
Secretariat Memorandum

Agenda item 13
CA020
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European Union (EU) Rail Passengers' Rights and Obligations 2009 : Department for Transport (DfT) Consultation

1 Purpose of report

- 1.1. The EU has now agreed the Rail Passengers' Rights and Obligations Regulations 2009. In order to reach agreement on a European-wide basis, the legislation allows for member countries not to introduce the regulations in full and to make some derogations.

2 Recommendations

- 2.1. That members familiarise themselves with the significant changes being made to passenger rights as detailed in Annex 1, the DfT Consultation Document.
- 2.2. That members provide written comments on the questions set out in the consultation paper and in relation to the suggested costs in the Impact Assessment (Annex 1c).
- 2.3. London TravelWatch and Passenger Focus are working together to provide a joint response on this consultation. Therefore the deadline for comments from members in writing to the Director, Public Liaison is 14 October 2009.

3 Information

- 3.1. As with all consultations, there is a significant amount of paperwork relating to this issue and members are directed to Annex 1 for full details.
- 3.1.1. The EU regulation marks the culmination of many years' campaigning by consumer groups across Europe. Initially, the regulation was intended for international rail passengers only, but the European Parliament argued that there should be one set of rights for passengers. The consultation is whether this regulation is introduced in full, or whether some parts are delayed through the use of derogations on some articles.
- 3.1.2. As can be seen from Annex 2, London TravelWatch and Passenger Focus have taken the view to date that, unless a convincing argument to the contrary is made, there should be no derogations to the introduction of consumer rights that are akin to the rest of Europe in Britain.

3.2. The cost of implementation

3.2.1. In November last year, we were asked to provide an initial assessment of the costs and benefits of the regulation. The DfT has now analysed these alongside the estimates provided by the rail industry and provided a range of costs for the proposals, although no monetary figure has been placed on the benefits.

3.2.2. It would appear, however, that the DfT have based its costings on information provided by ATOC on behalf of the train operators. As an interested party in the outcome of the consultation, we consider that some of these costs may have been overstated and may not always reflect the whole picture. For example, while there is a cost to providing refunds to those who abandon their journey due to the level of delay, train operators will be compensated for most of these delays by Network Rail. In addition, as the legislation has taken about six years to progress to this stage, it could be argued that the additional costs of the regulation have already been taken into account in franchise bids and are effectively already being paid for.

3.3. The key debates

3.3.1. The main area of debate up to now has been about giving passengers the right to compensation by cash instead of voucher. As may be seen from previous responses from London TravelWatch (Annex 2), we have argued that there is a clear preference amongst passengers for cash compensation because they can use it as they please whereas vouchers are linked solely to rail travel and cannot be used for web bookings or for transactions using ticket machines. We also consider that a failure to provide suitable compensation for passengers may discourage them from using rail in the future and therefore it could be considered that there are good business reasons for doing it.

3.3.2. ATOC argue that the most significant cost of the proposals would relate to the introduction of transferable tickets. This would enable any rail passenger who buys a ticket to re-sell it if they wish unless the ticket was specifically made out in their name. Therefore all rail tickets except monthly or longer season tickets in the London area would be transferrable.

3.3.3. The rail industry's concern is that a proportion of weekly season ticket holders will share their season tickets with partners or friends, or will sell on Advanced Purchase tickets. We recognise that some reselling or sharing of tickets could happen, and therefore there could be some to the rail industry of introducing this change. Typically, a weekly season ticket may cost around 3.5 times the daily ticket price. However, for a limited number of journeys the daily journey cost can be recouped much more quickly. For example, for Southampton to London, the daily peak return fare which is not regulated costs £62, but the weekly season ticket fare (which is regulated) costs £108.20. Therefore it is quite possible that part-time workers could lend their ticket to a friend at weekends or on days they do not work for instance.

3.3.4. We consider that, as a matter of principle, there is no reason why rail tickets should be treated any differently from any other retail product. If you purchased a jumper from Marks & Spencer's for instance, the retailer would have no interest in whether you chose to wear it, give it to a friend or re-sell it. In 2007, the government decided

not to legislate against the resale of concert tickets arguing that the vast majority of ticket holders use them in a legitimate way. While the resale of football season tickets is restricted due to anti-hooligan legislation, some football clubs enable their season ticket holders to re-sell tickets through official ticket exchanges.

- 3.3.5. Current legislation leads many rail passengers to break the law unwittingly. The Conditions of Carriage state that tickets can only be used by the person by or for whom they were bought. Therefore, if you purchase a rail ticket for your own use and pass it on to a friend or relative, you are technically breaking the law. However, except where they are sold to a named individual, or linked to a photocard, operators have no way of knowing for whom the ticket was bought anyway. In London, the introduction of Oyster means that such transferability of tickets already exists for Pay as you go users. Oyster season tickets are currently not transferrable, but as weekly Oyster season tickets require no photocard or registration in practice this is unenforceable.
- 3.3.6. We consider that current law is confused and that there are good reasons for changing it. We consider that ATOC have not provided convincing evidence of the cost of change, and therefore we should not accept a derogation in relation to this issue. While the current fares structure and regulation regime may encourage some substitution of standard tickets with season tickets or advanced tickets, this could be better meeting the needs of part-time commuters for instance rather than providing a derogation.

4 London TravelWatch response

- 4.1. Our proposed response is to support full implementation of the regulation. We believe that providing cash compensation for delays should incentive operators to improve their services and reduce delays. We also note that train operators will be compensated by Network Rail for many of the delays and we believe that currently that level of compensation far exceeds what is paid out in compensation to passengers. To help us assess this, we intend to ask Network Rail under their license (as it is not subject to the Freedom of Information act (FOI)), and how much compensation it paid to passenger train operators in the UK for unplanned delays (Schedule 8). We intend to copy this request to the DfT and the Office of Rail Regulators (ORR) as an FOI request.
- 4.2. We consider that the cost to the economy of rail delays is significantly higher than the amount paid in compensation. Therefore, if providing an incentive to operators could reduce this, there would be significant monetary benefits to the economy. In addition, with many of our European neighbours pushing ahead with full implementation, we consider that a failure to implement on the same basis would undermine the British government's stated intention to make the UK's consumer regime to be "as good as any in the world" and would also lead European partners to question the ability of train operators in the British liberalised rail market to provide as good consumer protection as that provided by state-owned operators in Europe.
- 4.3. The deadline for responses is 3 November. We will therefore in the next few weeks begin to co-ordinate a joint response with Passenger Focus.

5 Equalities and inclusion implications

5.1. There are no specific implications for equalities and inclusion arising from this report.

6 Financial implications

6.1. There are no specific financial implications arising from this report.

7 Legal powers

7.1. Section 248 of the Greater London Authority Act 1999 places upon London TravelWatch (as the London Transport Users Committee) a duty to consider – and, where it appears to it to be desirable, to make representations with respect to – any matter affecting the services and facilities provided by Transport for London which relate to transport (other than freight) and which have been the subject of representations made to it by or on behalf of users of those services and facilities. Section 252A of the same Act (as amended by Schedule 6 of the Railways Act 2005) places a similar duty upon it in respect of representations received from users or potential users of railway passenger services provided wholly or partly within the London railway area.

The Rail Passengers' Rights and Obligations Regulations 2009 Consultation Document

Purpose and Scope

1. The purpose of this consultation is to ask stakeholders for any comments they may have on the proposed draft Statutory Instrument (SI) to:

- Implement Regulation (EC) No 1371/2007 on rail passengers' rights and obligations ("the Regulation").

2. The Government is required to transpose the Regulation's provisions into UK legislation before 4 December 2009. This consultation covers implementation of the Regulation in Great Britain only. The Northern Ireland Department for Regional Development will consult on and enact separate legislation to cover implementation in Northern Ireland.

Introduction

3. The Regulation is a vehicle to introduce enhanced rights and obligations for passengers on rail services. It strengthens the rights of rail passengers, particularly in the areas of information and ticketing provision, compensation and assistance, and rights for persons of reduced mobility (PRM) and enforcement of those rights. It specifically establishes rules concerning:

- Information to be provided by railway undertakings, the conclusion of transport contracts, the issuing of tickets and implementation of a computerised information and reservation system for rail transport;
- Liability of railway undertakings and their insurance obligations for passengers and their luggage;
- Minimum obligations of railway undertakings to passengers in the event of delay, missed connections and cancellations;
- Protection of and assistance to persons with reduced mobility travelling by rail;
- Definition and monitoring of service quality standards for services, the management of risks to the personal security of passengers and the handling of complaints; and

- General rules on enforcement.

Background

4. European Regulation No 1371/2007 on passenger rights and obligations, along with Directive 2007/58/EC on liberalisation of international passenger services, and Directive 2007/59/EC on train driver licensing, are collectively referred to as the 'Third Railway Package'. They are the latest in a series designed to revitalise the railways and take forward the creation of an integrated European railway. The Commission's agenda addresses opening up the market for the provision of train services, harmonising regulation of the sector - in particular its technical rules in order to facilitate use of these rights of access and reduce the costs of providing train services - and strengthening customer rights.

5. The Regulation was proposed after there had emerged evidence of problems of poor service quality in certain rail markets, and of difficulties for new entrants in marketing their services effectively. The Commission carried out a wide ranging consultation exercise in the autumn of 2002, and a more focused consultation on a report on delay compensation schemes in 2003. The proposal for a Regulation was adopted and published by the Commission in 2004 and mirrored similar proposals for air passengers.

6. After protracted negotiations between the Council and the European Parliament (EP) political agreement on was reached during the UK Presidency at the Transport Council on 5 December 2005. The text of the Package was officially adopted, and was published in the Official Journal (OJ) of the European Union on 3 December 2007. A copy of the Regulation can be found at **Annex A**.

7. One of the key agreements reached during the negotiations was to allow member States to grant certain derogations. Under Article 2(5), member States may grant urban, suburban and regional routes a derogation from most provisions of the Regulation. This derogation would not be limited in time. However, it cannot be applied to the provisions that grant disabled persons or PRM access to travel by rail, nor to the right of those wishing to purchase tickets for travel by rail to do so without undue difficulty, nor to the provisions on railway undertakings' liability in respect of passengers and their luggage, the requirement that undertakings be adequately insured, and the requirement that those undertakings take adequate measures to ensure passengers' personal security in railway stations and on trains and to manage risk.

8. The other relevant derogation is in Article 2(4). It allows member States to grant a derogation, from the same provisions, for all domestic services, for an initial period of five years, followed by a maximum of two further periods of five years each (making a maximum of 15 years).

Proposals

9. The emphasis of the Regulation on a high level of consumer protection is consistent with the Government's current statements of consumer policy. The Government has said that it wants the UK's consumer regime to be "as good as any in the world" and that it has set itself a "target of reaching the level of the best."

10. Although our draft Statutory Instrument is based on full implementation of the Regulation, no decision has been made on whether or not to utilise the exemptions available under Article 2(4) and 2(5). We are seeking as part of this consultation additional information on the costs and benefits of implementation of the Regulation in order to fully complete our Impact Assessment, which will provide the basis and justification for whether we make use or not of the exemptions available.

11. The draft Statutory Instrument, which will be known as The Rail Passengers' Rights and Obligations Regulations 2009, can be found at **Annex B**. References below to "the Regulations" are to that draft Instrument; each provision of it may be referred to as a "regulation".

Proposed implementation of provisions of European Regulation No 1371/2007

At present, the drafting of the Regulations is mostly based on the law in England and Wales. We intend, however, to ensure that the Regulations have the same effect in Scotland as they have in the rest of Great Britain.

The Regulations first make provisions concerning the relationship between domestic law and the Regulation (Part 2). Then, they deal with the regulatory enforcement of the Regulation (Part 3).

Where this is not incompatible with the Regulation, the United Kingdom continues to have an international obligation to comply with COTIF. By virtue of its direct applicability, and COTIF itself (see its Article 3(2)), the Regulation prevails over COTIF. Regulation 4 provides that the implementing measures under these Regulations also prevail over the measures implementing COTIF where the two are inconsistent.

Regulation 5 provides that the right, under the Civil Liability (Contribution) Act 1978 ("the 1978 Act"), of a carrier found liable for the accident to recover a contribution from those who have also been responsible for the accident does not apply where the right to a contribution is already governed by the Regulation.

The Regulation makes provision for payment of an advance payment, shortly after the accident, to passengers victim of accidents, and their dependents, to cover their short-term needs, even though liabilities have yet to be determined. Regulation 6

sets out the procedural requirements in respect of a claim for breach of the right to an advance payment. These include an obligation to give advance notice to the undertaking, and a right to make the claim by way of application. The regulation also makes provision for the remedies available. Finally, it deals with the relationship between claims for advance payments and claims for an interim payment under Part 25 of the Civil Procedure Rules 1999.

Since the advance payment is not refundable, the railway undertaking making the payment may face a shortfall between the payment it made and the damages for which it is eventually found liable. Regulation 7 makes provision for those liable for the accident to the recipient to be liable for a contribution to that shortfall, in proportion of their liabilities for the accident. If their liabilities to the recipient are high enough to cover the whole shortfall, a share of these is used for that purpose (see paragraph 7(3)). Otherwise, the persons liable for the accident will contribute to only part of the shortfall, that part being equal to their share in the liabilities for the accident compared to that of the railway undertaking (see paragraph 7 (4)).

Regulation 8 and Schedule 1 deal with the relationship between rights under the Regulation and claims under the Fatal Accidents Act 1976 or, in Scotland, the Damages (Scotland) Act 1976, preventing overlaps but leaving rights outside the scope of the Regulation intact.

Under section 2 of the Damages Act 1996 (as amended), in England and Wales, a court may normally order periodical payments to be made in respect of personal injury even when the claimant does not consent, but retains a discretion not to order such payments even where the claimant asks. In Scotland, a court can only order such payments if both parties consent. Regulation 9 prevents conflict between these provisions and Article 30(1) of Annex I the Community Regulation, which is the same as Article 30(1) of Appendix A of COTIF, under which periodical payments must be paid if national law so permits and the claimant so requests. It does so by inserting an amendment in the 1996 Act, providing that it applies subject to that Article.

Regulations 10 and 11 make provisions in respect of the rights, under the Regulation, of disabled persons and PRM. To prevent double-regulation, regulation 10 excludes from the scope of section 19 of the Disability Discrimination Act 1995, on discrimination in the provision of goods, facilities and services, the rights that are governed by the Regulation. Regulation 11 creates a right to damages, enforceable in the courts, for breach of the rights of PRM. That right is similar to that in the 1995 Act (see section 25).

The Regulation requires the designation of enforcement bodies to take the measures necessary for its effective implementation. Regulation 12(1) designates the Office of Rail Regulation (ORR), except for the purposes of handling individual complaints (as to which see below), and paragraph (2) places it under an obligation to ensure the effective application of the Community Regulation. To comply with this duty, the ORR has the powers referred to in paragraph (3). Those powers fall into two categories. The first is the powers it has to exercise its functions under Part I of the Railways Act 1993 and the functions under SI 2005/2005/3050, the Railways Act

2005 that are not safety functions. The second is the powers to modify existing licences, conferred by these Regulations.

Under the Regulation, bodies must be designated to handle complaints for breach of the rights conferred by it. Regulation 13 designates the Rail Passengers' Council (known as "Passenger Focus") and the London Transport Users' Committee (known as "London TravelWatch"), each within its existing functions – disregarding certain instruments that may have been made to restrict their functions in some areas. The regulation also modifies the legislation applying to those bodies, so that, in matters relating to the Regulation, they report, not to the Secretary of State, but to the ORR, as the enforcement body.

Regulation 14 and 15 provide for enforcement of the Regulation through the railway licensing regimes. They require the Secretary of State or the ORR (as the case may be) to impose on station operators and railway undertakings licence conditions under sections 8 and 9 of the 1993 Act (for station operators) and Statements of National Regulatory Provisions (SNRPs) under the Railway (Licensing of Railway Undertakings) Regulations 2005 (for railway undertakings) sufficient to ensure the effective application of the Regulation provisions listed in Schedule 2. As far as existing licences and SNRPs are concerned, they will have the power to modify them if necessary or expedient.

Regulation 16 concerns the protection of information obtained under or by virtue of these Regulations. It extends to that information section 145 of the 1993 Act, which restricts the use of information relating to an individual or business during the lifetime of the individual or the continuation of the business. It is, however, without prejudice to the duty enforcement bodies have to exchange information under Article 31 of the Community Regulation.

Consultation Questions

12. Consultees' views are sought on the arrangements proposed above and on the draft SI, in particular focussing on the considerations below:

Question 1: Do you think our proposal to enforce the provisions of the Regulation listed in Schedule II of the draft SI through the licensing and SNRP regime will provide for an enforcement regime that is effective and workable? Do you think there should be other enforcement mechanisms, in addition or in substitution to this? Do you agree with the content of that Schedule, or do you think provisions of the Regulation should be added or taken out? Do you agree with the provisions setting out the obligation to cause certain licensing conditions and SNRPs to be imposed, namely regulations 14 and 15, or do you think they should be more, or less, specific, or that anything should be added to them?

Question 2: Do you agree with the way the Regulations provide details of the process to change existing licences and SNRPs?

Question 3: Do you agree with the ORR being the designated enforcement body for the Regulation, and for Passenger Focus and London TravelWatch to handle complaints, and that in matters relating to the Regulation they report to the ORR rather than the Secretary of State? Do you think the ORR powers as an enforcement body under the draft SI are adequate (i.e. neither insufficient nor excessive to enforce the Regulation effectively)?

Question 4: The draft SI currently does not have any provision for the enforcement against ticket vendors that are not railway undertakings. We propose to apply to those vendors enforcement measures similar to those in the Railways Act 1993 for breach of licensing conditions (see section 55 and following). These would consist of a power of the ORR to impose an order to secure compliance, with civil penalties in case of default. Do you agree that the Regulation should be enforced, as against ticket vendors, by provisions similar to those in the Railways Act 1993 for breach of licensing conditions?

Question 5: Do you approve of the way the rights of disabled persons and PRMs will be enforced under the draft SI?

Question 6: Do you have any further comments on the enforcement regime?

Question 7: Do you believe the exemptions in Articles 2(4) and 2(5) should be used? If you think the exemptions should be used, please provide details, giving supporting evidence wherever possible. In particular, we would need details of costs and benefits to domestic rail passengers and operators of not receiving the full benefits and burdens of the Regulation. As far as the Article 2(4) exemption is concerned, we would need this for 5, 10 and 15 years durations respectively. In particular, if the Commission does not object, do you think the exemption in Article 2(4) should be used in respect of charter train operators and other similar services?

Question 8: We believe that if an exemption is used, it will be possible to define the classes of services to which it applies. If you are of the opinion that an exemption should apply only to certain services, do you have comments as to the legal criteria to be used to define the scope of the exemption? For example, in respect of charter train operators, two possible criteria which might be used for the definition are: the fact such services are demand-led, and the fact they are outside published timetables.

