



Department
for Transport

Applying the Consumer Rights Act 2015 to the rail, aviation and maritime sectors

Response to Consultation

Moving Britain Ahead

July 2016

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Introduction

- 1 In October 2015, the Government consulted on exempting aviation, maritime and EU licensed rail passenger operators¹ from two provisions of the Consumer Rights Act 2015, as they related to transport operators' liability for cancellations and delays to services. The consultation ended on 30 November 2015. It was seeking to establish whether an exemption would avoid the risk of adding unnecessary complexity, duplication and cost, given that all these sectors had existing compensation schemes for cancellations and delays.
- 2 Following the consultation, the Government carefully considered all the views received, and has concluded that consumer interests are best served if these sectors are not exempted from these services provisions, and the Consumer Rights Act has full effect. The Government's decision was announced to Parliament and to key stakeholders in early April.
- 3 This document sets out the formal Government response to the consultation, together with a summary of the responses we received, and the rationale for the Government's decision.
- 4 The Government response should be read in conjunction with the corresponding consultation document, available at <https://www.gov.uk/government/consultations/rail-aviation-and-maritime-applying-the-consumer-rights-act>.

¹ An explanation of the term "EU licensed rail passenger operators" is given in paragraph 2.13 of this document.

1. Proposal

Government policy

- 1.1 When transport users are let down by poor performance by transport operators they should have access to compensation on the same terms as in all other service sectors. They should also expect their rights and the process for making a claim to be clear, simple and effectively enforced. A fair and effective compensation process can make a significant contribution to consumers' confidence in transport services.

The Consumer Rights Act 2015 and transport

- The Consumer Rights Act 2015 clarifies, simplifies and enhances consumer rights when buying goods, services and digital content and amends the law on unfair terms.
- Traders must perform services with reasonable care and skill, in line with information they have provided to the consumer about the service and, if the contract does not set the price or time for performance, within a reasonable time and for a reasonable price (the "Statutory Rights").
- They are also prevented from limiting their liability for breaching the Statutory Rights to below the full price paid by the consumer for a service. This would directly affect transport schemes which typically limit compensation payable for delays and cancellations on a sliding scale depending on the extent of the delay.
- The majority of the Consumer Rights Act came into force on 1 October 2015. Certain provisions of the Act were not commenced in relation to aviation, maritime and EU licensed rail passenger operators.

Purpose of the consultation

- 1.2 The Department for Transport (DfT) consulted in October 2015 on the Government's proposal to exempt aviation, maritime and EU licensed rail passenger services from sections 57(3) and 57(4)(a) of the Consumer Rights Act 2015 ("the CRA").
- 1.3 Section 57(3) provides that traders supplying services to consumers cannot limit their liability to consumers for breach of any of the Statutory Rights to less than the price paid. This provision could affect the current sector compensation schemes because these schemes contain terms that limit transport operators' liability to pay compensation to less than the full ticket price, regardless of the reason for the delay or cancellation, since they are based on fixed or percentage rates of compensation.

- 1.4 The proposed exemption would have allowed operators to continue to impose contractual limits on liability that would limit the amount of compensation payable to less than the price paid by the consumer (ie allow operators to continue to offer partial refunds based on fixed rates or length of delay). These limits would have applied in the event of disruption covered by existing compensation arrangements but which might also have been caused by an operator's breach of the Statutory Rights. Exempting the industry from section 57(3) would have allowed these limits, based on the existing compensation arrangements, to continue. Exemption from 57(4)(a) (which deals more generally with exclusions and restrictions on remedies in relation to breaches of the Statutory Rights) was also proposed so as to remove potential doubt over whether exemption from 57(3) alone would achieve the policy objective of allowing continued limits on liability (but it has now been concluded that an exemption from 57(4)(a) is not necessary and could have other unintended effects - see paragraphs 2.14 and 2.15 below).
- 1.5 We proposed the exemption because we believed that the existing compensation schemes in each mode provided an established, equitable and commensurate package of remedies for consumers and that there could be some risk of complexity and duplication if consumers had rights under both the CRA and the sectoral transport schemes. We were also concerned that opening up the existing schemes to challenge under the CRA could result in additional cost to transport operators, which in some cases could be passed on to tax payers, if they resulted in increased subsidies payable to or reduced premiums payable by operators.

