

2009 No.

TRANSPORT

The Rail Passengers' Rights and Obligations Regulations 2009

Made - - - - - ***

Laid before Parliament ***

Coming into force - - - ***

The Secretary of State for Transport makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a).

He is a Minister designated for the purposes of that section in relation to measures relating to railways and railway transport(b).

PART 1

Preliminary

Citation and commencement

1.—(1) These Regulations may be cited as the Rail Passengers' Rights and Obligations Regulations 2009.

(2) These Regulations come into force on xxx.

Extent

2. These Regulations do not extend to Northern Ireland.

Interpretation

3.—(1) In these Regulations—

“the Community Regulation” means Regulation (EC) No. 1371/2007 of the European Parliament and of the Council of 23rd October 2007 on rail passengers' rights and obligations(c);

“the 1993 Act” means the Railways Act 1993(d);

“the 1978 Act” means the Civil Liability (Contribution) Act 1978(e);

(a) 1972 c.68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a).
(b) S.I. 1996/266, to which there are amendments not relevant to these Regulations.
(c) OJ No. L315, 3.12.2007, p.14.
(d) 1993 c.43.
(e) 1978 c.47.

“the 2005 Regulations” means the Railway (Licensing of Railway Undertakings) Regulations 2005(a);

“the COTIF Regulations” means the Railways (Convention on International Carriage by Rail) Regulation 2005(b);

“the CPR” means the Civil Procedure Rules 1998(c);

“the ORR” means the Office of Rail Regulation.

(2) In these Regulations, unless the context otherwise requires, expressions also used in the Community Regulation shall have the same meaning as they have in the Community Regulation.

PART 2

Relationship between the Community Regulation and domestic law

CHAPTER 1

Relationship with the COTIF Regulations

Relationship with the COTIF Regulations

4.—(1) In the COTIF Regulations, after regulation 2, add—

“Relationship with the Rail Passengers’ Rights and Obligations Regulations 2009

2A.These Regulations are subject to the Rail Passengers’ Rights and Obligations Regulations 2009”.

CHAPTER 2

Civil remedies

Accidents for which others than the person liable under Article 26 are responsible

5. Sections 1 and 2 of the 1978 Act do not apply where liability for contribution between persons liable in respect of the same damage is governed by the Community Regulation, including Article 62 of Annex I to it.

Claim for advance payments

6.—(1) No person (referred to in this regulation as “the claimant”) may bring proceedings against a railway undertaking in respect of an infringement of the right conferred by article 13(1) of the Community Regulation (“the right to an advance payment”) unless—

- (a) the claimant has requested the railway undertaking in writing to make an advance payment under that provision, and
- (b) at least fifteen days have elapsed since that written request was received by the undertaking.

(2) Proceedings in respect of an infringement of the right to an advance payment may (but do not need to) be brought under the same procedure as an application under Part 23 of the CPR.

(a) S.I. 2005/3050.

(b) S.I. 2005/2092..

(c) S.I. No. 1998/3132, relevant amending instruments are the Constitutional Reform Act 2005 (c.4), Schedule 11, S.I. 1999/1008, regulation 8, 2000/221, regulations 11 and Schedule 3, 2001/4015, regulation 17, 2002/2058, regulation 7, 2002/3219, regulation 3, 2004/2072, regulation 9, 2004/3419, regulation 5, 2005/2292, regulation 26, and 2005/3515, regulation 7.

(3) Where the court finds that an infringement of the right to an advance payment has taken place, it shall award damages of an amount that it thinks just and equitable, having regard, among other things, to—

- (a) the extent to which, and the time at which a railway undertaking acting reasonably would have realised, in all the circumstances, that the claimant had the right to an advance payment,
- (b) how promptly the claimant acted in sending the request under paragraph (1),
- (c) the steps a railway undertaking acting reasonably would, in the circumstances, have taken to ascertain the extent of the right to an advance payment, and
- (d) the extent to which the request under paragraph (1) contained enough information for the railway undertaking to decide whether he or she was entitled to an advance payment, and the amount of that payment.

