

Title: The Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2014 IA No: DfT00296 Lead department or agency: Department for Transport Other departments or agencies: Civil Aviation Authority(CAA) and the General Consumer Council for Northern Ireland (CCNI)	Impact Assessment (IA)		
	Date: 28/07/2014		
	Stage: Final		
	Source of intervention: EU		
	Type of measure: Secondary legislation		
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Summary: Intervention and Options			RPC Opinion: GREEN

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
£-0.11	£-0.11	£0.01	No Zero Net Cost

What is the problem under consideration? Why is government intervention necessary?
EC Regulation 1107/2006 concerning the rights of disabled persons and persons with reduced mobility (PRMs) when travelling by air imposes legal obligations on airports, airlines, and their agents or tour operators in respect of the service assistance at airports and on board the aircraft. The EC Regulation requires Member States to ensure compliance with the rules and lay down penalties for infringements that are effective, proportionate and dissuasive. Whilst the criminal enforcement powers set out in SI 2007/1895 meet the requirements of the EC Regulation, criminal enforcement can be costly and time consuming for both businesses and the CAA.

What are the policy objectives and the intended effects?
To replace SI 2007/1895, using powers under Section 2(2) of the European Communities Act (1972), as follows: a) to introduce statutory civil enforcement powers to provide the CAA with a more flexible and effective enforcement regime in order to further improve compliance with the EC Regulation; b) provide clarification, in relation to International Law, of the scope of the 'injury to feelings' provision; and c) to remove reference to the Equality and Human Rights Commission (EHRC) who no longer hold responsibility for complaints and conciliation services.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
Option 1: Supplement the existing criminal enforcement regime with civil enforcement powers, provide clarification of the scope of the 'injury to feelings' provision and remove reference to the EHRC.
Option 2 (preferred): Replace the existing criminal enforcement regime with civil enforcement powers, provide clarification of the scope of the 'injury to feelings' provision and remove reference to the EHRC.
Further details of the two options proposed are available in the evidence base (below).

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: _____ Robert Goodwill _____ Date: _____ 16/10/2014 _____

Summary: Analysis & Evidence

Policy Option 1

Description: Supplement the existing criminal enforcement regime with civil enforcement powers, provide clarification of the scope of the 'injury to feelings' provision; and remove reference to the EHRC

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -0.22	High: 0	Best Estimate: -0.11

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.0	0.0	0.0
High	0.0	0.0	0.2
Best Estimate	0.0	0.0	0.1

Description and scale of key monetised costs by 'main affected groups'

The Civil Aviation Authority (CAA) anticipate estimated costs to be around £13,000 per annum, amounting to around one fifth of a legal advisor's annual salary (which include the full cost of employment e.g. pensions etc). These costs would be passed on to the air transport industry (both the compliant and non-compliant) via CAA's charges.

Other key non-monetised costs by 'main affected groups'

None

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0.0	0.0
High	0	0.0	0.0
Best Estimate	0	0.0	0.0

Description and scale of key monetised benefits by 'main affected groups'

None

Other key non-monetised benefits by 'main affected groups'

It has not been possible to monetise any of the benefits. However, the change will benefit consumers by fully realising the benefits of the EC Regulation's service assistance provisions for disabled and PRM air passengers.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

The CAA recovers its costs from Industry through its charging schemes. The ongoing impact on business can only be an estimate (based on known levels of current compliance) as it's difficult to predict the number of non-compliance cases that will arise. An estimated maximum of 1,500 businesses may be subject to the EC Regulation and the enforcement regime.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0.0	Benefits: 0.0	Net: 0.0	No	Zero net cost

Summary: Analysis & Evidence

Policy Option 2

Description: Option 2- (preferred): Replace the existing criminal enforcement regime with civil enforcement powers, provide clarification of the scope of the 'injury to feelings' provision; and remove reference to the EHRC

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -0.22	High: 0.00	Best Estimate: -0.11

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.0	0.0	0.0
High	0.0	0.0	0.2
Best Estimate	0.0	0.0	0.1

Description and scale of key monetised costs by 'main affected groups'

The Civil Aviation Authority (CAA) anticipate estimated costs to be around £13,000 per annum, amounting to around one fifth of a legal advisor's annual salary. These costs would be passed on to the air transport industry (both the compliant and non-compliant) via CAA's charges.

