

Title: 12 month exemption of EU licensed rail passenger services from a provision of the Consumer Rights Act 2015 IA No: DfT00344 Lead department or agency: Department for Transport Other departments or agencies: None	Impact Assessment (IA)		
	Date: 21/06/2016		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
Contact for enquiries: Lynn Stevens, Rail Funding & Fares, DfT. Tel: 020 7944 4885 Email: Lynn.Stevens@dft.gsi.gov.uk			
Summary: Intervention and Options			RPC Opinion: Awaiting Scrutiny

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2014 prices)	In scope of One-In, Three-Out? Measure qualifies as
ZERO	ZERO	ZERO	Yes Neutral

What is the problem under consideration? Why is government intervention necessary?
We wish to temporarily (for 12 months) exempt the rail sector from one provision in the Consumer Rights Act 2015 (the Act) where this would overlap with existing industry schemes for compensation in cases of delay or cancellation, in order to allow the rail industry to move to more consistent compensation arrangements. Without the temporary exemption, train operating companies may not have sufficient time to review and adjust their compensation, and might then be in breach of the requirements in the Act.

What are the policy objectives and the intended effects?
The objective of the temporary exemption is to enable rail operators to review their current compensation schemes and move to more consistent delay compensation arrangements, without having the concern that these are not in compliance with the Act.

Under the Act, if a service is not performed with reasonable care and skill or in line with certain information about it or the service provider, consumers are entitled to a price reduction of an appropriate amount which could be as much as the full price paid. A service provider is also prevented from capping its contractual liabilities to consumers in such cases.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: Do nothing – apply all provisions of the Consumer Rights Act 2015 to the rail, aviation and maritime sectors from 1 October 2016. This would result in rail compensation not fully complying with the Act due to insufficient time to agree the necessary changes to arrangements between rail companies, Government and the industry regulator.

Option 2: Preferred option – temporarily exempt EU licensed rail passenger operators from section 57(3) of the Consumer Rights Act in cases of delay and cancellation, to allow the rail industry to move to more consistent compensation arrangements. We would need to use the order-making power in the 2015 Act to put the exemption in place, as there is no other suitable route.

Will the policy be reviewed? No – the measure expires after 12 months					
Does implementation go beyond minimum EU requirements?				N/A	
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
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, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ **Claire Perry** _____ Date: 30 June 2016

Summary: Analysis & Evidence

Policy Option 2

Description: To exempt temporarily the rail sector from section 57(3) of the Consumer Rights Act 2015 in cases of delay or cancellation.

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: ZERO	High: ZERO	Best Estimate: ZERO

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

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

None.

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

For the 12 month period of the exemption, consumers will forgo potential benefits from any increases in compensation for delays and cancellations which train operators might introduce, or which might be ordered by the courts if existing compensation arrangements are found to be not fully compliant with the Act.

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

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

None

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

The rail industry will have sufficient time to properly review and improve its compensation arrangements, without being concerned that these are not fully compliant with the Consumer Rights Act. So, for the 12 month period of the exemption, the industry will avoid potential additional costs from dealing with litigation under section 57(3) of the Act, and any potential increased compensation payments as a result of court action. Industry will also benefit from avoiding any possible adverse outcomes from working to the extremely constrained timescale needed if section 57(3) came into force on 1 October 2016.

Key assumptions/sensitivities/risks	Discount rate (%)	N/A
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Assumption: that if we do nothing, rail compensation arrangements will fail to fully comply with the Consumer Rights Act 2015 from 1 October 2016 to 30 September 2017.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: Zero	Benefits: Zero	Net: Zero	Yes	Neutral

Evidence Base (for summary sheets)

Key definitions:

IA = Impact Assessment

SI = Statutory Instrument

The Act = The Consumer Rights Act 2015

EU = European Union

DfT = Department for Transport

ORR = Office of Rail and Road

OI3O = One In Three Out

BIT = Business Impact Target

NRCoC = National Rail Conditions of Carriage

1. TITLE OF PROPOSAL

12 month exemption of EU licensed rail passenger services from a provision of the Consumer Rights Act 2015

2. PROBLEM UNDER CONSIDERATION

The majority of the Consumer Rights Act 2015 came into force on 1 October 2015. The services provisions of the Act were not commenced in relation to aviation, maritime and EU licensed rail passenger operators, while the Government consulted on whether to permanently exempt these transport sectors from certain provisions of the Act. The exemption would apply where the provisions overlapped with existing EU, domestic and industry schemes for compensation in cases of delay or cancellation and, for aviation, denied boarding or downgrading.

Significant concerns were raised about the proposed exemption during the consultation. The Government considered all the responses carefully and concluded that consumer interests would be best served if the transport sectors were not exempted from any services provisions. However, it would be fair to give industry notice and time to adjust. A short delay to commencement would provide sufficient time for the aviation and maritime sectors to do this, but the Government concluded that a further 12 month exemption from one provision of the Act would be needed for the rail industry.

