

**United Kingdom National Enforcement Body activity report for -
2017-2018**

**Rights of passengers travelling by sea and inland waterway
(Regulation (EU) N° 1177/2010)**

1. Introduction

Under the provisions of Article 26 of Regulation (EU) 1177/2010, the National Enforcement Bodies (NEBs) of each EU Member State are required to publish a report on their activities in the previous two calendar years. The report should focus on a description of actions taken in order to implement the provisions of the Regulation, statistics on complaints and any sanctions that may have been applied. This is the third such report and covers the two-year period from 01 January 2017 through to 31 December 2018.

2. Background

To put the application of the Regulation into context, the following statistical data provides the background against which the UK's approach to passenger rights continues to be delivered. The Department's data analysis of passenger movements excludes vessels smaller than 100 gross tons (in line with European statistical reporting requirements).

In February this year, the Department for Transport published provisional statistics for the movement of maritime passengers for 2018.

It is important to note that there are 106 Port Facilities throughout the UK that deal with passengers, plus one Port Facility in Gibraltar. Some of these facilities may only handle passengers on an occasional basis (e.g. an infrequent call by a cruise ship) whilst others will handle passengers on a regular and daily basis (e.g. Dover).

In 2017, 21.5 million passengers departed from UK ports on international ferry routes, with 2.8 million

sea passenger movements on main domestic ferry services within the UK¹;

In 2017, there were:

- 3.5 million passengers on domestic sea crossing routes;
- 21.5 million passengers on river ferries;
- 1.9 million passengers embarking on or disembarking from cruises and long sea journeys at UK ports.

All the outstanding 2018 figures in spas0101 and 0201 will be updated in November 2019

Whilst this covers what might usually be regarded as ferries, it excludes very small vessels which are used for a few short routes, such as the [Kintyre Express](#) which carries up to 12 passengers and operates between Campbeltown - Ballycastle and Ballycastle (and Port Ellen from April to September).

River ferry passenger numbers are also generally only for routes that are subject to EU Regulation 1177/2010.

Further information and additional statistical data can be found here:

[SPAS0101](#) – International (including cruise and long sea journeys);

[SPAS0201](#) – Domestic (including inter island and river ferries)².

3. The UK National Enforcement Body (UK NEB)

The UK's National Enforcement Body (NEB) is the Maritime and Coastguard Agency (MCA). The MCA is an Executive Agency of the Department for Transport. The UK NEB became fully operational on 18 December 2012 when the Regulation entered into force. The MCA's role as UK NEB is prescribed in national regulations³. These regulations also set out the penalties and offences regarding non-compliance with the Regulation with a (potentially) unlimited fine being payable on conviction.

¹ 2018 figures currently cover only GB to Northern Ireland; GB to Channel Islands, and; GB to the Isle of Man

² Source: UK Department for Transport Maritime Statistics

³ Statutory Instrument 2013 No. 425 – The Merchant Shipping (Passengers' Rights) Regulations 2013

The UK NEB monitors and organises inspections of carriers, terminal operators, ticket vendors and other outlets in scope of the Regulation through checks, visits and the exchange of information (the UK NEB has the power to require information to be provided, and failure to do so constitutes an offence – The Merchant Shipping (Passengers’ Rights) Regulations (2013 Regulations)).

The UK NEB (in co-operation with the Department for Transport) maintains regular contact with organisations that represent carriers, passengers, disabled people, consumers and other national authorities in order to promote and develop a consistent approach to implementation of the Regulation and ensure that maritime passengers are able to access their rights, within the context of the Regulation, wherever and whenever they travel from (or to) the UK.

4. The Complaint Handling Procedure

The UK has chosen not to adopt a standard complaint handling form for maritime passengers. Instead, passengers are able to make their complaint in various formats – by letter or electronically, such as email or through an online form, if that is available.

In order to ensure that complaints are properly handled and resolved as quickly as possible, the UK has adopted a three-tier approach for managing passenger complaints that are in scope of the Regulation. This approach places the emphasis on carriers and operators to try to resolve complaints without recourse to the UK NEB. These arrangements have been in place since the UK implemented the Regulation.