Existing transport compensation arrangements (1)

- Aviation, maritime and EU licensed rail passenger operators currently have to provide significant consumer protection through schemes that give compensation to customers when services are delayed or cancelled and, additionally in the case of aviation, for denied boarding or downgrading. Compensation for rail is set out in industry compensation schemes, while aviation and maritime compensation is set out in EU and international regimes.
- **Rail** passengers on mainline services benefit from standard rates of compensation for delays or cancellations, set out under the National Rail Conditions of Carriage (NRCoC) and, for many train operators, the more generous rates under the Delay Repay scheme. Both schemes have some advantages over the CRA, particularly in terms of reduced uncertainty. These schemes set out in advance clear and specific criteria for when passengers will be eligible for compensation for delays and cancellations and how much compensation they will be eligible for under different levels of delay. Under Delay Repay, compensation is paid for a delay of 30 minutes or more whatever the cause, with no exclusions for delays outside the control of the rail industry. Under the NRCoC, compensation is payable for a delay of 60 minutes or more only where the delay is within the control of the rail industry. By contrast, the CRA only applies where the train operator itself fails to exercise reasonable care and skill and this has caused the delay, and under the CRA the amount of compensation a passenger would receive is not defined in advance. Under the CRA, if the operator and passenger cannot agree on these things, a passenger may ultimately need to pursue their claim through the courts or complain to a regulator.

Existing transport compensation arrangements (2)

- In **aviation**, compensation is set out in international and EU-wide regimes. International flights are governed by international Conventions (“the Carriage by Air Conventions”) which provide a framework for several areas of carrier liability, including compensation for delays. This is coupled with a range of compensation and assistance available under Regulation (EC) 261/2004, providing fixed rates of compensation, including for cancellation and delay (based on the length of delay and distance of the flight).
- Under the EU **maritime** Passenger Rights Regulation (Regulation (EU) 1177/2010), passengers have specific rights in cases of cancellation or delay to scheduled services. These include refreshments and accommodation, automatic rights to compensation (payable within one month of a claim being made), reimbursement of ticket price (payable within seven days), and alternative travel arrangements (depending on the length of the delay). Compensation is calculated as a percentage of the ticket price according to the length of delay and the scheduled length of the journey, up to a ceiling of 50% of the price paid.

Consultation process

- 1.6 The consultation ran from 29 October 2015 to 30 November 2015, and was publicised on the Department’s gov.uk website. To ensure that as much evidence as possible was gathered from the consultation, a variety of response methods was made available. These included an organised event to gather responses in discussion from consumer and passenger representative organisations, individual discussions with industry stakeholders, and an online survey. Consultees were also able to respond direct to DfT.
- 1.7 In addition, DfT wrote to a range of organisations to further publicise the consultation, including: 6 consumer or passenger representative and complaints handling bodies; 34 rail, aviation and maritime industry operators and their representative bodies; 12 regulators or government organisations, including the devolved administrations.
- 1.8 A number of substantive issues were raised in consultation and the Government wanted to allow sufficient time to consider these carefully. We announced our decision in April 2016.

2. Outcome

Responses to the consultation

- 2.1 Responses were received from transport industry bodies, regulators, consumer bodies and transport consumer groups. The transport industry bodies that responded supported the proposal for an exemption for these sectors. They argued that an exemption would be less confusing for passengers by allowing existing industry schemes to continue and would also reduce the risk of unavoidable cost increases, which would then have to be passed on to passengers or taxpayers. The rail industry body, ATOC, suggested that not having an exemption for rail could increase costs to the sector by up to £3.5bn per year.
- 2.2 Consumer groups argued that it would be wrong to exempt any sector from such a recent Act. They considered the risk of overlap between the CRA and existing legislation was low and that any exemption would be more confusing for consumers and would also put passengers in these sectors at a disadvantage. They highlighted what they saw as significant flaws in the operation of existing transport sector compensation schemes within the rail and aviation sectors. They argued that, rather than exempting these sectors, Government should aim instead to improve the consistency and operation of these schemes. One consumer group, Which?, also considered that the scope of the proposed exemption was too broad and could allow transport operators to contract out of more provisions of the CRA than had been intended. The Office of Rail and Road (ORR) and transport consumer groups also shared a number of the concerns raised by consumer groups.
- 2.3 Further detail of the responses for each transport sector is in the Summary of Responses section on page 13.