3. RATIONALE FOR INTERVENTION

The 12 month exemption will provide the rail industry with the time they need in order to review their current compensation arrangements in the light of the services provisions of the Act. They will be able to ensure that their compensation schemes are consistent across the industry and consider how they can be improved to better reflect the rights granted in the Act.

Under the Act, if a service is not performed with reasonable care and skill or in line with certain information about it or about the service provider, consumers are entitled to a price reduction of an appropriate amount which could be as much as the full price paid. A service provider is also prevented from capping its contractual liabilities to consumers in such cases.

While the exemption is in place, train operators will be able to temporarily continue to limit the amount of compensation payable for delays and cancellations to less than the full ticket price, which is a feature of some of the current industry compensation schemes, but would not be

compliant with the Act. Providing the 12 month exemption will allow the rail industry to take a considered approach to improving their compensation arrangements and bringing them into compliance with the Act.

The further 12 month period is needed before the Act comes fully into force for train operators because the industry's structure and compensation arrangements are complex, involving both industry-devised and DfT-devised compensation schemes. Any changes to terms and conditions need to be negotiated and agreed between the Association of Train Operating Companies, the individual train operating companies that make up their membership and sit on their key policy committees, and the DfT. In the rail sector, changes to existing arrangements take a considerable time to agree and implement because they need to be negotiated with Government and the sector regulator, the ORR, unlike in the more deregulated maritime and aviation sectors.

4. POLICY OBJECTIVES

The objective of this temporary exemption is to ensure that the rail industry is able to work constructively with the Government and focus on improving compensation for the benefit of consumers, who from October 2017 will benefit from the protections in the Act with regard to compensation for delays and cancellations, while still enjoying the advantages of the simpler claim arrangements and wider benefits of the dedicated rail compensation schemes. This will best be achieved by the rail industry improving its own compensation offer to consumers by making their schemes more consistent. The temporary exemption will provide time for this work to be completed.

The Act includes a power to provide in an Order (using an affirmative Statutory Instrument) that a provision of Chapter 4 of Part 1 does not apply to a service in the circumstances specified in the Order. The power is designed for limited situations where it would not be appropriate to apply one or more of the Act's services provisions. We are intending to make an Order to exempt temporarily, for 12 months, EU licensed rail transport operators from section 57(3), which would prevent the train operator from limiting their liability to consumers for the delay or cancellation of a service.

5. DESCRIPTION OF OPTIONS CONSIDERED

Two policy options have been considered in this impact assessment.

5.1. Policy Option 1 – Do Nothing

All provisions of the Act would come into force from 1 October 2016 for the rail sector as well as for the other transport sectors. Rail operators will not have had sufficient time to move to more consistent compensation arrangements and may not fully comply with the Act.

5.2 Policy Option 2 – The preferred option

To temporarily exempt, for 12 months, EU licensed rail passenger operators from section 57(3) of the Consumer Rights Act in cases of delay and cancellation. This will ensure that rail operators are able to focus on reviewing their current compensation schemes and move to more consistent delay compensation arrangements, without being concerned that they are not complying with the Act. We need to use the order-making power in the Act to put the temporary exemption in place, as there is no other suitable route. The order-making power was included in the Act to enable exemptions to be put in place if the need should arise.

6. OUTCOME OF CONSULTATION¹

The Department for Transport carried out a public consultation exercise in late 2015. In the consultation, the Department proposed a permanent exemption from sections 57(3) and 57(4)(a) of the Act for the aviation, maritime and EU licensed rail passenger sectors, to permit transport operators to limit their liability by reference to their existing compensation schemes. Comments were invited from a range of organisations, including consumer or passenger representatives and complaints handling bodies; rail, aviation and maritime industry operators and their representative bodies; and regulators or government organisations, including the devolved administrations.

A total of 31 responses was received. Most respondents' replies concerned only their sector. Most responses came from industry bodies and transport operators, who supported the proposed permanent exemption.

Two respondents, the consumer groups Which? and MoneySavingExpert.com, were strongly opposed to the exemption, partly on principle, as they believed it was inappropriate to be making any exemption from such a recent Act. They also disputed that having the Act apply in parallel with the sector schemes would be confusing and lead to costs for transport operators. They raised wider points about the effectiveness of the current rail and aviation schemes, for example around take-up by passengers, and enforcement by regulators. Some of these concerns were shared by the rail regulator, the Office for Rail and Road (ORR).

There was some support for the proposed permanent exemption from three of the transport consumer groups: Ombudsman Services, London TravelWatch and Transport Focus, although both London TravelWatch and Transport Focus also commented that there was room for improvement in the current rail schemes.