(4) The court has jurisdiction to reduce the award under paragraph (3), or decline to make such an award, to take into account—

- (a) any interim payment made in respect of the accident under Part 25 of the CPR, and
- (b) any payment made in any court proceeding in respect of the accident.

(5) In any proceedings, including proceedings for an interim payment under Part 25 of the CPR, the court has jurisdiction to award a lesser amount than it would otherwise have awarded to take into account the fact that an award was made under this regulation.

Recovery of overpaid advance payment

7.(1) This regulation applies where there is a shortfall (“the shortfall”) between—

- (a) an advance payment (“the advance payment”) made by a railway undertaking (“the railway undertaking”) under Article 13 of the Community Regulation, in respect of an accident (“the accident”) and
- (b) the railway undertaking’s liability to the recipient of the advance payment (“the recipient”) for the accident.

(2) The railway undertaking shall have the right to recover a share of the shortfall from each of the persons from whom it may recover contribution in respect of its liability to the recipient for the accident, whether under the 1978 Act or the Community Regulation, each share being determined under either paragraph (3) or paragraph (4).

(3) Where the sum of —

- (a) the liabilities of the railway undertaking to the recipient in respect of the accident, after deduction, where applicable, of any contribution recoverable under the 1978 Act or the Community Regulation and
- (b) the liabilities of all the persons liable under paragraph (2) to the recipient in respect of the accident, whether under the Community Regulation or otherwise

exceeds or equals the advance payment, a person liable under paragraph (2) shall bear a share of the shortfall equal to its share in the amount referred to in sub-paragraph (b).

(4) Where paragraph (3) does not apply, then, subject to paragraph (5), a person liable under paragraph (2) shall bear a share of the shortfall equal to its share in the aggregate of the amounts referred to in sub-paragraphs (3)(a) and (3)(b).

(5) (a) Where paragraph (4) applies, then, subject to sub-paragraph (b), if the advance payment was higher than it would have been reasonable in all the circumstances for the railway undertaking to make, the advance payment shall be deemed to have been of the amount that it would have been reasonable for the railway undertaking to pay.

(b) Where the railway undertaking has made the advance payment pursuant to a court order—

- (i) as against any person whom the railway undertaking made reasonable efforts to warn of the proceedings against it under regulation 6 in such a way that they would be

afforded a fair opportunity to intervene in those proceedings, the actual advance payment made shall be deemed to have been reasonable; and

- (ii) as against any other person—
 - (aa) which amount was reasonable for the undertaking to pay as advance payment shall be determined by reference to all the circumstances, and
 - (bb) even where the amount was reasonable, the other person shall only be liable for the sum that, in all the circumstances, it is fair for it to pay.

(6) A person liable under paragraph (2) may offset its liability under that paragraph against any liability to the recipient in respect of the accident, provided that, where the latter liability exceeds that person's liability towards the recipient, the recipient shall not be liable to that person for the difference.

Fatal accidents

8.—(1) Where, by virtue of the Community Regulation, any person has a right of action in respect of the death of a passenger by reason of his being a person whom the passenger was under a legal duty to maintain—

- (a) subject to paragraph (2), no action in respect of the passenger's death may be brought for the benefit of that person under the Fatal Accidents Act 1976(a) ("the 1976 Act"), but
- (b) nothing in section 2(3) of that Act (not more than one action in respect of the same subject matter of complaint) prevents an action from being brought under that Act for the benefit of any other person.

(2) Nothing in paragraph (1)(a) affects the right of any person to claim damages for bereavement under section 1A of the 1976 Act.

(3) Section 4 of the 1976 Act (exclusion of certain benefits in assessment of damages) applies in relation to an action brought by any person under the Community Regulation as it applies in relation to an action under that Act.

(4) Where separate proceedings are brought under the Community Regulation and under the 1976 Act in respect of the death of a passenger, a court, in awarding damages under that Act, shall take into account any damages awarded in the proceedings brought under the Community Regulation and has jurisdiction to make any part of its award conditional on the result of those proceedings.