Government decision

- 2.4 The Government has concluded that consumer interests are best served if these sectors are not exempted from the services provisions, and that the CRA should apply in full to the aviation and maritime sectors from 1 October 2016. In relation to passenger services operated by EU licensed rail passenger operators, the Government has concluded that an additional one year exemption from section 57(3) of the CRA, from 1 October 2016, was necessary. The remainder of the CRA will apply to these services from 1 October 2016. The sector-specific schemes for the three transport modes remain available and are the main means of redress for passengers when things go wrong.
- 2.5 The Government reached its conclusion following careful consideration of the responses received from passenger and consumer groups, industry representatives and other bodies during the consultation. We concluded, in the light of the evidence provided, that the risks of not making an exemption for these sectors were

outweighed by the benefits to consumers of having the three transport sectors covered by the full provisions of the CRA.

- 2.6 In particular, we were persuaded by the arguments put forward by consumer groups that we should not deny consumers within these three transport sectors rights that are enjoyed by consumers in other sectors, by exempting them from provisions in the CRA. We also accepted that, in the light of wider concerns raised by consumer groups about the current operation of industry compensation schemes in the rail and aviation sectors, restricting consumers' access to the full remedies available under the CRA in these sectors might affect the steps that are being taken to address these concerns. For example, in aviation the Civil Aviation Authority (CAA) has recently taken enforcement action against several airlines that were not compliant with the EU Regulations, and they are in the process of reforming the way consumer complaints are being handled in the sector. The Government will continue to work closely with the CAA on the latter.
- 2.7 We were not persuaded by the arguments put forward by industry groups that applying the CRA in full to these sectors would impose unavoidable or disproportionate costs on the industry, which would then need to be passed on to passengers or taxpayers. We concluded that the means to mitigate this risk are entirely within the industry's control. Provided transport operators perform the services they provide to passengers with reasonable care and skill, then there is no reason why they should incur any additional costs under the Act. We note that the CRA has now been in force in full for bus, light rail and metro operators since October 2015, and that we have no evidence that operators in those sectors have experienced an increase in litigation or new costs arising from the CRA.
- 2.8 In aviation, the Government was concerned in particular to preserve the existing position where the Carriage by Air Conventions remain the exclusive basis of claim on routes to which they apply. This remains the Government's position. However, the Government considers that the existing position in relation to the exclusivity of claims can be achieved not only by a specific exemption, but also through section 53 of the CRA. Given that most air routes are governed by one of the Carriage by Air Conventions, the scope for additional claims under the CRA will in practice be limited in the aviation sector. The Government has therefore concluded that the balance lies in favour of bringing the CRA (including section 53) into force in full.
- 2.9 There was no evidence to show that the current compensation arrangements in the maritime sector were detrimental to the interests of consumers. There was no evidence however to suggest that having parallel rights under the EU-based compensation scheme and the CRA would introduce confusion for customers and the decision was therefore taken not to exempt maritime, so as to be consistent with the approach taken in the other two sectors.

Implementation

- 2.10 The Government has decided to allow a short period of adjustment to 30 September 2016 to allow the industries concerned to review their current arrangements and consider whether any changes to their terms and conditions, including their compensation schemes, need to be made in the light of the CRA. While we want passengers to benefit from the protection of the services chapter as soon as possible, it is only fair that industry is given notice and time to adjust. We consider that a six month delay to the commencement of the services chapter of the CRA provides sufficient time for the aviation and maritime sectors to do this, but that a

further 12 month exemption from only section 57(3) of the CRA would be needed for the rail industry.

