
STATUTORY INSTRUMENTS

2010 No. 1504

TRANSPORT

The Rail Passengers' Rights and Obligations Regulations 2010

Made - - - - 26th May 2010
Laid before Parliament 2nd June 2010
Coming into force - - 25th June 2010

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 ^{M1}.

He is a Minister designated for the purposes of that section in relation to measures relating to railways and railway transport ^{M2}.

Marginal Citations

- M1** 1972 c.68. Section 2(2) was amended by the [Legislative and Regulatory Reform Act 2006 \(c.51\)](#), [section 27\(1\)\(a\)](#), and the [European Union \(Amendment\) Act 2008 \(c.7\)](#), the Schedule.
- M2** [S.I. 1996/266](#), to which there are amendments not relevant to these Regulations.

PART 1

Preliminary

Citation and commencement

1.—(1) These Regulations may be cited as the Rail Passengers' Rights and Obligations Regulations 2010.

(2) These Regulations come into force on 25th June 2010.

Extent

2. These Regulations do not extend to Northern Ireland.

Interpretation

3.—(1) In these Regulations—

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“the European 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 ^{M3}[^{F1}as amended by the Rail Passengers' Rights and Obligations (Amendment) (EU Exit) Regulations 2018];

“the 1993 Act” means the Railways Act 1993 ^{M4},

“the ORR” means the [^{F2}Office of Rail and Road].

(2) An expression used in these Regulations and in the European Regulation has the same meaning as in the European Regulation.

- F1** Words in reg. 3(1) inserted (31.12.2020) by The Rail Passengers' Rights and Obligations (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1165), regs. 1(2), 2(a); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Words in reg. 3(1) substituted (16.10.2015) by The Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), reg. 1(2), Sch. para. 10(bb)(i)

Marginal Citations

- M3** OJ No. L315, 3.12.2007, p.14.
- M4** 1993 c.43. Part 1 of that Act was amended by the Deregulation and Contracting Out Act 1994 (c.40), Schedules 2, 4 and 17, the Competition Act 1998 (c.41), Schedules 10 and 14, the Pollution Prevention and Control Act 1999 (c.24), Schedule 2, the Greater London Authority Act 1999 (c.29), section 200, the Transport Act 2000 (c.38), sections 212, 223, 224, 225, 226, 230, 232, 242 and 243 and Schedules 16, 17, 27 and 31, the Enterprise Act 2002 (c.40), Schedules 9 and 25, the Railways and Transport Safety Act 2003 (c.20), Schedules 2 and 8, the Communications Act 2003 (c.21), Schedule 16, the Railways Act 2005 (c.14), sections 3 and 21 and Schedules 1, 11 and 13, the Tribunals, Courts and Enforcement Act 2007 (c.15), Schedule 13 and S.I. 1999/506, article 33, 1999/1750, Schedule 5, 2003/1398, the Schedule, 2004/1261, Schedule 2, 2005/3049, regulation 2 and 2005/3050, Schedule 1.

PART 2

Relationship between the European Regulation and other passenger rights

CHAPTER 1

Relationship with the rights under the COTIF Convention

Relationship with the COTIF Convention and COTIF Regulations

4.—(1) To the extent that there is a conflict between—

- (a) the COTIF Regulations, including the Convention to which they give the force of law, and
- (b) these Regulations,

the latter shall prevail.

(2) In the COTIF Regulations, after regulation 2 (interpretation), insert—

“Relationship with the Rail Passengers' Rights and Obligations Regulations 2010

2A. To the extent that there is a conflict between—

- (a) these Regulations, including the Convention to which they give the force of law, and
- (b) the Rail Passengers' Rights and Obligations Regulations 2010,

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the latter shall prevail.”

(3) In this regulation—

“the Convention” has the same meaning as in the COTIF Regulations, and

“the COTIF Regulations” means the Railways (Convention on International Carriage by Rail) Regulations 2005 ^{M5}.

Marginal Citations

M5 [S.I. 2005/2092](#).

CHAPTER 2

Civil remedies

Contribution between parties responsible for damage

5.—(1) Sections 1 and 2 of the Civil Liability (Contribution) Act 1978 ^{M6} (entitlement to and assessment of contribution) do not apply where liability for contribution between persons liable in respect of the same damage is governed by the European Regulation.