Tier 1

In the first instance, passengers should raise their complaint directly with the **port terminal operator / carrier** who provided the service. In most cases it would be envisaged that the issue can be resolved to the satisfaction of all parties. If the complaint cannot be resolved at this stage, and the operator’s internal complaint handling procedure has been exhausted, the complainant can escalate the matter to a voluntary complaint handling body at Tier 2. The operator should make the complainant aware of this option, and also the option of Alternative Dispute Resolution (ADR).

Tier 2

The **voluntary complaint handling bodies** deal with complaints that arise from ports, or on services departing from ports, within their own jurisdiction. Passengers with complaints relating to ports or

services in other UK jurisdictions (Northern Ireland and Scotland) will be directed to the relevant voluntary complaint handling body.

The role of the voluntary complaint handling body is to act as an impartial arbitrator who will examine all the facts, seek further information or clarification and reach an opinion about the complaint and recommend what course of action or redress would be appropriate.

There are five voluntary complaint handling bodies set up in the UK. Details of these can be found in **Section 8**.

If the complaint cannot be resolved at this stage, the complaint may then be escalated to the UK NEB.

Tier 3

The role of the UK NEB is **not** to act as an arbiter or conciliator between the passenger and the carrier or terminal operator. Its role is primarily to ensure that industry has in place mechanisms for carrying out its duties and obligations under the Regulation, and to take action to address shortcomings or failures.

However, where disputes arise on whether alleged breaches under the Regulation have taken place, the UK NEB may be asked to investigate.

The UK NEB is responsible for investigating cases where there has been a breach of the Regulation and will take measures necessary to ensure compliance with the Regulation.

5. Enforcement

As set out in Section 2, there is an established sanctions and penalties framework already in place. However, during the current reporting period it was not necessary for the UK NEB to impose sanctions or take formal enforcement action against any UK carrier, operator or port terminal. So, no penalties have been imposed as a result of any complaint being made. Neither has there been any need for significant co-operation with NEBs of other EU Member States, either in terms of passing complaints on or for other enforcement reasons. There have been no cases that required action under the EU Consumer Protection Cooperation Regulation.

Most of the issues identified through the voluntary complaint handling bodies were either outside the scope of the Regulation; the operator was deemed not to be at fault; or the issue was resolved through the relevant voluntary complaint handling body to the satisfaction of the passenger. In all cases, and given the large numbers of passengers travelling from ports and terminals in and out of the UK, the low

level and nature of complaints reflects a high level of compliance by industry and business (for the purposes of the Regulation).

While some complaints were brought directly to the attention of the UK NEB (so not via one of complaint handling bodies), these mostly involved matters of interpretation of the Regulation. This was provided and clarified in co-operation between the UK NEB, the Department's legal team, the Department for Transport and, where appropriate, the voluntary complaint handling bodies.

Experience has shown that it is more effective to support and educate industry towards achieving compliance, rather than to impose sanctions with fines, particularly when non-compliance is often the result of a misunderstanding or incorrect interpretation of the Regulation.

During the reporting period, the UK's NEB was able to inspect nine ports around the UK, there is a caveat against this figure as due to staff changes in the MCA, this is an estimate. The inspections covered a wide range of aspects and compliance (both interpretation as well as physical and practical matters). The NEB did not find any significant issues with operators or port terminals and overall compliance with the Regulation was deemed to be good, in particular around accessibility for those passengers with disabilities or those with reduced mobility. The assistance that staff provided was also considered to be of a good standard.

The only consistent issue of non-compliance identified was operators not having a Quality Standards document that sets quality standards for assistance provided by operators to passengers. This is something that the UK NEB will continue to address, working with industry to ensure it fulfils this particular obligation. Improvements have been seen but the MCA continues to enforce and through the inspection regime.

6. Implementation of the Passenger Rights Regulation in Gibraltar

The Gibraltar Port Authority (GPA) is tasked to enforce the Regulation in Gibraltar where complaints are submitted directly to the vessel's agent in Gibraltar.