Question 9: Do you have comments about the way we intend to deal with the inconsistency between section 2 of the Damages Act 1996 (as amended) and, Article 30(1) of Annex I the Community Regulation?

Question 10: Do you agree with the approach regulation 6 reflects as far as remedies for breach of the right to an advance payment are concerned? In particular, Do you agree with the requirement for the claimant first to approach the railway undertaking, and with the fact that the regulation leaves a discretion to the court as far as remedy is concerned?

Question 11: An alternative to the drafting of regulation 7 would be to leave it to the court's discretion to settle the amount, the court being directed to have regard, in exercising this discretion, to have regard to the amounts for which the parties are liable in respect of the accident. Do you prefer the Regulation as currently drafted or the alternative approach outlined?

Question 12: A draft Impact Assessment accompanying this consultation document is at Annex C. This has been prepared largely on cost estimates provided by the Association of Train Operating Companies. Are there any additional costs or benefits that you feel have not been reflected in the draft Impact Assessment? In particular, the Department seeks information from respondents on the potential benefits and costs to passengers so that the Department is able to monetise the benefits and costs.

Question 13: What areas of the Regulation do you consider need clarification and you would like to see covered in guidance?

Question 14: Do you have any other comments on the Statutory Instrument?

Question 15: Do you agree with our overall approach for implementation? If not, please explain your concerns.

How to Respond

If you would like further copies of this consultation document it can be found at www.dft.gov.uk/consultations or you can contact Mike Franklyn below if you would like alternative formats (braille, audio CD etc).

You may use the Consultation Response Form at **Annex D** to respond. However, we will also accept responses submitted in other formats if you find this is easier.

The deadline for return of responses is **3 November 2009**. We cannot guarantee that responses received after this deadline will be taken into account.

When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

This consultation has been produced in accordance with the principles of the Government's "Code of Practice on Consultation" which are included at **Annex E**.

A list of those consulted is attached at **Annex F**. If you have any suggestions of others who may wish to be involved in this process please contact us.

A summary of responses to this consultation will be published on our website: www.dft.gov.uk/consultations/closed after the consultation period has closed.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Responses are welcome via email or post to:

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REGULATION (EC) No 1371/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 23 October 2007
on rail passengers' rights and obligations

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty, in the light of the joint text approved by the Conciliation Committee on 31 July 2007 ⁽³⁾,

Whereas:

- (1) In the framework of the common transport policy, it is important to safeguard users' rights for rail passengers and to improve the quality and effectiveness of rail passenger services in order to help increase the share of rail transport in relation to other modes of transport.
- (2) The Commission's communication 'Consumer Policy Strategy 2002-2006' ⁽⁴⁾ sets the aim of achieving a high level of consumer protection in the field of transport in accordance with Article 153(2) of the Treaty.
- (3) Since the rail passenger is the weaker party to the transport contract, passengers' rights in this respect should be safeguarded.
- (4) Users' rights to rail services include the receipt of information regarding the service both before and during the journey. Whenever possible, railway undertakings and ticket vendors should provide this information in advance and as soon as possible.
- (5) More detailed requirements regarding the provision of travel information will be set out in the technical specifications for interoperability (TSIs) referred to in Directive

2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the conventional rail system ⁽⁵⁾.

- (6) Strengthening of the rights of rail passengers should build on the existing system of international law on this subject contained in Appendix A — Uniform rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV) to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as modified by the Protocol for the modification of the Convention concerning International Carriage by Rail of 3 June 1999 (1999 Protocol). However, it is desirable to extend the scope of this Regulation and protect not only international passengers but domestic passengers too.
- (7) Railway undertakings should cooperate to facilitate the transfer of rail passengers from one operator to another by the provision of through tickets, whenever possible.
- (8) The provision of information and tickets for rail passengers should be facilitated by the adaptation of computerised systems to a common specification.
- (9) The further implementation of travel information and reservation systems should be executed in accordance with the TSIs.
- (10) Rail passenger services should benefit citizens in general. Consequently, disabled persons and persons with reduced mobility, whether caused by disability, age or any other factor, should have opportunities for rail travel comparable to those of other citizens. Disabled persons and persons with reduced mobility have the same right as all other citizens to free movement, freedom of choice and to non-discrimination. *Inter alia*, special attention should be given to the provision of information to disabled persons and persons with reduced mobility concerning the accessibility of rail services, access conditions of rolling stock and the facilities on board. In order to provide passengers with sensory impairment with the best information on delays, visual and audible systems should be used, as appropriate. Disabled persons and persons with reduced mobility should be enabled to buy tickets on board a train without extra charges.

⁽¹⁾ OJ C 221, 8.9.2005, p. 8.

⁽²⁾ OJ C 71, 22.3.2005, p. 26.

⁽³⁾ Opinion of the European Parliament of 28 September 2005 (OJ C 227 E, 21.9.2006, p. 490), Council Common Position of 24 July 2006 (OJ C 289 E, 28.11.2006, p. 1), Position of the European Parliament of 18 January 2007 (not yet published in the Official Journal), Legislative Resolution of the European Parliament of 25 September 2007 and Council Decision of 26 September 2007.

⁽⁴⁾ OJ C 137, 8.6.2002, p. 2.

⁽⁵⁾ OJ L 110, 20.4.2001, p. 1. Directive as last amended by Commission Directive 2007/32/EC (OJ L 141, 2.6.2007, p. 63).

- (11) Railway undertakings and station managers should take into account the needs of disabled persons and persons with reduced mobility, through compliance with the TSI for persons with reduced mobility, so as to ensure that, in accordance with Community public procurement rules, all buildings and rolling stock are made accessible through the progressive elimination of physical obstacles and functional hindrances when acquiring new material or carrying out construction or major renovation work.
- (12) Railway undertakings should be obliged to be insured, or to make equivalent arrangements, for their liability to rail passengers in the event of accident. The minimum amount of insurance for railway undertakings should be the subject of future review.
- (13) Strengthened rights of compensation and assistance in the event of delay, missed connection or cancellation of a service should lead to greater incentives for the rail passenger market, to the benefit of passengers.
- (14) It is desirable that this Regulation create a system of compensation for passengers in the case of delay which is linked to the liability of the railway undertaking, on the same basis as the international system provided by the COTIF and in particular appendix CIV thereto relating to passengers' rights.
- (15) Where a Member State grants railway undertakings an exemption from the provisions of this Regulation, it should encourage railway undertakings, in consultation with organisations representing passengers, to put in place arrangements for compensation and assistance in the event of major disruption to a rail passenger service.
- (16) It is also desirable to relieve accident victims and their dependants of short-term financial concerns in the period immediately after an accident.
- (17) It is in the interests of rail passengers that adequate measures be taken, in agreement with public authorities, to ensure their personal security at stations as well as on board trains.
- (18) Rail passengers should be able to submit a complaint to any railway undertaking involved regarding the rights and obligations conferred by this Regulation, and be entitled to receive a response within a reasonable period of time.
- (19) Railway undertakings should define, manage and monitor service quality standards for rail passenger services.
- (20) The contents of this Regulation should be reviewed in respect of the adjustment of financial amounts for inflation and in respect of information and service quality requirements in the light of market developments as well as in the light of the effects on service quality of this Regulation.
- (21) This Regulation should be without prejudice to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾.
- (22) Member States should lay down penalties applicable to infringements of this Regulation and ensure that these penalties are applied. The penalties, which might include the payment of compensation to the person in question, should be effective, proportionate and dissuasive.
- (23) Since the objectives of this Regulation, namely the development of the Community's railways and the introduction of passenger rights, cannot be sufficiently achieved by the Member States, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (24) It is an aim of this Regulation to improve rail passenger services within the Community. Therefore, Member States should be able to grant exemptions for services in regions where a significant part of the service is operated outside the Community.
- (25) Railway undertakings in some Member States may experience difficulty in applying the entirety of the provisions of this Regulation on its entry into force. Therefore, Member States should be able to grant temporary exemptions from the application of the provisions of this Regulation to long-distance domestic rail passenger services. The temporary exemption should, however, not apply to the provisions of this Regulation that grant disabled persons or persons with reduced mobility access to travel by rail, nor to the right of those wishing to purchase tickets for travel by rail to do so without undue difficulty, nor to the provisions on railway undertakings' liability in respect of passengers and their luggage, the requirement that undertakings be adequately insured, and the requirement that those undertakings take adequate measures to ensure passengers' personal security in railway stations and on trains and to manage risk.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

- (26) Urban, suburban and regional rail passenger services are different in character from long-distance services. Therefore, with the exception of certain provisions which should apply to all rail passenger services throughout the Community, Member States should be able to grant exemptions from the application of the provisions of this Regulation to urban, suburban and regional rail passenger services.
- (27) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (28) In particular, the Commission should be empowered to adopt implementing measures. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, or to supplement it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes rules as regards the following:

- (a) the information to be provided by railway undertakings, the conclusion of transport contracts, the issuing of tickets and the implementation of a Computerised Information and Reservation System for Rail Transport,
- (b) the liability of railway undertakings and their insurance obligations for passengers and their luggage,
- (c) the obligations of railway undertakings to passengers in cases of delay,
- (d) the protection of, and assistance to, disabled persons and persons with reduced mobility travelling by rail,
- (e) the definition and monitoring of service quality standards, the management of risks to the personal security of passengers and the handling of complaints, and
- (f) general rules on enforcement.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

Article 2

Scope

1. This Regulation shall apply to all rail journeys and services throughout the Community provided by one or more railway undertakings licensed in accordance with Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings ⁽²⁾.

2. This Regulation does not apply to railway undertakings and transport services which are not licensed under Directive 95/18/EC.

3. On the entry into force of this Regulation, Articles 9, 11, 12, 19, 20(1) and 26 shall apply to all rail passenger services throughout the Community.

4. With the exception of the provisions set out in paragraph 3, a Member State may, on a transparent and non-discriminatory basis, grant an exemption for a period no longer than five years, which may be renewed twice for a maximum period of five years on each occasion, from the application of the provisions of this Regulation to domestic rail passenger services.

5. With the exception of the provisions set out in paragraph 3 of this Article, a Member State may exempt from the application of the provisions of this Regulation urban, suburban and regional rail passenger services. In order to distinguish between urban, suburban and regional rail passenger services, Member States shall apply the definitions contained in Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways ⁽³⁾. In applying these definitions, Member States shall take into account the following criteria: distance, frequency of services, number of scheduled stops, rolling stock employed, ticketing schemes, fluctuations in passenger numbers between services in peak and off-peak periods, train codes and timetables.

6. For a maximum period of five years, a Member State may, on a transparent and non-discriminatory basis, grant an exemption, which may be renewed, from the application of the provisions of this Regulation to particular services or journeys because a significant part of the rail passenger service, including at least one scheduled station stop, is operated outside the Community.

7. Member States shall inform the Commission of exemptions granted pursuant to paragraphs 4, 5 and 6. The Commission shall take appropriate action if such an exemption is deemed not to be in accordance with the provisions of this Article. No later than 3 December 2014, the Commission shall submit to the European Parliament and the Council a report on exemptions granted pursuant to paragraphs 4, 5 and 6.

⁽²⁾ OJ L 143, 27.6.1995, p. 70. Directive as last amended by Directive 2004/49/EC of the European Parliament and of the Council (OJ L 164, 30.4.2004, p. 44).

⁽³⁾ OJ L 237, 24.8.1991, p. 25. Directive as last amended by Directive 2006/103/EC (OJ L 363, 20.12.2006, p. 344).

Article 3

Definitions

For the purposes of this Regulation the following definitions shall apply:

1. 'railway undertaking' means a railway undertaking as defined in Article 2 of Directive 2001/14/EC ⁽¹⁾, and any other public or private undertaking the activity of which is to provide transport of goods and/or passengers by rail on the basis that the undertaking must ensure traction; this also includes undertakings which provide traction only;
2. 'carrier' means the contractual railway undertaking with whom the passenger has concluded the transport contract or a series of successive railway undertakings which are liable on the basis of this contract;
3. 'substitute carrier' means a railway undertaking, which has not concluded a transport contract with the passenger, but to whom the railway undertaking party to the contract has entrusted, in whole or in part, the performance of the transport by rail;
4. 'infrastructure manager' means any body or undertaking that is responsible in particular for establishing and maintaining railway infrastructure, or a part thereof, as defined in Article 3 of Directive 91/440/EEC, which may also include the management of infrastructure control and safety systems; the functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings;
5. 'station manager' means an organisational entity in a Member State, which has been made responsible for the management of a railway station and which may be the infrastructure manager;
6. 'tour operator' means an organiser or retailer, other than a railway undertaking, within the meaning of Article 2, points (2) and (3) of Directive 90/314/EEC ⁽²⁾;
7. 'ticket vendor' means any retailer of rail transport services concluding transport contracts and selling tickets on behalf of a railway undertaking or for its own account;
8. 'transport contract' means a contract of carriage for reward or free of charge between a railway undertaking or a ticket vendor and the passenger for the provision of one or more transport services;
9. 'reservation' means an authorisation, on paper or in electronic form, giving entitlement to transportation subject to previously confirmed personalised transport arrangements;
10. 'through ticket' means a ticket or tickets representing a transport contract for successive railway services operated by one or several railway undertakings;
11. 'domestic rail passenger service' means a rail passenger service which does not cross a border of a Member State;
12. 'delay' means the time difference between the time the passenger was scheduled to arrive in accordance with the published timetable and the time of his or her actual or expected arrival;
13. 'travel pass' or 'season ticket' means a ticket for an unlimited number of journeys which provides the authorised holder with rail travel on a particular route or network during a specified period;
14. 'Computerised Information and Reservation System for Rail Transport (CIRSRT)' means a computerised system containing information about rail services offered by railway undertakings; the information stored in the CIRSRT on passenger services shall include information on:
 - (a) schedules and timetables of passenger services;
 - (b) availability of seats on passenger services;
 - (c) fares and special conditions;
 - (d) accessibility of trains for disabled persons and persons with reduced mobility;
 - (e) facilities through which reservations may be made or tickets or through tickets may be issued to the extent that some or all of these facilities are made available to users;
15. 'disabled person' or 'person with reduced mobility' means any person whose mobility when using transport is reduced due to any physical disability (sensory or locomotory, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or as a result of age, and whose situation needs appropriate attention and adaptation to his or her particular needs of the service made available to all passengers;
16. 'General Conditions of Carriage' means the conditions of the carrier in the form of general conditions or tariffs legally in force in each Member State and which have become, by the conclusion of the contract of carriage, an integral part of it;
17. 'vehicle' means a motor vehicle or a trailer carried on the occasion of the carriage of passengers.

⁽¹⁾ Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure (OJ L 75, 15.3.2001, p. 29). Directive as last amended by Directive 2004/49/EC.

⁽²⁾ Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p. 59).

CHAPTER II

TRANSPORT CONTRACT, INFORMATION AND TICKETS*Article 4***Transport contract**

Subject to the provisions of this Chapter, the conclusion and performance of a transport contract and the provision of information and tickets shall be governed by the provisions of Title II and Title III of Annex I.

*Article 5***Bicycles**

Railway undertakings shall enable passengers to bring bicycles on to the train, where appropriate for a fee, if they are easy to handle, if this does not adversely affect the specific rail service, and if the rolling-stock so permits.

*Article 6***Exclusion of waiver and stipulation of limits**

1. Obligations towards passengers pursuant to this Regulation may not be limited or waived, notably by a derogation or restrictive clause in the transport contract.
2. Railway undertakings may offer contract conditions more favourable for the passenger than the conditions laid down in this Regulation.

*Article 7***Obligation to provide information concerning discontinuation of services**

Railway undertakings or, where appropriate, competent authorities responsible for a public service railway contract shall make public by appropriate means, and before their implementation, decisions to discontinue services.

*Article 8***Travel information**

1. Without prejudice to Article 10, railway undertakings and ticket vendors offering transport contracts on behalf of one or more railway undertakings shall provide the passenger, upon request, with at least the information set out in Annex II, Part I in relation to the journeys for which a transport contract is offered by the railway undertaking concerned. Ticket vendors offering transport contracts on their own account, and tour operators, shall provide this information where available.
2. Railway undertakings shall provide the passenger during the journey with at least the information set out in Annex II, Part II.

3. The information referred to in paragraphs 1 and 2 shall be provided in the most appropriate format. Particular attention shall be paid in this regard to the needs of people with auditory and/or visual impairment.

*Article 9***Availability of tickets, through tickets and reservations**

1. Railway undertakings and ticket vendors shall offer, where available, tickets, through tickets and reservations.
2. Without prejudice to paragraph 4, railway undertakings shall distribute tickets to passengers via at least one of the following points of sale:
 - (a) ticket offices or selling machines;
 - (b) telephone, the Internet or any other widely available information technology;
 - (c) on board trains.
3. Without prejudice to paragraphs 4 and 5, railway undertakings shall distribute tickets for services provided under public service contracts via at least one of the following points of sale:
 - (a) ticket offices or selling machines;
 - (b) on board trains.
4. Railway undertakings shall offer the possibility to obtain tickets for the respective service on board the train, unless this is limited or denied on grounds relating to security or antifraud policy or compulsory train reservation or reasonable commercial grounds.
5. Where there is no ticket office or selling machine in the station of departure, passengers shall be informed at the station:
 - (a) of the possibility of purchasing tickets via telephone or the Internet or on board the train, and of the procedure for such purchase;
 - (b) of the nearest railway station or place at which ticket offices and/or selling machines are available.

*Article 10***Travel information and reservation systems**

1. In order to provide the information and to issue tickets referred to in this Regulation, railway undertakings and ticket vendors shall make use of CIRSRT, to be established by the procedures referred to in this Article.

2. The technical specifications for interoperability (TSIs) referred to in Directive 2001/16/EC shall be applied for the purposes of this Regulation.

3. The Commission shall, on a proposal to be submitted by the European Railway Agency (ERA), adopt the TSI of telematics applications for passengers by 3 December 2010. The TSI shall make possible the provision of the information, set out in Annex II, and the issuing of tickets as governed by this Regulation.

4. Railway undertakings shall adapt their CIRSRT according to the requirements set out in the TSI in accordance with a deployment plan set out in that TSI.

5. Subject to the provisions of Directive 95/46/EC, no railway undertaking or ticket vendor shall disclose personal information on individual bookings to other railway undertakings and/or ticket vendors.

CHAPTER III

LIABILITY OF RAILWAY UNDERTAKINGS FOR PASSENGERS AND THEIR LUGGAGE

Article 11

Liability for passengers and luggage

Subject to the provisions of this Chapter, and without prejudice to applicable national law granting passengers further compensation for damages, the liability of railway undertakings in respect of passengers and their luggage shall be governed by Chapters I, III and IV of Title IV, Title VI and Title VII of Annex I.

Article 12

Insurance

1. The obligation set out in Article 9 of Directive 95/18/EC as far as it relates to liability for passengers shall be understood as requiring a railway undertaking to be adequately insured or to make equivalent arrangements for cover of its liabilities under this Regulation.