(2) In paragraph (1), “contribution between persons liable in respect of the same damage” has the same meaning as in section 1(1) of the Civil Liability (Contribution) Act 1978 (entitlement to contribution).

(3) Section 3 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 ^{M7} (contribution among joint wrongdoers) does not apply where liability inter se for contribution between persons liable in damages or expenses is governed by the European Regulation.

(4) In paragraph (3), “liability inter se for contribution between persons liable in damages or expenses” has the same meaning as in section 3 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940.

Marginal Citations

M6 [1978 c.47](#).

M7 [1940 c.42](#).

Claims relating to advance payments

6.—(1) No person may bring proceedings against a railway undertaking in respect of an infringement of the right conferred by Article 13(1) of the European Regulation unless—

(a) the person 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) In proceedings in respect of the breach of a right to an advance payment under Article 13 of the European Regulation, to the extent that this would not conflict with that Article, the court has jurisdiction to reduce an award to take into account the extent to which the undertaking acted reasonably.

(3) In such proceedings, the court has jurisdiction to reduce the award, or decline to make such an award, to take into account—

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- (a) any interim payment made in respect of the accident under—
 - (i) in England and Wales, Part 25 of the Civil Procedure Rules 1998 ^{M8}, or
 - (ii) in Scotland—
 - (aa) rule 43.11 of the Rules of the Court of Session 1994 ^{M9}, or
 - (bb) rule 36.9 of the Ordinary Cause Rules 1993 ^{M10}; or
- (b) any payment made in any court proceedings in respect of the accident.

(4) In any other proceedings, including proceedings for an interim payment under the enactments referred to in paragraph (3)(a), the court has jurisdiction to award a lesser amount than it would otherwise have awarded to take into account the fact that an award has been made under Article 13(1) of the European Regulation.

Marginal Citations

- M8** [S.I. 1998/3132](#); relevant amending instruments are the [Constitutional Reform Act 2005 \(c.4\)](#), [Schedule 11](#), [S.I. 1999/1008](#), regulation 8, [2000/221](#), regulation 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.
- M9** The Rules of the Court of Session are set out in [Schedule 2](#) to the Act of Sederunt (Rules of the Court of Session 1994) 1994, [S.I. 1994/1443](#) (S.69), amended by [S.S.I. 2002/570](#), [S.S.I. 2004/331](#) and [S.S.I. 2006/83](#).
- M10** First Schedule to the Sheriff Courts (Scotland) Act 1907(c.51) as substituted in respect of causes commenced on or after 1st January 1994 by [S.I. 1993/1956](#) and amended by [S.S.I. 2004/197](#).

Fatal accidents: England and Wales

7.—(1) Where, by virtue of the European Regulation, any person has a right of action in respect of the death of a passenger by reason of that person 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 section 1 of the Fatal Accidents Act 1976 ^{M11} (right of action for wrongful act causing death) (“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 the 1976 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 in reliance on section 1A of the 1976 Act.

(3) Section 4 of the 1976 Act (assessment of damages: disregard of benefits) applies in relation to an action brought under the European Regulation as it applies in relation to an action brought under that Act.

(4) Where separate proceedings are brought under the European Regulation and under the 1976 Act in respect of the death of a passenger, a court, in awarding damages under that Act—

- (a) shall take into account any damages awarded in the proceedings brought under the European Regulation, and
- (b) has jurisdiction to make any part of its award conditional on the result of those proceedings.

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Marginal Citations

M11 1976 c.30. That Act was amended by the [Administration of Justice Act 1982 \(c.53\)](#), [section 3](#), the [Civil Partnerships Act 2004 \(c.33\)](#), [section 83](#), and S.I. 2007/3489.

Fatal accidents: Scotland

8.—(1) This regulation extends to Scotland only.

(2) Subject to paragraph (3), no enactment or rule of law shall have effect so as to permit a person who has a right of action under the European Regulation in respect of the death of a passenger by virtue of him or her 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 or her.

(3) Paragraph (2) shall not apply in so far as the other action concludes for an award under section 1(4) of the Damages (Scotland) Act 1976 ^{M12}.

(4) Section 1(5) of that Act (exclusion of certain items in assessment of damages) shall apply to an action brought under the European 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 European Regulation.

(5) Where separate proceedings in respect of the death of a passenger are brought under the European 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 European Regulation and may make any part of its award conditional on the result of those proceedings.