To date there has not been any ferry related complaints registered by the GPA. The ferry service that exists in Gibraltar is very limited with a ferry operation every fortnight. The service operates to meet the demand of the Moroccan community that live and work in Gibraltar. The number of passengers transported at any given time seldom exceeds 100 passengers and two or three cars.

Gibraltar does have a healthy cruise industry with just over 250 ships calling at the port on an annual basis. Passengers passing through the terminal are usually coming for only the day. Gibraltar is not a home port to any of the visiting vessels (and no turn around operations are conducted). Normally, in the event of complaints, these are given to the Tourist Board who are responsible for running the terminal and who will in turn pass the complaint to the GPA if necessary.

Of the few cruise ship related complaints that the GPA have been notified about, none have fallen within the scope of the Regulation.

7. Guidance

The Department for Transport has produced a comprehensive set of nine Guidance Notes that provide general information on the different provisions of the Regulation. This guidance, which is available in both electronic and paper format (on request from either the UK NEB or the Department for Transport), specifically relates to the rights of the passenger (including persons with reduced mobility), the obligations of carriers (e.g. cruise and ferry operators), port terminal operators and travel agents.

The Guidance Notes are subject to regular review in the light of lessons learned and the development of best practice, in co-operation with consumer groups, industry and the UK NEB.

The full suite of Guidance Notes are available here:

www.gov.uk/government/publications/draft-guidance-notes-relating-to-regulation-eu-no-1177-2010.

Additional information is available in the public domain but this is primarily aimed at Ship Owners and Agents; Ship Operators, Managers and Masters; Seafarers; Marine Surveyors and Port and Terminal Operators through the Marine Guidance Note 504 available at - www.gov.uk/government/publications/mgn-504-maritime-passenger-rights-national-enforcement-body.

The UK NEB has also provided a poster template for carriers and port terminals to display, and which communicates the rights of the passenger and the provisions of the Regulation, as required under Article 23(1).

8. Voluntary Complaint Handling Bodies

There are 5 voluntary complaint handling bodies who handle Tier 2 level complaints. These are:

- **Association of British Travel Agents (ABTA)** for complaints related to ferry services in England and Wales;
- **Cruise Lines International Association, CLIA UK and Ireland** for complaints for cruise services in England and Wales;
- **Consumer Council for Northern Ireland (CCNI)** for complaints on ferry and cruise services in Northern Ireland;
- **London Travel Watch** for complaints on services operated, contracted and / or licensed by Transport for London; and
- **Transport for Scotland** for ferry and cruise service complaints in Scotland.

9. Statistical Data

All voluntary complaint handling bodies liaise with the UK NEB in the preparation of the biennial enforcement report. They provide data and analysis when asked to do so and, in order to streamline responses from each voluntary complaint handling body. A standard reporting template has been developed by the Department for Transport and the UK NEB for reporting purposes for all voluntary complaint handling bodies to use. The UK NEB also meets regularly with representatives of the voluntary complaint handling bodies to discuss a range of issues, from legislation, policy proposals or developments, guidance notes, individual cases, matters of interpretation and future strategies.

Complaint Handling at Carrier / Terminal Operator Level

Whilst information may be kept by carriers and terminal operators for their own internal audit, there is no statistical data available relating to complaint handling at operational level, since this is not a mandatory requirement of the Regulation.

Recording and Monitoring of Complaints

During the current reporting period, the voluntary complaint handling bodies received a total of 54 complaints that were in scope of the Regulation. These are summarised here:

Year	Number of complaints received by CHB's	Reason for complaint (e.g. cancellation, delay, discrimination, lack of assistance, please indicate whether it is a disability related complaint):		Comments (if any). Please specify how many of the cases received were satisfactorily resolved. If applicable, please indicate what happened to the unsolved cases (referral to Court, ADR alternative dispute resolution)?
		Cancellation related	Disability related	
From 1 January 2017 – 31 December 2017	13	13 ferry 0 cruise	0 ferry 0 cruise	Of the thirteen cases investigated, it was found that two were in relation to crossings outside UK, as such customers were referred to the relevant authorities (Italy & Spain). In seven cases it was found that the ferry company had complied with the regulations and there was no case to answer. In one instance the company refused compensation under Art 20(4) claiming maintenance was an extraordinary circumstance, which is not the case, so were instructed to pay compensation. The remaining cases was resolved by the ferry company directly.