2. The Commission shall submit to the European Parliament and the Council a report on the setting of a minimum amount of insurance for railway undertakings by 3 December 2010. If appropriate, that report shall be accompanied by suitable proposals or recommendations on this matter.

Article 13

Advance payments

1. If a passenger is killed or injured, the railway undertaking as referred to in Article 26(5) of Annex I shall without delay, and in any event not later than fifteen days after the establishment of the identity of the natural person entitled to compensation, make such advance payments as may be required to meet immediate economic needs on a basis proportional to the damage suffered.

2. Without prejudice to paragraph 1, an advance payment shall not be less than EUR 21 000 per passenger in the event of death.

3. An advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of this Regulation but is not returnable, except in the cases where damage was caused by the negligence or fault of the passenger or where the person who received the advance payment was not the person entitled to compensation.

Article 14

Contestation of liability

Even if the railway undertaking contests its responsibility for physical injury to a passenger whom it conveys, it shall make every reasonable effort to assist a passenger claiming compensation for damage from third parties.

CHAPTER IV

DELAYS, MISSED CONNECTIONS AND CANCELLATIONS

Article 15

Liability for delays, missed connections and cancellations

Subject to the provisions of this Chapter, the liability of railway undertakings in respect of delays, missed connections and cancellations shall be governed by Chapter II of Title IV of Annex I.

Article 16

Reimbursement and re-routing

Where it is reasonably to be expected that the delay in the arrival at the final destination under the transport contract will be more than 60 minutes, the passenger shall immediately have the choice between:

- (a) reimbursement of the full cost of the ticket, under the conditions by which it was paid, for the part or parts of his or her journey not made and for the part or parts already made if the journey is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant, a return service to the first point of departure at the earliest opportunity. The payment of the reimbursement shall be made under the same conditions as the payment for compensation referred to in Article 17; or
- (b) continuation or re-routing, under comparable transport conditions, to the final destination at the earliest opportunity; or
- (c) continuation or re-routing, under comparable transport conditions, to the final destination at a later date at the passenger's convenience.

*Article 17***Compensation of the ticket price**

1. Without losing the right of transport, a passenger may request compensation for delays from the railway undertaking if he or she is facing a delay between the places of departure and destination stated on the ticket for which the ticket has not been reimbursed in accordance with Article 16. The minimum compensations for delays shall be as follows:

- (a) 25 % of the ticket price for a delay of 60 to 119 minutes,
- (b) 50 % of the ticket price for a delay of 120 minutes or more.

Passengers who hold a travel pass or season ticket and who encounter recurrent delays or cancellations during its period of validity may request adequate compensation in accordance with the railway undertaking's compensation arrangements. These arrangements shall state the criteria for determining delay and for the calculation of the compensation.

Compensation for delay shall be calculated in relation to the price which the passenger actually paid for the delayed service.

Where the transport contract is for a return journey, compensation for delay on either the outward or the return leg shall be calculated in relation to half of the price paid for the ticket. In the same way the price for a delayed service under any other form of transport contract allowing travelling several subsequent legs shall be calculated in proportion to the full price.

The calculation of the period of delay shall not take into account any delay that the railway undertaking can demonstrate as having occurred outside the territories in which the Treaty establishing the European Community is applied.

2. The compensation of the ticket price shall be paid within one month after the submission of the request for compensation. The compensation may be paid in vouchers and/or other services if the terms are flexible (in particular regarding the validity period and destination). The compensation shall be paid in money at the request of the passenger.

3. The compensation of the ticket price shall not be reduced by financial transaction costs such as fees, telephone costs or stamps. Railway undertakings may introduce a minimum threshold under which payments for compensation will not be paid. This threshold shall not exceed EUR 4.

4. The passenger shall not have any right to compensation if he is informed of a delay before he buys a ticket, or if a delay due to continuation on a different service or re-routing remains below 60 minutes.

*Article 18***Assistance**

1. In the case of a delay in arrival or departure, passengers shall be kept informed of the situation and of the estimated departure time and estimated arrival time by the railway undertaking or by the station manager as soon as such information is available.

2. In the case of any delay as referred to in paragraph 1 of more than 60 minutes, passengers shall also be offered free of charge:

- (a) meals and refreshments in reasonable relation to the waiting time, if they are available on the train or in the station, or can reasonably be supplied;
- (b) hotel or other accommodation, and transport between the railway station and place of accommodation, in cases where a stay of one or more nights becomes necessary or an additional stay becomes necessary, where and when physically possible;
- (c) if the train is blocked on the track, transport from the train to the railway station, to the alternative departure point or to the final destination of the service, where and when physically possible.

3. If the railway service cannot be continued anymore, railway undertakings shall organise as soon as possible alternative transport services for passengers.

4. Railway undertakings shall, at the request of the passenger, certify on the ticket that the rail service has suffered a delay, led to a missed connection or that it has been cancelled, as the case might be.

5. In applying paragraphs 1, 2 and 3, the operating railway undertaking shall pay particular attention to the needs of disabled persons and persons with reduced mobility and any accompanying persons.

CHAPTER V

DISABLED PERSONS AND PERSONS WITH REDUCED MOBILITY*Article 19***Right to transport**

1. Railway undertakings and station managers shall, with the active involvement of representative organisations of disabled persons and persons with reduced mobility, establish, or shall have in place, non-discriminatory access rules for the transport of disabled persons and persons with reduced mobility.

2. Reservations and tickets shall be offered to disabled persons and persons with reduced mobility at no additional cost. A railway undertaking, ticket vendor or tour operator may not refuse to accept a reservation from, or issue a ticket to, a disabled person or a person with reduced mobility, or require that such person be accompanied by another person, unless this is strictly necessary in order to comply with the access rules referred to in paragraph 1.

Article 20

Information to disabled persons and persons with reduced mobility

1. Upon request, a railway undertaking, a ticket vendor or a tour operator shall provide disabled persons and persons with reduced mobility with information on the accessibility of rail services and on the access conditions of rolling stock in accordance with the access rules referred to in Article 19(1) and shall inform disabled persons and persons with reduced mobility about facilities on board.

2. When a railway undertaking, ticket vendor and/or tour operator exercises the derogation provided for in Article 19(2), it shall upon request inform in writing the disabled person or person with reduced mobility concerned of its reasons for doing so within five working days of the refusal to make the reservation or to issue the ticket or the imposition of the condition of being accompanied.

Article 21

Accessibility

1. Railway undertakings and station managers shall, through compliance with the TSI for persons with reduced mobility, ensure that the station, platforms, rolling stock and other facilities are accessible to disabled persons and persons with reduced mobility.

2. In the absence of accompanying staff on board a train or of staff at a station, railway undertakings and station managers shall make all reasonable efforts to enable disabled persons or persons with reduced mobility to have access to travel by rail.

Article 22

Assistance at railway stations

1. On departure from, transit through or arrival at, a staffed railway station of a disabled person or a person with reduced mobility, the station manager shall provide assistance free of charge in such a way that that person is able to board the departing service, or to disembark from the arriving service for which he or she purchased a ticket, without prejudice to the access rules referred to in Article 19(1).

2. Member States may provide for a derogation from paragraph 1 in the case of persons travelling on services which are the subject of a public service contract awarded in conformity with Community law, on condition that the competent authority has put in place alternative facilities or arrangements guaranteeing an equivalent or higher level of accessibility of transport services.

3. In unstaffed stations, railway undertakings and station managers shall ensure that easily accessible information is displayed in accordance with the access rules referred to in Article 19(1) regarding the nearest staffed stations and directly available assistance for disabled persons and persons with reduced mobility.

Article 23

Assistance on board

Without prejudice to the access rules as referred to in Article 19(1), railway undertakings shall provide disabled persons and persons with reduced mobility assistance free of charge on board a train and during boarding and disembarking from a train.

For the purposes of this Article, assistance on board shall consist of all reasonable efforts to offer assistance to a disabled person or a person with reduced mobility in order to allow that person to have access to the same services in the train as other passengers, should the extent of the person's disability or reduced mobility not allow him or her to have access to those services independently and in safety.

Article 24

Conditions on which assistance is provided

Railway undertakings, station managers, ticket vendors and tour operators shall cooperate in order to provide assistance to disabled persons and persons with reduced mobility in line with Articles 22 and 23 in accordance with the following points:

- (a) assistance shall be provided on condition that the railway undertaking, the station manager, the ticket vendor or the tour operator with which the ticket was purchased is notified of the person's need for such assistance at least 48 hours before the assistance is needed. Where the ticket permits multiple journeys, one notification shall be sufficient provided that adequate information on the timing of subsequent journeys is provided;
- (b) railway undertakings, station managers, ticket vendors and tour operators shall take all measures necessary for the reception of notifications;
- (c) if no notification is made in accordance with point (a), the railway undertaking and the station manager shall make all reasonable efforts to provide assistance in such a way that the disabled person or person with reduced mobility may travel;

- (d) without prejudice to the powers of other entities regarding areas located outside the railway station premises, the station manager or any other authorised person shall designate points, within and outside the railway station, at which disabled persons and persons with reduced mobility can announce their arrival at the railway station and, if need be, request assistance;
- (e) assistance shall be provided on condition that the disabled person or person with reduced mobility present him or herself at the designated point at a time stipulated by the railway undertaking or station manager providing such assistance. Any time stipulated shall not be more than 60 minutes before the published departure time or the time at which all passengers are asked to check in. If no time is stipulated by which the disabled person or person with reduced mobility is required to present him or herself, the person shall present him or herself at the designated point at least 30 minutes before the published departure time or the time at which all passengers are asked to check in.

Article 25

Compensation in respect of mobility equipment or other specific equipment

If the railway undertaking is liable for the total or partial loss of, or damage to, mobility equipment or other specific equipment used by disabled persons or persons with reduced mobility, no financial limit shall be applicable.

CHAPTER VI

SECURITY, COMPLAINTS AND QUALITY OF SERVICE

Article 26

Personal security of passengers

In agreement with public authorities, railway undertakings, infrastructure managers and station managers shall take adequate measures in their respective fields of responsibility and adapt them to the level of security defined by the public authorities to ensure passengers' personal security in railway stations and on trains and to manage risks. They shall cooperate and exchange information on best practices concerning the prevention of acts, which are likely to deteriorate the level of security.

Article 27

Complaints

1. Railway undertakings shall set up a complaint handling mechanism for the rights and obligations covered in this Regulation. The railway undertaking shall make its contact details and working language(s) widely known to passengers.

2. Passengers may submit a complaint to any railway undertaking involved. Within one month, the addressee of the complaint shall either give a reasoned reply or, in justified cases, inform the passenger by what date within a period of less than three months from the date of the complaint a reply can be expected.

3. The railway undertaking shall publish in the annual report referred to in Article 28 the number and categories of received complaints, processed complaints, response time and possible improvement actions undertaken.

Article 28

Service quality standards

1. Railway undertakings shall define service quality standards and implement a quality management system to maintain service quality. The service quality standards shall at least cover the items listed in Annex III.

2. Railway undertakings shall monitor their own performance as reflected in the service quality standards. Railway undertakings shall each year publish a report on their service quality performance together with their annual report. The reports on service quality performance shall be published on the Internet website of the railway undertakings. In addition, these reports shall be made available on the Internet website of the ERA.

CHAPTER VII

INFORMATION AND ENFORCEMENT

Article 29

Information to passengers about their rights

1. When selling tickets for journeys by rail, railway undertakings, station managers and tour operators shall inform passengers of their rights and obligations under this Regulation. In order to comply with this information requirement, railway undertakings, station managers and tour operators may use a summary of the provisions of this Regulation prepared by the Commission in all official languages of the European Union institutions and made available to them.

2. Railway undertakings and station managers shall inform passengers in an appropriate manner, at the station and on the train, of the contact details of the body or bodies designated by Member States pursuant to Article 30.

Article 30

Enforcement

1. Each Member State shall designate a body or bodies responsible for the enforcement of this Regulation. Each body shall take the measures necessary to ensure that the rights of passengers are respected.

Each body shall be independent in its organisation, funding decisions, legal structure and decision-making of any infrastructure manager, charging body, allocation body or railway undertaking.

Member States shall inform the Commission of the body or bodies designated in accordance with this paragraph and of its or their respective responsibilities.

2. Each passenger may complain to the appropriate body designated under paragraph 1, or to any other appropriate body designated by a Member State, about an alleged infringement of this Regulation.

Article 31

Cooperation between enforcement bodies

Enforcement bodies as referred to in Article 30 shall exchange information on their work and decision-making principles and practice for the purpose of coordinating their decision-making principles across the Community. The Commission shall support them in this task.

CHAPTER VIII

FINAL PROVISIONS

Article 32

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those rules and measures to the Commission by 3 June 2010 and shall notify it without delay of any subsequent amendment affecting them.

Article 33

Annexes

Measures designed to amend non-essential elements of this Regulation by adapting the Annexes thereto, except Annex I, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 35(2).

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 23 October 2007.

For the European Parliament
The President
H.-G. PÖTTERING

Article 34

Amending provisions

1. Measures designed to amend non-essential elements of this Regulation by supplementing it and necessary for the implementation of Articles 2, 10 and 12 shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 35(2).

2. Measures designed to amend non-essential elements of this Regulation by adjusting the financial amounts referred to therein, other than in Annex I, in light of inflation shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 35(2).

Article 35

Committee procedure

1. The Commission shall be assisted by the Committee instituted by Article 11a of Directive 91/440/EEC.

2. Where reference is made to this paragraph, Articles 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 36

Report

The Commission shall report to the European Parliament and the Council on the implementation and the results of this Regulation by 3 December 2012, and in particular on the service quality standards.

The report shall be based on information to be provided pursuant to this Regulation and to Article 10b of Directive 91/440/EEC. The report shall be accompanied where necessary by appropriate proposals.

Article 37

Entry into force

This Regulation shall enter into force 24 months after the date of its publication in the *Official Journal of the European Union*.

For the Council
The President
M. LOBO ANTUNES

ANNEX I

Extract from Uniform Rules concerning the contract for international carriage of passengers and luggage by rail (CIV)*Appendix A*

to the Convention Concerning International Carriage by Rail (COTIF) of 9 May 1980, as modified by the Protocol for the modification of the Convention Concerning International Carriage by Rail of 3 June 1999

TITLE II

CONCLUSION AND PERFORMANCE OF THE CONTRACT OF CARRIAGE*Article 6***Contract of carriage**

1. By the contract of carriage the carrier shall undertake to carry the passenger as well as, where appropriate, luggage and vehicles to the place of destination and to deliver the luggage and vehicles at the place of destination.
2. The contract of carriage must be confirmed by one or more tickets issued to the passenger. However, subject to Article 9 the absence, irregularity or loss of the ticket shall not affect the existence or validity of the contract which shall remain subject to these Uniform Rules.
3. The ticket shall be prima facie evidence of the conclusion and the contents of the contract of carriage.

*Article 7***Ticket**

1. The General Conditions of Carriage shall determine the form and content of tickets as well as the language and characters in which they are to be printed and made out.
2. The following, at least, must be entered on the ticket:
 - (a) the carrier or carriers;
 - (b) a statement that the carriage is subject, notwithstanding any clause to the contrary, to these Uniform Rules; this may be indicated by the acronym CIV;
 - (c) any other statement necessary to prove the conclusion and contents of the contract of carriage and enabling the passenger to assert the rights resulting from this contract.
3. The passenger must ensure, on receipt of the ticket, that it has been made out in accordance with his instructions.
4. The ticket shall be transferable if it has not been made out in the passenger's name and if the journey has not begun.
5. The ticket may be established in the form of electronic data registration, which can be transformed into legible written symbols. The procedure used for the registration and treatment of data must be equivalent from the functional point of view, particularly so far as concerns the evidential value of the ticket represented by those data.

*Article 8***Payment and refund of the carriage charge**

1. Subject to a contrary agreement between the passenger and the carrier, the carriage charge shall be payable in advance.
2. The General Conditions of Carriage shall determine under what conditions a refund of the carriage charge shall be made.

*Article 9***Right to be carried. Exclusion from carriage**

1. The passenger must, from the start of his journey, be in possession of a valid ticket and produce it on the inspection of tickets. The General Conditions of Carriage may provide:

- (a) that a passenger who does not produce a valid ticket must pay, in addition to the carriage charge, a surcharge;
- (b) that a passenger who refuses to pay the carriage charge or the surcharge upon demand may be required to discontinue his journey;
- (c) if and under what conditions a refund of the surcharge shall be made.

2. The General Conditions of Carriage may provide that passengers who:

- (a) present a danger for safety and the good functioning of the operations or for the safety of other passengers,
- (b) inconvenience other passengers in an intolerable manner,

shall be excluded from carriage or may be required to discontinue their journey and that such persons shall not be entitled to a refund of their carriage charge or of any charge for the carriage of registered luggage they may have paid.

*Article 10***Completion of administrative formalities**

The passenger must comply with the formalities required by customs or other administrative authorities.

*Article 11***Cancellation and late running of trains. Missed connections**

The carrier must, where necessary, certify on the ticket that the train has been cancelled or the connection missed.

TITLE III

CARRIAGE OF HAND LUGGAGE, ANIMALS, REGISTERED LUGGAGE AND VEHICLES

Chapter I

Common provisions*Article 12***Acceptable articles and animals**

1. The passenger may take with him articles which can be handled easily (hand luggage) and also live animals in accordance with the General Conditions of Carriage. Moreover, the passenger may take with him cumbersome articles in accordance with the special provisions, contained in the General Conditions of Carriage. Articles and animals likely to annoy or inconvenience passengers or cause damage shall not be allowed as hand luggage.

2. The passenger may consign articles and animals as registered luggage in accordance with the General Conditions of Carriage.

3. The carrier may allow the carriage of vehicles on the occasion of the carriage of passengers in accordance with special provisions, contained in the General Conditions of Carriage.

4. The carriage of dangerous goods as hand luggage, registered luggage as well as in or on vehicles which, in accordance with this Title are carried by rail, must comply with the Regulation concerning the Carriage of Dangerous Goods by Rail (RID).

*Article 13***Examination**

1. When there is good reason to suspect a failure to observe the conditions of carriage, the carrier shall have the right to examine whether the articles (hand luggage, registered luggage, vehicles including their loading) and animals carried comply with the conditions of carriage, unless the laws and prescriptions of the State in which the examination would take place prohibit such examination. The passenger must be invited to attend the examination. If he does not appear or cannot be reached, the carrier must require the presence of two independent witnesses.
2. If it is established that the conditions of carriage have not been respected, the carrier can require the passenger to pay the costs arising from the examination.

*Article 14***Completion of administrative formalities**

The passenger must comply with the formalities required by customs or other administrative authorities when, on being carried, he has articles (hand luggage, registered luggage, vehicles including their loading) or animals carried. He shall be present at the inspection of these articles save where otherwise provided by the laws and prescriptions of each State.

