

EXPLANATORY MEMORANDUM TO
THE CIVIL AVIATION (ACCESS TO AIR TRAVEL FOR DISABLED PERSONS
AND PERSONS WITH REDUCED MOBILITY) REGULATIONS 2007

2007 No. 1895

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 This instrument sets out offences and penalties for non-compliance with Regulation (EC) No.1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (“the EC Regulation”). It designates the Civil Aviation Authority (CAA) as the body responsible for enforcement of the Regulation, and the Disability Rights Commission (“DRC”) and the General Consumer Council for Northern Ireland as the bodies responsible for handling complaints about infringements of the Regulation. On 1 October 2007 the Commission for Equality and Human Rights (“CEHR”) will replace the DRC, which will cease to function.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 Because the EC Regulation comes into effect in two stages, a literal interpretation might suggest that the national enforcement body or bodies are not required before 26 July 2008. However, passengers who consider that there has been an infringement of Articles 3 and 4 of the Regulation should be able to file complaints from 26 July 2007 when these provisions come into effect. We therefore intend that the enforcement regime should be in place by this date.

3.2 Where an obligation exists under the EC Regulation but is not made an offence in the Statutory Instrument, this is because we consider that it is a matter which is capable of being resolved between the parties concerned, through the civil courts if necessary, or because there are existing powers to enforce the obligation. An example of this would be Article 8.4 (reasonableness of airport's charges) where the CAA already has suitable powers under the Airports Act 1986 to investigate complaints about airport charges.

4. **Legislative Background**

4.1 This instrument is required to ensure that the UK complies with the EC Regulation. Although the Regulation will have direct application in the UK, Member

States are required to ensure compliance with its provisions and, in particular, must lay down rules on penalties applicable to infringements of the Regulation which are effective, proportionate and dissuasive, and designate a body or bodies responsible for enforcement of the Regulation.

4.2 An Explanatory Memorandum (6622/05) on the legislative proposal was submitted to the European scrutiny committees on 10 March 2005.

4.3 The Disability Discrimination Act 1995 already provides a certain degree of protection for disabled persons in respect of goods, facilities and services. Although it does not apply to services provided on board aircraft, the Act applies to airport facilities and booking services. Because Community law takes precedence, the instrument amends the Disability Discrimination Act to ensure that there is no duplication where there would otherwise be an overlap between the EC Regulation and the Act.

4.4. The instrument also amends the Equality Act 2006 to give powers to the CEHR to offer conciliation services. This is to ensure consistency as the CEHR will be able to offer such services for complaints under the Disability Discrimination Act in relation to other transport modes.

5. Territorial Extent and Application

5.1 This instrument applies to the whole of the United Kingdom.

5.2 As the remit of the DRC extends only to Great Britain (as will the remit of the CEHR), it is necessary to designate a separate body to handle complaints in Northern Ireland.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State for Transport, Jim Fitzpatrick, has made the following statement regarding Human Rights:

In my view the provisions of the Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations are compatible with the Convention rights.

7. Policy background

7.1 This Regulation forms part of the European Commission's wider programme to improve passenger rights across all transport modes. Its aim is to prevent disabled persons or persons with reduced mobility being refused carriage on the grounds of their disability or reduced mobility, and to ensure the provision of assistance, free of charge, which meets their needs and enables such persons to have equal opportunities to travel. Over 45 million people with disabilities or reduced mobility, or 10% of the European population¹ require some form of assistance in using air transport. This figure includes disabled persons as well as persons who would be incapable of travelling without assistance, because of their age, reduced mental capacity or illness.

¹ Towards a barrier-free Europe for people with disabilities. COM (2000) 284, 12.5.2000

7.2 An initial consultation on the proposal for the EC Regulation took place between May and August 2005² and a summary of responses and full Regulatory Impact Assessment were published in October 2005³. The Regulation was strongly supported by the UK and we gave priority to its progress during our Presidency of the EU in 2005.

7.3 Consultation on enforcement of the EC Regulation and on this instrument took place between April and June 2007. The consultation was sent to a wide range of air transport industry and disability stakeholders and the consultation period included two stakeholder seminars. In total 34 responses were received. Seven were from individual airlines or tour operators, three from airports, two from airport consultative committees, two from industry representative bodies, thirteen from disability organisations, three from consumer organisations and three from private individuals.

