

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (PASSENGERS' RIGHTS) REGULATIONS 2013
2013 No. 425

1. 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 The Regulations provide for the enforcement of rights and entitlements under EU Regulation No. 1177/2010 (“the EU Regulation”) concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No. 2006/2004, which entered into force on 18 December 2012.

2.2 The EU Regulation establishes the right of all passengers to assistance in cases of cancelled or delayed departures and lays down the right, in certain circumstances, to compensation in case of delay in arrival.

2.3 The EU Regulation, which will apply to most cruise and ferry services, also provides disabled persons or those with reduced mobility with similar rights and accessibility assistance when travelling by water to those they have in other transport sectors.

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

3.1 None

4. Legislative Context

4.1 Chapter II provides for the rights of disabled persons and persons with reduced mobility when travelling by water. Chapter III sets out the obligations of carriers and terminal operators in the event of interrupted travel. Chapter IV contains general rules on information and complaints and Chapter V on enforcement.

4.2 The proposal that resulted in Regulation (EU) No 1177/2010 was the subject of Explanatory Memorandum 11990/08 submitted by the Department for Transport on 20 January 2009. The House of Commons European Scrutiny Committee considered the Explanatory Memorandum on 28 January 2009. The Committee recommended that the document was politically important and did not clear it (Report 6, Session 2008-2009, 30264).

4.3 The House of Lords Select Committee on the European Union referred the Explanatory Memorandum to its Sub-Committee B at the 1346th sif on 27 January 2009. On 3 February 2009 the Lords Committee Chairman wrote to the Minister requesting further information. Ministerial letters were sent to both Committees on 29 June 2009, 1 September 2009, 25 September 2009, 2 November 2009, and 19 July 2010. The House of Commons European Scrutiny Committee cleared the proposal from scrutiny on 14 October 2009 (Report 29, Session 2008/2009). The House of Lords Select Committee on the European Union cleared the proposal on 12 October 2009.

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The aims and intended effects of the EU Regulation are to: (i) create a uniform system of rights for all passengers when travelling by sea and inland waterway; (ii) establish new rights of access and agreed quality of service standards for disabled persons and persons of reduced mobility when travelling by sea and inland waterway; and; (iii) bring the maritime and inland waterway sector into line with the existing provisions applying to the aviation and rail sectors with respect to passenger rights.

7.2 Chapter II of the EU Regulation provides rights to disabled persons and persons with reduced mobility. The rights include a right to transport, whereby carriers, travel agents and tour operators must not refuse to provide a ticket or to embark persons on the grounds of disability or reduced mobility, except on safety grounds. The EU Regulation also provides for increased accessibility and information for such passengers, and a right to assistance in ports and on board ships. Chapter II also outlines quality standards and training and instructions for operators on the transport of these passengers.

7.3 Chapter III of the EU Regulation provides for information and assistance in the event of cancelled or delayed departures for all passengers. The EU Regulation also includes provisions for re-routing, re-imbusement and compensation in certain circumstances.

7.4 Under Article 25 of the EU Regulation, there is a requirement for each Member State to designate a body responsible for enforcement: the Regulations designate the Maritime and Coastguard Agency as the national enforcement body for the UK.

7.5 Government intervention in the form of new legislation is needed to provide for the enforcement of rights and entitlements under the EU Regulation in the UK, including nominating the national enforcement body and establishing penalties in the event of non-compliance.

7.6 Until Regulations are made under section 30 of the Equality Act 2010 (which applies to transporting people by, and services provided on, ships and hovercraft), certain

provisions of the Disability Discrimination Act 1995 which are prospectively repealed are saved by Article 10 of the Equality Act 2010 (Commencement No.4, Savings, Consequential, Transitional, Transitory and Incidental Provisions and Revocation) Order 2010 (S.I. 2010/2317 - transitory provisions relating to ships and hovercraft). The Regulations accordingly provide that, in any case where the situation is governed by the EU Regulation, its provisions should apply, and not those saved by the Commencement Order.