Chapter II

Hand luggage and animals*Article 15***Supervision**

It shall be the passenger's responsibility to supervise the hand luggage and animals that he takes with him.

Chapter III

Registered luggage*Article 16***Consignment of registered luggage**

1. The contractual obligations relating to the forwarding of registered luggage must be established by a luggage registration voucher issued to the passenger.
2. Subject to Article 22 the absence, irregularity or loss of the luggage registration voucher shall not affect the existence or the validity of the agreements concerning the forwarding of the registered luggage, which shall remain subject to these Uniform Rules.
3. The luggage registration voucher shall be prima facie evidence of the registration of the luggage and the conditions of its carriage.
4. Subject to evidence to the contrary, it shall be presumed that when the carrier took over the registered luggage it was apparently in a good condition, and that the number and the mass of the items of luggage corresponded to the entries on the luggage registration voucher.

*Article 17***Luggage registration voucher**

1. The General Conditions of Carriage shall determine the form and content of the luggage registration voucher as well as the language and characters in which it is to be printed and made out. Article 7(5) shall apply *mutatis mutandis*.
2. The following, at least, must be entered on the luggage registration voucher:
 - (a) the carrier or carriers;
 - (b) a statement that the carriage is subject, notwithstanding any clause to the contrary, to these Uniform Rules; this may be indicated by the acronym CIV;

- (c) any other statement necessary to prove the contractual obligations relating to the forwarding of the registered luggage and enabling the passenger to assert the rights resulting from the contract of carriage.
3. The passenger must ensure, on receipt of the luggage registration voucher, that it has been made out in accordance with his instructions.

Article 18

Registration and carriage

1. Save where the General Conditions of Carriage otherwise provide, luggage shall be registered only on production of a ticket valid at least as far as the destination of the luggage. In other respects the registration of luggage shall be carried out in accordance with the prescriptions in force at the place of consignment.
2. When the General Conditions of Carriage provide that luggage may be accepted for carriage without production of a ticket, the provisions of these Uniform Rules determining the rights and obligations of the passenger in respect of his registered luggage shall apply *mutatis mutandis* to the consignor of registered luggage.
3. The carrier can forward the registered luggage by another train or by another mode of transport and by a different route from that taken by the passenger.

Article 19

Payment of charges for the carriage of registered luggage

Subject to a contrary agreement between the passenger and the carrier, the charge for the carriage of registered luggage shall be payable on registration.

Article 20

Marking of registered luggage

The passenger must indicate on each item of registered luggage in a clearly visible place, in a sufficiently durable and legible manner:

- (a) his name and address;
- (b) the place of destination.

Article 21

Right to dispose of registered luggage

1. If circumstances permit and if customs requirements or the requirements of other administrative authorities are not thereby contravened, the passenger can request luggage to be handed back at the place of consignment on surrender of the luggage registration voucher and, if the General Conditions of Carriage so require, on production of the ticket.
2. The General Conditions of Carriage may contain other provisions concerning the right to dispose of registered luggage, in particular modifications of the place of destination and the possible financial consequences to be borne by the passenger.

Article 22

Delivery

1. Registered luggage shall be delivered on surrender of the luggage registration voucher and, where appropriate, on payment of the amounts chargeable against the consignment.

The carrier shall be entitled, but not obliged, to examine whether the holder of the voucher is entitled to take delivery.

2. It shall be equivalent to delivery to the holder of the luggage registration voucher if, in accordance with the prescriptions in force at the place of destination:
- (a) the luggage has been handed over to the customs or octroi authorities at their premises or warehouses, when these are not subject to the carrier's supervision;
- (b) live animals have been handed over to third parties.

3. The holder of the luggage registration voucher may require delivery of the luggage at the place of destination as soon as the agreed time and, where appropriate, the time necessary for the operations carried out by customs or other administrative authorities, has elapsed.
4. Failing surrender of the luggage registration voucher, the carrier shall only be obliged to deliver the luggage to the person proving his right thereto; if the proof offered appears insufficient, the carrier may require security to be given.
5. Luggage shall be delivered at the place of destination for which it has been registered.
6. The holder of a luggage registration voucher whose luggage has not been delivered may require the day and time to be endorsed on the voucher when he requested delivery in accordance with paragraph 3.
7. The person entitled may refuse to accept the luggage if the carrier does not comply with his request to carry out an examination of the registered luggage in order to establish alleged damage.
8. In all other respects delivery of luggage shall be carried out in accordance with the prescriptions in force at the place of destination.

Chapter IV

Vehicles

Article 23

Conditions of carriage

The special provisions governing the carriage of vehicles, contained in the General Conditions of Carriage, shall specify in particular the conditions governing acceptance for carriage, registration, loading and carriage, unloading and delivery as well as the obligations of the passenger.

Article 24

Carriage voucher

1. The contractual obligations relating to the carriage of vehicles must be established by a carriage voucher issued to the passenger. The carriage voucher may be integrated into the passenger's ticket.
2. The special provisions governing the carriage of vehicles, contained in the General Conditions of Carriage, shall determine the form and content of the carriage voucher as well as the language and the characters in which it is to be printed and made out. Article 7(5) shall apply *mutatis mutandis*.
3. The following, at least, must be entered on the carriage voucher:
 - (a) the carrier or carriers;
 - (b) a statement that the carriage is subject, notwithstanding any clause to the contrary, to these Uniform Rules; this may be indicated by the acronym CIV;
 - (c) any other statement necessary to prove the contractual obligations relating to the carriage of vehicles and enabling the passenger to assert the rights resulting from the contract of carriage.
4. The passenger must ensure, on receipt of the carriage voucher, that it has been made out in accordance with his instructions.

Article 25

Applicable law

Subject to the provisions of this Chapter, the provisions of Chapter III relating to the carriage of luggage shall apply to vehicles.

TITLE IV

LIABILITY OF THE CARRIER

Chapter I

Liability in case of death of, or personal injury to, passengers

Article 26

Basis of liability

1. The carrier shall be liable for the loss or damage resulting from the death of, personal injuries to, or any other physical or mental harm to, a passenger, caused by an accident arising out of the operation of the railway and happening while the passenger is in, entering or alighting from railway vehicles whatever the railway infrastructure used.
2. The carrier shall be relieved of this liability
 - (a) if the accident has been caused by circumstances not connected with the operation of the railway and which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent;
 - (b) to the extent that the accident is due to the fault of the passenger;
 - (c) if the accident is due to the behaviour of a third party which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent; another undertaking using the same railway infrastructure shall not be considered as a third party; the right of recourse shall not be affected.
3. If the accident is due to the behaviour of a third party and if, in spite of that, the carrier is not entirely relieved of his liability in accordance with paragraph 2, letter c), he shall be liable in full up to the limits laid down in these Uniform Rules but without prejudice to any right of recourse which the carrier may have against the third party.
4. These Uniform Rules shall not affect any liability which may be incurred by the carrier in cases not provided for in paragraph 1.
5. If carriage governed by a single contract of carriage is performed by successive carriers, the carrier bound pursuant to the contract of carriage to provide the service of carriage in the course of which the accident happened shall be liable in case of death of, and personal injuries to, passengers. When this service has not been provided by the carrier, but by a substitute carrier, the two carriers shall be jointly and severally liable in accordance with these Uniform Rules.

Article 27

Damages in case of death

1. In case of death of the passenger the damages shall comprise:
 - (a) any necessary costs following the death, in particular those of transport of the body and the funeral expenses;
 - (b) if death does not occur at once, the damages provided for in Article 28.
2. If, through the death of the passenger, persons whom he had, or would have had, a legal duty to maintain are deprived of their support, such persons shall also be compensated for that loss. Rights of action for damages of persons whom the passenger was maintaining without being legally bound to do so, shall be governed by national law.

Article 28

Damages in case of personal injury

In case of personal injury or any other physical or mental harm to the passenger the damages shall comprise:

- (a) any necessary costs, in particular those of treatment and of transport;
- (b) compensation for financial loss, due to total or partial incapacity to work, or to increased needs.

*Article 29***Compensation for other bodily harm**

National law shall determine whether and to what extent the carrier must pay damages for bodily harm other than that for which there is provision in Articles 27 and 28.

*Article 30***Form and amount of damages in case of death and personal injury**

1. The damages under Article 27(2) and Article 28(b) must be awarded in the form of a lump sum. However, if national law permits payment of an annuity, the damages shall be awarded in that form if so requested by the injured passenger or by the persons entitled referred to in Article 27(2).

2. The amount of damages to be awarded pursuant to paragraph 1 shall be determined in accordance with national law. However, for the purposes of these Uniform Rules, the upper limit per passenger shall be set at 175 000 units of account as a lump sum or as an annual annuity corresponding to that sum, where national law provides for an upper limit of less than that amount.

*Article 31***Other modes of transport**

1. Subject to paragraph 2, the provisions relating to the liability of the carrier in case of death of, or personal injury to, passengers shall not apply to loss or damage arising in the course of carriage which, in accordance with the contract of carriage, was not carriage by rail.

2. However, where railway vehicles are carried by ferry, the provisions relating to liability in case of death of, or personal injury to, passengers shall apply to loss or damage referred to in Article 26(1) and Article 33(1), caused by an accident arising out of the operation of the railway and happening while the passenger is in, entering or alighting from the said vehicles.

3. When, because of exceptional circumstances, the operation of the railway is temporarily suspended and the passengers are carried by another mode of transport, the carrier shall be liable pursuant to these Uniform Rules.

*Chapter II****Liability in case of failure to keep to the timetable****Article 32***Liability in case of cancellation, late running of trains or missed connections**

1. The carrier shall be liable to the passenger for loss or damage resulting from the fact that, by reason of cancellation, the late running of a train or a missed connection, his journey cannot be continued the same day, or that a continuation of the journey the same day could not reasonably be required because of given circumstances. The damages shall comprise the reasonable costs of accommodation as well as the reasonable costs occasioned by having to notify persons expecting the passenger.

2. The carrier shall be relieved of this liability, when the cancellation, late running or missed connection is attributable to one of the following causes:

- (a) circumstances not connected with the operation of the railway which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent;
- (b) fault on the part of the passenger; or
- (c) the behaviour of a third party which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent; another undertaking using the same railway infrastructure shall not be considered as a third party; the right of recourse shall not be affected.

3. National law shall determine whether and to what extent the carrier must pay damages for harm other than that provided for in paragraph 1. This provision shall be without prejudice to Article 44.

Chapter III

Liability in respect of hand luggage, animals, registered luggage and vehicles

SECTION 1

Hand luggage and animals

Article 33

Liability

1. In case of death of, or personal injury to, passengers the carrier shall also be liable for the loss or damage resulting from the total or partial loss of, or damage to, articles which the passenger had on him or with him as hand luggage; this shall apply also to animals which the passenger had brought with him. Article 26 shall apply *mutatis mutandis*.

2. In other respects, the carrier shall not be liable for the total or partial loss of, or damage to, articles, hand luggage or animals the supervision of which is the responsibility of the passenger in accordance with Article 15, unless this loss or damage is caused by the fault of the carrier. The other Articles of Title IV, with exception of Article 51, and Title VI shall not apply in this case.

Article 34

Limit of damages in case of loss of or damage to articles

When the carrier is liable under Article 33(1), he must pay compensation up to a limit of 1 400 units of account per passenger.

Article 35

Exclusion of liability

The carrier shall not be liable to the passenger for loss or damage arising from the fact that the passenger does not conform to the formalities required by customs or other administrative authorities.

SECTION 2

Registered luggage

Article 36

Basis of liability

1. The carrier shall be liable for loss or damage resulting from the total or partial loss of, or damage to, registered luggage between the time of taking over by the carrier and the time of delivery as well as from delay in delivery.

2. The carrier shall be relieved of this liability to the extent that the loss, damage or delay in delivery was caused by a fault of the passenger, by an order given by the passenger other than as a result of the fault of the carrier, by an inherent defect in the registered luggage or by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.

3. The carrier shall be relieved of this liability to the extent that the loss or damage arises from the special risks inherent in one or more of the following circumstances:

- (a) the absence or inadequacy of packing;
- (b) the special nature of the luggage;
- (c) the consignment as luggage of articles not acceptable for carriage.

Article 37

Burden of proof

1. The burden of proving that the loss, damage or delay in delivery was due to one of the causes specified in Article 36(2) shall lie on the carrier.

2. When the carrier establishes that, having regard to the circumstances of a particular case, the loss or damage could have arisen from one or more of the special risks referred to in Article 36(3), it shall be presumed that it did so arise. The person entitled shall, however, have the right to prove that the loss or damage was not attributable either wholly or in part to one of those risks.

Article 38

Successive carriers

If carriage governed by a single contract is performed by several successive carriers, each carrier, by the very act of taking over the luggage with the luggage registration voucher or the vehicle with the carriage voucher, shall become a party to the contract of carriage in respect of the forwarding of luggage or the carriage of vehicles, in accordance with the terms of the luggage registration voucher or of the carriage voucher and shall assume the obligations arising therefrom. In such a case each carrier shall be responsible for the carriage over the entire route up to delivery.

Article 39

Substitute carrier

1. Where the carrier has entrusted the performance of the carriage, in whole or in part, to a substitute carrier, whether or not in pursuance of a right under the contract of carriage to do so, the carrier shall nevertheless remain liable in respect of the entire carriage.
2. All the provisions of these Uniform Rules governing the liability of the carrier shall apply also to the liability of the substitute carrier for the carriage performed by him. Articles 48 and 52 shall apply if an action is brought against the servants or any other persons whose services the substitute carrier makes use of for the performance of the carriage.
3. Any special agreement under which the carrier assumes obligations not imposed by these Uniform Rules or waives rights conferred by these Uniform Rules shall be of no effect in respect of the substitute carrier who has not accepted it expressly and in writing. Whether or not the substitute carrier has accepted it, the carrier shall nevertheless remain bound by the obligations or waivers resulting from such special agreement.
4. Where and to the extent that both the carrier and the substitute carrier are liable, their liability shall be joint and several.
5. The aggregate amount of compensation payable by the carrier, the substitute carrier and their servants and other persons whose services they make use of for the performance of the carriage shall not exceed the limits provided for in these Uniform Rules.
6. This Article shall not prejudice rights of recourse which may exist between the carrier and the substitute carrier.

Article 40

Presumption of loss

1. The person entitled may, without being required to furnish further proof, consider an item of luggage as lost when it has not been delivered or placed at his disposal within 14 days after a request for delivery has been made in accordance with Article 22(3).
2. If an item of luggage deemed to have been lost is recovered within one year after the request for delivery, the carrier must notify the person entitled if his address is known or can be ascertained.
3. Within thirty days after receipt of a notification referred to in paragraph 2, the person entitled may require the item of luggage to be delivered to him. In that case he must pay the charges in respect of carriage of the item from the place of consignment to the place where delivery is effected and refund the compensation received less, where appropriate, any costs included therein. Nevertheless he shall retain his rights to claim compensation for delay in delivery provided for in Article 43.
4. If the item of luggage recovered has not been claimed within the period stated in paragraph 3 or if it is recovered more than one year after the request for delivery, the carrier shall dispose of it in accordance with the laws and prescriptions in force at the place where the item of luggage is situated.

*Article 41***Compensation for loss**

1. In case of total or partial loss of registered luggage, the carrier must pay, to the exclusion of all other damages:
 - (a) if the amount of the loss or damage suffered is proved, compensation equal to that amount but not exceeding 80 units of account per kilogram of gross mass short or 1 200 units of account per item of luggage;
 - (b) if the amount of the loss or damage suffered is not established, liquidated damages of 20 units of account per kilogram of gross mass short or 300 units of account per item of luggage.

The method of compensation, by kilogram missing or by item of luggage, shall be determined by the General Conditions of Carriage.

2. The carrier must in addition refund the charge for the carriage of luggage and the other sums paid in relation to the carriage of the lost item as well as the customs duties and excise duties already paid.

*Article 42***Compensation for damage**

1. In case of damage to registered luggage, the carrier must pay compensation equivalent to the loss in value of the luggage, to the exclusion of all other damages.
2. The compensation shall not exceed:
 - (a) if all the luggage has lost value through damage, the amount which would have been payable in case of total loss;
 - (b) if only part of the luggage has lost value through damage, the amount which would have been payable had that part been lost.

*Article 43***Compensation for delay in delivery**

1. In case of delay in delivery of registered luggage, the carrier must pay in respect of each whole period of 24 hours after delivery has been requested, but subject to a maximum of 14 days:
 - (a) if the person entitled proves that loss or damage has been suffered thereby, compensation equal to the amount of the loss or damage, up to a maximum of 0,80 units of account per kilogram of gross mass of the luggage or 14 units of account per item of luggage, delivered late;
 - (b) if the person entitled does not prove that loss or damage has been suffered thereby, liquidated damages of 0,14 units of account per kilogram of gross mass of the luggage or 2,80 units of account per item of luggage, delivered late.

The methods of compensation, by kilogram missing or by item of luggage, shall be determined by the General Conditions of Carriage.

2. In case of total loss of luggage, the compensation provided for in paragraph 1 shall not be payable in addition to that provided for in Article 41.
3. In case of partial loss of luggage, the compensation provided for in paragraph 1 shall be payable in respect of that part of the luggage which has not been lost.
4. In case of damage to luggage not resulting from delay in delivery the compensation provided for in paragraph 1 shall, where appropriate, be payable in addition to that provided for in Article 42.
5. In no case shall the total of compensation provided for in paragraph 1 together with that payable under Articles 41 and 42 exceed the compensation which would be payable in case of total loss of the luggage.

SECTION 3

Vehicles

Article 44

Compensation for delay

1. In case of delay in loading for a reason attributable to the carrier or delay in delivery of a vehicle, the carrier must, if the person entitled proves that loss or damage has been suffered thereby, pay compensation not exceeding the amount of the carriage charge.
2. If, in case of delay in loading for a reason attributable to the carrier, the person entitled elects not to proceed with the contract of carriage, the carriage charge shall be refunded to him. In addition the person entitled may, if he proves that loss or damage has been suffered as a result of the delay, claim compensation not exceeding the carriage charge.

Article 45

Compensation for loss

In case of total or partial loss of a vehicle the compensation payable to the person entitled for the loss or damage proved shall be calculated on the basis of the usual value of the vehicle. It shall not exceed 8 000 units of account. A loaded or unloaded trailer shall be considered as a separate vehicle.

Article 46

Liability in respect of other articles

1. In respect of articles left inside the vehicle or situated in boxes (e.g. luggage or ski boxes) fixed to the vehicle, the carrier shall be liable only for loss or damage caused by his fault. The total compensation payable shall not exceed 1 400 units of account.
2. So far as concerns articles stowed on the outside of the vehicle, including the boxes referred to in paragraph 1, the carrier shall be liable in respect of articles placed on the outside of the vehicle only if it is proved that the loss or damage results from an act or omission, which the carrier has committed either with intent to cause such a loss or damage or recklessly and with knowledge that such loss or damage would probably result.