Other key non-monetised costs by 'main affected groups'

None

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.0	0.0	0.0
High	0.0	0.0	0.0
Best Estimate	0.0	0.0	0.0

Description and scale of key monetised benefits by 'main affected groups'

Other key non-monetised benefits by 'main affected groups'

It has not been possible to monetise any of the benefits. However, the change will benefit consumers by fully realising the benefits of the EC Regulation's service assistance provisions to disabled and PRM air passengers.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

The CAA recovers its costs from Industry through its charging schemes. The ongoing impact on business can only be an estimate (based on known levels of current compliance) as it's difficult to predict the number of non-compliance cases that will arise. An estimated maximum of 1,500 businesses may be subject to the EC Regulation and the enforcement regime.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0.0	Benefits: 0.0	Net: 0.0	No	Zero net cost

Evidence Base (for summary sheets)

Problem under consideration

EC Regulation 1107/2006 (the “EC Regulation”) concerning the rights of disabled persons and persons with reduced mobility (PRMs) when travelling by air imposes legal obligations on airports, airlines, and their agents or tour operators in respect of the service assistance (e.g. assistance for movement through the airport and retrieving baggage) at airports and on board the aircraft for disabled persons and PRMs.

The EC Regulation requires Member States to ensure compliance with the rules and lay down penalties for infringements that are effective, proportionate and dissuasive.

Statutory Instrument (SI) 2007/1895 The Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2007 provides the Civil Aviation Authority (CAA) with criminal enforcement powers. These powers are costly and time consuming to use. The SI also includes, at Regulation 9(2), an ‘injury to feelings’ compensation provision. SI 2007/1895 designates the CAA as the National Enforcement Body (NEB) and the Equality and Human Rights Commission (EHRC) as the complaints handling body in the UK to meet the requirements of the EC Regulation.

Rationale for intervention

SI 2007/1895 provides the CAA with criminal enforcement powers. Whilst such powers meet the requirements of the EC Regulation, criminal enforcement is costly and time consuming for both businesses and the CAA. For other aviation related legislation the CAA holds civil enforcement powers which allows it to take up compliance issues with Industry and move to formal action only if the person in breach is unwilling to provide informal assurances as to future conduct. The CAA has found this to be more effective in improving compliance and the proposed change is widely supported across disabled groups and UK Industry.

Regulation 9(2) of SI 2007/1895 permits ‘injury to feelings’ but only when an award is outside the scope of international conventions governing air flights. On 5 March 2014 the Supreme Court ruled that Mr Stott (a paraplegic) was not entitled to his claim for damages for ‘injury to feelings’ because the incident happened at a time when the Montreal Convention (1999) applied. In the judgement Lord Toulson specifically said that although the existence of Regulation 9(2) is misleading there is no suggestion that it is invalid or beyond power (*ultra vires*). However, additional clarification of the scope of the ‘injury to feelings’ provision would be advantageous.

The EHRC no longer holds responsibility for complaints handling or conciliation services. The Home Office (HO), who held sponsorship responsibility for the EHRC, decided to end, in 2012, the EHRC arrangements of conciliation services which was part of the ‘Building a fairer Britain: Reform of the EHRC’ consultation document (Spring 2011). In October 2012 the CAA formally took over the complaints handling function.

Policy objective

To amend SI 2007/1895, using powers under Section 2(2) of the European Communities Act (1972), as follows:

- a) To introduce statutory civil enforcement powers to provide the CAA with a more flexible and effective enforcement regime in order to further improve compliance with the EC Regulation;
- b) To provide clarification, in relation to International Law, of the scope of the ‘injury to feelings’ provision;

- c) To remove reference to the EHRC who no longer hold responsibility for complaints handling or conciliation services.