Marginal Citations

M12 1976 c.13; [section 1\(4\)](#) was amended by the [Damages \(Scotland\) Act 1993 \(c.5\)](#), [section 1\(1\)](#).

Periodical payments

9. In section 2 of the Damages Act 1996 ^{M13} (periodical payments), before subsection (1), add—

“(A1) In cases where Regulation (EC) No. 1371/2007 of the European Parliament and of the Council of 23rd October 2007 on rail passengers' rights and obligations applies, this section needs to be read in the light of Article 30 of the Uniform Rules concerning the contract for the international carriage of passengers and luggage by rail (damages to be awarded as annuity on request), as set out in Annex I to that Regulation.”

Marginal Citations

M13 1996 c.48. Section 2 was substituted, in respect of England and Wales, by the [Courts Act 2003 \(c.39\)](#), [section 100](#).

CHAPTER 3

Rights of disabled persons and persons with reduced mobility

Amendment of section 19 of the Disability Discrimination Act 1995

^{F3}10.

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F3 [Reg. 10](#) omitted (1.10.2010 immediately after the commencement of S.I. 2010/2779) by virtue of [The Equality Act 2010 \(Commencement No. 4, Savings, Consequential, Transitional, Transitory and Incidental Provisions and Revocation\) Order 2010 \(S.I. 2010/2317\)](#), arts. 1(2), **23**

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 European 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 European 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 in pursuance of arrangements under section 27 of the Equality Act 2006 ^{M14} 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.

Marginal Citations

M14 [2006 c.3](#). Section 27 was amended by [S.I. 2006/1031](#), 2007/1895, 2007/2405 and 2007/2914.

Amendment of section 27 of the Equality Act 2006

12. In section 27 of the Equality Act 2006 (conciliation), after subsection (1A), insert—

“(1B) The Commission may make arrangements for the provision of conciliation services for disputes in respect of which proceedings have been or could be brought in England and Wales or Scotland under regulation 11 of the Rail Passengers' Rights and Obligations Regulations 2010 (compensation claims by disabled persons and persons with reduced mobility).”

PART 3

Regulation of the railway

Enforcement body: the [^{F4}Office of Rail and Road]

13.—(1) Subject to paragraph (4), the ORR is designated as the enforcement body for ^{F5}... the European Regulation.

(2) Accordingly, it is the duty of the ORR to use its powers under these Regulations and any other enactment to take the measures necessary to ensure that the European Regulation is complied with.

(3) Section 4(1) to (6) of the 1993 Act (general duties of the Secretary of State and the Office of [^{F6}Office of Rail and Road]) do not apply in relation to the performance by the ORR of its functions under Part 1 of the 1993 Act or the Railways Act 2005 ^{M15} in so far as its exercise of those functions is for the purposes of ensuring that the European Regulation is complied with.

(4) The ORR is not the enforcement body in relation to Article 26 of the European Regulation (personal security of passengers).

- F4** Words in [reg. 13](#) heading substituted (16.10.2015) by [The Office of Rail Regulation \(Change of Name\) Regulations 2015 \(S.I. 2015/1682\)](#), [reg. 1\(2\)](#), [Sch. para. 10\(bb\)](#)
- F5** Words in [reg. 13\(1\)](#) omitted (31.12.2020) by virtue of [The Rail Passengers' Rights and Obligations \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1165\)](#), [regs. 1\(2\)](#), [2\(b\)](#); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)
- F6** Words in [reg. 13](#) substituted (16.10.2015) by [The Office of Rail Regulation \(Change of Name\) Regulations 2015 \(S.I. 2015/1682\)](#), [reg. 1\(2\)](#), [Sch. para. 10\(bb\)\(ii\)](#)

Marginal Citations

M15 [2005 c.14](#).

Duties of the ORR in respect of station licences

14.—(1) The ORR must include, or require the Secretary of State to include, in a station licence issued under section 8 of the 1993 Act on or after the date on which these Regulations come into force conditions that ensure that the licence holder complies with the provisions of the European Regulation specified in the Schedule that apply to station managers.

(2) Where a station licence has been issued before the date on which these Regulations come into force, the ORR may, where in its opinion it is necessary or expedient to do so—

- (a) modify or require to be modified any existing licensing condition, or
- (b) impose or require to be imposed a licence condition,

in each case to ensure that the licence holder complies with the provisions of the European Regulation specified in the Schedule that apply to station managers.

