

## Fact sheet - Passenger rights when travelling by sea and inland waterways

### Introduction

The European Parliament and Council have formally signed Regulation EU No. 1177/2010, which gives rights to passengers when they are travelling by sea or inland waters. This is to come into force in December 2012.

### The purpose of the Regulation is to:

- Prevent discrimination and to offer assistance to disabled persons and persons with reduced mobility.
- Give rights to passengers in case of cancellation or delay.
- Ensure that a minimum degree of information is provided to passengers.
- Require Carriers to issue tickets or other documents to give entitlement to transport.
- Prevent discrimination of tariffs or conditions based on the nationality of the passenger or place of establishment of the Carrier or ticket vendor.

### Application of the Regulation

The Regulation applies when:

- Passengers travel on passenger services where the port of embarkation is situated in the territory of a member state.
- Passengers travel on passenger services where the port of embarkation is situated outside the territory of a member state but the port of disembarkation is situated in the territory of a member state provided that the services operated are by a Union Carrier. (A Union Carrier is defined under the Regulation as a Carrier established within the territory of a member state or offering transport by passenger services operated to or from the territory of a member state).

- Passengers travel on a cruise where the port of embarkation is situated in the territory of a member state. (Articles 16(2), 18, 19 and 20(1) and (4) shall not apply to cruise ships.)
- “Passenger services” are defined as a commercial passenger transport service by sea or inland waterways operated according to a published timetable i.e. ferries.
- “Cruises” are defined as a transport service by sea or inland waterways operated exclusively for the purpose of pleasure or recreation, supplemented by accommodation and other facilities, exceeding two overnight stays on board.
- The Regulation does not apply to transport of goods and excludes road haulers and their employees the right of compensation for delays.

It is important to note that not all of the provisions in the Regulation apply to cruises.

It is not possible to exclude or restrict the obligations imposed by the Regulation by any contractual term. Passengers cannot be prevented from exercising their rights to claim damages for cancellation or delay of transport services under the Regulation or under the Package Travel, Package Tour and Package Holiday Regulations.

### **The Regulation does not apply:**

- to ships certified to carry up to 12 passengers;
- to excursion and Sightseeing tours, other than cruises;
- on ships with less than three operational crew;
- where the overall passenger service is less than 500m one way;
- to ships not propelled by mechanical means, replicas of historical ships;
- member states can exempt for two years from 18 December 2012 in respect of seagoing ships of less than 300 gross tons operated in domestic transport; or to passenger services covered by public service obligations provided passenger rights are adequately protected under national law.

## **Who is the primary beneficiary under the Regulation?**

- Disabled persons and persons with reduced mobility.
- Passengers affected by delay and cancellation of services.

## **Who is a disabled person or person with reduced mobility?**

Any person whose mobility when using transport is reduced as a result of any physical disability whether it be sensory, or locomotor, permanent or temporary, intellectual disability or impairment, or any other cause of disability as a result of age, and whose situation needs appropriate attention and adaptation to his particular needs of the services made available to all passengers.

This definition is extremely wide and covers a multitude of individuals and their circumstances.

## **Who has the obligation under the Regulation?**

The obligations are independently imposed on:

- Carriers (contracting and performing)
- Tour Operators/Travel Agents
- Ticket Vendors; and
- Ports

Where the performance of obligations has been entrusted by one party to another party the party with the obligation is still liable for the acts and omissions of the performing party acting in the scope of its employment. The performing party is also liable.

## **The non-discriminatory part of the Regulation**

Under Article 7, Carriers, Travel Agents and Tour Operators shall not refuse to accept a reservation or to issue or otherwise provide a ticket or to embark persons on the grounds of disability or of reduced mobility. Such services are to be offered to these individuals at no additional cost under the same conditions as applies to any other passenger.

