



STATUTORY INSTRUMENTS.

S.I. No. 350 of 2023

EUROPEAN UNION (COOPERATION BETWEEN NATIONAL
AUTHORITIES RESPONSIBLE FOR THE ENFORCEMENT OF
CONSUMER PROTECTION LAWS RELATING TO RAIL PASSENGERS'
RIGHTS AND OBLIGATIONS) REGULATIONS 2023

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I, EAMON RYAN, Minister for Transport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017¹, in so far as it relates to Regulation (EU) 2021/782 of the European Parliament and of the Council of 29 April 2021², hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Cooperation between National Authorities Responsible for the Enforcement of Consumer Protection Laws relating to Rail Passengers' Rights and Obligations) Regulations 2023.

Interpretation

2. (1) In these Regulations -

“Authority” means National Transport Authority;

“Regulation 2017/2394” means Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017¹;

“Regulation 2021/782” means Regulation (EU) 2021/782 of the European Parliament and of the Council of 29 April 2021²;

“trader” has the meaning assigned to it in Article 3 of Regulation 2017/2394.

(2) A word or expression which is used in these Regulations and is also used in the Regulation 2017/2394 has, unless the context otherwise requires, the same meaning in these Regulations as it has in that Regulation.

Competent authority

3. (1) The Authority is designated as the competent authority responsible for the application of Regulation 2017/2394 in so far as it relates to Regulation 2021/782.

(2) For the purposes of investigations relating to Regulation 2017/2394, the Authority shall have the investigation powers referred to in Article 9(3) of Regulation 2017/2394.

¹ OJ No. L345, 27.12.2017, p.1

² OJ No. L172, 17.05.2021, p.1

(3) For the purposes of enforcement of Regulation 2017/2394, the Authority shall have the enforcement powers referred to in Article 9(4)(a) to (g) of Regulation 2017/2394.

(4) The Authority –

- (a) shall have the power to start investigations or proceedings in accordance with Article 9(6) of Regulation 2017/2394, and
- (b) may publish any final decision, trader's commitment or order adopted pursuant to the Council Regulation in accordance with Article 9(7) of Regulation 2017/2394.

(5) The powers referred to in paragraphs (2), (3) and (4) shall be exercised by the authority in accordance with Article 10 of Regulation 2017/2394.

Infringement notice

4. (1) The Authority, where it considers there has been an infringement under Regulation 2017/2394 relating to Regulation 2021/782, may serve on the trader concerned a notice ("infringement notice") to cease the infringement or to bring about the cessation of the infringement within such time as specified in the notice.

(2) Where the Authority proposes to serve an infringement notice, the Authority shall first notify the trader in writing of the Authority's intention to serve the infringement notice and the trader in question may, within 21 days, make representations to the Authority who shall consider them.

(3) Where the Authority decides, having considered any representations made to it under paragraph (2), to serve an infringement notice and so serves it, and where the trader in question is aggrieved by the infringement notice, then that trader may, within the period of 14 days beginning on the day on which the notice is served on it, appeal to the High Court against the notice and in determining the appeal the judge may if he or she is satisfied that in the circumstances of the case it is reasonable to do so, confirm, with or without modification, or cancel, the notice. The decision of the court is final other than on a point of law which lies to the Court of Appeal.

(4) A trader who appeals against an infringement notice shall at the same time notify the Authority of the appeal and the grounds for appeal and the Authority shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(5) Where an appeal against an infringement notice is taken, the notice shall take effect on the day next following the day on which the notice is confirmed on appeal or the appeal is withdrawn or on the day specified in the notice as that on which it is to come into effect, whichever is the later.

(6) Where no appeal is taken against an infringement notice, the notice shall take effect on the expiration of the period during which such an appeal may be taken or on the day specified in the notice as that on which it is to come into effect, whichever is the later.

(7) Where no appeal is taken against a compliance notice, the notice shall take effect on the expiration of the period during which such an appeal may be taken or on the day specified in the notice as that on which it is to come into effect, whichever is the later.

(8) The Authority may withdraw a compliance notice at any time before the date specified in it. The Authority may extend or further extend that date at any time when an appeal against the notice is not pending.

(9) A provider on whom a compliance notice is served under this Regulation who fails to comply with the notice commits an offence and is liable on summary conviction to a class A fine.