(5) The provisions of Schedule 1 to these Regulations shall, as respects Scotland, have effect in lieu of paragraphs (1) to (4).

Periodical payments

9. In section 2 of the Damages Act 1996, before subsection (1), insert—

“(1ZA) This section is subject to Article 30 of Annex I to Regulation (EC) No. 1371/2007 of the European Parliament and of the Council of 23rd October 2007 on rail passengers' rights and obligations.”

CHAPTER 3

Rights of disabled persons and persons with reduced mobility

Amendment of section 19 of the Disability Discrimination Act 1995

10. In section 19 of the Disability Discrimination Act 1995(b) (discrimination in relation to goods, facilities and services), after subsection (4A), add—

(a) 1976 c.30. That Act was amended by the Administration of Justice Act 1982 (c.53), section 3, the Civil Partnerships Act 2004, section 83, and S.I. 2007/3489.
(b) 1995 c.50.

“(4B) Subsection (1) does not apply to anything that is governed by Regulation (EC) No. 1371/2007 of the European Parliament and of the Council of 23rd October 2007 on rail passengers’ rights and obligations.”.

Compensation claims by disabled persons and persons with reduced mobility

11.—(1) A claim by a disabled person or a person with reduced mobility for an infringement of any of his or her rights as such a person under the Community Regulation may be made the subject of civil proceedings in the same way as any other claim in tort or (in Scotland) in reparation for breach of statutory duty.

(2) For the avoidance of doubt, any damages awarded in respect of any infringement of the rights of disabled persons and persons with reduced mobility under the Community Regulation may include compensation for injury to feelings whether or not they include compensation under any other head.

(3) Proceedings in England and Wales may be brought only in a county court.

(4) Proceedings in Scotland may be brought only in a sheriff court.

(5) The remedies available in such proceedings are those which are available in the High Court or (as the case may be) the Court of Session.

(6) Subject to paragraphs (7) and (8), a county court or a sheriff court is not to consider a claim under this regulation unless proceedings in respect of it are instituted before the end of the period of six months beginning when the infringement complained of occurred.

(7) Where, in relation to proceedings or prospective proceedings under this regulation, the dispute concerned is referred to conciliation before the end of the period of six months mentioned in paragraph (6), the period allowed by that paragraph is to be extended by three months.

(8) A court may consider any claim under this regulation that is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

PART 3

Regulation of the railway

Functions of the Office of Rail Regulation

12.—(1) The ORR is designated as the enforcement body for the purposes of Article 30(1) of the Community Regulation.

(2) It shall be the duty of the ORR to ensure the effective application of the Community Regulation.

(3) The powers that the ORR has to exercise its functions under paragraph (2) are the following—

- (a) the same powers as it has to exercise its functions under Part I of the 1993 Act and the Railways Act 2005^(a) which are not safety functions, disregarding section 55(5)(a) of the 1993 Act where its application would conflict with the duty under paragraph (2), and
- (b) the powers conferred upon it by regulations 14 and 15.

Bodies handling complaints

13.—(1) The Rail Passengers’ Council is designated as a body to which complaints may be made under Article 30(2) of the Community Regulation, in relation to matters that fall within its

(a) 2005 c.14. That Act was amended by the Legislative and Regulatory Reform Act 2006 (c.51), Schedule, the Road Safety Act 2006 (c.49), s 51 and 61, S.I. 2006/556, regulations 1 and 2, S.I. 2005/3050, Schedule 1, the Greater London Authority Act 2007 (c.24), Schedule 2, the Local Transport Act 2008 (c.26), section 74 and Schedule 4, SI 2008/960, Schedule 3, the Finance Act 2008 (c.1), Schedule 2.

functions(a) under any enactment or rule of law (other than this regulation), disregarding any Order made under section 76(7C) of the 1993 Act(b).

(2) In matters for which the Rail Passengers' Council is a body to which complaints may be made under Article 30(2) of the Community Regulation, section 76 of the 1993 Act has effect as if, in subsection (5)—

- (a) the references to the Secretary of State included a reference to the ORR, and
- (b) in relation to a matter being referred to the ORR under that subsection as modified by the above sub-paragraph, the words “unless representations about the matter have been made to the Secretary of State by the Rail Passengers' Council” were omitted.