As a result of the concerns expressed, the Government concluded that it would be in the best interests of consumers if the transport sector is not exempted from the services provisions of the Act. The Government has decided not to grant a permanent exemption for the aviation, maritime and rail sectors from any provisions of the Act. However, the Government has decided to allow a short period of adjustment to allow the industries in these sectors to review their current arrangements and consider whether any changes to their terms and conditions need to be made in the light of the Act. Commencement of the services chapter of the Act for the aviation, maritime and rail sectors has been delayed until 1 October 2016 to give the industry time to adjust.

In addition, the Government decided to seek the further, 12 month, exemption for EU licensed rail passenger services from section 57(3) relating to refunds and cancellations. This will allow a short further period for the rail industry to review their current compensation schemes and work with the Government to make the rail compensation arrangements more consistent, before the provisions of the Act are applied in full to the rail sector.

Consultees were asked if they could estimate costs that might fall on transport operators if the permanent exemption was not granted. Most respondents said that they thought that there would be costs if no permanent exemption was granted, but the potential claims that might be made under the Act, and any costs that would result, were too uncertain to enable them to estimate the costs².

¹ The Government's full response to the consultation can be found at:
<https://www.gov.uk/government/consultations/rail-aviation-and-maritime-applying-the-consumer-rights-act>

² One respondent, the Association of Train Operating Companies, provided cost estimates ranging from £2.5m to £3.5bn per annum. However, insufficient information was provided to enable these estimates to be verified or for a level of assurance to be assigned to them.

7. COSTS AND BENEFITS OF THE AVAILABLE OPTIONS

Costs:

The proposed exemption is limited in scope and would last for only 12 months. The number of train operating companies that will be covered by the exemption is small, at less than 40 companies in total. During the consultation rail operating companies said that they would support a permanent exemption, and they did not indicate that they expected an exemption to have any costs.

Consumers will forgo potential benefits from any increases in compensation for delays and cancellations which train operators might introduce, or which might be ordered by the courts if existing compensation arrangements are found to be not fully compliant with the Act.

Benefits:

The measure will simply allow the existing compensation arrangements to continue for a further 12 months without potentially being challenged under section 57(3) of the Act. The benefit of this for the rail industry will be to enable them to focus on the task of improving their compensation arrangements, without being concerned that these are not fully compliant with the Act. This will mean that, for the 12 month period of the exemption, the industry will avoid potential additional costs from dealing with litigation under section 57(3) of the Act, and any potential increased compensation payments as a result of court action. Industry will also benefit from avoiding any possible adverse outcomes from working to the extremely constrained timescale needed if section 57(3) came into force on 1 October 2016.

For consumers, we believe that the extra time allowed to the rail industry to improve their compensation arrangements will mean that, in the medium to long term, the benefit to consumers from a better designed scheme will outweigh the forgone potential benefits from increases in compensation during the 12 month period of the exemption.

8. RATIONALE AND EVIDENCE THAT JUSTIFY THE LEVEL OF ANALYSIS IN THIS IA

It has not been possible to quantify the impacts set out in section 7 above. We do not have reliable data on which to base quantification of the impacts, and the legislative timetable for the Act has not allowed sufficient time to collect data. We have not been able to make any reliable assumptions that we could use as a basis for quantification, as there is too much uncertainty around the likely future behaviour of both passengers and the courts with regard to how far compensation payments might be in breach of section 57(3) of the Act, and there is also uncertainty about how the industry might improve its compensation arrangements and phase in any improvements if it had to do this over the next 12 months.

Evidence obtained during the consultation process pointed to potential costs arising from lack of an exemption. However, due to uncertainty of any potential claims that might be made under the Act, consultees were unable to provide any estimates of these costs. Only the Association of Train Operating Companies provided cost estimates ranging from £2.5m to £3.5bn per annum. Unfortunately, insufficient information was provided to enable these estimates to be verified or for any level of assurance to be assigned to them. As a result, this estimate was not used in our analysis.

9. One-in-three-out (OI3O) / Business Impact Target (BIT)

The measure will regulate business so is in scope of OI3O. The preferred option is narrower in scope than the original proposed permanent exemption which the Regulatory Policy Committee considered to be an 'Out' when they commented in the earlier Regulatory Triage Confirmation (reference RPC15-FT-DFT-2360). The preferred option is considered as deregulatory in comparison with the 'Do Nothing' option, but it has not been possible to quantify the impact on business.

10. RISKS AND ASSUMPTIONS

Our key assumption is that if we do nothing, beginning from 1 October 2016 rail industry compensation schemes would not fully comply with the Consumer Rights Act 2015. We also believe that the future benefits to consumers from delaying section 57(3) coming into force will be higher in the long term than the benefits lost over the 12 month exemption period.