(3) This regulation applies only in relation to the operation of stations used or to be used for the purposes of rail journeys to which the European Regulation applies.

(4) In this regulation, “station” and “station licence” have the meaning given by section 83 of the 1993 Act.

Duties of the ORR in respect of European licence conditions

15.—(1) The ORR must include in any statement of national regulatory provisions issued under the Railway (Licensing of Railway Undertakings) Regulations 2005 ^{M16}, on or after the date on which

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these Regulations come into force, conditions that ensure that the licence holder complies with the provisions of the European Regulation specified in the Schedule that apply to railway undertakings.

(2) Where such a statement has been issued before the date on which these Regulations come into force, the ORR may, where in its opinion it is necessary or expedient to do so—

- (a) modify any existing condition in the statement, or
- (b) impose in the statement a condition,

in each case to ensure that the licence holder complies with the provisions of the European Regulation specified in the Schedule that apply to railway undertakings.

Marginal Citations

M16 S.I. 2005/3050.

Personal security of passengers

16. Where in the opinion of the Secretary of State it is necessary or expedient to do so, the Secretary of State shall use the powers under section 119 of the 1993 Act to ensure that Article 26 of the European Regulation (personal security of passengers) is enforced.

Channel Tunnel Rail Link station operators and independent ticket vendors

17.—(1) Subject to regulation 13(3), sections 55 to 58 of the 1993 Act apply to a breach of the requirements to which paragraphs (2) and (3) apply as those sections apply to a breach by a licence holder of the conditions of its licence.

(2) This paragraph applies to a breach by the operator of a rail link station of the requirements imposed on station managers by the provisions of the European Regulation listed in the Schedule.

(3) This paragraph applies to a breach by a ticket vendor who is not a railway undertaking of the requirements imposed on ticket vendors by the provisions of the European Regulation listed in the Schedule.

(4) In this regulation—

“operator”, “licence” and “licence holder” have the same meaning as in Part I of the 1993 Act ^{M17};

“rail link station” has the same meaning as in section 16 of the Channel Tunnel Rail Link Act 1996 ^{M18}.

Marginal Citations

M17 See sections 55 and 83 of that Act.

M18 1996 c.61.

Bodies handling complaints

18.—(1) The Passengers' Council is designated as a body to which complaints may be made [^{F7}about an alleged infringement of the European Regulation], in relation to matters that fall within its functions under any enactment (other than this regulation), disregarding any order made under section 76(7B) or (7C) of the 1993 Act ^{M19} (power to exclude specified services from general duties of the Passengers' Council).

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(2) In matters for which the Passengers' Council is a body to which complaints may be made [F8 about an alleged infringement of the European Regulation], section 76 of the 1993 Act (general duties of the Passengers' Council) has effect as if—

- (a) in subsection (5)—
 - (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 paragraph (i), the words “unless representations about the matter have been made to the Secretary of State by the Passengers' Council” were omitted,
- (b) subsection (5A) M20 were omitted, and
- (c) in subsection (7), the reference to the Secretary of State included a reference to the ORR.

(3) The London Transport Users' Committee is designated as a body to which complaints may be made [F9 about an alleged infringement of the European Regulation], in relation to matters that fall within its functions under any enactment (other than this regulation), disregarding any order made under section 252E of the Greater London Authority Act 1999 M21 (power to make exclusions from duties of Committee).

(4) In matters for which the London Transport Users' Committee is a body to which complaints may be made [F10 about an alleged infringement of the European Regulation], section 252C of the Greater London Authority Act 1999 (action on investigation under section 252B) 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 paragraph (i), the words “subject to subsection (4)” were omitted,
- (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),
- (c) subsection (5) were omitted, and
- (d) in subsection (6), the reference to the Secretary of State included a reference to the ORR.