(3) The London Transport Users' Committee is designated as a body to which complaints may be made under Article 30(2) of the Community Regulation, in relation to matters that fall within its functions(c) under any enactment or rule of law (other than this regulation), disregarding any Order made under section 252E of the Greater London Authority Act 1999.

(4) In matters for which the London Transport Users' Committee is a body to which complaints may be made under Article 30(2) of the Community Regulation, section 252C of the Greater London Authority Act 1999 has effect as if—

- (a) in subsection (3)—
 - (i) the references to the Secretary of State included a reference to the ORR; and
 - (ii) in relation to a matter being referred to the ORR under that subsection as modified by the above paragraph, the words “subject to subsection (4)” were omitted, and
- (b) subsection (4) did not apply in relation to the reference of a matter to the ORR under that subsection as modified by sub-paragraph (a)(i).

Duties in respect of national licensing conditions for station licences

14.—(1) The ORR and the Secretary of State shall cause the station licences issued under section 8 of the 1993 Act to operators of stations used or to be used for the purposes of rail journeys covered by the Community Regulation to be subject to conditions under section 9 of that Act that ensure effective compliance with the provisions of the Community Regulation listed in Schedule 2.

(2) With respect to licenses granted after these Regulations came into force, the ORR and the Secretary of State shall comply with their duty under paragraph (1) by using their powers under section 8(1) and 9(1) of the 1993 Act.

(3) With respect to licences granted before Regulations came into force, the ORR and the Secretary of State may, where necessary or expedient to comply with their duty under paragraph (1), and notwithstanding anything to the contrary, including any enactment, licence condition, contract or agreement, modify any existing licensing condition or impose a new one.

(4) In this regulation, “station” and “station licence” have the same meaning as in Part I of the 1993 Act(d).

Duties in respect of European licensing conditions

15.—(1) The ORR shall cause the SNRPs issued under the 2005 Regulations to include conditions that ensure effective compliance with the provisions of the Community Regulation listed in Schedule 2.

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- (a) See section 76 of the 1993 Act, amended by the Transport Act 2000 (c.38), sections 216 and 228 and Schedules 22 and 31, the Railways and Transport Safety Act (c.20), Schedule 2, and the 2005 Act, Schedules 1, 6 and 13. See also, Part III of the Railways Act 2005 (list of amendments above), and regulation 17 of the 2005 Regulations.
 - (b) The only such Order at the time of making is S.I. 2003/1695.
 - (c) See Chapter X of Part IV of the Greater London Authority Act 1999 (c.29), and, in particular, sections 252B and 252C, as inserted by the 2005 Act, Schedule 6. See also section 76(2A) of the 1993 Act, as inserted by Schedule 6, paragraph 5 to the Railways Act 2005.
 - (d) See section 83 of that Act.

(2) With respect to SNRPs issued after these Regulations came into force, the ORR shall comply with its duty under paragraph (1) by issuing, under regulation 10 of the 2005 Regulations, SNRPs that contain appropriate conditions.

(3) With respect to SNRPs issued before these Regulations came into force, the ORR may, where necessary or expedient to comply with its duty under paragraph (1), and notwithstanding anything to the contrary, including any enactment, licence condition, SNRP condition, contract or agreement, modify any existing SNRP condition or impose a new one.

Restrictions on disclosure of information

16. Subject to Article 31 of the Community Regulation, section 145 of the 1993 Act (restriction on disclosure of information) shall have effect in relation to information which has been obtained under or by virtue of any provision of these Regulations and which relates to the affairs of any individual or to any particular business as it has effect in relation to such information obtained under or by virtue of any of the provisions of that Act.