From 1 January 2018 – 31 December 2018	57	56 ferry 0 cruise	1 ferry 0 cruise	Of the 57 cases investigated, it was found that six were in relation to crossings outside UK; as such, customers were referred to the relevant authorities (Spain, France, Ireland & Greece). In 17 cases, it was found that the ferry company had complied with the regulations and there was no case to answer. In 12 instances, the company disputed the right to compensation and as such, clients were referred to NEB/ADR/Courts. The remaining 22 cases were resolved with the ferry company.
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The data can be further broken down as follows:

1. January 2017 – 31 December 2017

	<u>Article</u>	<u>Number of complaints</u>
•	Art. 16, 18 & 19	1
•	Art. 17	2
•	Art. 17 & 19	1
•	Art. 18	4
•	Art. 18 & 24	1
•	Article 18, 19 & 20	1
•	Article 19	3

1. January 2018 – 31 December 2018

	<u>Article</u>	<u>Number of complaints</u>
•	Art 10	1
•	Art 16	2
•	Art 16 & 24	1
•	Art 16, 17, 18, & 19	1
•	Art 16, 17, 18, 19, & 24	1
•	Art 17	7
•	Art 17 & 19	5
•	Art 17 & 24	1
•	Art 17,18, 19 & 23	1
•	Art 17, 18, 19 & 24	1
•	Art 18	14
•	Art 18 & 24	1
•	Art 18, 19 & 24	1
•	Art 19	17
•	Art 19 & 20	1
•	Art 19 & 24	2

10. NEB Next steps & Improvements to Enforcement

The NEB are continually looking for improvement and work with DfT to implement the Inclusive Transport Strategy. Below are a number of areas for the NEB to look at during the

next reporting period.

Carrying out a comprehensive port and vessel inspection regime with renewed focus on passenger rights. This should include:

- Ensuring port and vessel operator staff are trained to deal with disabled issues
- Ensuring announcements are audio and visual
- Encouraging operators to provide disabled parking close to terminal buildings

The roll out of the inspection regime was delayed by a change in staffing since the release of the ITS. There is now a new MCA passenger rights lead in post to deliver compliance inspections as part of an improved enforcement regime.

The aim of the inspection regime is to ensure compliance with current regulations – Regulation EU 1177/2010. Operators are being encouraged to go further than currently required, such as providing Changing Places.

The NEB will inspect the top 10 ferry routes and port terminals with over 100,000 commercial passenger movements per year during this current year. Further inspection programmes will then be developed for subsequent years.

There will be annual surveys of disabled passengers to identify levels of satisfaction- The first annual survey ran for 3 months and closed on 31 October 2018. The results were published on the 3 June 2018 and can be found at <https://www.gov.uk/government/statistics/mca-disabled-passenger-satisfaction-survey-2018>

The requirement for operators to test their facilities with local disabled groups will be the focus- This is an Inclusive Transport Strategy¹ action as well as a legislative requirement for port and ferry operators.

During inspections the NEB will identify operators who could be held up as an example for others - This will assist DfT with the plans to introduce an Inclusive Transport Leaders scheme for operators providing exemplary services.

11. Conclusion

In conclusion and based on the evidence that is currently available from statistics as well as

¹ <https://www.gov.uk/government/publications/inclusive-transport-strategy>

ongoing engagement with industry and consumer groups, the UK believes that the Regulation works well and that the approach to enforcement within the UK continues to be appropriate and effective. There is some indication, based on the statistical returns, that maritime passengers are becoming increasingly aware of their rights under the Regulation.

Nonetheless, the UK will continue to monitor compliance with the Regulation and take action where it is needed, using a range of legislative and enforcement mechanisms and tools in order to help industry meet its responsibilities. In particular, the UK will continue to ensure that passengers travelling by sea have recourse to a system that works effectively and fairly for them.