- | | |
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| F7 | Words in reg. 18(1) substituted (31.12.2020) by The Rail Passengers' Rights and Obligations (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1165) , regs. 1(2), 2(e) ; 2020 c. 1, Sch. 5 para. 1(1) |
| F8 | Words in reg. 18(2) substituted (31.12.2020) by The Rail Passengers' Rights and Obligations (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1165) , regs. 1(2), 2(e) ; 2020 c. 1, Sch. 5 para. 1(1) |
| F9 | Words in reg. 18(3) substituted (31.12.2020) by The Rail Passengers' Rights and Obligations (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1165) , regs. 1(2), 2(e) ; 2020 c. 1, Sch. 5 para. 1(1) |
| F10 | Words in reg. 18(4) substituted (31.12.2020) by The Rail Passengers' Rights and Obligations (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1165) , regs. 1(2), 2(e) ; 2020 c. 1, Sch. 5 para. 1(1) |

Marginal Citations

- M19** [Section 76\(7B\)](#) and (7C) were inserted by the [Transport Act 2000 \(c.38\)](#), [section 228\(1\)](#) and (4).
- M20** [Section 76\(5A\)](#) was inserted by the [Transport Act 2000](#), [Schedule 17](#), and amended by the [Railways Act 2005 \(c.14\)](#), [Schedule 1](#), and the [Railways and Transport Safety Act 2003 \(c.20\)](#), [Schedule 2](#).
- M21** [1999 c.29](#). Sections 252A to 252E were inserted by the [Railways Act 2005 \(c.14\)](#), [Schedule 6](#).

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Restrictions on disclosure of information

19. Section 145 of the 1993 Act (restriction on disclosure of information) shall have effect in relation to information—

- (a) which has been obtained by the ORR, the Passengers' Council or the London Travel Users' Committee in the exercise of their functions under Article 30, and
- (b) 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

Department for Transport

Theresa Villiers
Minister of State

SCHEDULE

Regulations 14, 15 and 17

European Regulation provisions to be enforced through licensing conditions and Statements of National Regulatory Provisions

Article 4 (transport contract)

Article 5 (bicycles)

Article 6 (exclusion of waiver and stipulation of limits)

Article 7 (obligation to provide information concerning discontinuation of services)

Article 8 (travel information)

Article 9 (availability of tickets, through tickets and reservations)

Article 10 (travel information and reservation systems), paragraphs (1), (2), (4) and (5)

Article 11 (liability for passengers and luggage)

Article 12 (insurance), paragraph (1)

Article 13 (advance payments)

Article 14 (contestation of liability)

Article 15 (liability for delays, missed connections and cancellations)

Article 16 (reimbursement and re-routing)

Article 17 (compensation of the ticket price)

Article 18 (assistance)

Article 19 (right to transport)

Article 20 (information to disabled persons and persons with reduced mobility)

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Article 21 (accessibility)

Article 22 (assistance at railway stations)

Article 23 (assistance on board)

Article 24 (conditions on which assistance is provided)

Article 27 (complaints)

Article 28 (service quality standards)

Article 29 (information to passengers about their rights)

EXPLANATORY NOTE

(This note is not part of the Regulations)

This instrument makes 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 European Regulation”). The European Regulation harmonises, across the European Union, the rules regarding the rights and obligations of rail passengers. The European Regulation 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). The European Regulation 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) (“the COTIF Regulations”).

This instrument first makes provision concerning the relationship between domestic law and the European Regulation (Part 2). Then, it deals with the regulatory enforcement of the European Regulation (Part 3).

Where this is not incompatible with the European 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 European Regulation prevails over COTIF and the COTIF Regulations. *Regulation 4* provides that the implementing measures under these Regulations also prevail, in case of a conflict, over the COTIF Regulations and COTIF itself, where the two are inconsistent, and amends the COTIF Regulations accordingly.

Regulation 5 provides that the right, under the Civil Liability (Contribution) Act 1978 (in England and Wales) and the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 (in Scotland), of a person found liable for an accident, to recover a contribution from those who have also been

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responsible for the accident, does not apply where the right to a contribution is already governed by the European Regulation.

The European Regulation makes provision for payment of an advance payment, shortly after an accident, to victims of the accident and their dependents, to cover their short-term needs, even though liabilities have yet to be determined. *Regulation 6* sets out an obligation to give advance notice of court proceedings relative to such a payment to the undertaking. It also gives jurisdiction to the court to reduce the award where the railway undertaking has acted reasonably. Finally, it deals with the relationship between claims for advance payments and other claims, including claims for an interim payment under, in England and Wales, Part 25 of the Civil Procedure Rules 1999 or, in Scotland, rule 43.11 of the Rules of the Court of Session and, for the Sheriff Court, rule 36.9 of the Ordinary Cause Rules.