Article 47

Applicable law

Subject to the provisions of this Section, the provisions of Section 2 relating to liability for luggage shall apply to vehicles.

Chapter IV

Common provisions

Article 48

Loss of right to invoke the limits of liability

The limits of liability provided for in these Uniform Rules as well as the provisions of national law, which limit the compensation to a fixed amount, shall not apply if it is proved that the loss or damage results from an act or omission, which the carrier has committed either with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

Article 49

Conversion and interest

1. Where the calculation of compensation requires the conversion of sums expressed in foreign currency, conversion shall be at the exchange rate applicable on the day and at the place of payment of the compensation.

2. The person entitled may claim interest on compensation, calculated at five per cent per annum, from the day of the claim provided for in Article 55 or, if no such claim has been made, from the day on which legal proceedings were instituted.
3. However, in the case of compensation payable pursuant to Articles 27 and 28, interest shall accrue only from the day on which the events relevant to the assessment of the amount of compensation occurred, if that day is later than that of the claim or the day when legal proceedings were instituted.
4. In the case of luggage, interest shall only be payable if the compensation exceeds 16 units of account per luggage registration voucher.
5. In the case of luggage, if the person entitled does not submit to the carrier, within a reasonable time allotted to him, the supporting documents required for the amount of the claim to be finally settled, no interest shall accrue between the expiry of the time allotted and the actual submission of such documents.

Article 50

Liability in case of nuclear incidents

The carrier shall be relieved of liability pursuant to these Uniform Rules for loss or damage caused by a nuclear incident when the operator of a nuclear installation or another person who is substituted for him is liable for the loss or damage pursuant to the laws and prescriptions of a State governing liability in the field of nuclear energy.

Article 51

Persons for whom the carrier is liable

The carrier shall be liable for his servants and other persons whose services he makes use of for the performance of the carriage, when these servants and other persons are acting within the scope of their functions. The managers of the railway infrastructure on which the carriage is performed shall be considered as persons whose services the carrier makes use of for the performance of the carriage.

Article 52

Other actions

1. In all cases where these Uniform Rules shall apply, any action in respect of liability, on whatever grounds, may be brought against the carrier only subject to the conditions and limitations laid down in these Uniform Rules.
2. The same shall apply to any action brought against the servants and other persons for whom the carrier is liable pursuant to Article 51.

TITLE V

LIABILITY OF THE PASSENGER

Article 53

Special principles of liability

The passenger shall be liable to the carrier for any loss or damage:

- (a) resulting from failure to fulfil his obligations pursuant to
 1. Articles 10, 14 and 20,
 2. the special provisions for the carriage of vehicles, contained in the General Conditions of Carriage, or
 3. the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID), or
- (b) caused by articles and animals that he brings with him,

unless he proves that the loss or damage was caused by circumstances that he could not avoid and the consequences of which he was unable to prevent, despite the fact that he exercised the diligence required of a conscientious passenger. This provision shall not affect the liability of the carrier pursuant to Articles 26 and 33(1).

TITLE VI

ASSERTION OF RIGHTS*Article 54***Ascertainment of partial loss or damage**

1. When partial loss of, or damage to, an article carried in the charge of the carrier (luggage, vehicles) is discovered or presumed by the carrier or alleged by the person entitled, the carrier must without delay, and if possible in the presence of the person entitled, draw up a report stating, according to the nature of the loss or damage, the condition of the article and, as far as possible, the extent of the loss or damage, its cause and the time of its occurrence.
2. A copy of the report must be supplied free of charge to the person entitled.
3. Should the person entitled not accept the findings in the report, he may request that the condition of the luggage or vehicle and the cause and amount of the loss or damage be ascertained by an expert appointed either by the parties to the contract of carriage or by a court or tribunal. The procedure to be followed shall be governed by the laws and prescriptions of the State in which such ascertainment takes place.

*Article 55***Claims**

1. Claims relating to the liability of the carrier in case of death of, or personal injury to, passengers must be addressed in writing to the carrier against whom an action may be brought. In the case of a carriage governed by a single contract and performed by successive carriers the claims may also be addressed to the first or the last carrier as well as to the carrier having his principal place of business or the branch or agency which concluded the contract of carriage in the State where the passenger is domiciled or habitually resident.
2. Other claims relating to the contract of carriage must be addressed in writing to the carrier specified in Article 56(2) and (3).
3. Documents which the person entitled thinks fit to submit with the claim shall be produced either in the original or as copies, where appropriate, the copies duly certified if the carrier so requires. On settlement of the claim, the carrier may require the surrender of the ticket, the luggage registration voucher and the carriage voucher.

*Article 56***Carriers against whom an action may be brought**

1. An action based on the liability of the carrier in case of death of, or personal injury to, passengers may only be brought against the carrier who is liable pursuant to Article 26(5).
2. Subject to paragraph 4 other actions brought by passengers based on the contract of carriage may be brought only against the first carrier, the last carrier or the carrier having performed the part of carriage on which the event giving rise to the proceedings occurred.
3. When, in the case of carriage performed by successive carriers, the carrier who must deliver the luggage or the vehicle is entered with his consent on the luggage registration voucher or the carriage voucher, an action may be brought against him in accordance with paragraph 2 even if he has not received the luggage or the vehicle.
4. An action for the recovery of a sum paid pursuant to the contract of carriage may be brought against the carrier who has collected that sum or against the carrier on whose behalf it was collected.
5. An action may be brought against a carrier other than those specified in paragraphs 2 and 4 when instituted by way of counter-claim or by way of exception in proceedings relating to a principal claim based on the same contract of carriage.
6. To the extent that these Uniform Rules apply to the substitute carrier, an action may also be brought against him.
7. If the plaintiff has a choice between several carriers, his right to choose shall be extinguished as soon as he brings an action against one of them; this shall also apply if the plaintiff has a choice between one or more carriers and a substitute carrier.

*Article 58***Extinction of right of action in case of death or personal injury**

1. Any right of action by the person entitled based on the liability of the carrier in case of death of, or personal injury to, passengers shall be extinguished if notice of the accident to the passenger is not given by the person entitled, within 12 months of his becoming aware of the loss or damage, to one of the carriers to whom a claim may be addressed in accordance with Article 55(1). Where the person entitled gives oral notice of the accident to the carrier, the carrier shall furnish him with an acknowledgement of such oral notice.
2. Nevertheless, the right of action shall not be extinguished if
 - (a) within the period provided for in paragraph 1 the person entitled has addressed a claim to one of the carriers designated in Article 55(1);
 - (b) within the period provided for in paragraph 1 the carrier who is liable has learned of the accident to the passenger in some other way;
 - (c) notice of the accident has not been given, or has been given late, as a result of circumstances not attributable to the person entitled;
 - (d) the person entitled proves that the accident was caused by fault on the part of the carrier.

*Article 59***Extinction of right of action arising from carriage of luggage**

1. Acceptance of the luggage by the person entitled shall extinguish all rights of action against the carrier arising from the contract of carriage in case of partial loss, damage or delay in delivery.
2. Nevertheless, the right of action shall not be extinguished:
 - (a) in case of partial loss or damage, if
 1. the loss or damage was ascertained in accordance with Article 54 before the acceptance of the luggage by the person entitled,
 2. the ascertainment which should have been carried out in accordance with Article 54 was omitted solely through the fault of the carrier;
 - (b) in case of loss or damage which is not apparent whose existence is ascertained after acceptance of the luggage by the person entitled, if he
 1. asks for ascertainment in accordance with Article 54 immediately after discovery of the loss or damage and not later than three days after the acceptance of the luggage, and
 2. in addition, proves that the loss or damage occurred between the time of taking over by the carrier and the time of delivery;
 - (c) in case of delay in delivery, if the person entitled has, within twenty-one days, asserted his rights against one of the carriers specified in Article 56(3);
 - (d) if the person entitled proves that the loss or damage was caused by fault on the part of the carrier.

*Article 60***Limitation of actions**

1. The period of limitation of actions for damages based on the liability of the carrier in case of death of, or personal injury to, passengers shall be:
 - (a) in the case of a passenger, three years from the day after the accident;
 - (b) in the case of other persons entitled, three years from the day after the death of the passenger, subject to a maximum of five years from the day after the accident.

2. The period of limitation for other actions arising from the contract of carriage shall be one year. Nevertheless, the period of limitation shall be two years in the case of an action for loss or damage resulting from an act or omission committed either with the intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

3. The period of limitation provided for in paragraph 2 shall run for actions:

- (a) for compensation for total loss, from the fourteenth day after the expiry of the period of time provided for in Article 22(3);
- (b) for compensation for partial loss, damage or delay in delivery, from the day when delivery took place;
- (c) in all other cases involving the carriage of passengers, from the day of expiry of validity of the ticket.

The day indicated for the commencement of the period of limitation shall not be included in the period.

4. [...]

5. [...]

6. Otherwise, the suspension and interruption of periods of limitation shall be governed by national law.

TITLE VII

RELATIONS BETWEEN CARRIERS

Article 61

Apportionment of the carriage charge

1. Any carrier who has collected or ought to have collected a carriage charge must pay to the carriers concerned their respective shares of such a charge. The methods of payment shall be fixed by agreement between the carriers.
2. Article 6(3), Article 16(3) and Article 25 shall also apply to the relations between successive carriers.

Article 62

Right of recourse

1. A carrier who has paid compensation pursuant to these Uniform Rules shall have a right of recourse against the carriers who have taken part in the carriage in accordance with the following provisions:
 - (a) the carrier who has caused the loss or damage shall be solely liable for it;
 - (b) when the loss or damage has been caused by several carriers, each shall be liable for the loss or damage he has caused; if such distinction is impossible, the compensation shall be apportioned between them in accordance with letter c);
 - (c) if it cannot be proved which of the carriers has caused the loss or damage, the compensation shall be apportioned between all the carriers who have taken part in the carriage, except those who prove that the loss or damage was not caused by them; such apportionment shall be in proportion to their respective shares of the carriage charge.
2. In the case of insolvency of any one of these carriers, the unpaid share due from him shall be apportioned among all the other carriers who have taken part in the carriage, in proportion to their respective shares of the carriage charge.

Article 63

Procedure for recourse

1. The validity of the payment made by the carrier exercising a right of recourse pursuant to Article 62 may not be disputed by the carrier against whom the right to recourse is exercised, when compensation has been determined by a court or tribunal and when the latter carrier, duly served with notice of the proceedings, has been afforded an opportunity to intervene in the proceedings. The court or tribunal seized of the principal action shall determine what time shall be allowed for such notification of the proceedings and for intervention in the proceedings.

2. A carrier exercising his right of recourse must present his claim in one and the same proceedings against all the carriers with whom he has not reached a settlement, failing which he shall lose his right of recourse in the case of those against whom he has not taken proceedings.
3. The court or tribunal shall give its decision in one and the same judgment on all recourse claims brought before it.
4. The carrier wishing to enforce his right of recourse may bring his action in the courts or tribunals of the State on the territory of which one of the carriers participating in the carriage has his principal place of business, or the branch or agency which concluded the contract of carriage.
5. When the action must be brought against several carriers, the plaintiff carrier shall be entitled to choose the court or tribunal in which he will bring the proceedings from among those having competence pursuant to paragraph 4.
6. Recourse proceedings may not be joined with proceedings for compensation taken by the person entitled under the contract of carriage.

Article 64

Agreements concerning recourse

The carriers may conclude agreements which derogate from Articles 61 and 62.

ANNEX II

**MINIMUM INFORMATION TO BE PROVIDED BY RAILWAY UNDERTAKINGS
AND/OR BY TICKET VENDORS****Part I: Pre-journey information**

General conditions applicable to the contract

Time schedules and conditions for the fastest trip

Time schedules and conditions for the lowest fares

Accessibility, access conditions and availability on board of facilities for disabled persons and persons with reduced mobility

Accessibility and access conditions for bicycles

Availability of seats in smoking and non-smoking, first and second class as well as couchettes and sleeping carriages

Any activities likely to disrupt or delay services

Availability of on-board services

Procedures for reclaiming lost luggage

Procedures for the submission of complaints.

Part II: Information during the journey

On-board services

Next station

Delays

Main connecting services

Security and safety issues.

*ANNEX III***MINIMUM SERVICE QUALITY STANDARDS**

Information and tickets

Punctuality of services, and general principles to cope with disruptions to services

Cancellations of services

Cleanliness of rolling stock and station facilities (air quality in carriages, hygiene of sanitary facilities, etc.)

Customer satisfaction survey

Complaint handling, refunds and compensation for non-compliance with service quality standards

Assistance provided to disabled persons and persons with reduced mobility.

2009 No.

TRANSPORT

The Rail Passengers' Rights and Obligations Regulations 2009

Made - - - - - ***

Laid before Parliament ***

Coming into force - - - ***

The Secretary of State for Transport makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a).

He is a Minister designated for the purposes of that section in relation to measures relating to railways and railway transport(b).

PART 1

Preliminary

Citation and commencement

1.—(1) These Regulations may be cited as the Rail Passengers' Rights and Obligations Regulations 2009.

(2) These Regulations come into force on xxx.

Extent

2. These Regulations do not extend to Northern Ireland.

Interpretation

3.—(1) In these Regulations—

“the Community Regulation” means Regulation (EC) No. 1371/2007 of the European Parliament and of the Council of 23rd October 2007 on rail passengers' rights and obligations(c);

“the 1993 Act” means the Railways Act 1993(d);

“the 1978 Act” means the Civil Liability (Contribution) Act 1978(e);

(a) 1972 c.68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a).
(b) S.I. 1996/266, to which there are amendments not relevant to these Regulations.
(c) OJ No. L315, 3.12.2007, p.14.
(d) 1993 c.43.
(e) 1978 c.47.

“the 2005 Regulations” means the Railway (Licensing of Railway Undertakings) Regulations 2005(a);

“the COTIF Regulations” means the Railways (Convention on International Carriage by Rail) Regulation 2005(b);

“the CPR” means the Civil Procedure Rules 1998(c);

“the ORR” means the Office of Rail Regulation.

(2) In these Regulations, unless the context otherwise requires, expressions also used in the Community Regulation shall have the same meaning as they have in the Community Regulation.

PART 2

Relationship between the Community Regulation and domestic law

CHAPTER 1

Relationship with the COTIF Regulations

Relationship with the COTIF Regulations

4.—(1) In the COTIF Regulations, after regulation 2, add—

“Relationship with the Rail Passengers’ Rights and Obligations Regulations 2009

2A.These Regulations are subject to the Rail Passengers’ Rights and Obligations Regulations 2009”.

CHAPTER 2

Civil remedies

Accidents for which others than the person liable under Article 26 are responsible

5. Sections 1 and 2 of the 1978 Act do not apply where liability for contribution between persons liable in respect of the same damage is governed by the Community Regulation, including Article 62 of Annex I to it.

Claim for advance payments

6.—(1) No person (referred to in this regulation as “the claimant”) may bring proceedings against a railway undertaking in respect of an infringement of the right conferred by article 13(1) of the Community Regulation (“the right to an advance payment”) unless—

- (a) the claimant has requested the railway undertaking in writing to make an advance payment under that provision, and
- (b) at least fifteen days have elapsed since that written request was received by the undertaking.

(2) Proceedings in respect of an infringement of the right to an advance payment may (but do not need to) be brought under the same procedure as an application under Part 23 of the CPR.

(a) S.I. 2005/3050.

(b) S.I. 2005/2092..

(c) S.I. No. 1998/3132, relevant amending instruments are the Constitutional Reform Act 2005 (c.4), Schedule 11, S.I. 1999/1008, regulation 8, 2000/221, regulations 11 and Schedule 3, 2001/4015, regulation 17, 2002/2058, regulation 7, 2002/3219, regulation 3, 2004/2072, regulation 9, 2004/3419, regulation 5, 2005/2292, regulation 26, and 2005/3515, regulation 7.

(3) Where the court finds that an infringement of the right to an advance payment has taken place, it shall award damages of an amount that it thinks just and equitable, having regard, among other things, to—

- (a) the extent to which, and the time at which a railway undertaking acting reasonably would have realised, in all the circumstances, that the claimant had the right to an advance payment,
- (b) how promptly the claimant acted in sending the request under paragraph (1),
- (c) the steps a railway undertaking acting reasonably would, in the circumstances, have taken to ascertain the extent of the right to an advance payment, and
- (d) the extent to which the request under paragraph (1) contained enough information for the railway undertaking to decide whether he or she was entitled to an advance payment, and the amount of that payment.

(4) The court has jurisdiction to reduce the award under paragraph (3), or decline to make such an award, to take into account—

- (a) any interim payment made in respect of the accident under Part 25 of the CPR, and
- (b) any payment made in any court proceeding in respect of the accident.

(5) In any proceedings, including proceedings for an interim payment under Part 25 of the CPR, the court has jurisdiction to award a lesser amount than it would otherwise have awarded to take into account the fact that an award was made under this regulation.

Recovery of overpaid advance payment

7.(1) This regulation applies where there is a shortfall (“the shortfall”) between—

- (a) an advance payment (“the advance payment”) made by a railway undertaking (“the railway undertaking”) under Article 13 of the Community Regulation, in respect of an accident (“the accident”) and
- (b) the railway undertaking’s liability to the recipient of the advance payment (“the recipient”) for the accident.

(2) The railway undertaking shall have the right to recover a share of the shortfall from each of the persons from whom it may recover contribution in respect of its liability to the recipient for the accident, whether under the 1978 Act or the Community Regulation, each share being determined under either paragraph (3) or paragraph (4).

(3) Where the sum of —

- (a) the liabilities of the railway undertaking to the recipient in respect of the accident, after deduction, where applicable, of any contribution recoverable under the 1978 Act or the Community Regulation and
- (b) the liabilities of all the persons liable under paragraph (2) to the recipient in respect of the accident, whether under the Community Regulation or otherwise

exceeds or equals the advance payment, a person liable under paragraph (2) shall bear a share of the shortfall equal to its share in the amount referred to in sub-paragraph (b).

(4) Where paragraph (3) does not apply, then, subject to paragraph (5), a person liable under paragraph (2) shall bear a share of the shortfall equal to its share in the aggregate of the amounts referred to in sub-paragraphs (3)(a) and (3)(b).

(5) (a) Where paragraph (4) applies, then, subject to sub-paragraph (b), if the advance payment was higher than it would have been reasonable in all the circumstances for the railway undertaking to make, the advance payment shall be deemed to have been of the amount that it would have been reasonable for the railway undertaking to pay.

(b) Where the railway undertaking has made the advance payment pursuant to a court order—

- (i) as against any person whom the railway undertaking made reasonable efforts to warn of the proceedings against it under regulation 6 in such a way that they would be

afforded a fair opportunity to intervene in those proceedings, the actual advance payment made shall be deemed to have been reasonable; and

- (ii) as against any other person—
 - (aa) which amount was reasonable for the undertaking to pay as advance payment shall be determined by reference to all the circumstances, and
 - (bb) even where the amount was reasonable, the other person shall only be liable for the sum that, in all the circumstances, it is fair for it to pay.

