

# **Regulation (EU) No. 1177/2010 concerning the rights of passengers when travelling by sea and inland waterways**

## **Guidance Note N° 3**

### **The Relationship between the passenger care and compensation regimes in the EU Maritime Passenger Rights Regulation and in other legislation**

1. Generally, the EU Regulation gives passengers rights which are in addition to their existing statutory rights. In most cases, it covers aspects of passenger travel that are outside the scope of other compensation regimes, but there are some points of overlap between regimes.
2. This Guidance Note is intended to guide passengers to the regime that relates to their journey or holiday and, where two or more regimes overlap, to help passengers identify the most appropriate one.

#### **Which regime applies?**

	Compensation for late arrival at destination	Refund, or re-routing in the event of cancelled or badly delayed sailing	Refreshment, meals, and accommodation for stranded passengers
Cruises	Package Travel Directive (depending on the circumstances <sup>1</sup> )	Package Travel Directive <sup>2</sup>	Passenger Rights Regulation <sup>3</sup>
Ferry (travel only)	Passenger Rights Regulation	Passenger Rights Regulation	Passenger Rights Regulation
Ferry (as part of a package)	Package Travel Directive (depending on the	Package Travel Directive OR Passenger Rights	Passenger Rights Regulation

<sup>1</sup> The Directive does not provide for compensation directly. Late arrival will normally be a breach of contract. The Directive imposes liability for that breach on the organiser, including where the late arrival is the fault of another supplier. The Directive does not provide a right to compensation where a contract is not properly performed for reasons of force majeure or where the consumer is at fault.

<sup>2</sup> The Package Travel Directive provides a right to withdraw from a contract (and receive a full refund) where there are significant alterations to essential terms before departure, or to accept an offer of alternative arrangements. If alteration is due to reasons of force majeure, the consumer would not be entitled to additional compensation for damage, e.g. inconvenience.

<sup>3</sup> The Package Travel Directive also contains rights to suitable alternative arrangements where after departure a significant proportion of the services cannot be provided, this could include refreshments and accommodation etc. Also, package organisers are required to have in place protection against their insolvency for consumers to provide for the refund of prepayments and for repatriation.

	circumstances) OR Passenger Rights Regulation	Regulation	
Ferry (not part of package with connecting service)	Passenger Rights Regulation (to value of ticket for the ferry service only)	Passenger Rights Regulation (to value of ticket for the ferry service only)	Passenger Rights Regulation

3. The Package Travel Directive is designed to protect consumers who purchase package travel in the EU. This is where a tour operator provides a combination of at least two out of the three services of either - transport, accommodation and tourist services, for one price. It contains rules concerning the liability of package organisers and retailers, who must accept responsibility for the performance of the services offered. There are some exceptions, for example, cases of "force majeure", or similar circumstances which could be neither foreseen nor overcome.

4. Where both regimes apply, passengers can choose whether to pursue a claim under either the EU Maritime Passenger Rights Regulation or the EU Package Travel Directive but not both.

#### **Connecting Services and multi-modal travel**

5. If a ferry passenger misses a connecting transport service due to a cancellation or delay of a sailing, reasonable efforts will have to be made by the ferry operator to inform those passengers concerned of alternative connections. This however does not apply to cruise passengers as their protection in cases of disruption to travel arrangements forming part of a package is set out in the EU Package Travel Directive 90/314/EEC (implemented in the UK by the Package Travel Regulations 1992).

6. A passenger travelling by a bus or coach that is being transported by a ferry will normally have a transport contract with the bus or coach company rather than the ferry company and therefore is not entitled to be re-routed, refunded or compensated by the ferry company on an individual basis. A specific regime of care and compensation of bus and coach passengers is being introduced on 1 March 2013, by EU Regulation No 181/2011.

7. A passenger travelling on an integrated rail and ferry ticket is considered to have a transport contract with both the rail operator and the carrier and is therefore entitled to be re-routed, refunded or compensated. A passenger can expect any refund to be for the full cost of the ticket in accordance with the relevant section of this document. Details of how to access these entitlements should be available in the carrier's Terms and Conditions.

