

2012 No. [Draft 09.08.2012]

MERCHANT SHIPPING

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The Merchant Shipping (Passengers' Rights) Regulations 2012

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

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

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to maritime transport.

Citation and Commencement

1. These Regulations may be cited as the Merchant Shipping (Passengers' Rights) Regulations 2012 and come into force on [XXXX 2012].

Interpretation

2.—(1) In these Regulations—

“the EU Regulation” means 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;

“carrier”, “port”, “ticket vendor”, “terminal operator”, “tour operator” and “travel agent” have the same meaning as in the EU Regulation;

“Maritime and Coastguard Agency” means the Maritime and Coastguard Agency, an executive agency of the Department for Transport; and

“port authority” means the managing body of a port.

(2) A reference to an Article is a reference to that Article in the EU Regulation.

Offences

3.—(1) A carrier who contravenes an obligation imposed by Article 4(1), 17, 18 or 19(5) is guilty of an offence.

(a) 1972 c.68.

(2) A carrier or a ticket vendor who contravenes an obligation imposed by Article 4(2) is guilty of an offence.

(3) A carrier or a terminal operator who contravenes an obligation imposed by Article 9, 10, 11(3), (4) or (5), 12(3), 13, 14, 15(4), 16, 22 or 24 is guilty of an offence.

(4) A carrier, port authority or terminal operator who contravenes an obligation imposed by Article 23 is guilty of an offence.

(5) A carrier, tour operator or travel agent who contravenes an obligation imposed by Article 7 or 8(2), (3), (4) or (5) is guilty of an offence.

(6) A carrier, terminal operator, tour operator or travel agent who contravenes an obligation imposed by Article 12(1) is guilty of an offence.

(7) A carrier, terminal operator, ticket vendor, tour operator or travel agent who contravenes an obligation imposed by Article 6 is guilty of an offence.

(8) A tour operator or travel agent who contravenes an obligation imposed by Article 11(3) or 12(2) is guilty of an offence.

Penalties

4. A person guilty of an offence under regulation 3 is liable—

(a) in relation to any failure to comply with an obligation imposed by—

- (i) Article 4(1),
- (ii) Article 9,
- (iii) Article 11(3), (4) or (5),
- (iv) Article 12(1) or (2),
- (v) Article 13,
- (vi) Article 14,
- (vii) Article 15(4),
- (viii) Article 16,
- (ix) Article 17,
- (x) Article 18,
- (xi) Article 19(5),
- (xii) Article 22, or
- (xiii) Article 23

on summary conviction, to a fine not exceeding Level 5 on the standard scale;

(b) in relation to any failure to comply with an obligation imposed by—

- (i) Article 4(2),
- (ii) Article 6,
- (iii) Article 7,
- (iv) Article 8(2), (3), (4) or (5),
- (v) Article 10,
- (vi) Article 11(1),
- (vii) Article 12(3), or
- (viii) Article 24

on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to an unlimited fine.

Other performing parties

5.—(1) This regulation applies where a person (A) undertakes to carry out an obligation imposed on another (B) under any of the Articles mentioned in regulation 3.

(2) In such a case, A and B are both guilty of an offence if that obligation is contravened.

Defence

6.—(1) Subject to paragraph (2), in proceedings against any person for an offence under regulation 3, it is a defence for that person to show that they took all reasonable steps to avoid committing the offence.

(2) A person is not entitled to rely on the defence provided by paragraph (1) by reason of their reliance on information supplied to them, unless they show that it was reasonable in all the circumstances to have relied on that information.

Offences by corporate or unincorporated bodies

7.—(1) Where a body corporate is guilty of an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate, or
- (b) a person who was purporting to act in such a capacity

they as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to their acts and defaults in connection with their functions of management as if they were a director of the body corporate.

(3) Where an offence under these Regulations committed by a limited partnership or a Scottish partnership is proved—

- (a) to have been committed with the consent or connivance of, or
- (b) to be attributable to any neglect on the part of,

a partner, that partner as well as the partnership is guilty of that offence and is liable to be proceeded against and punished accordingly.

(4) In relation to any proceedings on indictment in Scotland for an offence alleged to have been committed under these Regulations by an unincorporated body, section 70 of the Criminal Procedure (Scotland) Act 1995 (proceedings on indictment against bodies corporate) applies as if it were a body corporate.

Enforcement

8.—(1) The Maritime and Coastguard Agency is the designated body for the purposes of Article 25.

(2) Any person subject to an obligation imposed by the EU Regulation and referred to in regulation 3 shall supply the Maritime and Coastguard Agency with such information and documents as it may reasonably require for the purposes of, or in connection with, the exercise of any of its functions under the EU Regulation.

(3) A person who fails, without reasonable excuse, to comply with a request to supply such information or documents is guilty of an offence, and is liable on summary conviction, to a fine not exceeding level 5 on the standard scale, or on conviction on indictment, to an unlimited fine.

Review

9.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations.
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the EU Regulation (which is implemented by means of these Regulations) is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Signed by authority of the Secretary of State for Transport
Date

Name
Minister of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the enforcement of the rights and entitlements set out in Council Regulation (EU) No 1177/2010 (OJ No L 334, 17.12.2010) (“the EU Regulation”) which concerns the rights of passengers, particularly those with a disability or reduced mobility, when travelling by sea and inland waterway.

The Regulations come into force on [XX 2012].

Regulation 3 provides offences for failure to comply with various obligations set out in the EC Regulation. These obligations fall, respectively, on sea and inland waterway carriers, ticket vendors, port authorities, terminal operators, tour operators, and travel agents, and the penalties provided by *regulation 4* vary from fines not exceeding level 5 on the standard scale on summary conviction to an unlimited fine on conviction on indictment.

Regulation 5 provides that, where a person on whom an obligation is imposed, arranges for another person to carry out that obligation on their behalf, both parties commit an offence if it is contravened.

It will be a defence for a person to demonstrate that all reasonable steps were taken to ensure compliance with the EU Regulation (*regulation 6*).

Regulation 7 provides that members and officers of corporate bodies who have contributed to a failure to comply with the EU Regulation shall also be liable to prosecution.

Regulation 8 designates the Maritime and Coastguard Agency as the body responsible for the enforcement of the EU Regulation, and gives it the right to ask for information to assist it in carrying out its functions: it will be an offence punishable with a fine not exceeding level 5 on the standard scale on summary conviction, or an unlimited fine on conviction on indictment, to fail to provide it with information without reasonable excuse.

Regulation 9 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations

should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

A full impact assessment of the effect this Regulation will have on the costs of business and the voluntary sector is available from the Maritime Trade and Liability Branch at the Department for Transport, 33 Horseferry Road, London SW1P 4DR. A copy has been placed in the library of each Houses of Parliament. Alternatively, copies can be obtained from the Department for Transport's website, which is at www.dft.gov.uk.