- 2.11 The Government has therefore made The Consumer Rights Act 2015 (Commencement No.3, Transitional Provisions, Savings and Consequential Amendments) (Amendment) Order 2016, which came into force on 6 April 2016. The Order provides that the provisions in the services chapter of the Act that apply to the aviation, maritime and rail sectors will come into force on 1 October 2016.
- 2.12 In addition, to give the rail industry further time to review their compensation schemes, the Government will be laying a draft statutory instrument before Parliament to seek Parliament's approval to a further, 12 month, exemption for EU licensed rail passenger operators from section 57(3) in the CRA (see paragraph 2.20 below). This will allow them to temporarily continue to limit the amount of compensation payable for delays and cancellations to less than the ticket price, even in cases where the operator has been at fault, until 30 September 2017. This will allow the rail industry to make their compensation schemes more consistent with each other and consider how they can be improved to better reflect the rights granted by the CRA. This Order is limited to 12 months because a longer or permanent exemption for rail from any of the provisions of the CRA would not be in the best interests of consumers. We will use this time to ensure that the rail industry works constructively with Government and the ORR on ensuring that the benefits they offer passengers are high quality and more consistent between individual operators. We believe that a 12 month exemption allows time for the industry to focus on this task, and will result in a better outcome for rail passengers in the longer term.

Scope of the further 12 month exemption for the rail sector

- 2.13 The exemption will apply to passenger services operated by EU licensed rail passenger operators. EU licensed rail passenger operators are those operating mainline services in the UK pursuant to a licence under Directive 2012/34/EU of the European Parliament and of the Council establishing a single European railway area (recast) or Council Directive 1995/18/EC dated 19 June 1995 on the licensing of railway undertakings (an "EU Rail Licence"). Operators providing rail passenger services on only local and regional standalone infrastructure and operators providing only urban or suburban rail passenger services are excluded from the EU licensing regime. Therefore the exemption will not apply to the London Underground and other metro services, for example, Glasgow subway, trams and tramways including the Greater Manchester Metrolink and heritage/tourist rail passenger services. The 2015 Act has applied to these services from 1 October 2015. Note, however, that the exemption would apply to London Overground rail services operated by Transport for London as these are operated under an EU Rail Licence.
- 2.14 Some respondents argued that any exemption for rail should be from section 57(3) only, and should not cover 57(4)(a), as we had originally proposed. We are persuaded by the arguments put forward by consumer groups that an exemption from section 57(3) is sufficient to achieve the intended policy objective, which related to the payment of partial refunds for delays and cancellations.
- 2.15 The exemption will not apply to section 57(4)(a), in order to avoid a risk of confusion about what provisions the exemption applies to, which had concerned some consumer groups. The exemption only applies to the amount of compensation payable for delays or cancellations which are the responsibility of the train operator. Other than section 57(3), the provisions of the CRA will apply in full to EU licensed

rail passenger operators from 1 October 2016. These will include the provisions of section 56 which require refunds for a breach of the Statutory Rights to be paid:

- a. using the same means of payment as the consumer used to pay for the service, unless the consumer expressly agrees otherwise;
 - b. without undue delay and in any event within 14 days beginning with the day the train company agrees that the consumer is entitled to a refund; and
 - c. without imposing any fee on the consumer.
- 2.16 After the 12 month exemption ends on 30 September 2017, train companies will still be able to offer compensation schemes but they will need to comply with the CRA. The schemes will be able to limit the amount of compensation payable for delays and cancellations but only where there has been no breach of the Statutory Rights (eg where the delay or cancellation is not caused by the train operator).

Implications of Government decision for customers of rail, aviation and maritime sectors

- 2.17 Except as explained in paragraph 2.19, from 1 October 2016 rail, aviation and maritime passengers will be able to enforce their rights under the Services Chapter of the Act through the courts if necessary. This would mean that if an operator fails to provide a passenger service with reasonable care and skill and this causes delay, cancellation and, additionally in the case of aviation, denied boarding or downgrading, the passenger is entitled to an appropriate refund which could be up to the full price paid. Operators will no longer be able to enforce contract terms that limit the amount of a refund to less than the full ticket price.
- 2.18 In these circumstances, consumers will have the right to pursue claims for refunds through the courts. However, customers in these sectors will continue to have access to the existing industry compensation schemes, and also to their existing contractual rights.
- 2.19 As an exemption to paragraph 2.17, a mainline rail operator who has failed to run a service with reasonable care and skill can cap compensation for a delay or cancellation at less than the ticket price. But they will only be able to do this up to 30 September 2017. If a passenger goes to court to enforce this right the court will have to decide in each case if the service has been performed with reasonable skill and care. If they think that it hasn't, then they can award compensation up to the full ticket price. In aviation, the courts will also have to take into account international agreements such as the Montreal Convention when considering what level of damages to award.