## Annex A – other provisions

The **Supply of Goods and Services Act 1982** sets out the general duties and responsibilities of a person providing a service. For example, a traveller is entitled to expect that the holiday organiser provides the service with reasonable care and skill. This does not impact on the provisions of The Regulation.

The **Unfair Terms in Consumer Contracts Regulations 1999, which implement Council Directive 93/13/EEC**, allow passengers to challenge standard contractual terms (i.e. terms which have not been individually negotiated) that may be unfair or unreasonable, unfairly weighted against them, or ambiguous.

Terms relating to the definition of the main subject matter of the contract or the adequacy of the price cannot be challenged for unfairness, provided those terms are written in clear, understandable language. The Office of Fair Trading has issued guidance on unfair terms at

<http://www.offt.gov.uk/about-the-offt/legal-powers/legal/unfair-terms/guidance>.

The **Consumer Protection from Unfair Trading Regulations 2008, which implement Directive 2005/29/EC**, deal with the commercial practices of traders and create offences of misleading actions, misleading omissions and aggressive commercial practices.

The **Consumer Protection (Distance Selling) Regulations [Directive 97/77/EC]** govern the rules on sales made at a distance between business and consumers, such as internet sales and phone bookings. However, the information and cooling-off provisions do not apply to contracts for the provision of accommodation, transport, catering or leisure services, where the supplier undertakes, when the contract is concluded, to provide these services on a specific date or within a specific period.

The purchase of a travel insurance policy by the passenger may provide additional protection and assistance. Whether a passenger is entitled to claim in addition under any insurance policy would be subject to the terms and conditions of the insurance policy and would not appear to relieve the transport provider or the package organiser from their obligations under the respective regimes. There is nothing in the EU Maritime Regulations nor the Package Travel Regulations which suggests that a payout under the passenger's insurance policy relieves the respective traders of their obligations and they should not therefore seek to avoid their responsibilities for this reason, say, in their terms and conditions.

Section 75 of the **Consumer Credit Act 1974** makes a credit company jointly and severally liable for the provision of services which cost more than £100 where those services are paid for by credit provided by that credit company. This includes where a UK credit card is used to finance all or part of the purchase - irrespective of where the transaction took place (and whether the supplier is based overseas). Consumers can therefore look to the credit card company for recompense where there is a breach of contract.

The Coalition Government has undertaken to implement **Part 3 of the Equality Act 2010** to ships and hovercraft, and the Department for Transport is currently considering how best to take this forward. Whichever approach for implementing

Part 3 is decided upon, due consideration will be given to the requirements on industry of complying with the EU Regulation on Maritime Passenger Rights<sup>4</sup>.

In the meantime, whilst the provisions of the Equality Act do not currently apply on board a vessel, the provisions do apply to port and all land based services. Therefore operators and passengers should be aware of the Equality Act provisions in this respect.

The new **Consumer Rights Directive** will come into effect in 2014 and harmonise certain aspects of the distance selling and off-premises selling regulations as well as a ban on excessive method of payment surcharges and strengthening the requirements to provide pre-contractual information requirements for on-premises contracts. These measures will provide a level of consumer protection to safeguard consumer interests and increase confidence in cross-boarder shopping. The current provisions on the sale of goods and unfair contract terms will remain in force.

**EU Regulation 181/2011 on the rights of bus and coach passengers** was published in the Official Journal of the European Union on 28 February 2011 and will apply in all EU Member States from 1 March 2013. It aims to make bus and coach transport more attractive to all passengers, including disabled people and people with reduced mobility; and to create a level playing field across Europe, both between operators and different modes of transport.

The EU Regulation, which mainly applies to journeys over 155 miles (250km), lays out the responsibilities of operators and terminal owners in the case of delays, cancellations, accidents and other issues affecting passengers, including disabled passengers and passengers with reduced mobility.

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have been taken into account).

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<sup>4</sup> Part 3 of the Equality Act 2010 in relation to transporting people by ship and hovercraft will not apply to Northern Ireland.