Offence

5. (1) For the purposes of Article 9(4)(h) of Regulation 2017/2394 and the powers of enforcement conferred on the Authority under these Regulations, a person who fails to comply with a decision, order, interim measure, trader's commitment or other measure specified in Regulation 2017/2394 relating to Regulation 2021/782 commits an offence.

(2) Where a person commits an intra-Union infringement, a widespread infringement or a widespread infringement with a Union dimension under Regulation 2017/2394 relating to Regulation 2021/782, he or she commits an offence.

(3) (a) A person who commits an offence under —

- (a) paragraph (1) is liable —
 - (i) on summary conviction, to a class A fine, or
 - (ii) on conviction on indictment, to a fine not exceeding €50,000, or
- (b) paragraph (2) is liable on summary conviction to a class B fine.

Court - determining sentence

6. Where a court is determining the sentence to impose on a person convicted of an offence under Regulation 5 relating to an intra-Union infringement, a widespread infringement or a widespread infringement with a Union dimension under Regulation 2017/2394, it shall take account, so far as applicable, of the following indicative and non-exhaustive criteria in respect of such infringements:

- (a) the nature, gravity, scale and duration of the infringement;
- (b) any action taken by the person to mitigate or remedy the damage suffered by consumers;
- (c) any previous infringement by the person;
- (d) the financial benefits gained or losses avoided by the person due to the infringement, if the relevant data are available;

- (e) any penalties imposed on the person for the same infringement in other Member States in cross-border cases where information about such penalties is available through the mechanism established by Regulation 2017/2394;
- (f) any other aggravating or mitigating factors applicable in the circumstances of the case.

Authorised officers

7. (1) The Authority may appoint such and so many persons as it sees fit to be authorised officers for the purpose of obtaining documents, records or other such information or of carrying out such inspections or any other functions as the Authority may deem necessary for the exercise by the Authority of its functions under Regulation 2017/2394. An authorised officer appointed under section 78 of the Dublin Transport Authority Act 2008 (No. 15 of 2008) is deemed appointed under this paragraph.

(2) A person appointed to be an authorised officer by the Authority shall be furnished by the Authority with a certificate of his or her appointment.

(3) An authorised officer, when exercising a power conferred under these Regulations, shall, if requested by any person thereby affected, produce his or her certificate of appointment or a copy of it to that person for inspection together with an appropriate form of identification.

(4) Subject to this Regulation, an authorised officer may, in respect of the functions of the Authority, serve on a trader a notice in writing, requiring, the trader, within such period as may be specified in the notice, not being less than 21 days from the date of the service of the notice, to do either or both of the following, namely—

- (a) to deliver to, or to make available for inspection by, the authorised officer such documents, records or other information as are in the possession, power or procurement of the trader and as contain, or may (in the authorised officer's opinion formed on reasonable grounds) contain, information relevant to the functions of the Authority under Regulation 2017/2394, and
- (b) to give to the authorised officer, in writing, such information, explanations and particulars as the authorised officer may reasonably require, being information, explanations and particulars that are relevant to the functions of the Authority under Regulation 2017/2394 and which are specified in the notice.

(5) Where, in compliance with the requirements of a notice served on a trader under paragraph (4), a trader makes available for inspection by an authorised officer, documents, records or other information, the trader shall afford the authorised officer reasonable assistance, including information, explanations and particulars, in relation to the use of all the electronic or other automatic means, if any, by which the documents, records or other information, in so far as they are in a non-legible form, are capable of being reproduced in a legible form, and any data equipment or any associated apparatus or material.

(6) Where, under paragraph (4), a trader makes documents, records or other information available for inspection by the authorised officer, the authorised officer may make extracts from or copies of all or any part of the documents, records or other information.

(7) Nothing in this Regulation shall be taken to compel the production by any person of a document, which he or she would be exempt from production in proceedings in a court on the ground of legal privilege.

(8) A person who—

- (a) obstructs or impedes an authorised officer in carrying out his or her functions under this Regulation, or
- (b) gives false or misleading information, explanations or particulars to an authorised officer when required under paragraph (4),

commits an offence and is liable on summary conviction to a class A fine.

(10) In this Regulation and Regulation 8 “documents, records or other information” includes—

- (a) books, accounts, rolls, registers, papers and other documents, whether—
 - (i) comprised in bound volume, loose-leaf binders or other loose-leaf filing system, loose-leaf ledger sheets, pages, folios or cards, or
 - (ii) kept on microfilm, magnetic tape or in any non-legible form (by the use of electronics or otherwise) which is capable of being reproduced in a legible form,
- (b) every electronic or other automatic means, if any, by which any such thing in non-legible form is so capable of being reproduced, and
- (c) documents in manuscript, documents which are typed, printed, stencilled or created by any other mechanical or partly mechanical process in use from time to time and documents which are produced by any photographic or photo static process.