7.4 We recognise that the intended coming into force date of 26 July 2007 is very soon after the close of the consultation period. To mitigate against this and allow for considered analysis of responses, stakeholder workshops were held half way through the consultation period and stakeholders were encouraged to express concerns or questions at an early stage to allow issues to be discussed and, where possible, resolved, before formal responses were submitted. In addition, the Department has kept in close touch with key stakeholders throughout this period.

7.5 Airlines were generally opposed to criminal sanctions and some to unlimited fines, whilst disability groups and private individuals called for tougher sanctions for certain offences.

7.6 Following the consultation, a small number of changes have been made to the penalties to reflect concerns raised. A number of disability organisations were concerned that the penalty for breach of Article 6 (transmission of information) should be set higher, since this is crucial for disabled people to receive the assistance requested. We have therefore raised this to a Level 5 penalty. We have decided to raise the penalty for breach of Article 8.5 (failure to separate accounts) to make this consistent with enforcement of a similar offence in the Airports (Groundhandling) Regulations 1997 (SI 1997/2389). Finally we have separated the offence for breach of Article 5 into two separate offences to reflect concerns that an unlimited fine was not justified for breach of Article 5.2.

7.7 The Equality Commission for Northern Ireland had concerns that its initially intended legal remit would only enable it to handle complaints from disabled people and only in relation to discrimination. The General Consumer Council for Northern Ireland has a broader statutory remit to handle passenger complaints about transport and, it has now been agreed, is the appropriate body to be designated to handle complaints in Northern Ireland.

7.8 The DRC and others were concerned about the lack of a time limit for civil compensation claims. To ensure consistency with the Disability Discrimination Act we have therefore provided for a six month time limit.

7.9 The Department has noted the airlines' preference for administrative sanctions to be put in place to enforce this Regulation. The inclusion of criminal sanctions for offences under these Regulations is in line with other Community-based aviation

² <http://www.dft.gov.uk/consultations/archive/2005/prpmtr/proposalontherightsofpersons1860>

³ <http://www.dft.gov.uk/consultations/archive/2005/prpmtr/summaryofconsultationrespons1861>

legislation including groundhandling, denied boarding, insurance and identity of air carrier. However, the Government is considering the possibility of extending the use of civil sanctions in future and will include aviation regulation in those considerations in due course.

7.10 We do not believe that fines of £5,000 or less (the statutory maximum on summary conviction) would be sufficiently dissuasive for certain offences, particularly in the case of persistent offenders. For this reason, we maintain that unlimited fines (on conviction on indictment) must be kept as an option for certain offences.

7.11 A full summary of the consultation responses and the Department's response to these will be published shortly on the Department's website.

7.12 To give guidance to the air transport industry on how it can meet its obligations under the Regulation, the Department will be revising its Code of Practice "Access to Air Travel for Disabled People". We intend that this should be ready in time for July 2008 when the bulk of the EC Regulation comes into force.

8. Impact

8.1 A Regulatory Impact Assessment (RIA) is attached to this memorandum

8.2 There will be a small impact on the public sector caused by the tasks of handling and monitoring complaints and liaising with industry to ensure compliance. This impact is discussed in more detail in the RIA.

9. Contact

Tim May at the Department for Transport; Tel: 020 7944 4917 or e-mail: tim.may@dft.gsi.gov.uk can answer any queries regarding the instrument.

Final Regulatory Impact Assessment

1. Title of proposed measure

Enforcement of :

Regulation (EC) No. 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility (PRMs) when travelling by air

by means of :

The Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2007.

2. Purpose and intended effect

Objectives

- 2.1 In accordance with Member States' obligations to ensure that the rules are implemented, the overall objective is to ensure that air passengers' rights set out in EC Regulation 1107/2006 are realised and that the requirements of the Regulation are enforced fairly.
- 2.2 Enforcement measures and sanctions are required with the aim of discouraging airports and airlines from refusing the carriage of disabled persons and PRMs on the basis of a disability or reduced mobility, and to guarantee the provision, at no extra cost at the point of use, of the assistance required to allow them effective opportunities for air travel. The sanctions apply to infringements of the Regulation by the following (if convicted):
- airports;
 - travel agents; and
 - tour operators in the UK; and
 - airlines operating flights departing from or arriving in the UK, including flights from outside the EU to the UK where the operating carrier is a Community air carrier.