## Exceptions under the Regulation

Article 8 sets out the only two circumstances in which a Carrier, Travel Agent or tour operator can refuse to accept a reservation or embarkation of a disabled person or person with reduced mobility, which are:

- 1. In order to meet applicable safety requirements established by international, union or national law or in order to meet safety requirements established by the competent authorities.**

The Regulation does not give details of what is acceptable in this respect. Operators, will need to be very careful when refusing carriage on the grounds of safety which is related to health. They will be expected to carry out risk assessments, taking into account the provisions of national law and other applicable legislation and regulations, including the ISM Code, SOLAS. If this derogation is going to be used to decline a booking or deny embarking a passenger then the disabled passenger or person with reduced mobility has to be informed of the basis of refusal. On request reasons must be given to the passenger in writing within 5 days. Remember that the Risk Assessments and Policies will be disclosable documents and must support the decision on the applicable safety requirements.

Many people consider passenger rights legislation in terms of reduced mobility. In fact this is the easy part, as these Regulations do not involve changes to the existing hardware of the ship. The definition of 'disabled' is a wide one, and a major concern for the cruise industry will be invisible medical conditions requiring for example for kidney conditions dialysis machines onboard, psychotic conditions, behavioural disorders or tendency to grand seizures. Health alone is not a basis for refusing carriage; safety is the overriding consideration. Cruise companies wish to manage risks so as to enable carriage of disabled passengers safely, and to manage them they must be aware of any risks before passengers' board. Another issue is in the case of older ships. Some corridors or doorways may be narrower than those on more modern vessels, which pose difficulties with people who require certain types of mobility equipment onboard. The Regulations deal with design and structural issues which affect the ability to carry a passenger safely.

**2. Where the design of the passenger ship or port infrastructure and equipment, including port terminals, makes it impossible to carry out the embarkation, disembarkation or carriage of the person in a safe or operationally feasible manner.**

There are two limbs to this exception, the inability to simply carry a passenger in a safe or operationally feasible manner is not sufficient to deny carriage. This must be related to the design of the ship or port infrastructure and equipment. This will therefore be limited to physical design issues and will be limited to physical constraints of the ship. Other examples may include size of wheelchairs, nature of equipment that can be carried on board.

A reservation or embarkation cannot be refused to a passenger simply because they cannot be carried in a “safe or operationally feasible manner”. As stated above, this must be related to the design of the ship or the port or an applicable safety requirement which is established by a competent authority or has a legal basis.

Risk assessments must be carried out in order to enable Carriers to justify any refusals on the grounds of safety. The company policies must be based on these risk assessments and the policy must be fully set out in the Booking Conditions and the Carriers Conditions of Carriage. Training of sale representatives, ships personnel and customer care personnel will also be vital to ensure that there is no discrimination at the time of booking or on the ship at the time of complaint or refusal of embarkation.

If carriage is denied for any reasons other than those set out in Article 8 above then this is likely to result in a claim for discrimination.

Where a Carrier, Travel Agent or Tour Operator refuses to accept a reservation or to issue a ticket on the grounds of the above derogations then they are required to make all reasonable efforts to propose, where possible, an acceptable alternative transport on a passenger service or cruise operated by the Carrier. It is difficult to see what alternatives would be possible.

Where a disabled person or person with a reduced mobility has a reservation/ticket but is denied carriage on the basis of the above derogations, then that person and any person accompanying him/her must be offered the choice between the right to reimbursement and re-routing. In practice this will mean repatriating the person who was unable to join the vessel at a foreign port. Care must be taken to ensure that the Booking Conditions make it clear where certain disabilities or conditions need to be reported to enable a risk assessment to be carried out prior to sailing and certainly

prior to presentation at the vessel for embarkation particularly where this will be at a foreign port in relation to the passenger. In some cases it may be possible to decline reimbursement or re-routing based on the failure to notify.

## Requiring an accompanying person

Where a Carrier, Travel Agent, or Tour Operator considers that it is “strictly necessary” they can require that a disabled person or person with reduced mobility be accompanied by another person who is capable of providing the assistance required by the disabled person or person with reduced mobility.