Regulations 7 and 8 deal with the relationship between rights under the European Regulation and claims, in England and Wales, 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 – “the 1996 Act”), 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* amends the 1996 Act, reminding the reader of these provisions that they are subject to Article 30(1) of Annex I to the European Regulation, under which periodical payments must be paid if national law so permits and the claimant so requests.

Regulations 10 and 11 make provision in respect of the rights, under the European 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 European Regulation. *Regulation 11* creates a right to damages, enforceable in the courts, for breach of the rights of DPRMs. *Regulation 12* provides that, in respect of that right, the Commission for Equality and Human Rights fulfils a role similar to the one it has in respect of the 1995 Act in making arrangements for conciliation.

The European Regulation requires the designation of enforcement bodies to take the measures necessary for its effective implementation. *Regulation 13(1)* designates the Office of Rail Regulation (ORR), except for the purposes of handling individual complaints (as to which see below on regulation 18), and for the purpose of enforcing Article 26 of the European Regulation on the personal security of rail passengers (as to which see below on regulation 16). *Regulation 13(2)* places the ORR under an obligation to use its powers under this instrument and any other enactment, including Part I of the Railways Act 1993 (“the 1993 Act”), the Railway (Licensing of Railway Undertakings) Regulations 2005 (“the 2005 Regulations”) and regulations 14 and 15 of this instrument, to take the measures necessary to ensure that the European Regulation is complied with. Furthermore, by virtue of *regulation 13(3)*, the general duties under section 4 of the 1993 Act do not apply in those circumstances.

Regulations 14 and 15 provide for enforcement of the European Regulation through the railway licensing regimes. They require the ORR to impose, or require to be imposed by the Secretary of State, on station operators and railway undertakings, licence conditions under section 8 of the 1993 Act (for station operators) and Statements of National Regulatory Provisions (SNRPs) under the 2005 Regulations (for railway undertakings) sufficient to ensure that the Regulation provisions listed in the Schedule are complied with. As far as existing licences and SNRPs are concerned, the ORR is given the power to modify them, or, where appropriate, require them to be modified by the Secretary of State, if necessary or expedient.

By virtue of Part 3 of the Railways and Transport Safety Act 2003, many of those providing railway services are already required to have in place an agreement with the British Transport Police Authority, under which it polices the railway services and property for which they are responsible. In most cases, this will be sufficient to ensure the enforcement of Article 26 of the

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European Regulation on the personal security of rail passengers. For the cases where it is not, *regulation 16* provides an enforcement mechanism in respect of Article 26 of the European Regulation additional to the one mentioned above in connection with regulation 13. Under section 119 of the 1993 Act, the Secretary of State may give directions to a person who provides railway services or who owns or operates a rail network or a station or other railway assets. Such directions must be given with a view to protecting such assets or persons on or in such assets from acts of violence. *Regulation 16* requires the Secretary of State to use this power to issue instructions where it is necessary or expedient to do so for the purposes of enforcing Article 26 of the European Regulation.

Under section 16 of the Channel Tunnel Rail Link Act 1996, the licensing regime does not cover the operators of stations in the Channel Tunnel Rail Link. Nor are ticket vendors which are not railway undertakings covered by that regime. Nonetheless, under *regulation 17*, the ORR will be able to enforce requirements imposed on them by the European Regulation in the same way as it enforces breaches of licensing requirements.

Under the European Regulation, bodies must be designated to handle complaints for breach of the rights conferred by it. *Regulation 18* designates the 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. *Regulation 18* also modifies the legislation applying to those bodies, so that, in matters relating to the European Regulation, they report, not only to the Secretary of State, but also to the ORR, as the enforcement body.

Regulation 19 concerns the protection of information obtained under or by virtue of these Regulations. It provides that section 145 of the 1993 Act applies to that information too. That section restricts the use of information relating to an individual or business during the lifetime of the individual or the continuation of the business. This is, however, without prejudice to the duty enforcement bodies have to exchange information under Article 31 of the European Regulation, thanks to section 145(2)(k) of that Act.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from David Hibbs, at the Department for Transport, tel. 020 7944 5036, and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.org.uk).

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Changes and effects yet to be applied to :

- schedule rev by [S.I. 2010/1524 reg 2](#)