Background

- 2.3 Effective access to transport is considered necessary for active participation in economic and social life. The single market for air transport in Europe has, to date, helped open air transport to a majority of citizens. However, over 45 million people with disabilities or reduced mobility, or 10% of the European population⁴, require some form of assistance in using air transport. This figure includes disabled persons as well as persons who would be incapable of travelling without assistance, because of their age, reduced mental capacity or illness.
- 2.4 To address the pressing concerns of equal access to air travel, the European Commission has sought to introduce fair treatment for disabled people and PRMs, so that they can travel with confidence throughout the EU with relevant assistance services offered free of charge.

⁴ Towards a barrier-free Europe for people with disabilities. COM (2000) 284, 12.5.2000

- 2.5 On 9 June 2006, EC Regulation 1107/2006 was formally adopted. The provisions of the Regulation take effect in two stages; the first stage is confined to articles 3 and 4 concerning non-discrimination from 26 July 2007, and the rest of the Regulation will take effect 12 months later.
- 2.6 The Regulation guarantees the rights of disabled persons and PRMs to have equal access to air travel, and places a legal requirement on airport managing bodies to organise the central provision of assistance for disabled persons and PRMs to enable them to pass through airports, board, disembark and transit between flights. The Regulation guarantees assistance, on departure, in moving from a designated point of arrival at the airport to the aircraft, and on arrival, from the aircraft to a designated point of departure from the airport. The provisions in the Regulation are provided free of charge to passengers, with airports allowed to recoup costs from the airlines in direct proportion to the total number of passengers each airline carries. Air carriers are also required to provide assistance on board aircraft at no additional cost to the passenger. The Regulation allows equal access except where there are well-founded safety reasons which prevent it.
- 2.7 The Regulation applies to departures, arrivals and transit flights at airports in Member States and flights from third countries to a Member State where the operating carrier is a Community air carrier.
- 2.8 Member States are required to lay down sanctions applicable to infringements of this Regulation and ensure that these sanctions are applied. The sanctions should be effective, proportionate and dissuasive.
- 2.9 The Disability Discrimination Act 1995 (DDA) does not apply to services on board aircraft though it does apply to airport infrastructure and related services, such as booking facilities.

Rationale for Government Intervention

- 3.1 The majority of UK airlines and airports already provide assistance to PRMs free of charge. This is provided in accordance with the voluntary Code of Practice “Access to Air Travel for Disabled People”. However, this is only voluntary whereas the EC Regulation introduces new legal obligations. The Regulation requires Member States to bring forward measures to apply sanctions to airport operators, air carriers, agents or tour operators who are in breach of the Regulation. The Government is therefore obliged to intervene to comply with this duty and ensure that passengers can be confident that they will receive the rights granted under the Regulation.

Consultation

- 4.1 The Department for Transport consulted industry and disability groups in 2005 on the provisions of EC Regulation 1107/2006⁵. It published a final RIA on this in October 2005⁶. A second consultation was carried out specifically on the proposed enforcement regime⁷. Airlines were generally opposed to criminal sanctions and some to unlimited fines, whilst disability groups and private individuals called for tougher sanctions for certain offences. A summary of

⁵ <http://www.dft.gov.uk/consultations/archive/2005/prpmtr/proposalontherightsofpersons1860>

⁶ <http://www.dft.gov.uk/consultations/aboutria/ria/finalregulatoryimpactassessm5518>

⁷ <http://www.dft.gov.uk/consultations/closed/consulcivilaviationreg07/>

the responses received and the Government's response will be published shortly on the Department's website.

5.1 Options:

Three enforcement options were identified:

5.1a Option 1 – Do nothing and rely on a voluntary approach.

It is a legal requirement for EU Member states to lay down rules on penalties for non compliance with EC Regulation 1107/2006. Taking no action contravenes EU legislation and is likely to lead to infraction proceedings by the Commission. In this case taking no action is not an option.