Proposed next steps

- 2.20 The Government will shortly lay before Parliament The Consumer Rights (Rail Passenger Service Exemption, Enforcement and Amendments) Order 2016. This will be an affirmative Statutory Instrument, which will be subject to debate in both Houses. The Order will exempt, for one year only, EU licensed rail passenger operators from section 57(3) of the CRA in respect of their liability to consumers under Chapter 4 of Part 1 of the CRA arising from the delay or cancellation of services. The Order will have effect from 1 October 2016 to the end of 30 September 2017.

- 2.21 Subject to Parliamentary approval of the Order, from 1 October 2017 all provisions of the CRA will apply to EU licensed rail passenger operators, in the same way as they do to other service sectors.
- 2.22 The Government is also determined to improve the passenger experience when rail services are disrupted. Which? made a 'super-complaint' to the ORR on 21 December 2015 into rail passengers' access to compensation, raising a range of concerns about the degree to which passengers are informed by TOCs of their right to claim compensation, and the subsequent ease of making a claim. Which? said that this has led to a large gap between the compensation that passengers are entitled to and the compensation they actually receive. The ORR investigated and responded to the super-complaint on 18 March 2016, concluding that action was needed to increase the number of passengers aware of their rights, improve the information passengers receive, and make the process for claiming more passenger-friendly. The ORR made a number of recommendations to train operators, and has committed to report on progress towards these in December 2016. It also recommended that the Government take some actions through the requirements it places on franchised train operators. The Government will respond to the ORR's report before the end of the summer.
- 2.23 The Government is also committed to improving rail passenger compensation for delays that are shorter than 30 minutes (the current threshold for compensation payable under Delay Repay). We announced in the Spending Review and Autumn Statement 2015 that we would take action to ensure that rail passengers have access to compensation for delays of more than 15 minutes. We are currently considering the detailed implementation of this policy, and a further announcement will be made before the end of the summer.

Implications of the EU referendum

- 2.24 On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force, including the EU-based compensation schemes that apply in the aviation and maritime sectors. During this period the Government will continue to negotiate, implement and apply EU legislation. It will be for the Government, under the new Prime Minister, to begin negotiations to exit the EU. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation and funding in future once the UK has left the EU.

3. Summary of Responses

Responses received

- 3.1 Views were sought on the Government's proposal to disapply sections 57(3) and 57(4)(a) of the CRA for aviation, maritime and EU licensed rail passenger operators, in relation to compensation for delays and cancellations and, in the case of aviation, also for denied boarding and downgrading.
- 3.2 There were 31 responses in total, including two from individuals who did not answer the specific questions or make any substantive comments. The responses are broken down between types of organisation as shown here:

Type of organisation	Number of responses
Industry and trade associations	16
Consumer organisations	2
Consumer protection and complaint handling organisations	3
Regulators	2
Ombudsman Services	1
Trading Standards	1
Transport lobby group	1
Individuals	5
Total	31

- 3.3 The responses to the consultation were split largely between industry bodies and transport operators from the three sectors, who were in favour of the exemption, and consumer groups and representative organisations, who were broadly against it.

Responses applicable across modes

- 3.4 General comments, applicable across transport modes, were received from a number of consumer groups and regulators in addition to their replies to the specific questions for each sector. Two respondents, Which? and MoneySavingExpert.com (two of the main consumer organisations), were strongly opposed to the exemption. They argued that it was inappropriate to be making any exemption from such a recent Act. They also disagreed that it would be confusing to have both the CRA and

sector delay compensation schemes operating in parallel, and argued that DfT had not made a strong case that there could be significant costs to transport operators, particularly in the Rail sector, if consumers were able to claim delay compensation under the CRA as well as the sector schemes.

Rail responses

3.5 We asked the following questions:

Q1: Do you agree that the existing schemes should continue to apply to the EU licensed rail sector? Please provide evidence to support your views. If you do not agree, please give reasons.