Signed by authority of the Secretary of State for Transport

Date

Name
Minister of State
Department for Transport

SCHEDULE 1

regulation 8(5)

Fatal Accidents: Scotland

1.—(1) Subject to sub-paragraph (2), no enactment or rule of law shall have effect so as to permit a person who has a right of action under the Community Regulation in respect of the death of a passenger by virtue of his being a person whom the passenger was under a legal duty to maintain to raise any other action in that respect for any loss of support suffered by him.

(2) Sub-paragraph (1) shall not apply in so far as the other action concludes for an award under section 1(4) of the Damages (Scotland) Act 1976(a).

2. Section 1(5) of the said Act of 1976 (exclusion of certain items in assessment of damages) shall apply to an action brought under the Community Regulation as it applies to an action brought under that Act, but section 6 of that Act shall not apply to such an action under the Community Regulation.

3. Where separate proceedings in respect of the death of a passenger are brought under the Community Regulation and under any other enactment or rule of law the court, in awarding damages in such other proceedings, shall take into account any damages awarded in the proceedings brought under the Community Regulation and may make any part of its award conditional on the result of those proceedings.

SCHEDULE 2

regulations 14, 15

Community Regulation provisions to be enforced through licensing conditions and SNRPs

Article 4

(a) 1976 c. 13; section 1(4) was amended by the Damages (Scotland) Act 1993 (c. 5), section 1(1).

Article 5
Article 6
Article 7
Article 8
Article 9
Article 10, except paragraph (3)
Article 11
Article 12, paragraph 1
Article 13
Article 14
Article 15
Article 16
Article 17
Article 18
Article 19
Article 20
Article 21
Article 22
Article 23
Article 24
Article 26
Article 27
Article 28
Article 29

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the effective implementation, in Great Britain (see *Regulation 2*), of Regulation (EC) No. 1371/2007 of the European Parliament and of the Council of 23rd October 2007 on rail passengers' rights and obligations ("the Regulation"). The Regulation harmonises, across the European Community, the rules regarding the rights and obligations of rail passengers. Subject, potentially, to certain derogations, it applies to all train journeys and services, whether international or domestic, licensed under Directive 95/18/EEC of the European Parliament and of the Council dated 19th June 1995 on the licensing of railway undertakings (OJ No. L143, 27.6.1995, p.70). It reproduces large parts of the Convention concerning International Carriage by Rail of 9th May 1980 (Cm 4873) (COTIF), as amended by a Protocol signed at Vilnius on 3rd June 1999. In the UK, COTIF is implemented by the Railways (Convention on International Carriage by Rail) Regulations 2005 (S.I. 2005/2092).

These Regulations first make provisions concerning the relationship between domestic law and the Regulation (Part 2). Then, they deal with the regulatory enforcement of the Regulation (Part 3).

Where this is not incompatible with the Regulation, the United Kingdom continues to have an international obligation to comply with COTIF. By virtue of its direct applicability, and COTIF itself (see its Article 3(2)), the Regulation prevails over COTIF. *Regulation 4* provides that the implementing measures under these Regulations also prevail over the measures implementing COTIF where the two are inconsistent.

Regulation 5 provides that the right, under the Civil Liability (Contribution) Act 1978 ("the 1978 Act"), of a carrier found liable for the accident to recover a contribution from those who have also been responsible for the accident does not apply where the right to a contribution is already governed by the Regulation.

The Regulation makes provision for payment of an advance payment, shortly after the accident, to passengers victim of accidents, and their dependents, to cover their short-term needs, even though liabilities have yet to be determined. *Regulation 6* sets out the procedural requirements in respect of a claim for breach of the right to an advance payment. These include an obligation to give advance notice to the undertaking, and a right to make the claim by way of application. The regulation also makes provision for the remedies available. Finally, it deals with the relationship between claims for advance payments and claims for an interim payment under Part 25 of the Civil Procedure Rules 1999.

Since the advance payment is not refundable, the railway undertaking making the payment may face a shortfall between the payment it made and the damages for which it is eventually found liable. *Regulation 7* makes provision for those liable for the accident to the recipient to be liable for a contribution to that shortfall, in proportion of their liabilities for the accident. If their liabilities to the recipient are high enough to cover the whole shortfall, a share of these is used for that purpose (see paragraph 7(3)). Otherwise, the persons liable for the accident will contribute to only part of the shortfall, that part being equal to their share in the liabilities for the accident compared to that of the railway undertaking (see paragraph 7(4)).