5.1b Option 2 – Introduce a regime of administrative sanctions.

In line with the Government's Better Regulation agenda, we have considered whether there are alternatives to the customary criminal sanctions and penalties to secure compliance and meet the UK's obligations.

The aim would be to utilise administrative sanctions to tackle repeated or intentional breach of the Regulation. An enforcement body must be designated to select and impose the penalties, with an appeals process in place to handle complaints against the penalty imposed and to ensure compliance with the requirements of the European Convention on Human Rights.

5.1c Option 3 – Introduce a regime of criminal sanctions.

A criminal sanctions regime would rely on an enforcement body to prosecute an offence with the courts deciding on guilt and imposing an appropriate penalty (within limits set by legislation). Criminal sanctions are used to enforce other European aviation Regulations implemented in the UK, as well as other aviation legislation under the Civil Aviation Act 1982. There would therefore be a consistent criminal sanctions regime across all legislation enforced by the CAA.

6.1 Sectors and groups affected

The Regulation affects the aviation industry including all UK passenger airlines, travel agents, tour operators, airport operators and ground-handling companies, the Civil Aviation Authority (CAA) and disabled persons or persons with reduced mobility.

6.2 Analysis of costs and benefits

6.2a Option 1 – Do nothing and rely on a voluntary approach.

Benefits

The benefits of doing nothing are that there would be no implementation costs or additional regulatory burdens. Regardless of the establishment of domestic enforcement legislation, the EC Regulation will have direct application in the UK and could be used as basis for a civil action for damages by individual passengers.

Costs

This option contravenes the requirement to lay down rules on penalties for non-compliance with the Regulation and therefore is likely to lead to infraction proceedings by the Commission and possible claims for damages. It would also mean that disabled persons or PRMs might continue to be discriminated against and prevented from using air travel. In addition, some of the obligations in the Regulation are of a general nature, such as the publication of quality standards or transparency of accounts, and it is unlikely that individuals would pursue a breach of these obligations through the civil courts.

6.2b **Option 2** – Administrative sanctions

Benefits

Administrative sanctions may be considered a more flexible option than criminal sanctions as the latter involve a higher burden of proof and may take longer to process. The CAA, as the proposed enforcement body, would have the power to take action using a wide range of sanctions and to tailor penalties according to the severity of offence. Appropriately designed sanctions should be able to meet the requirements of the Regulation.

Costs

Administrative penalties are a relatively new concept for addressing regulatory compliance and the Government has not yet implemented the recommendations of the Macrory Review of Regulatory Penalties. There would be a resource and financial cost in terms of setting up, implementing and monitoring a sanctioning system and an appropriate appeals process. Doing so for this Regulation alone would be disproportionate pending full implementation of the Macrory Review recommendations.

Current indicative figures from the CAA estimate that the potential costs for setting up, managing and implementing an administrative regime would be in the region of £200,000 in addition to ongoing costs, which are dependent on the number of complaints received. The CAA would also need to be prepared to appear before an Appeals Tribunal where there was an appeal against an administrative penalty. This process may be analogous to a criminal trial. Examples of the costs of a criminal prosecution are, for a simple case, with a guilty plea at first hearing, around £50,000, and, for a complex case, with a one week trial, up to £250,000. The number of complaints that may be required to be investigated is an unknown variable.

6.2c **Option 3** – Criminal Sanctions

Benefits

As with option 2, the UK would comply with the Regulation in adopting this option. Criminal sanctions are in line with existing European aviation Regulations, as well as other aviation consumer Regulations. Since the CAA is familiar with operating under a criminal sanctions regime, there would be no start-up costs. The threat of criminal sanctions may be considered dissuasive in itself. Current experience would suggest that this generally enables the CAA to secure compliance without needing to pursue expensive court action.

Costs

Prosecutions through the courts can be costly and time-consuming for both businesses and regulators, generally involving a higher burden of proof and taking longer to process. Based on its experience of prosecuting other aviation criminal offences, the CAA estimates that the cost of prosecuting a criminal case can vary from £50,000 to £250,000 depending on complexity.