Q2: Do you agree that sections 57(3) and 57(4)(a) should not apply to the EU licensed rail sector? Please provide evidence to support your views. If you do not agree, please give reasons.

Q3: Do you agree with our assessment of the likely impacts on EU licensed rail passenger operators if the exemption was not granted? If you do not agree, please give reasons. Are there any other impacts that are not referred to?

Q4: What is your estimate of the costs that might fall on EU licensed rail passenger operators if the exemption was not granted? Please provide clear reasoning on the assumptions and methodology used.

- 3.6 Of the 31 responses, 14 commented on the rail sector. There was support for the exemption from the rail operators' representative body, the Association of Train Operating Companies (ATOC), as well as from individual businesses such as TfL and the Trainline. Commenting on behalf of the rail industry, ATOC suggested that there could be significant new costs to the rail industry without an exemption, with possibly up to £3.5bn additional costs per year on the rail sector.
- 3.7 Consumer organisations Which? and MoneySavingExpert.com were strongly opposed to an exemption for all sectors, including rail. Which? argued in a detailed submission that there was no evidence that consumers would be disadvantaged by having the Statutory Rights sitting alongside the transport sector compensation schemes, and that it would be less confusing for consumers to know that their Statutory Rights applied across the board.
- 3.8 Which? also argued that there are deficiencies in existing rail compensation arrangements and the Government should secure improvements to existing schemes before protecting industry from parts of the CRA. Which? pointed out that consumers' rights to compensation varied depending on whether the train operator was using a scheme based on the NRCoC or was using Delay Repay. Which? argued that NRCoC rights are inadequate compared to Delay Repay, and pointed out that neither scheme compensated regular travellers for frequent shorter delays, or paid compensation in cash by default. These aspects of the existing schemes could lead to a remedy under the CRA. Which? also pointed out that there was a low level of claims under the existing rail schemes, and that previous research by the regulator had exposed a lack of awareness of the schemes.

- 3.9 In addition to concerns that the existing compensation arrangements needed improvement, Which? felt that the scope of the exemption being proposed was too wide, arguing that exempting the transport sector from both sections 57(3) and 57(4)(a) would mean that the sector did not have to comply with most, if not all, of the CRA provisions governing consumer rights in relation to services. In particular, Which? argued, exemption from section 57(4)(a) would mean that a transport provider could contract out of any liability for cancellation or delays.
- 3.10 The transport consumer representative groups, London TravelWatch and Transport Focus, saw some justification for the exemption, but also expressed similar concerns to Which? about the current compensation schemes and the scope of the exemption. They commented that there was room to improve the current rail compensation schemes to address the disparity in compensation payments offered to passengers, with only some operators providing more generous Delay Repay rates. Transport Focus urged Government to speed up the roll-out of Delay Repay if the exemption was granted.
- 3.11 The rail sector regulator, the ORR, thought it would be possible to have the Act and the rail sector schemes running in parallel provided train operators improved the information they gave passengers. They shared the concerns of other bodies that the scope of the exemption might be too wide. And, while they recognised arguments about unbalancing the current arrangements and imposing disproportionate costs on the rail industry or tax payers through increased subsidies, they did not think it was clear from the consultation why costs would be any more of an issue than in other sectors and why increased compensation payments would lead to higher fares.

Aviation responses

- 3.12 We asked:

Q5: Do you agree that the existing international and EU aviation legal framework should continue to apply to air passenger and cargo consumer services? Please provide evidence to support your views. If you do not agree, please explain why.

Q6: Do you agree that the proposed exemption will achieve the intended purpose? Please provide evidence to support your views. If you do not agree, please explain why.

Q7: What do you consider are the likely impacts, and potential costs, if an exemption is not made and air carriers were not permitted to limit their conditions of carriage in relation to breach of the implied terms under the Services Chapter of the Act?

