numerous Acts and Regulations which formed the basis of anti-discrimination law in Great Britain⁶.

11.2 The Equality Act covers discrimination because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. These categories are known in the Equality Act as 'protected characteristics'.

11.3 In the January 2011 consultation it was highlighted that anti-discrimination legislation, in respect of the 'protected characteristic' of disability, will be strengthened in relation to ships and hovercraft when the EU Regulation on the rights of passengers travelling by sea and inland waterway comes into force in the UK in late 2012.

11.4 The Department for Transport is still committed to implementing Part 3 of the Equality Act 2010 to ships and hovercraft, and is currently considering how best to take this forward. Whichever approach for implementing Part 3 is decided upon, due consideration will be given of the requirements on industry of complying with the implemented EU Regulation.

⁶ Part 3 of the Equality Act 2010 in relation to transporting people by ship and hovercraft will not apply to Northern Ireland.

12. Impact Assessment

The Impact Assessment for the draft Regulations is attached at Annex D. This sets out the available evidence on the costs and benefits of the draft Regulations that we have identified. When responding to the consultation, you are encouraged to provide any additional evidence relating to the costs and benefits associated with the policy option that has been assessed. Any additional evidence that is provided will be taken into account when the Impact assessment is updated following the consultation.

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

Please also suggest any alternative methods for reaching the objectives and highlight any possible unintended consequences of the policy, and practical enforcement or implementation issues.

How to Respond

All responses should be provided in writing by post, fax or email, and must be received no later than the closing date which is 16 November 2012. If you would like further copies of this consultation document it can be found at www.dft.gov.uk or you can contact Damian de Niese if you need alternative formats (Braille, audio CD, etc).

Please send consultation responses to

Damian de Niese
Department for Transport - Zone 2/29
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Tel: 0207 944 2024

Fax: 0207 944 2168

E-mail address: damian.de_niese@dft.gsi.gov.uk

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

A list of those consulted is attached at Annex C. If you have any suggestions of others who may wish to be involved in this process please contact us.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA), or the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Questions

When formulating a response to this consultation, it would be helpful if particular consideration could be given to the following questions:

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

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

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?

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

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

What will happen next?

A summary of responses, including the next steps will be published on the Department for Transport's website at - www.dft.gov.uk, paper copies will be available on request.

The Government's Key Consultation Principles

This targeted consultation is being conducted in line with the Government's key consultation principles which are as follows:

- Departments will follow a range of timescales rather than defaulting to a 12 week period, particularly where extensive engagement has occurred before;

- Departments will need to give more thought to how they engage with and consult with those who are affected;
- Consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and
- The principles of the Compact between government and the voluntary and community sector will continue to be respected.

Further information is available on the Better Regulation Executive website at:

<https://update.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments about the **consultation process** please contact:

Chris Simon
Consultation Co-ordinator
Department for Transport
Zone 1/14
Great Minster House
33 Horseferry Road
London
SW1P 4DR
Email address: consultation@dft.gsi.gov.uk