Description of options considered (including do nothing)

Option 1: Supplement the existing criminal enforcement regime with civil enforcement powers, provide clarification of the scope of the ‘injury to feelings’ provision; and remove reference to the EHRC

SI 2007/1895 was formulated to provide criminal enforcement powers to the CAA that would rely on them to prosecute an offence on serious breaches that lead to considerable consumer harm, both in scope and depth. Current criminal powers have not been tested since SI 2007/1895 was first implemented.

This option proposes to supplement the existing criminal enforcement powers with a civil enforcement regime, similar to those contained in Part 8 of the Enterprise Act (2002) and in other aviation related legislation (e.g. SI 2013/486 The Operation of Air Services in the Community (Pricing) Regulations 2013).

As part of any civil enforcement regime, breaches of the law that cannot be addressed by taking up individual passenger complaints would first be dealt with through informal negotiation between the CAA and the business concerned. If businesses are unwilling to provide assurances, formal enforcement may commence (which could include an application to the Courts for an Enforcement Order). If the business fails to comply with the Enforcement Order the CAA may then return to Court for a ruling that the business is in contempt of court. The CAA has found this to be more effective and flexible in improving compliance with other aviation related legislation.

To provide clarification, in relation to International Law, of the scope of the ‘injury to feelings’ provision.

To remove reference to the EHRC in Regulation 7 and Regulation 10 of SI 2007/1895 as the EHRC no longer holds responsibility for complaints handling or conciliation services related to the EC Regulation.

Option 2 (preferred option): Replace the existing criminal enforcement regime with civil enforcement powers, provide clarification of the scope of the ‘injury to feelings’ provision; and remove reference to the EHRC

This option proposes to replace the existing criminal enforcement powers with a civil enforcement regime (Option 1 above provides further details on the civil enforcement regime).

To provide clarification, in relation to International Law, of the scope of the ‘injury to feelings’ provision.

To remove reference to the EHRC in Regulation 7 and Regulation 10 of SI 2007/1895 as the EHRC no longer holds responsibility for complaints handling or conciliation services related to the EC Regulation.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

The cost associated with Option 1 and Option 2 are the same due to the fact that the current criminal enforcement powers have not been used since their inception in 2007. It is unlikely that they will be used in the foreseeable future.

Transitional costs

The CAA regularly monitors businesses to ensure compliance with the EC Regulation. This work is undertaken within existing CAA resources so there are no additional costs to businesses. Any passenger surveys, data from passenger complaints, inspections and bilateral meetings of previously unchecked businesses will be undertaken in the same way ensuring compliant businesses will not incur additional costs. It will not be necessary for businesses to become familiar with any revised enforcement regime if they are already compliant. There will therefore be no transitional costs for compliant businesses.

Non-compliant businesses may experience some costs, but these have not been included as the costs for the non-compliant are not included in such assessments.

Ongoing costs

It is estimated that there will be no more than a maximum of five cases (per year) arising from the civil enforcement approach. The CAA anticipates some short term ongoing costs in terms of internal legal resource in quality assuring processes and standard letters but this would reduce once the new enforcement framework is at steady state.

The anticipated costs have been estimated to be around £13,000 per annum, amounting to around one fifth of a legal advisor's annual salary (which includes the full cost of employment e.g. pensions etc). These costs would be passed on to the air transport industry (both the compliant and non-compliant) via CAA's charges, which it consults on annually. These figures are best (central) estimates, and may be subject to change if the numbers of non-compliant cases are higher than anticipated. For instance, if the number of cases are double of that expected, legal (in house) requirements are also likely to double, meaning costs would increase to £26,000 per annum (high estimate). In order for the cost to the CAA to be above £1million, 38 times as many cases have to arise than assumed in the high estimate. Considering that no cases have been brought in the last 6 years, this scenario is regarded to be extremely unlikely.

It will not be necessary for businesses to become familiar with any revised enforcement regime if they are already compliant. In reality, it is likely that businesses would need to read the new regulation to ensure that they are still compliant, but the costs are likely to be low. In any case, although these are a new set of civil enforcement powers, the regime mirrors the CAA's (Part 8 of the Enterprise Act 2002) powers which have been used for some time and are familiar to businesses.