(6) A person liable under paragraph (2) may offset its liability under that paragraph against any liability to the recipient in respect of the accident, provided that, where the latter liability exceeds that person's liability towards the recipient, the recipient shall not be liable to that person for the difference.

Fatal accidents

8.—(1) Where, by virtue of the Community Regulation, any person has a right of action in respect of the death of a passenger by reason of his being a person whom the passenger was under a legal duty to maintain—

- (a) subject to paragraph (2), no action in respect of the passenger's death may be brought for the benefit of that person under the Fatal Accidents Act 1976(a) ("the 1976 Act"), but
- (b) nothing in section 2(3) of that Act (not more than one action in respect of the same subject matter of complaint) prevents an action from being brought under that Act for the benefit of any other person.

(2) Nothing in paragraph (1)(a) affects the right of any person to claim damages for bereavement under section 1A of the 1976 Act.

(3) Section 4 of the 1976 Act (exclusion of certain benefits in assessment of damages) applies in relation to an action brought by any person under the Community Regulation as it applies in relation to an action under that Act.

(4) Where separate proceedings are brought under the Community Regulation and under the 1976 Act in respect of the death of a passenger, a court, in awarding damages under that Act, shall take into account any damages awarded in the proceedings brought under the Community Regulation and has jurisdiction to make any part of its award conditional on the result of those proceedings.

(5) The provisions of Schedule 1 to these Regulations shall, as respects Scotland, have effect in lieu of paragraphs (1) to (4).

Periodical payments

9. In section 2 of the Damages Act 1996, before subsection (1), insert—

“(1ZA) This section is subject to Article 30 of Annex I to Regulation (EC) No. 1371/2007 of the European Parliament and of the Council of 23rd October 2007 on rail passengers' rights and obligations.”

CHAPTER 3

Rights of disabled persons and persons with reduced mobility

Amendment of section 19 of the Disability Discrimination Act 1995

10. In section 19 of the Disability Discrimination Act 1995(b) (discrimination in relation to goods, facilities and services), after subsection (4A), add—

(a) 1976 c.30. That Act was amended by the Administration of Justice Act 1982 (c.53), section 3, the Civil Partnerships Act 2004, section 83, and S.I. 2007/3489.
(b) 1995 c.50.

“(4B) Subsection (1) does not apply to anything that is governed by Regulation (EC) No. 1371/2007 of the European Parliament and of the Council of 23rd October 2007 on rail passengers’ rights and obligations.”.

Compensation claims by disabled persons and persons with reduced mobility

11.—(1) A claim by a disabled person or a person with reduced mobility for an infringement of any of his or her rights as such a person under the Community 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) For the avoidance of doubt, any damages awarded in respect of any infringement of the rights of disabled persons and persons with reduced mobility under the Community Regulation may include compensation for injury to feelings whether or not they include compensation under any other head.

(3) Proceedings in England and Wales may be brought only in a county court.

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

(5) 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.

(6) Subject to paragraphs (7) and (8), 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.

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

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

PART 3

Regulation of the railway

Functions of the Office of Rail Regulation

12.—(1) The ORR is designated as the enforcement body for the purposes of Article 30(1) of the Community Regulation.

(2) It shall be the duty of the ORR to ensure the effective application of the Community Regulation.

(3) The powers that the ORR has to exercise its functions under paragraph (2) are the following—

- (a) the same powers as it has to exercise its functions under Part I of the 1993 Act and the Railways Act 2005^(a) which are not safety functions, disregarding section 55(5)(a) of the 1993 Act where its application would conflict with the duty under paragraph (2), and
- (b) the powers conferred upon it by regulations 14 and 15.

Bodies handling complaints

13.—(1) The Rail Passengers’ Council is designated as a body to which complaints may be made under Article 30(2) of the Community Regulation, in relation to matters that fall within its

(a) 2005 c.14. That Act was amended by the Legislative and Regulatory Reform Act 2006 (c.51), Schedule, the Road Safety Act 2006 (c.49), s 51 and 61, S.I. 2006/556, regulations 1 and 2, S.I. 2005/3050, Schedule 1, the Greater London Authority Act 2007 (c.24), Schedule 2, the Local Transport Act 2008 (c.26), section 74 and Schedule 4, SI 2008/960, Schedule 3, the Finance Act 2008 (c.1), Schedule 2.

functions(a) under any enactment or rule of law (other than this regulation), disregarding any Order made under section 76(7C) of the 1993 Act(b).

(2) In matters for which the Rail Passengers' Council is a body to which complaints may be made under Article 30(2) of the Community Regulation, section 76 of the 1993 Act has effect as if, in subsection (5)—

- (a) the references to the Secretary of State included a reference to the ORR, and
- (b) in relation to a matter being referred to the ORR under that subsection as modified by the above sub-paragraph, the words “unless representations about the matter have been made to the Secretary of State by the Rail Passengers' Council” were omitted.

(3) The London Transport Users' Committee is designated as a body to which complaints may be made under Article 30(2) of the Community Regulation, in relation to matters that fall within its functions(c) under any enactment or rule of law (other than this regulation), disregarding any Order made under section 252E of the Greater London Authority Act 1999.

(4) In matters for which the London Transport Users' Committee is a body to which complaints may be made under Article 30(2) of the Community Regulation, section 252C of the Greater London Authority Act 1999 has effect as if—

- (a) in subsection (3)—
 - (i) the references to the Secretary of State included a reference to the ORR; and
 - (ii) in relation to a matter being referred to the ORR under that subsection as modified by the above paragraph, the words “subject to subsection (4)” were omitted, and
- (b) subsection (4) did not apply in relation to the reference of a matter to the ORR under that subsection as modified by sub-paragraph (a)(i).

Duties in respect of national licensing conditions for station licences

14.—(1) The ORR and the Secretary of State shall cause the station licences issued under section 8 of the 1993 Act to operators of stations used or to be used for the purposes of rail journeys covered by the Community Regulation to be subject to conditions under section 9 of that Act that ensure effective compliance with the provisions of the Community Regulation listed in Schedule 2.

(2) With respect to licenses granted after these Regulations came into force, the ORR and the Secretary of State shall comply with their duty under paragraph (1) by using their powers under section 8(1) and 9(1) of the 1993 Act.

(3) With respect to licences granted before Regulations came into force, the ORR and the Secretary of State may, where necessary or expedient to comply with their duty under paragraph (1), and notwithstanding anything to the contrary, including any enactment, licence condition, contract or agreement, modify any existing licensing condition or impose a new one.

(4) In this regulation, “station” and “station licence” have the same meaning as in Part I of the 1993 Act(d).

Duties in respect of European licensing conditions

15.—(1) The ORR shall cause the SNRPs issued under the 2005 Regulations to include conditions that ensure effective compliance with the provisions of the Community Regulation listed in Schedule 2.

(a) See section 76 of the 1993 Act, amended by the Transport Act 2000 (c.38), sections 216 and 228 and Schedules 22 and 31, the Railways and Transport Safety Act (c.20), Schedule 2, and the 2005 Act, Schedules 1, 6 and 13. See also, Part III of the Railways Act 2005 (list of amendments above), and regulation 17 of the 2005 Regulations.

(b) The only such Order at the time of making is S.I. 2003/1695.

(c) See Chapter X of Part IV of the Greater London Authority Act 1999 (c.29), and, in particular, sections 252B and 252C, as inserted by the 2005 Act, Schedule 6. See also section 76(2A) of the 1993 Act, as inserted by Schedule 6, paragraph 5 to the Railways Act 2005.

(d) See section 83 of that Act.

(2) With respect to SNRPs issued after these Regulations came into force, the ORR shall comply with its duty under paragraph (1) by issuing, under regulation 10 of the 2005 Regulations, SNRPs that contain appropriate conditions.

(3) With respect to SNRPs issued before these Regulations came into force, the ORR may, where necessary or expedient to comply with its duty under paragraph (1), and notwithstanding anything to the contrary, including any enactment, licence condition, SNRP condition, contract or agreement, modify any existing SNRP condition or impose a new one.

Restrictions on disclosure of information

16. Subject to Article 31 of the Community Regulation, section 145 of the 1993 Act (restriction on disclosure of information) shall have effect in relation to information which has been obtained under or by virtue of any provision of these Regulations and which relates to the affairs of any individual or to any particular business as it has effect in relation to such information obtained under or by virtue of any of the provisions of that Act.

Signed by authority of the Secretary of State for Transport

Date

Name
Minister of State
Department for Transport

SCHEDULE 1

regulation 8(5)

Fatal Accidents: Scotland

1.—(1) Subject to sub-paragraph (2), no enactment or rule of law shall have effect so as to permit a person who has a right of action under the Community Regulation in respect of the death of a passenger by virtue of his being a person whom the passenger was under a legal duty to maintain to raise any other action in that respect for any loss of support suffered by him.

(2) Sub-paragraph (1) shall not apply in so far as the other action concludes for an award under section 1(4) of the Damages (Scotland) Act 1976(a).

2. Section 1(5) of the said Act of 1976 (exclusion of certain items in assessment of damages) shall apply to an action brought under the Community Regulation as it applies to an action brought under that Act, but section 6 of that Act shall not apply to such an action under the Community Regulation.

3. Where separate proceedings in respect of the death of a passenger are brought under the Community Regulation and under any other enactment or rule of law the court, in awarding damages in such other proceedings, shall take into account any damages awarded in the proceedings brought under the Community Regulation and may make any part of its award conditional on the result of those proceedings.

SCHEDULE 2

regulations 14, 15

Community Regulation provisions to be enforced through licensing conditions and SNRPs

Article 4

(a) 1976 c. 13; section 1(4) was amended by the Damages (Scotland) Act 1993 (c. 5), section 1(1).

Article 5
Article 6
Article 7
Article 8
Article 9
Article 10, except paragraph (3)
Article 11
Article 12, paragraph 1
Article 13
Article 14
Article 15
Article 16
Article 17
Article 18
Article 19
Article 20
Article 21
Article 22
Article 23
Article 24
Article 26
Article 27
Article 28
Article 29

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the effective implementation, in Great Britain (see *Regulation 2*), of Regulation (EC) No. 1371/2007 of the European Parliament and of the Council of 23rd October 2007 on rail passengers' rights and obligations ("the Regulation"). The Regulation harmonises, across the European Community, the rules regarding the rights and obligations of rail passengers. Subject, potentially, to certain derogations, it applies to all train journeys and services, whether international or domestic, licensed under Directive 95/18/EEC of the European Parliament and of the Council dated 19th June 1995 on the licensing of railway undertakings (OJ No. L143, 27.6.1995, p.70). It reproduces large parts of the Convention concerning International Carriage by Rail of 9th May 1980 (Cm 4873) (COTIF), as amended by a Protocol signed at Vilnius on 3rd June 1999. In the UK, COTIF is implemented by the Railways (Convention on International Carriage by Rail) Regulations 2005 (S.I. 2005/2092).

These Regulations first make provisions concerning the relationship between domestic law and the Regulation (Part 2). Then, they deal with the regulatory enforcement of the Regulation (Part 3).

Where this is not incompatible with the Regulation, the United Kingdom continues to have an international obligation to comply with COTIF. By virtue of its direct applicability, and COTIF itself (see its Article 3(2)), the Regulation prevails over COTIF. *Regulation 4* provides that the implementing measures under these Regulations also prevail over the measures implementing COTIF where the two are inconsistent.

Regulation 5 provides that the right, under the Civil Liability (Contribution) Act 1978 ("the 1978 Act"), of a carrier found liable for the accident to recover a contribution from those who have also been responsible for the accident does not apply where the right to a contribution is already governed by the Regulation.

The Regulation makes provision for payment of an advance payment, shortly after the accident, to passengers victim of accidents, and their dependents, to cover their short-term needs, even though liabilities have yet to be determined. *Regulation 6* sets out the procedural requirements in respect of a claim for breach of the right to an advance payment. These include an obligation to give advance notice to the undertaking, and a right to make the claim by way of application. The regulation also makes provision for the remedies available. Finally, it deals with the relationship between claims for advance payments and claims for an interim payment under Part 25 of the Civil Procedure Rules 1999.

Since the advance payment is not refundable, the railway undertaking making the payment may face a shortfall between the payment it made and the damages for which it is eventually found liable. *Regulation 7* makes provision for those liable for the accident to the recipient to be liable for a contribution to that shortfall, in proportion of their liabilities for the accident. If their liabilities to the recipient are high enough to cover the whole shortfall, a share of these is used for that purpose (see paragraph 7(3)). Otherwise, the persons liable for the accident will contribute to only part of the shortfall, that part being equal to their share in the liabilities for the accident compared to that of the railway undertaking (see paragraph 7(4)).

Regulation 8 and Schedule 1 deal with the relationship between rights under the Regulation and claims under the Fatal Accidents Act 1976 or, in Scotland, the Damages (Scotland) Act 1976, preventing overlaps but leaving rights outside the scope of the Regulation intact.

Under section 2 of the Damages Act 1996 (as amended), in England and Wales, a court may normally order periodical payments to be made in respect of personal injury even when the claimant does not consent, but retains a discretion not to order such payments even where the claimant asks. In Scotland, a court can only order such payments if both parties consent. *Regulation 9* prevents conflict between these provisions and Article 30(1) of Annex I the Community Regulation, which is the same as Article 30(1) of Appendix A of COTIF, under which periodical payments must be paid if national law so permits and the claimant so requests. It does so by inserting an amendment in the 1996 Act, providing that it applies subject to that Article.

Regulations 10 and 11 make provisions in respect of the rights, under the Regulation, of disabled persons and persons with reduced mobility (DPRMs). To prevent double-regulation, *regulation 10* excludes from the scope of section 19 of the Disability Discrimination Act 1995, on discrimination in the provision of goods, facilities and services, the rights that are governed by the Regulation. *Regulation 11* creates a right to damages, enforceable in the courts, for breach of the rights of DPRMs. That right is similar to that in the 1995 Act (see section 25).

The Regulation requires the designation of enforcement bodies to take the measures necessary for its effective implementation. *Regulation 12(1)* designates the Office of Rail Regulation (ORR), except for the purposes of handling individual complaints (as to which see below), and *paragraph (2)* places it under an obligation to ensure the effective application of the Community Regulation. To comply with this duty, the ORR has the powers referred to in *paragraph (3)*. Those powers fall into two categories. The first is the powers it has to exercise its functions under Part I of the Railways Act 1993 and the functions under the Railways Act 2005 that are not safety functions. Its functions under Part I of the 1993 Act include functions deemed to be so by virtue of Schedule 3 to the 2005 Regulations. The second is the powers to modify existing licences, conferred by these Regulations. However, in respect of the latter, the powers are extended: normally, the general duties of the ORR under section 4 of the 1993 Act prevail over its duty to make and order to enforce compliance with licence conditions (deemed to include SNRPs under the 2005 Regulations), while, where the order is made to enforce these Regulations, this is not the case.

Under the Regulation, bodies must be designated to handle complaints for breach of the rights conferred by it. *Regulation 13* designates the Rail Passengers' Council (known as "Passenger Focus") and the London Transport Users' Committee (known as "London TravelWatch"), each within its existing functions – disregarding certain instruments that may have been made to restrict their functions in some areas. The regulation also modifies the legislation applying to those bodies, so that, in matters relating to the Regulation, they report, not to the Secretary of State, but to the ORR, as the enforcement body.

Regulation 14 and 15 provide for enforcement of the Regulation through the railway licensing regimes. They require the Secretary of State or the ORR (as the case may be) to impose on station operators and railway undertakings licence conditions under sections 8 and 9 of the 1993 Act (for station operators) and Statements of National Regulatory Provisions (SNRPs) under the Railway (Licensing of Railway Undertakings) Regulations 2005 (for railway undertakings) sufficient to ensure the effective application of the Regulation provisions listed in Schedule 2. As far as existing licences and SNRPs are concerned, they will have the power to modify them if necessary or expedient.

Regulation 16 concerns the protection of information obtained under or by virtue of these Regulations. It extends to that information section 145 of the 1993 Act, which restricts the use of information relating to an individual or business during the lifetime of the individual or the continuation of the business. It is, however, without prejudice to the duty enforcement bodies have to exchange information under Article 31 of the Community Regulation.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from Mike Franklyn, at the Department for Transport, tel. 020 7944 5761, and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.org.uk).

Background

- 1.1** The European Regulation No. 1371/2007 on rail passengers' rights and obligations is aimed at introducing enhanced rights for passengers on international rail services, with domestic services being made subject to these regulations in due course. It is one of a series of measures that form the ***Third Railway Package***, which are designed to revitalise the railways and take forward the creation of an integrated European railway.
- 1.2** The Passenger Rights Regulation was adopted and published by the Commission in 2004 with political agreement on the regulations being reached on 5th December 2005 during the UK Presidency at the Transport Council. The Council and the European Parliament agreed that the Regulation would not apply to urban, suburban and regional routes and that domestic service could be exempt for a period of 5 years, followed by a maximum of two further 5 year exemption periods.
- 1.3** There are a number of mandatory requirements within the Regulation – covered under Articles 9, 11, 12, 20(1) and 26 - which are applicable to all rail passengers (including urban, suburban and regional routes). ATOC estimate these services will result in an additional cost to TOCs of between £3m and £5m per year, but of these only around £0.5m could be considered as *additional* costs from societies perspective with the remainder representing a *transfer payment*. The estimates are also based on a number of uncertain assumptions which suggest a level of uncertainty. Annex A presents further information.
- 1.4** The UK is legally bound to implement the Regulation but has discretion on whether to use the derogations highlighted in Articles 2(4) and 2(5) of the Regulation.

2. Options for the Regulation

2.1. The Council and European Parliament's agreement to provide derogation from the non-mandatory elements of this regulation to domestic services (for up to a 15 year period) and urban, suburban and regional routes (indefinitely) provides eight policy options:

- Option 1 (Base Case) - apply non-mandatory elements of regulation to all services
 - Option 2 – define all services within Great Britain as domestic services and exempt these services from the non-mandatory elements of the regulation for a period of 5 years
 - Option 3 – define all services within Great Britain as domestic services and exempt these services from the non-mandatory elements of the regulation for a period of 10 years
 - Option 4 – define all services within Great Britain as domestic services and exempt these services from the non-mandatory elements of the regulation for a period of 15 years
 - Option 5 – define all services within Great Britain as urban, suburban and regional services and exempt these services from the non-mandatory elements of the regulation indefinitely
 - Option 6 – define some services within Great Britain as domestic services (and exempt these services from the non-mandatory elements of the regulation for 5 years) and some as urban, suburban and regional services (and exempt these indefinitely)
 - Option 7 – define some services within Great Britain as domestic services (and exempt these services from the non-mandatory elements of the regulation for 10 years) and some as urban, suburban and regional services (and exempt these indefinitely)
 - Option 8 – define some services within Great Britain as domestic services (and exempt these services from the non-mandatory elements of the regulation for 15 years) and some as urban, suburban and regional services (and exempt these indefinitely)
- 2.2.** Options 2 and 5 provide the two extremities of a range within which the remaining options fall. The benefits and costs of an exemption are the same across the options (compared to the base case) with the coverage and timescale differing.
- 2.3.** It is not clear what the definitions that would be applied to non-domestic services within Great Britain are and thus we do not attempt to consider all the options but focus on

options 2, 3, 4 and 5 and note that the remaining three options will fall within the range of the two extremities.