- 3.13 Of the 31 responses that the Government received to the consultation, 21 responses had comments on the aviation sector. The respondents represented a wide variety of stakeholders, with responses received from members of the public, the aviation industry and representative bodies of both consumers and the industry stakeholders.
- 3.14 The Government's proposal to exempt the aviation sector from sections 57(3) and 57(4)(a) of the CRA was supported by aviation industry respondents. The arguments

cited for the exemption were that it would provide certainty and clarity in the eligibility for compensation in various situations. The existing schemes were viewed as generous in the amounts of compensation and other benefits offered, and providing adequate protection with easy access to redress. Industry considered that the existing international regime should continue to be the means by which passengers can seek redress, although they were of the view that Regulation (EC) 261/2004 on Air Passenger Rights was no longer fit for purpose and should be renegotiated.

- 3.15 The layering of international, EU and national legislation was raised by industry respondents as potentially problematic and carrying the risk of uncertainty and confusion. It was suggested that there could be uncertainty over which legislation would take precedence in particular cases. Some respondents argued that this uncertainty would halt the process of awarding compensation to consumers while the courts made a ruling on the issue, while others argued that the case law is clear in granting international and EU law precedence.
- 3.16 However, consumer groups raised significant concerns about the proposed exemption. They expressed the view that levels of compensation claims from passengers were still too low and that there remained lack of awareness among consumers on what they are eligible for under the current international and EU-wide schemes. Additionally, one group drew attention to a large number of compensation claims that have to be litigated in court due to the airline's perceived reluctance to award compensation, as well as to the possible detriment to the consumer from planned changes to the way complaints are handled under the Alternative Dispute Resolution (ADR) Directive. They did not agree that the laying of domestic legislation on top of international regimes would lead to confusion and uncertainty.

Maritime responses

- 3.17 We asked:

Q8: Do you agree that the existing provisions set out in the EU passenger rights legislation relating to delays and cancellations in the maritime sector should continue to apply to maritime passengers? Please provide evidence to support your views. If you do not agree, please give your reasons.

Q9: Do you agree that the proposed exemption disapplying sections 57(3) and 57(4)(a) for the maritime sector will achieve the intended outcome as set out in this Consultation Document? Please provide evidence to support your views. If you do not agree, please give your reasons.

Q10: What do you consider are the likely impacts and potential costs on the maritime sector if the proposed exemptions are not granted? Please provide your evidence and assumptions. Are there any other impacts that have not been identified in this Consultation Document?

- 3.18 The overall response from the maritime industry (Chamber of Shipping, Voluntary Complaint Handling Bodies and trading standards regulators) supported the proposed exemption from the Consumer Rights Act 2015. Consumer group organisations did not respond specifically on the current compensation arrangements in place for the maritime sector.

- 3.19 The maritime industry and Voluntary Complaint Handling bodies responded to the consultation in favour of the exemption, including the UK Chamber of Shipping, Association of British Travel Agents (ABTA), London TravelWatch, Ombudsman Services and the Chartered Trading Standards Institute.
- 3.20 The respondents felt that the exemption would reduce complexity and possible duplication in consumer protection and afford clarity to traders and consumers alike. They believed that the existing compensation provisions were clear and proportionate, and well understood by both consumers and the industry.
- 3.21 Maritime industry bodies also commented that the existing regime worked well, and pointed out that statistics published by the MCA show that in the first two years of operation of the EU Regulation on maritime passenger rights, only 19 ferry passengers (out of the many millions carried) and no cruise passengers decided to pursue a complaint about delayed or cancelled sailings beyond the carrier, and that all those complaints were successfully resolved by the Complaint Handling Bodies.
- 3.22 None of those who responded to the maritime element of the consultation were able to provide any further evidence of what the likely impacts might be on operators or the wider maritime industry.

4. List of respondents

A4A

ABTA

Association of Train Operating Companies (ATOC)

BAR UK

British Air Transport Association (BATA)

Civil Aviation Authority (CAA)

Consumer Council for Northern Ireland (CNNI)

Campaign for Better Transport

Chamber of Shipping

Chartered Institute of Trading Standards

Eurostar

Hill Dickinson

IATA

Jet

London TravelWatch

Malaysian Airlines

Monarch

Money Saving Expert

Ombudsman Services

Office of Rail and Road (ORR)

Thomas Cook Airlines

Trainline

Transport Focus

Transport for London

Virgin Atlantic

Which?

Individual consumers