The requirement for an accompanying person must be based on either of the two derogations under Article 8, i.e. it is required in order to meet applicable safety law or safety requirements established by a competent authority, or alternatively it is related to the design of the passenger ship or port infrastructure and the ability to carry that passenger in a safe or operationally feasible manner. An accompanying person cannot be required outside of these provisions.

In order to substantiate the requirement for an accompanying person, a risk assessment and policy will be necessary. The risk assessment itself will need to substantiate why an accompanying person is necessary and it must set out the risks which relate to safety in not being accompanied. Requiring a person to be accompanied where this cannot be justified will amount to discrimination under the Regulation. Risk assessments may need to be conducted according to the type of disability/mobility and/or the equipment required and may differ from itinerary to itinerary and ship to ship.

Contrary to recent press reports, an accompanying person is not carried free of charge on cruise ships. Accompanying persons only travel free of charge if required by the Carrier on passenger services. Operators will need to justify their decision to require a person to be accompanied and again risk assessments will be necessary and policies based on those risk assessments to justify the decision which has been taken in not carrying the individual without being accompanied. Carriers, Travel Agents and Tour Operators must on request of the disabled person or person with reduced mobility give reasons in writing within 5 days. Operators of passenger services should review their requirements regarding accompanying persons who will now travel free.

## **Accessibility and information**

Carriers and Terminal Operators are required to co-operate with organisations representing disabled persons or persons with reduced mobility to establish or have in place non discriminatory access conditions, (access conditions are defined under the Regulation as relevant standards, guidelines and information on the accessibility of port terminals and ships including their facilities for disabled persons or persons with reduced mobility).

These access conditions must be made publicly available in appropriate and accessible format to all passengers in relation to passenger services, cruises and packages as defined under the Package Travel, Package Holidays and Package Tours Legislation. Hence policies will need to consider types of equipment which can or cannot be carried i.e. dialysis machines, scooters, oxygen cylinders or the number of disabled or reduced mobility persons that can be carried on board taking into account SOLAS requirement for evacuation.

## **Rights to assistance in ports and on board ships**

Carriers and Terminal Operators shall, within their respective areas of competence, provide assistance free of charge to disabled persons and persons with reduced mobility in ports, including at time of embarkation and disembarkation and on board ships.

In order to receive such assistance the person must inform the carrier or terminal operator at least 48 hours before the assistance is needed, unless a shorter period is agreed between the parties.

It is important that a longer requirement to notify is set out in the Booking Conditions and Carriers Conditions of Carriage. Passengers are not required to volunteer any particular conditions and/or disabilities prior to booking. Passengers are required under the Regulation to notify at booking of their specific needs with regard to accommodation, seating, or services required or their need to bring medical equipment provided the need is known at the time. Even if notification is not given, the Carrier still has an obligation to make all reasonable efforts to ensure that such assistance is provided in a way that the disabled person or person with reduced mobility is able to embark, disembark and travel on the ship. It is therefore important to ensure that as much information is obtained from passengers prior to booking and embarkation.

Whilst the Regulation does not require passengers to volunteer information other than that set out above, it does not prevent Carriers from seeking information if the purpose is to try and accommodate that passenger in a safe manner. Often, passengers who might be declined embarkation at the port can be carried quite safely where there is advance notification, a risk assessment and planning by the Carrier. It is important therefore that passengers are encouraged to give as much information regarding their mobility and any disability at the time of booking which would enable the Carrier to ensure that they can be carried both comfortably and safely, and that embarkation is not refused. Given that many bookings are made by telephone, it is important that these issues are part of the script for telephone bookings and that the questions should be asked prior to booking being taken and not subsequently.

