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## STATUTORY INSTRUMENTS

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# 2010 No. 1504

## The Rail Passengers' Rights and Obligations Regulations 2010

### 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,
- 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 <sup>M1</sup>.

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**Marginal Citations**

M1 [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 <sup>M2</sup> (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.

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(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<sup>M3</sup> (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

**M2** 1978 c.47.

**M3** 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—

- (a) any interim payment made in respect of the accident under—
  - (i) in England and Wales, Part 25 of the Civil Procedure Rules 1998<sup>M4</sup>, or
  - (ii) in Scotland—
    - (aa) rule 43.11 of the Rules of the Court of Session 1994<sup>M5</sup>, or
    - (bb) rule 36.9 of the Ordinary Cause Rules 1993<sup>M6</sup>; 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

**M4** 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.

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- M5** 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](#).
- M6** 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 <sup>M7</sup> (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

- M7** 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 <sup>M8</sup>.

(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

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under the European Regulation and may make any part of its award conditional on the result of those proceedings.

**Marginal Citations**

**M8** 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 <sup>M9</sup> (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**

**M9** 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**

**F1**10. ....

**F1** 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.

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(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 <sup>M10</sup> 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**

**M10** 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).”

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**Changes and effects yet to be applied to :**

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