8. Consultation outcome

8.1 A consultation exercise was conducted from 5 October to 16 November 2012. Fifty seven organisations representing the maritime industry and other interested parties were notified upon launch of the consultation, of which seven responded (approximately 12%). A further six consultation responses were also received from other parties. There was general agreement to the approach proposed.

8.2 Responses were generally supportive of the proposed three tier approach to the handling of passenger complaints. Therefore, this approach has been confirmed in the associated updated Impact Assessment.

8.3 The Government consulted on the basis that (i) the Passenger Shipping Association (PSA) would act as the voluntary complaint handling body for England and Wales; and (ii) that the Scottish Government and the Consumer Council for NI (CCNI) take up this role in their respective areas. Following feedback from the consultation, a further complaint handling role for London TravelWatch was identified, and they will be the complaint handling body for services operated and licensed by Transport for London. The role of the complaint handling bodies is explained further in a Department Press Release on the <https://www.gov.uk> website.

8.4 Setting up voluntary complaint handling bodies is not a mandatory requirement of the EU Regulation and therefore does not form part of the Regulations.

8.5 Respondents were invited to provide new or additional evidence or information to help improve the quality of the cost and benefit analysis. Only limited evidence was submitted.

8.6 Consultees were also invited to submit any additional evidence on the impact that the enforcement measures may have on compliance with the overall EU Regulation. No relevant responses were received.

8.7 The summary of responses, as well as the Government response to the points raised following the consultation can be found on the <https://www.gov.uk> website.

9. Guidance

9.1 Alongside the public consultation, the Department published seven draft guidance notes on the EU Regulation on the <https://www.gov.uk> website. These guidance documents are intended to provide general information on those provisions within the EU Regulation. Comments were also invited on these draft guidance notes right up to the date of the implementation of the EU Regulation (18 December 2012), through an informal consultation with interested parties.

10. Impact

10.1 It has not been possible to monetise some of the costs and benefits of the Regulations that have been identified in the Impact Assessment due to the limitations of the available evidence base.

10.2 In the Impact Assessment, the costs to the Maritime and Coastguard Agency (MCA) of establishing and operating a national enforcement body to ensure compliance with the EU Regulation that it has been possible to monetise are estimated to be in the region of £46,000 to £66,000 per year, with a Best estimate of £56,000 (the mid-point of this range). This is based on the Department for Transport's current resourcing plan. However, it should be noted that this cost is very uncertain and that this estimate is sensitive to the assumptions made.

10.3 Several other potential costs of the Regulations have also been identified in the Impact Assessment which could not be monetised. These include: costs to business associated with engaging with the national enforcement body; familiarisation costs to business; potential costs to business in the event of non-compliance with the EU Regulation, but 100% compliance is assumed in the Impact Assessment; and additional costs to the MCA for recruitment, training, travel and expenses.

10.4 It has not been possible to monetise any of the benefits of the Regulations that have been identified in the Impact Assessment. Benefits of the EU Regulation to passengers include improved access for disabled persons and persons with reduced mobility, and assistance in cases of cancelled or delayed departures. The Regulations could potentially contribute to realising the benefits of the EU Regulation by establishing an enforcement mechanism in the UK. However, the benefits of the Regulations would depend on the extent that there would be non-compliance with the EU Regulation in the absence of an enforcement mechanism in the UK.

10.5 The Impact Assessment is attached to this memorandum (at **Annex A**) and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The EU Regulation includes a number of exemptions that are designed to exclude small boats and to protect small businesses. For example, it does not apply to ships certified to carry up to and including 12 passengers; ships which have a crew of not more than 3; journeys where the distance is less than 500 metres one way; on excursion and sightseeing tours other than cruises; and on ships not propelled by mechanical means.

12. Monitoring and review

12.1 The policy in the regulations will be reviewed no later than March 2018, five years after the Regulations enter into force.

13. Contact

Damian de Niese at the Department for Transport, telephone: 020 7944 2024, or email: damian.de_niese@dft.gsi.gov.uk can answer any queries regarding the instrument.