3. Benefits of a Derogation from the Regulation

3.1 ATOC suggest that subjecting non-international services to those elements of the Regulation that are non-mandatory for non-international services will result in additional costs to TOCs of between £32m and £115m per year . The estimates are based on a number of assumptions - Annex B presents further information.

3.2 However, of these estimated costs, between £25m and £95m per year could be considered as *transfer payments* and thus the *additional cost* to society – and therefore the benefit from derogation – is between £5m and £20m per year.

3.3 The table below shows the benefits in present value terms for the four options in which all non-international services are defined as domestic or urban, suburban and regional.

	Low Estimate	High Estimate
Option 2	£25m	£70m
Option 3	£40m	£120m
Option 4	£50m	£160m
Option 5*	£90m	£265m

*appraisal period for indefinite period is assumed to be 60 years

4. Costs of Derogation from the Regulation

4.1 Passenger Focus and London TravelWatch have suggested that derogation for non-international rail services within the UK would introduce additional complexity and mean that passengers on the same trains but with different destinations or the same destinations but different ticket types may have different rights.

4.2 They also suggest that the aim of the Regulation is to enhance passenger rights and a derogation goes against this aim and would leave non-international rail passengers with less rights.

5. Specific Impact Tests:

5.1 Small Firms Test: There are no anticipated impacts on small firms mainly because the rail franchise market comprises of relatively larger firms.

5.2 Competition Assessment: There are no likely impacts on competition within the rail industry. Because railways are structured on the basis of franchises, there can be no effect on exit and entry.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

Annex A – ATOC Cost Estimates of Mandatory Elements of Regulation

Table 1 below presents ATOC’s cost estimates for the introduction of the mandatory elements of the Regulation to all rail services – international and non-international.

Table 1 Summary of Estimated Costs for Mandatory Items

Key Concerns (£ per annum)	Low Estimate	High Estimate
PRM/ Accessibility	£100 k	£100k
Liability-Insurance Costs	£1m	£3m
International Distribution of GB Fares	£100k	£100k
More Complaints (15%)	£1.5m	£2m
Total	£3m	£5m

(a) Accessibility

- ATOC considers two key potential costs and these pertain to the requirement to provide free telephone numbers for booking assistance and the requirement for train facilities information to be available to customers.
- They also note that under current practice, 50% of TOCs already provide free telephone numbers and thus such costs are likely to be marginal.
- A greater proportion of the costs, however, relate to the provision of information on train facilities. This is mainly due to the fact that current systems do not have the facility to hold such information.
- National Rail Enquiries quoted a price of approximately £500k to add to this option and another £100k per annum for maintaining the system.

(b) Liability

- Whilst Liability issues are being dealt with outside the scope of this document, ATOC have provided very high estimates for the likely increase in insurance premiums.
- Such costs are a result of the need to compensate and make immediate payments to passengers in the case of injury or death regardless of liability.
- One TOC estimated a cost between the range of £1m and £3m per annum, based on a small increment to the level of insurance costs currently paid by TOCs.
- Alternatively, ATOC also considered the statistics on passenger injuries published by the ORR to estimate what the liability would be if compensation were to be paid from

revenue. The figures indicated that approximately 1,400 passengers require hospital treatment annually as a result of incidents. An average payment of between £1k and £2k would thus lead to an annual figure of similar magnitude as the one reported above.

(c) International Distribution of GB Fares

- Basic International fares have previously been subject to the TCV (Tarif Commun Pour Voyageurs- Common Fare to Passengers) which provided a common basis for calculating fares.
- There was initially a high probability that such a system would have to be retained and thus the savings from withdrawing them foregone were included as a cost. Although, the new TAP-TSI has not formally been adopted, such costs have been removed.
- Despite this, the TAP-TSI system has also led to another additional cost burden for marketing domestic fares through other European railways. In the case of where the issuer and carrier are in different countries, there is a prior obligation to use TAP message standards to provide data on fares. The TSI excludes such fares but it is highly probable that the foreign sales obligation would override such a domestic exclusion.
- Converting the current fares to the TAP standards would be problematic for static fares and at the same time, it would be very costly and inefficient for yield managed fares. It may be possible to mitigate costs by licensing a UK domiciled subsidiary of the foreign issuer, but if not, the costs are likely to be in the range of £500k capex and £100k opex.

(d) Increase in complaints

- ATOC estimates a 15% increase in complaint volume as the implementation of the European Air Passenger Rights Legislation led to a similar outcome.
- Three large TOCs (two long distance and one London and South East (LSE) and one major owning group have provided estimates of the costs related to an increase in 15% complaints. Such data is based on their current expenditure on handling complaints.
- These complaints were also normalised for the whole industry based on the complaint rates published in the National Rail Trends, providing an approximate cost of £2m. This was used as a high estimate, where as for a low estimate, an increase in complaints of 10% was assumed. The latter gave an approximate additional cost of £1.5m.

Annex B – ATOC Cost Estimates of Non-Mandatory Elements of Regulation

Table 2 below presents ATOC's cost estimates for the introduction of the non-mandatory elements of the Regulation to all non-international services.

Table 2 Summary of Estimated Costs for Items with Optional Exemptions

Key Concerns (£ per annum)	Low Estimate	High Estimate
Abandon Journey	£1m	£9m
Cash Compensation	£4.1m	£7m
Assistance if Delayed	£6m	£17m
Tickets Transferable	£20m	£80m
Other Commercial/ TAP-TSI	Minimal	Minimal
Service Quality Measurement	Minimal	£1m
PRM-Multiple Booking	£500k	£500k
Total	£32m	£115m

3.8 For cost estimates provided by ATOC covered under the possible exemptions in Table 2:

(a) Abandon Journey

(1) Low Estimate

- This relates mainly to passengers who are delayed on a route for more than 60 minutes and therefore choose to abandon their journey and seek a refund.
- The Low Estimate is based on methodology used by several TOCs to predict costs relating to their individual services. Data on the number of delayed trains is used along with the estimated proportion of current fare revenue which is obtained from the passengers experiencing such delays. The final step in this methodology involves estimating the proportion of passengers who would actually abandon their journey and seek a refund.
- Table 3 provides a breakdown by sector for the different proportion of trains delayed and the average revenue per passenger for such delayed journeys. The total revenue from passengers delayed over 60 minutes is estimated at £6.9m.
- Based on the assumption that only 15% of rail passengers delayed more than 60 minutes would seek a refund, the resulting low estimate is therefore £1m.

(2) High Estimate

- The High Estimate is provided by another Long Distance TOC which predicted that the additional right would result in a cost of £6k for each train delayed over 60 minutes.
- This analysis was based on methodology similar to that of the Low Estimate. However, in this case, the assumption was that 50% of delayed passengers would actually abandon their journey or claim that they had done later.
- Such costs also account for administrative costs such as the need to disapprove fraudulent claims.
- Applying this to all Long Distance sector trains results in a High Estimate of £9m. Although the Long Distance sector obtains the highest amount of revenue from passengers delayed over 60 minutes (as is evident from Table 3), £9m may be considered as a slightly conservative figure as it only accounts for the Long Distance sector.
- It should be noted that neither of these figures take account of cancellations, where the delay could exceed an hour. However, only in cases where no other alternative mode of travel exists does the delay over 60 minutes occur.

Table 3 Revenue Estimates for Passengers delayed over 60 minutes

	Total Passenger Revenue	% Trains Delayed	Revenue -Delayed Passengers
Long Distance	£2036m	0.30%	£6,022,226
London & SE	£2717m	0.30%	£703,468
Regional	£801m	0.02%	£185,340
Total			£6,911,034

In Table 3, Delayed passengers refer to those who have been delayed for 60 minutes or more. Percentages have been rounded off for ease of illustration.

(b) Payment of compensation in cash

- Under the Regulation, the requirement for compensation in cash is only necessary when a specific request is made and for all other circumstances, current vouchers are deemed sufficient.
- The main issues underlying the voucher system are that if vouchers are provided as compensation, there is a possibility that these may never be used. At the same time, some vouchers are generative to the industry. For example, people use them for part payment for journeys they would have otherwise not made.
- Whilst such a compensation system would not be applicable to all TOCs, it is most suitable for the Long Distance sector. This is not only because of the number of delayed trains and the relatively higher average fare, but more so because there may be a higher chance of cash being claimed from rail passengers. With the standard commuter TOCs,

more regular customers may accept the vouchers and use them to renew their season tickets.

- At the same time, TOCs have expressed their concern that this may lead to additional claims. With the presence of websites such as, trainsdelays.co.uk, many consumers may even be more encouraged to make unnecessary claims.

(1) Low Estimates

- Data on additional costs of issuing compensation has been provided by six TOCs. Such estimates were mainly based on the estimated non-redemption and generation rates on their TOC. The additional administration costs behind such a scheme were expected to be minimal with the assumption that “cash” could be interpreted as cheque or BACs payment.
- The annual complaint rate for each TOC, published by the ORR in the National Rail Trends, was used to estimate proportions for the whole industry. Although not all complaints resulted in compensation, it was assumed that the proportion would be the same across all TOCs. At the same time, it should be noted that estimates for cash compensation have been based on current level of issued vouchers.
- The average additional cost per complaint from the estimates supplied by the TOCs was £6.90 and with the application to the total number of complaints of 600,000, a low estimate of £4m has been derived.

(2) High Estimate

- Several TOCs provided details of the total compensation currently paid out in vouchers and this was normalised for the whole industry based on estimated number of passengers delayed by one hour or more. This gave an estimated total of approximately £14m per annum.
- The highest non-redemption rate was provided by a TOC was 35% and the highest figure for generation amounted to 10%. The High Estimate was therefore calculated from £14m, with the assumption that 45% (35% + 10%) would be lost to the industry if cash was paid. Given this, the High Estimate for compensation in cash is £7m.

(c) Assistance in case of delay

- This relates to the requirement to provide refreshments to rail passengers whose journeys have been delayed by 60 minutes or more. Generally, such refreshments consist of light snacks and beverages but in special circumstances, meals may be provided.

- Currently, the provision of refreshments at railway stations is not common practice though some TOCs provide light refreshments on board in case of a significant delay.
- Additional costs in terms of assistance are expected to be higher if refreshments are provided at the stations as the station retail outlets are independent of TOCs. Besides the basic refreshment cost, administrative costs for the management of such assistance, should be taken into consideration.

(1) Low Estimate

- Average additional cost figures were provided by 6 TOCs and this was normalised to the whole industry using the number of passengers delayed for their journeys. The Low Estimate as a total of £6m.
- Considering that approximately 600,000 passengers travelled on services that were delayed for more than 60 minutes or more, the estimate per person is approximately £10.50

(2) High Estimate

- One Long Distance and one LSE TOC provided data for the estimated cost of the assistance, based on 20% increase in their additional expenditure in the area. Taking the average of these figures by factoring the number of passengers delayed by 60 minutes or more, a High Estimate of £17m was derived.

(d) Tickets Transferable

- Many potential risks were identified with the transferability of tickets such as the risk of passengers sharing season tickets. Furthermore, the outward and return portion of Off-peak tickets could be used by different passengers or tickets such as Advance tickets could potentially be resold. Such risks are present because of the fact that such tickets do not include the passenger's name, especially in the case of the weekly season ticket.

(1) Low Estimate

- The Low Estimate is simply based on 25% of the High Estimate.

(2) High Estimate

- Because the consequences of transferability differ by the type of ticket, the calculation for the High Estimate is based on several different calculations.
- Weekly Season Tickets: Taking weekly season tickets into consideration, the worst case scenario is estimated by a TOC with the assumption that 10% of journeys made using a

weekly season ticket, would be made by someone other than the main user. This would therefore result in lost revenue as a potential season ticket could have been sold.

- Given that the total value of season tickets is £480m and that weekly season tickets offer a discount over 5 daily fares, 10% of this for journeys lost would amount to £53m (i.e. $480 \times 0.1 \times (5/4.5)$).
- Off- Peak Returns: The approximate revenue from Off-Peak returns is £1.5 billion. As a worst case scenario, it is assumed that 1% of this would be lost due to transferability and therefore this would amount to £15m.
- Advance Fares: The total revenue from such fares is £566m and it is assumed that 1% of these are resold in place of more expensive products which would otherwise have been purchased nearer the time and that the alternative fares would approximately cost 50% more. The loss was therefore estimated at approximately £11m (i.e. $566 \times 0.01 \times 2$).
- The High Estimate for Ticket Transferability therefore amounts to a rounded off figure of £80m.

(e) Other Commercial

- This requirement encompasses a number of factors which are discussed below.
- Requirement to certify delay on tickets: On some non-U.K railways, passengers holding train specific tickets are officially required to have a delay to a connecting service certified by a member of staff to be able to use the ticket on a later service in the case of a missed connection.
- At present, in the U.K, this is not a requirement and the staff are able to confirm delays via the information systems. If passengers were to request this facility, there could be significant resource issues at times of major delay. However, since this was considered unlikely and to an extent self-limiting, it has not been estimated.
- Indicate carrier on tickets: This requirement is incompatible with the current system as tickets are interavailable and can be used on any TOC serving that route. At the same time, under the Convention Concerning International Carriage by Rail, it is deemed sufficient to advise customers where carrier details can be found.
- If changes were made that details of the carrier were provided on the ticket, some changes to ticket stock would nevertheless be required. Since these were assumed to be fairly minimal, these have not been estimate by ATOC.
- Informing passengers of their Rights: ATOC have suggested a number of ways by which this could be brought about and some of these include placing posters at stations or providing details on relevant websites. Once again, ATOC has assumed that such costs would be fairly minimal and have not been estimated.

(f) Service Quality Management

- This requirement involves the implementation of a service quality measurement system. Since many TOCs currently adopt certain service standards, these may be sufficient to meet the requirements of the legislation.
- ATOC have however provided figures for a worst case scenario where existing systems do not meet the requirements under the Regulation and these are estimated at £1m per annum.

(g) PRM/ Accessibility

- Such a requirement is additional to the one under the mandatory services as it covers the possible requirement that passengers would be able to make multiple bookings for assistance for repeated journeys.
- Under the current system, passengers have to book each journey manually and at the same time, future bookings cannot be taken into account. Enabling such a facility would involve a major systems upgrade and the estimate for this has been provided by the Rail Settlement Plan for ATOC as £500k.

Our Ref: MF/2
Your Ref:

4 November 2008

Mr Mike Franklyn
Rail Sponsorship & International
Rail & National Networks Group
Department for Transport
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76 Marsham Street
London SW1P 4DR

Dear Mike

Third Railway Package: Regulation (EC) 1371/2007 – Passengers’ Rights and Obligations

At the meeting on the implementation of the Third Railway Package on 13th October, stakeholders were invited to write to you outlining our views as to the costs and benefits of the UK utilising the exemptions under Articles 2 (4) and 2 (5) of the Regulation.

General comments

The views outlined in this response reflect those of Passenger Focus and London TravelWatch. Passenger Focus is the national consumer body representing rail passengers, and London TravelWatch represents the interests of transport users in and around the capital. We welcome the Regulation on Passenger Rights and Obligations, and have been active in development of the Regulation through the European Passengers’ Federation on behalf of rail passengers.

We consider that implementing the regulation in full would be consistent with the government’s current statements of consumer policy. The government says that it wants the UK’s consumer regime to be “as good as any in the world” and that it has set itself a “target of reaching the level of the best”.

Passenger train services in the UK are, in the main, structured on the basis of franchises awarded by the Department for Transport (DfT) to Train Operating Companies. In addition, a number of services operated on an 'open access' basis outside the franchise arrangements and services in Northern Ireland are run by a wholly-owned nationalised company. This structure effectively provides most operators with a virtual monopoly of passenger railway services between their stations for at least five years and indefinitely in the case of Northern Ireland. As such, if they are provided with poor service, consumers are often unable to “vote with their feet” and change to another operator. While it is sometimes the case that a successful franchisee may grow the business through being responsive to their passengers, others may be fortunate in being located in areas where there is relatively few viable alternatives or where significant growth is planned.

In the Preamble to the Regulation, it is recognised that rail passengers are the weaker party to the transport contract, and therefore that passengers' rights should be safeguarded. It continues by stating that "strengthened rights of compensation and assistance in the event of delay, missed connection or cancellation of a service should lead to greater incentives for the rail passenger market, to the benefit of passengers".

We consider that the consistent provision of passenger rights, such as monetary compensation and assistance in the event of delay, to all railway passengers should help make operators more responsive to their passengers' needs and safeguard consumer interests. This is all the more important in view of the virtual monopolies that train companies have in running passenger services.

The impact of derogations

Article 2 (4) enables a member state to make an exemption with regard to application to domestic services for a period of no longer than five years, which may be renewed twice for a maximum of five years on each occasion. Article 2 (5) allows a member state to utilise an indefinite exemption to not apply the provisions to urban, suburban and regional rail services.

We recognise that the Department for Transport is minded to implement the Regulation as part of its target for the UK's consumer regime to be "as good as any in the world". We agree with this approach and we would be strongly opposed to any request for any exemption. We consider that British consumers should not have their rights deferred or have fewer rights than those given to consumers elsewhere in continental Europe. Providing a consistent system of rights is more likely to be understood by passengers and applied by train service providers than systems that vary between and within member states. Rail passengers' consumer rights would be greatly enhanced both in the UK and across the European Union if they can be based upon consistent regulation. Lastly, we consider that the Department's proposals for transposition of the Regulation show that many of its provisions reflect current practice or are exceeded either in licence requirements, franchise agreements or the National Conditions of Carriage.

Our concern with exempting one section of passengers from the Regulation is that throughout the country passengers making identical journeys would have varying degrees of consumer protection. If domestic services were made exempt for a period of up to 15 years, passengers travelling on international services to intermediate stations between Belfast and Dublin would have fewer rights than those travelling across the border. Similarly, a passenger buying a through ticket between Luton and Paris would have different rights to one travelling with separate tickets between Luton and London and London and Paris. In the event that inter-urban services were subject to the Regulation but urban, suburban and regional services remained exempt as would be the case after 2024 if the full derogations were utilised, passengers making journeys between towns such as Luton, Reading, Peterborough, Slough, Milton Keynes or Colchester and London could find that their journeys are subject to the regulation on some journeys but not on other journeys. The impact would also vary across the country, with the majority of railway passengers in the London area not being covered by the Regulation while consumers making journeys of a similar distance in other parts of the country would be covered.