The Carrier is required to allow recognised assistance dogs on board the vessel subject to national regulations, also to carry medical equipment and mobility equipment necessary for the disabled person or person with reduced mobility, including electric wheelchairs. This does not mean all items have to be carried, there still has to be a risk assessment carried out by the Carrier.

Annex III sets out the assistance to be provided on board ships. This does not include personal care. The requirements are quite basic. Similarly, the disability training to be given to crew set out in Annex IV is not onerous.

## Equipment

Compensation is payable under Article 15 in respect of loss of or damage to mobility equipment or other specific equipment, used by a disabled person or person with reduced mobility if the incident which caused the loss was due to the fault or neglect of the carrier or the terminal operator.

The compensation shall correspond to the replacement value of the equipment concerned or, where applicable to the costs relating to repairs.

If the Athens Convention on liability of Carriers of passengers by sea applies, then the equipment will be “cabin luggage” and recovery will be restricted to 833 SDRs.

## **Cancellations / delays in departure (Article 16)**

In the case of a cancellation or delay in departure of a passenger service or a cruise, passengers shall be informed by the carrier or where appropriate by the terminal operator of the situation as soon as possible and in any event not later than 30 minutes after the schedule time of departure, and estimated departure time and estimated arrival time as soon as this information is available.

If passengers miss a connecting transport service due to a cancellation or delay, the carrier and, where appropriate, the terminal operator shall make reasonable efforts to inform the disabled passengers or passengers with reduced mobility concerned of alternative connections in accessible formats. This does not apply to cruise passengers as their protection is as set out in the EU Directive 1990 and for the UK the Package Travel Regulations 1992.

## **Assistance in the event of cancelled or delayed departures (Article 17)**

Where the departure of a passenger service or a cruise is cancelled or delayed for more than 90 minutes beyond its scheduled time of departure. In such circumstances passengers departing from port terminals shall be offered free of charge snacks, meals or refreshments in reasonable relations to the waiting time, provided they are available, or can reasonably be supplied.

Where the delay in departure entails a stay of one or more nights the carrier shall offer passengers adequate accommodation free of charge on board, or ashore, and transport to and from the port terminal and place of accommodation in addition to the snacks, meals or refreshments provided (Article 17(2)). In these cases the carrier may limit the total cost of accommodation ashore, not including transport to and from the port terminal and place of accommodation to EUR 80 per night for a maximum of 3 nights. In carrying out the obligation under Article 17 the carrier shall pay particular attention to the needs of disabled persons and persons with reduced mobility and any accompanying persons. Any limitation of liability must be included in the Booking Conditions and Conditions of Carriage.

## **Re-routing and reimbursement in the event of cancelled or delayed departures (Article 18)**

Article 18 applies to passenger services. It does not apply to cruises. It provides that where a Carrier reasonably expects a passenger service to be cancelled or delayed in departure from a port terminal for more than 90 minutes, the passenger shall immediately be offered the choice between:

- re-routing to final destination, under comparable conditions, as set out in the transport contract, at the earliest opportunity and at no additional cost;
- reimbursement of the ticket price and, where relevant, a return service free of charge to the first point of departure, as set out in the transport contract, at the earliest opportunity.

Where the passenger service is cancelled or delayed in departure from a port for more than 90 minutes, passengers shall have the right of such re-routing or reimbursement of the ticket price from the Carrier within 7 days.

The Carrier must pay particular attention to the needs of disabled persons and persons with reduced mobility in providing assistance for delayed or cancelled departures.

## **Compensation of the ticket price in the event of delay in arrival (Article 19)**

Article 19 gives the percentage of minimum compensation of the ticket price in case of delay in arrival for passenger services. It does not apply to cruise ships. Article 19 states that without losing the right to transport, passengers may request compensation from the carrier if they are facing a delay in arrival at the final destination as set out in the transport contract. The minimum level of compensation shall be 25% of the ticket price paid for a delay of a least:

- one hour in case of a schedule journey of up to four hours;
- two hours in case of a schedule journey of more than four hours, but not exceeding 8 hours;
- three hours in case of a schedule journey of more than eight hours, but not exceeding 24 hours; or
- six hours in case of a schedule journey of more than 24 hours.