A summary of the annual gross cost to business is set out in the table below:

Costs (Base Year 2013)	Option 1 and 2	£m (best estimate)	£m (high)
Average Annual (constant price)	Legal (in house). These costs would be passed on to industry via CAA's charges.	0.013	0.026
Total		0.013	0.026

annual gross costs			
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In regards to any additional costs arising related to the Courts, this will depend on the number of cases which move to formal enforcement which could include an application to the Courts for an interim or Enforcement Order. In the best case scenario the number of cases is estimated to be no more than five each year. A Justice Impact Test will be completed and cleared with the Ministry of Justice.

Benefits

It has not been possible to monetise any of the benefits. However, the change will benefit consumers by fully realising the benefits of the EC Regulation’s service assistance provisions to disabled and PRMs.

Rationale and evidence that justify the level of analysis used in the IA (proportionality approach);

The costs associated with the legislative change are low, and solely reflect the increased costs on compliant Industry of enforcing the EC Regulation effectively.

Risks and assumptions

The CAA recovers its costs from Industry through its charging schemes. The ongoing impact on business can only be an estimate (based on known levels of current compliance) as it’s difficult to predict the number of non-compliance cases that will arise.

The CAA’s review, undertaken in November 2013, to assess the level of compliance by airports and airlines with the EC Regulation, showed that the quality of the assistance provided by airports to PRMs is generally good. Data gathered from the CAA’s airport questionnaire shows that, in 2012, airports received approximately 1 PRM complaint for every 1,700 disabled and PRM assisted. Between July 2012 and September 2013, the CAA received 75 complaints about airports (as compared with 108 complaints about airlines).

There are some 1,200 International Air Transport Association agents in the UK selling tickets on behalf of airlines. Based on membership of the main trade associations, there are around 120 airlines which arrange special assistance services for the disabled and PRMs travelling from UK airports. This suggests that in total a maximum of 1,500 businesses may be subject to the EC Regulation and the enforcement regime.

Direct costs and benefits to business calculations (following OITO methodology);

As the UK is not going beyond the minimum required by the EC Regulation, this measure is out of scope of OITO. Further details of the costs and benefits to business are outlined above.

Wider impacts

Environmental and social costs and benefits are not expected to arise from this change.

All disabled and PRM passengers requiring service assistance at airports and on board the aircraft will benefit from the civil enforcement regime to the extent that this leads to greater compliance with the requirements of the EC Regulation.

As outlined above, the only impact of introducing a statutory civil enforcement regime is on non-compliant business and compliant business (through increased charges). Therefore, the change does not raise any issues that are relevant in relation to equalities, and a full Equality Impact Assessment has not been undertaken as a result.

The enforcement regime will not limit the number and range of businesses either directly or indirectly. It will not limit their ability to compete or reduce incentives to compete vigorously. It will however help to level the playing field between companies and, as a result, there will be positive 'competition' impacts for those firms already complying (and negative for those not). A full Competition Assessment is therefore unnecessary in this instance.

The EC Regulation makes no exceptions in its provisions relating to the rights of disabled and PRM passengers to have equal access to air travel, and places a legal requirement on airport managing bodies to organise the central provision of assistance for PRMS to enable them to pass through airports, board, disembark and transits between flights, which apply to all businesses in this market across the EU regardless of their size. The enforcement regime will therefore apply to all businesses involved in this activity in the UK, irrespective of size.

We do not expect impacts from the UK enforcement regime to be high or to have a significant impact on small businesses. The enforcement regime will only apply where companies have not complied with their obligations under the EC Regulation. Therefore, a Small and Micro Business Assessment is not required.

Summary and preferred option with description of implementation plan

Option 2 is the preferred option which would result in the current criminal powers replaced with civil. Following an informal targeted consultation in early 2014, the majority of respondents favoured a civil only enforcement regime. Replacing the current criminal offences is regarded as the preferred option because they have not been used to date due to the fact that they are burdensome and difficult to use. The preference is therefore to simplify the Regulations rather than have a dual enforcement regime.

Although the preferred Option 2 when implemented will be kept under review, no formal review commitment or date has been included in the proposed Regulations because the changes are relatively minor / low-cost in nature and replicate already well-established enforcement provisions used for other consumer related legislation.