If the Department was minded to exercise such derogations, we consider that such distinctions would be a recipe for confusion and would serve only to undermine network benefits. It would be difficult, if not impossible, to explain to consumers their varying rights, and would ultimately lead them to not understand or exercise them.

Article 17 – Compensation of the ticket price

Our response concentrates in particular on the issue of compensation for delays and our analysis as to the cost and benefits of introducing Article 17 of the Passengers' Rights Regulation. Overall, we recognise that the minimum specified standard of compensation is lower than that currently provided in Britain through the National Rail Conditions of Carriage and operators' Passenger Charters. We would however consider that any proposal to dilute the current level of compensation to the minimum to be a retrograde step, and welcome the fact that there is no indication that the Department intends to reduce compensation to the minimum legal level. The main difference is that currently, in the UK, there is no provision for compensation to be paid in cash terms.

In undertaking our analysis we have given consideration to what proportion of passengers currently claim compensation and what factors prevent them from doing so. We have also considered who the beneficiaries are of the current system of compensation.

(i) How many passengers currently claim compensation and what is the cost impact of this?

To our knowledge, there are no published figures showing the number of passengers entitled to compensation under the current system, nor how much compensation is paid each year by train operators. Further, we do not know how much of this compensation is recharged to Network Rail for delays which are their responsibility under Track Access arrangements.

Our view is that currently only a small proportion of passengers claim the compensation to which they are entitled for delays to their journeys. We know, for instance, that in Period 4 this year, First Capital Connect received around 4,000 Delay Repay claims but that 569 of their services were delayed by over 20 minutes. Even allowing for the fact that some of these services would have been delayed by less than the threshold period for compensation of 30 minutes and that on a high frequency railway many passengers could take an alternative service, this suggests that very few passengers claim for the compensation to which they are entitled.

We note that, during the same period, 67% of First Capital Connect's delay minutes to services were apportioned to Network Rail, which suggests that the train operator was able to claim a significant amount of compensation from them.

We do not know whether or not the level of compensation received from Network Rail is greater than that paid out to passengers for delays by rail operators, and as such if it acts as a net revenue stream or not. However, indications have been made to us that for some operators this has been the case at certain times.

With regards international travel within the UK, we understand that Eurostar does not have a similar arrangement for track access compensation for delays caused by Network Rail. So, for example, the compensation paid as a result of the delays caused by the recent tunnel fire incident did not include any offset from Network Rail.

Our conclusion is that, it would assist this debate, if there was greater transparency on these issues than there is currently. We are concerned that, even under a relatively user-friendly system of compensation such as “Delay Repay”, the majority of passengers are failing to exercise their right to compensation for delays. We would therefore challenge any reluctance by UK train operators to improve these rights as they appear to be significantly benefiting from the current situation.

(ii) Passenger knowledge of compensation rights

In 2002, the Strategic Rail Authority carried out research *“Towards a transparent and equitable compensation policy”* which suggested at that time only 40% of rail passengers were aware that compensation was available for their delay, and of those, only half were aware that they had received compensation. The report concluded that awareness of the compensation that exists was limited and that, if rail bodies wished to be seen as fair with passengers, the issue of compensation needed to be brought to their attention rather than expecting passengers to be proactive in enquiring.

We contend that passenger knowledge of compensation rights is unlikely to be significantly higher today than in 2002. Indeed, in view of a number of developments within the industry, it may be that fewer passengers are aware of their entitlement to claim compensation now than when this research was carried out.

Compensation schemes have been subject to change at different times for different operators, with operators tending only to transfer to “Delay Repay” compensation regimes when franchises are renewed. They also continue to vary significantly by operator, with a number of train operators still operating compensation schemes for season ticket holders based on average performance. The proliferation of new ticketing products such as Oyster, mobile phone and e-ticketing makes it more difficult for passengers to understand their rights to compensation and how they might go about claiming. We are also aware of instances where operators – both correctly and incorrectly – have refused to compensate Oyster card holders as they do not hold tickets issued by the operator themselves.

In view of this, establishing a legal right to a minimum level of compensation for delays is likely to lead to greater knowledge of their rights by passengers. We consider that this would reflect government’s stated policy of wanting to see empowered consumers who are able to make informed choices. We consider that providing a consistent system of rights is more likely to be understood by passengers than systems that vary between one another.

A greater awareness of their rights would encourage passengers to utilise them and would ultimately encourage consistent improvements in train service as well as punish poor performance by operators.

(iii) The claim process and value of claim

While a more uniform system of passenger rights would encourage greater awareness of rights to compensation for delays, on its own it may not provide a more accountable and competitive rail industry.

We consider that while it is likely that the main reason that so few passengers claim compensation is that they are not aware that any compensation is available for their delay, some passengers will still not claim compensation because the process to make the claim is too unwieldy or the value of compensation is too low to make it worth their while. For instance, a delay of 30 minutes for a journey for a season ticket holder between Luton and London would typically lead to a compensation payment of £3.00 in National Rail vouchers, which some passengers would consider is outweighed by the time and effort required to make a claim.

We note that relatively few operators – Eurostar and Heathrow Express are known exceptions – hand out compensation claim forms to their passengers on the train in the event of a delay. Similarly, while some operators have web forms available to enable passengers to submit their claims for compensation on line, others do not. Some operators such as First ScotRail insist on receiving a copy of the train ticket because of a fear of fraud even when the amounts are relatively small.

Currently, the rail industry forces passengers to contact the individual rail operator in order to make a claim for a delay. As such, passengers may have to contact more than one different operator during the course of a year in order to be compensated for delays they have experienced. In some cases, such as a journey between London and Bedford or between Exeter and Plymouth, the passenger may have to make a claim for compensation from two separate operators depending on which operator they choose to use on that particular day. Operators frequently change name or trade under more than one identity which can result in confusion to passengers. For example, well-established brands such as Thameslink have been replaced by First Capital Connect and Stansted Express airport services are operated by National Express East Anglia.

The Preamble to the Regulation states that “rail passengers should be able to submit a complaint to any railway undertaking involved regarding the rights and obligations conferred by this Regulation, and be entitled to receive a response within a reasonable period of time”. We consider that, to reflect this, there is a strong case for enabling claims for delays to be made through the National Rail website with ATOC either dealing with claims on behalf of train operators or seamlessly redirecting passengers to the relevant train operator or their website. An example of how a centralised claim service could work is demonstrated by the commercially-run TrainDelays website (www.traindelays.co.uk). Similarly, individual train operators should be able to act as proxy on behalf of other train operators for compensation claims, and a procedure should exist to ensure that the relevant train operator is compensated.

(iv) How should any compensation be paid?

In 2002, the Strategic Rail Authority found when it carried out research "*Towards a transparent and equitable compensation policy*" that direct transfer of compensation into a bank account or a rebate by cheque or card was the clearly favoured preference of passengers. While bank transfers were favoured more by commuters, cheque or card rebates were most favoured by business and leisure travellers. More importantly, it was clear that all groups disliked receiving compensation in the form of National Rail vouchers and those leisure travellers on longer journeys, whose compensation would be the greatest, disliked this form of compensation the most.

There are many reasons why passengers would prefer to be compensated in cash terms. Firstly, there is the ethical case for compensating passengers in cash terms. We consider that many passengers would argue that, if you pay for a good in cash, you should be able to receive compensation for delays in the same terms. Providing cash compensation provides tangible and immediate compensation to the passenger for being inconvenienced, while providing vouchers is akin to promising that you will be compensated at some stage in the future (or in some cases, not at all).

We have evidence from our casework that vouchers are not a suitable form of compensation for all types of passenger or for every type of ticket transaction. For instance, it is not currently possible to purchase train tickets online using vouchers, so those passengers with vouchers are often unable to access the cheapest rail tickets available for any particular journey. Passengers who are used to using Oyster (or, in future, other smartcards) may not know how to use vouchers in conjunction with their cards or may find that ticket office staff are unwilling to assist them in doing so. As rail vouchers have a 12-month expiry date, they can be an unfair and inconvenient form of compensation for leisure or occasional passengers and season ticket holders. In particular, those passengers who purchase tickets infrequently such as leisure travellers, Freedom Pass holders or visitors from overseas, may feel unable to use any vouchers issued to them. Other passengers may simply have lost confidence in their local train operator and may not wish to use them again.

We recognise that where such passengers have contacted us, we have often been able to persuade the operator to compensate them in cash instead (albeit on occasion an operator may not be prepared to pay the same cash value as they would in vouchers). However, we do not know how many passengers make more expensive purchases for a journey in order to use their vouchers, fail to use them at all or pass them on to someone else who may be able to make use of them because vouchers are inconvenient or unsuitable to them.

We are aware that train operators have in the past, or currently do, utilise a variety of systems to refund passengers. The predecessor operator to First Capital Connect, Thameslink, frequently paid compensation for void days in cash through its ticket offices. Transport for London often refunds overpayments on Oyster cards directly back to the card itself electronically through its ticket barriers. Compensation for unused tickets or successful penalty fare appeals are, on the other hand, usually paid by cheque.

One operator that is not part of the National Rail system, Heathrow Express, currently provide refunds for all delays of over 15 minutes within their control directly to a customer's

debit or credit card. Complimentary tickets are also often provided in addition to the cash refund to encourage passengers to use their service again. While Heathrow Express are a relatively small operator with a relatively high level of punctuality (93% within five minutes in the last quarter), the processing of all complaints and refunds is currently undertaken by two customer service staff. This indicates to us that the administrative impact of such a change on train operators should not be exaggerated. The relatively low number of claims received by Heathrow Express reflects the short journey time and high frequency and reliability achieved. However, it also indicates that the fear that payment in cash could lead to the operator being overwhelmed by claims would appear unfounded.

It is difficult for us to ascertain the cost impact on train operators of moving from a voucher-based compensation system to a cash-based one. We understand that by using vouchers operators may be able to get relief from Corporation Tax. Providing vouchers may encourage rail passengers to make journeys by rail that they would not otherwise do. Equally, however, we consider that providing passengers with compensation in a form that they do not find convenient or attractive may discourage them to use a train operator in future.

(v) Conclusion

We consider that the passenger priority for minimal inconvenience and delays, which is reflected by government through regulation, would be reinforced by providing a clear financial incentive for rail operators to improve their punctuality. We consider that, if operators never feel the pain of compensating their passengers, they are less likely to put pressure on reducing the causes of delay.

Article 18 – Assistance in cases of delay

The amount of assistance required by passengers in cases of delay clearly varies by the personal circumstances of the individual concerned, but it is clear that even a relatively small delay may inconvenience passengers. In 2002, the Strategic Rail Authority found when it carried out research *“Towards a transparent and equitable compensation policy”* that most passengers would be inconvenienced by a delay of 15 minutes to their journey.

In this context, it is important to consider what a railway operator should provide in the context of a significant delay of over an hour. We consider that Article 18 provides a reasonable set of provisions for such circumstances.

Article 18(2)(a) states that meals and refreshments should be provided if they are available on the train or in the station or can be reasonably supplied. We recognise that some guidance would be required as to the exact definition of what would be supplied, but note that the provision is not absolute and reflects where such provision can be reasonably supplied. This to an extent reflects the policy of many train operators now and the general duty of care outlined in franchise agreements. Some operators have specific statements on this issue. Chiltern Railways for instance state in their Passenger’s Charter that “on all trains with catering facilities you will be offered complimentary non-alcoholic refreshments if your train is delayed by 1 hour or more”. Southeastern, on the other hand, is proposing to establish standing arrangements to have contingency refreshments on board their longer

distance mainline services. However, overall, it is difficult to verify whether train operators have active contingency arrangements to serve refreshments.

In the event of a delay of over an hour, Article 18(2)(b) states that hotel or other accommodation and transport between the railway station and the place of accommodation would be provided in cases where a stay of one or more nights becomes necessary where and when physically possible.

Article 18(2)(c) states that, in the event of a delay of more than 1 hour, if the train is blocked on the track, passengers will be offered transport from the train to the railway station, to the alternative departure point or to the final destination of the service, where and when physically possible. More generally, Article 18(3) states that in the event that a railway service cannot be continued anymore, railway undertakings shall organise as soon as possible alternative transport for passengers.

These rights effectively already exist for National Rail passengers. Under the National Rail Conditions of Carriage, provided the disruption is caused by the train company or a rail service company, and the Train Company whose trains you are entitled to use is unable to get you to that destination by other means, any Train Company which is in a position to help will, if reasonably can, either arrange to get you to that destination, or provide overnight accommodation for you. This translates itself in practice to operators providing railway replacement bus services or taxis to ferry passengers to their destination or enabling them to use other operators' services.

However, the recent closure of the Channel Tunnel demonstrated that for Eurostar passengers there may be occasions where railway passengers can effectively be stranded and the railway undertaking does not provide alternative transport services for its passengers. Eurostar states that under its General Conditions of Carriage it is not liable for cancellation or later running where "the behaviour of a third party which we, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which we were unable to prevent".

However, to our knowledge, no such restriction exists in the Convention Concerning International Carriage by Rail (COTIF). Article 6 of the CIV Uniform Rules concerning the Contract of International Carriage of Passengers by Rail is quite clear in stating that "By the contract of carriage the carrier shall undertake to carry the passenger as well as, where appropriate, luggage and vehicles to the place of destination and to deliver the luggage and vehicles at the place of destination".

In addition, Article 32 of the CIV Uniform Rules concerning the Contract of International Carriage of Passengers by Rail states "the carrier shall be liable to the passenger for loss or damage resulting from the fact that, by reason of cancellation, the late running of a train or a missed connection, his journey cannot be continued the same day, or that a continuation of the journey the same day could not be reasonably required because of given circumstances. The damages shall comprise the reasonable costs of accommodation as well as the reasonable costs occasioned by having notified persons expecting the passenger." Operators are only relieved of this liability in the event of circumstances not connected with the operation of the railway; fault on the part of the passenger; or due to behaviour of a third

party which could not be avoided. However, the Article is also explicit in stating that “another undertaking using the same railway infrastructure shall not be considered as a third party”.

Article 8 of the CUI Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic also states that the Infrastructure Manager shall be liable “for pecuniary loss resulting from damages payable by the carrier under the CIV Uniform Rules and the CIM Uniform Rules, caused to the carrier or to his auxiliaries during the use of the infrastructure and having its origin in the infrastructure”.

We consider that Eurostar should ensure that alternative arrangements are made for its passengers in the event of a significant delay such as alternative transport to their destination or provision of hotel accommodation. We consider that, from the passengers’ point of view, where their journey is disrupted this is the minimum they should expect. However, as outlined, we consider that currently there are very few circumstances which would permit or justify any exception to this rule. On this basis, the Regulation on Passenger Rights would not appear to substantially change the current law in relation to Eurostar passengers.

Even if Eurostar were correct in their reliance on its General Conditions of Carriage exempting them from responsibility on the basis of the behaviour of a third party, the determination of whether an incident was preventable or not in our view would be difficult to determine with any degree of certainty outside a thorough enquiry. Our view is that compensation to passengers could not realistically await such a determination, and therefore should be paid at the time of disruption by the operator.

We consider that if a passenger is unable to reach their destination that alternative provision should be made for those who wish to use it. In the case of Eurostar, this may be train and ferry services or air services. We recognise that on such occasions that the railway operator may not necessarily be at fault, but consider that it is a reasonable expectation for them to assist their passengers and for the operator to then consider how it should be reimbursed by its suppliers.

Article 18(4) states that railway undertakings shall, at the request of the passenger, certify on the ticket that the rail service has suffered a delay, led to a missed connection or that it has been cancelled. We recognise that this is not currently a requirement of the National Conditions of Carriage, but consider that in practice few passengers are likely to enforce this right if their experience is that operators process compensation claims in a fair and equitable manner.

I hope that these comments are helpful. Please contact me or Tunde Olatunji of Passenger Focus should you require any further clarification of our views.

Yours sincerely

Bryan Davey
Director, Public Liaison

Our Ref: MF/1
Your Ref:

18 April 2008

Mr Mike Franklyn
Rail Sponsorship & International
Rail & National Networks Group
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Dear Mike

Third Railway Package: Regulation (EC) 1371/2007 – Passengers’ Rights and Obligations

Thank you for providing us with an opportunity to outline our preliminary views on how Regulation (EC) 1371/2007 relating to Passenger Rights and Obligations should be transposed into national law.

London TravelWatch welcomes the Regulation on Passenger Rights and Obligations, with which it has been active in development through the European Passengers Federation and in conjunction with Passenger Focus. We also concur with the views set out in the Preamble to the Regulation that, since rail passengers are the weaker party to the transport contract, passengers’ rights in this respect should be safeguarded.

We were therefore concerned that the initial thoughts of the Department for Transport were to adopt a ‘light touch’ approach to this regulation and to make use of the exemption in relation to domestic services and the indefinite exemption in relation to urban, suburban and regional passenger services. Our concern is that, in proposing to take this approach, the Department may be giving too much emphasis to the views of transport providers as opposed to the consumers of rail services for whom the regulation was intended to protect. We also consider that such an approach may contrast somewhat with the Government’s stated aim to provide Britain with a “consumer regime... as good as any in the world”.

Our view is that, to date, we have heard no compelling reason for not implementing the Passenger Rights and Obligations regulation in full. We note that much of what is set out in the regulation relating to the provision of information; the availability of tickets; and compensation regimes is already in place and, in some cases, is bettered by the National Conditions and Passenger Charter regime.

We note that should both exemptions be utilised, after the exemption under Article 2.4 has lapsed, we could face a situation where some domestic rail passengers would be subject to the regulation while others would not. We are concerned that if the option to exempt “urban, suburban and regional” services indefinitely was utilised, this could mean that the majority of railway consumers in the London area would not be covered by the Regulation while consumers making journeys of a similar distance in other parts of the country would be

covered. Similarly, passengers making journeys between towns such as Luton, Slough, Milton Keynes or Colchester and London could find that their journeys are subject to the regulation on some journeys but not on other journeys. In our view, such a distinction would be a recipe for confusion and would serve only to undermine network benefits.

We recognise that Article 30 (1) of the Regulation requires the Member State to designate a body or bodies responsible for the enforcement of the Regulation. We agree that it would be preferable for the industry to only deal with one regulatory body for day-to-day purposes in relation to this regulation, and note your preliminary view that DfT may be best placed to undertake this enforcement role due to its current responsibility for consumer protection matters.

Our initial view is that the enforcement role may be a function best performed by ORR. We consider that such an arrangement would overcome any potential conflict between the DfT's role in specifying franchises and enforcing passenger rights. In addition, we consider that such an arrangement would potentially be simpler as ORR already has established relationships with the Open Access operators and Network Rail who will be subject to this regulation but are not subject to franchise agreements with the DfT. Lastly, we would welcome some discussion at a future stage as to how the DfT envisages that compliance to the regulation will be monitored and enforced.

I hope that these comments are helpful. Please contact me should you require any further clarification of our views.

Yours sincerely

Bryan Davey
Director, Public Liaison