Application to High Court for non-compliance with Regulation 7(4)

8. (1) Where a trader fails to comply with the requirements of a notice in accordance with Regulation 7(4), the Authority may make an application to a judge of the High Court for an order requiring a trader to do either or both of the following, namely—

- (a) to deliver to an authorised officer, or to make available for inspection by the authorised officer, such documents, records or other information as are in the power, possession or procurement of a trader and as contain, or may (in the authorised officer's opinion formed on reasonable grounds) contain, information relevant to the functions of the Authority under Regulation 2017/2394, and

- (b) to give to the authorised officer such information, explanations and particulars as the authorised officer may reasonably require, being information, explanations and particulars that are relevant to the functions of the Authority under Regulation 2017/2394 and which are specified in the application.

(2) Where the judge, to whom an application is made under this Regulation, is satisfied that there are reasonable grounds for the application being made, that judge may, subject to such conditions as he or she may consider proper and specify in the order, make an order requiring the trader to whom the application relates—

- (a) to deliver to an authorised officer, or to make available for inspection by the authorised officer, such documents, records or other information, and
- (b) to give to the authorised officer such information, explanations and particulars,

as may be specified in the order.

Service of directions, notices, etc.

9. (1) Where a direction or notice is required to be given to or served on a trader under these Regulations, it shall be in writing and shall be addressed to the trader and shall be given to the trader in one of the following ways:

- (a) by delivering it to the trader;
- (b) by leaving a copy at the address at which the trader ordinarily resides or, in a case in which an address for service has been furnished, at that address;
- (c) by sending a copy by post in a pre-paid registered letter or by any other form of recorded delivery service to the address at which the trader ordinarily resides or carries on business, in the case of a body corporate or unincorporated body at the registered office of the body or, where an address for service has been furnished, at that address;
- (d) in the case in which an e-mail address has been furnished, to that e-mail address.

(2) For the purposes of this Regulation, a company formed and registered under the Companies Act 2014 (No. 38 of 2014) is considered to be ordinarily resident at its registered office and every other body corporate and every unincorporated body of persons is considered to be ordinarily resident at its named place of business.

(3) A copy of a direction or notice, which has endorsed on it a certificate purporting to be signed by an officer of the Authority (authorised in that behalf by the Authority) stating that the copy is a true copy of the direction or notice may, without proof of the signature, be produced in every court and in all legal proceedings and is evidence, unless the contrary is shown, of the direction or notice.

Prosecution of summary offences

10. Proceedings for an offence under these Regulations may be brought and prosecuted summarily by the Authority.

Offences by bodies corporate

11. (1) Where an offence under these Regulations is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any wilful neglect on the part of a person being a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in any such capacity, that person as well as the body corporate commits an offence and is liable to be proceeded against and punished as if he or she had committed the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of a body corporate.

Cost of prosecutions

12. Where a person is convicted of an offence under these Regulations, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order that person to pay to the Authority the costs and expenses, measured by the court, incurred by the Authority in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees or persons engaged by the Authority.



L.S.

GIVEN under my Official Seal,
30 June, 2023.

EAMON RYAN,
Minister for Transport.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations give effect to Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws, in so far as it relates to Regulation (EU) 2021/782 on rail passengers' rights and obligations.

The previous statutory instruments that gave effect to Regulation (EU) 2017/2394 in so far as it related to Regulation (EC) No. 1371/2007 on rail passengers' rights and obligations have been revoked. The statutory instruments concerned are the European Union (Rail Passengers' Rights and Obligations) (Amendment) Regulations 2020 (S.I. No. 636 of 2020) which amended the European Communities (Rail Passengers' Rights and Obligations) Regulations 2010 (S.I. No. 646 of 2010). S.I. No. 646 of 2010 was revoked by the European Union (Rail Passengers' Rights and Obligations) Regulations 2023 (S.I. No. 271 of 2023), made on 31 May 2023, to give full effect to Regulation (EU) 2021/782 on rail passengers' rights and obligations (recast). Regulation (EC) No. 1371/2007 is repealed by Regulation (EU) 2021/782 from 7 June 2023.

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