

**2013 No. 425**

**MERCHANT SHIPPING**

**The Merchant Shipping (Passengers' Rights) Regulations 2013**

*Made* - - - - 26th February 2013

*Laid before Parliament* 28th February 2013

*Coming into force* - - 27th March 2013

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

Accordingly, the Secretary of State in exercise of the powers conferred on him by that section makes the following regulations.

**Citation and commencement**

1. These Regulations may be cited as the Merchant Shipping (Passengers' Rights) Regulations 2013 and come into force on 27th March 2013.

**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(c);

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

“conciliation” includes mediation and any other form of alternative dispute resolution; and

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

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

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(a) S.I.1994/757.

(b) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment of section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1972 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183).

(c) OJ No L334, 17.12.2010, p1.

## Offences

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

(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 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 9 or 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 person (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) an offence is committed by a body corporate or a partnership (including a limited liability partnership and a Scottish partnership) or other unincorporated association; and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of —
  - (i) a relevant individual; or
  - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, partnership or unincorporated association commits an offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” means—

- (a) in relation to a body corporate—
  - (i) a director, manager, secretary or other similar officer of the body;
  - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a partnership, a partner;
- (c) in relation to an unincorporated association other than a partnership, a person who is concerned in the management or control of the association.

### **Enforcement**

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

(2) Any person subject to an obligation imposed by the EU Regulation and referred to in regulation 3 must 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.

## **Compensation claims**

9.—(1) A claim by a person for an infringement of any of that person's rights under the EU 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) Proceedings in England, Wales or Northern Ireland may be brought only in a county court.

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

(4) 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.

(5) 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.

(6) 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 (5), the period allowed by that paragraph is to be extended by three months.

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

## **Transitory provisions of the Equality Act 2010**

10. In relation to such aspects of a particular case as are governed by the EU Regulation, Article 10 of the Equality Act 2010 (Commencement No.4, Savings, Consequential, Transitional, Transitory and Incidental Provisions and Revocation) Order 2010(a) (transitory provisions relating to ships and hovercraft) does not apply.

## **Review**

11.—(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 is applied 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

*Stephen Hammond*  
Parliamentary Under Secretary of State  
Department for Transport

26th February 2013

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(a) S.I. 2010/2317.

## EXPLANATORY NOTE

*(This note is not part of the Regulations )*

These Regulations provide for the enforcement of the rights and entitlements set out in Regulation (EU) No 1177/2010 of the European Parliament and of the Council (OJ L. 334, 17.12.2010, p1) (“the EU Regulation”) which concerns the rights of passengers, particularly those with a disability or reduced mobility, when travelling by sea and inland waterway.

*Regulation 3* provides offences for failure to comply with various obligations set out in the EU 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.

*Regulation 6* provides that it will be a defence for a person to demonstrate that all reasonable steps were taken to ensure compliance with the EU Regulation.

*Regulation 7* provides that members and officers of corporate bodies, partnerships and unincorporated associations who have contributed to a failure to comply with the EU Regulation are 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 is 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 such information without reasonable excuse.

*Regulation 9* enables persons who have suffered an infringement of their rights under the EU Regulation to seek compensation separately from any penal sanction that may be imposed. A claim for compensation must be brought within six months of the infringement complained of unless the court considers it is just and equitable to consider a claim that is out of time.

*Regulation 10* provides that certain transitory provisions relating to the commencement of the Equality Act 2010 do not apply to the extent that the EU Regulation governs a particular case.

*Regulation 11* 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 regulatory impact assessment of the effect that this instrument will have on the costs of business has been produced and a copy placed in the library of both Houses of Parliament. Copies may be obtained from the Department for Transport, Great Minster House, 33 Horseferry Road, London, SW1P 4DR. Alternatively, copies can be obtained from the Department for Transport’s website, which is at [www.gov.uk](http://www.gov.uk). It is also published with the Explanatory Memorandum alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).





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STATUTORY INSTRUMENTS

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