If the delay exceeds double the time set out above the compensation shall be 50% of the ticket price.

Articles 17, 18 and 19 will not apply to passengers with open tickets as long as the time of departure is not specified or where the passenger is informed of the cancellation or delay before purchase of the ticket or if the cancellation or delay is caused by the fault of the passenger.

The requirement to provide free accommodation, etc. under Article 17 (2) (where the stay becomes a necessity) shall not apply where the carrier proves that the cancellation or delay is caused by weather conditions endangering the safe operation of the ship. This includes strong winds, heavy seas, strong currents, difficult ice conditions, extremely high or low water levels, hurricanes, tornados and floods. This is very relevant to ferries and less relevant to cruise ships where the passengers are likely to be accommodated on board.

Compensation is not payable if the cancellation or delay is caused by weather conditions endangering the safe operation of the ship or by extraordinary circumstances hindering the performance of the passenger services; however, assistance including accommodation is still to be provided where the delay/cancellation is caused by extraordinary circumstances; this will include ash cloud events. Bearing in mind that extraordinary circumstances are likely to be covered by insurance, this is a burden to the ferry industry. In the case of cruises, these issues are covered by the EU Directive 1990 and not these Regulations.

Extraordinary circumstances includes, but is not limited to, natural disasters including fires, earthquakes, terrorist attacks, wars and military or civil armed conflicts, uprisings, military or illegal confiscations, labour conflicts, landing any sick, injured or dead person, search and rescue operations at sea or on inland waterways, measures necessary to protect the environment, decisions taken by traffic management bodies or port authorities, or decisions by the competent authorities with regard to public order and safety as well as to cover urgent transport needs.

## **Enforcement**

- Passengers must be able to exercise their rights by an appropriate and accessible complaints procedure implemented by Carriers and terminal operators.
- There will be a right of recourse to a designated body or bodies who can enforce the Regulation in the appropriate member state.

- Independent designated and competent body or bodies will ensure compliance with the Regulation and carry out supervision and enforcement tasks to include penalties for infringement.
- The consultation process in the UK has begun and it is anticipated a number of existing enforcement bodies will pick up the various elements.
- By 1 June 2015 (and every two years thereafter) the enforcement bodies shall publish a report.

## Concluding checklist

- Conduct a full audit/risk assessments in relation to areas of risk identified either by virtue of the type of mobility/disability/equipment/ resources needed in respect of a particular passenger and/or the effect of a number of passengers. The risk assessments must take into account the maximum number of reduced mobility passengers which can be on board in the event of an emergency and the evacuation process under SOLAS, the number of wheelchairs, the type of equipment, e.g. oxygen tanks, dialysis machines, scooters, any limitations imposed by the number of disabled cabins. These risk assessments must take into account the variations of the ships and itineraries. The results may not be the same for all ships in the same fleet, or even the same ship on different itineraries.
- Once the risk assessments have been carried out, then the safety policies must be put in place. In order to be able to rely on the derogations in Article 8 the risk assessments must deal with any restrictions based on safety requirements or the structure of the vessel. These safety policies should be made known to passengers. It must be remembered that these and the risk assessments will be disclosable documents.
- Review Booking Conditions and Conditions of Carriage to deal with all aspects of the Regulation, including delay and cancellation.
- Training for shipboard staff across the board in relation to the various policies and procedures.
- Training of sales staff regarding information to be given/requested at the time of booking relating to these Regulations.

- Training of care teams/claims staff to avoid/deal with claims of alleged discrimination under the Regulations.
- Monitor procedures/policies and review appropriately.
- Provide information to passengers of their rights under this Regulation in all official languages and the contact details of the enforcement body (bodies).
- Have a complaints mechanism and procedures.

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