Regulation 8 and Schedule 1 deal with the relationship between rights under the Regulation and claims under the Fatal Accidents Act 1976 or, in Scotland, the Damages (Scotland) Act 1976, preventing overlaps but leaving rights outside the scope of the Regulation intact.

Under section 2 of the Damages Act 1996 (as amended), in England and Wales, a court may normally order periodical payments to be made in respect of personal injury even when the claimant does not consent, but retains a discretion not to order such payments even where the claimant asks. In Scotland, a court can only order such payments if both parties consent. *Regulation 9* prevents conflict between these provisions and Article 30(1) of Annex I the Community Regulation, which is the same as Article 30(1) of Appendix A of COTIF, under which periodical payments must be paid if national law so permits and the claimant so requests. It does so by inserting an amendment in the 1996 Act, providing that it applies subject to that Article.

Regulations 10 and 11 make provisions in respect of the rights, under the Regulation, of disabled persons and persons with reduced mobility (DPRMs). To prevent double-regulation, *regulation 10* excludes from the scope of section 19 of the Disability Discrimination Act 1995, on discrimination in the provision of goods, facilities and services, the rights that are governed by the Regulation. *Regulation 11* creates a right to damages, enforceable in the courts, for breach of the rights of DPRMs. That right is similar to that in the 1995 Act (see section 25).

The Regulation requires the designation of enforcement bodies to take the measures necessary for its effective implementation. *Regulation 12(1)* designates the Office of Rail Regulation (ORR), except for the purposes of handling individual complaints (as to which see below), and *paragraph (2)* places it under an obligation to ensure the effective application of the Community Regulation. To comply with this duty, the ORR has the powers referred to in *paragraph (3)*. Those powers fall into two categories. The first is the powers it has to exercise its functions under Part I of the Railways Act 1993 and the functions under the Railways Act 2005 that are not safety functions. Its functions under Part I of the 1993 Act include functions deemed to be so by virtue of Schedule 3 to the 2005 Regulations. The second is the powers to modify existing licences, conferred by these Regulations. However, in respect of the latter, the powers are extended: normally, the general duties of the ORR under section 4 of the 1993 Act prevail over its duty to make and order to enforce compliance with licence conditions (deemed to include SNRPs under the 2005 Regulations), while, where the order is made to enforce these Regulations, this is not the case.

Under the Regulation, bodies must be designated to handle complaints for breach of the rights conferred by it. *Regulation 13* designates the Rail Passengers' Council (known as "Passenger Focus") and the London Transport Users' Committee (known as "London TravelWatch"), each within its existing functions – disregarding certain instruments that may have been made to restrict their functions in some areas. The regulation also modifies the legislation applying to those bodies, so that, in matters relating to the Regulation, they report, not to the Secretary of State, but to the ORR, as the enforcement body.

Regulation 14 and 15 provide for enforcement of the Regulation through the railway licensing regimes. They require the Secretary of State or the ORR (as the case may be) to impose on station operators and railway undertakings licence conditions under sections 8 and 9 of the 1993 Act (for station operators) and Statements of National Regulatory Provisions (SNRPs) under the Railway (Licensing of Railway Undertakings) Regulations 2005 (for railway undertakings) sufficient to ensure the effective application of the Regulation provisions listed in Schedule 2. As far as existing licences and SNRPs are concerned, they will have the power to modify them if necessary or expedient.

Regulation 16 concerns the protection of information obtained under or by virtue of these Regulations. It extends to that information section 145 of the 1993 Act, which restricts the use of information relating to an individual or business during the lifetime of the individual or the continuation of the business. It is, however, without prejudice to the duty enforcement bodies have to exchange information under Article 31 of the Community Regulation.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from Mike Franklyn, at the Department for Transport, tel. 020 7944 5761, and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.org.uk).