7. Complaints handling

7.1 Handling complaints under this Regulation will be a new burden for whichever body takes on this role. Our designated complaints handling body for Great Britain, the Disability Rights Commission (DRC), already handles transport related complaints from disabled passengers under the Disability Discrimination Act (DDA), for which it is partly funded by the Department for Transport. It is likely that many complaints under this Regulation may arise from people who would otherwise be covered by the DDA, but with new complaints relating to services on board aircraft.

7.2 As the DRC will cease to function at the end of September 2007, it will be replaced by the Commission for Equality and Human Rights (CEHR) as the designated complaints body in Great Britain from 1 October. Since the remit of neither the DRC nor the CEHR extends to Northern Ireland, it is necessary to designate a separate body to handle complaints there. Following consultation it has been agreed that this should be the General Consumer Council for Northern Ireland.

7.2 Handling further complaints under this Regulation will therefore represent a possible incremental change, though the exact number of complaints is unknown and it is therefore impossible to estimate precisely the resources required. However, an approximate estimate would be up to one additional member of staff, possibly increasing from 2008 once the second stage of the Regulation comes into force and as passengers' awareness of their rights increases. The same would apply, but on a much reduced scale, to the General Consumer Council for Northern Ireland, the body designated to handle complaints in Northern Ireland.

8. Small firms impact test

8.1 The Regulation affects a mixture of small, medium and large companies. More small firms are likely to be affected by the requirement in the Regulation to inform passengers and provide notification of the need for assistance as this will apply to air carriers' agents and tour operators. We do not expect impacts from the UK enforcement regime to be large or to have a significantly greater impact on small business. The enforcement regime will only apply where companies have not complied with their obligations in the Regulation.

9. Competition assessment

9.1 The affected market is the aviation sector. Adoption of the proposed enforcement legislation will have no impact on competition. The EC Regulation applies to all commercial passenger flights involving departures from, arrivals at and transits through airports in Member States, including flights departing from outside the EU where the operating carrier is a Community air carrier. This means Community carriers will have obligations not faced by non-Community carriers on the same routes from outside the EU. The impact, however, is likely to be limited.

10. Environmental impact

10.1 It is unlikely that the introduction of implementing regulations to enforce Regulation 1107/2006 will have any impact on either carbon dioxide or NO₂ emissions.

11. Race impact

11.1 This policy has been assessed for race relevance. A Race impact assessment is not required.

12. Enforcement, sanctions and monitoring

12.1 This RIA concerns enforcement and sanctions for an existing Regulation. The Department for Transport intends to monitor compliance with the Regulation in liaison with the complaints handling and enforcement bodies.

13. Implementation and Delivery Plan

13.1 Regulation (EC) No. 1107/2006 comes into effect from 26 July 2007. It is intended that the complaints handling bodies and the Civil Aviation Authority will coordinate and agree procedures for managing the liaison between complaints handling and enforcement. A Memorandum of Understanding between the bodies is being drawn up.

14. Post-Implementation Review

14.1 The Regulation contains a requirement for the European Commission to report to the European Parliament and the Council by 1 January 2010 on the operation and effects of this Regulation. As mentioned in paragraph 12, the Department for Transport will be working with the complaints handling bodies and the Civil Aviation Authority to monitor complaints made under the Regulation.

15 Summary and Recommendation

Summary costs and benefits table

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	No compliance costs for industry.	Disabled persons might continue to be discriminated against. Risk of infraction proceedings for failure to set penalties.
2	More flexible, allowing fines to be tailored to circumstances.	High initial start up costs. Would require at least a year to put new system in place and mean no enforcement mechanism is in place in the interim.
3	Criminal sanctions can act as a deterrent and encourage compliance without needing to resort to prosecutions.	Depends on number of cases taken to court. High administrative costs if large number of cases are pursued.

Conclusion

We recommend option 3. Criminal sanctions for offences under these regulations are in line with other European based aviation legislation including groundhandling, denied boarding, insurance and identity of air carrier. However, the Government is considering the possibility of extending the use of civil sanctions in future (option 2) and will include aviation regulation in those considerations in due course. Option 1 is not a realistic option as it would lead to a high risk of infraction proceedings and would be unacceptable to disability stakeholders.

Declaration and Publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible minister

Jim Fitzpatrick.

Date 3 rd July 2007.

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