

**PROPOSALS FOR
THE RAIL PASSENGERS' RIGHTS AND OBLIGATIONS
(DESIGNATION AND ENFORCEMENT) REGULATIONS
(NORTHERN IRELAND) 2016**

A CONSULTATION PAPER

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A note setting out the background to the proposal.

A copy of the proposed Rail Passengers Rights and Obligations (Designation and Enforcement) Regulations (Northern Ireland) 2016.

A list of Consultees.

BACKGROUND

The Department for Infrastructure propose to make Regulations to give effect to Articles 30 and 32 of Regulation (EC) No. 1371/2007 of the European Parliament and of the Council of 23rd October 2007 concerning the rights of rail passengers.

Regulation (EC) No. 1371/2007 is directly applicable in all member states.

A copy of the draft regulations, The Rail Passengers' Rights and Obligations (Designation and Enforcement) Regulations (Northern Ireland) 2016 is attached at Appendix A.

These Regulations provide for the operational implementation of Regulation (EC) No. 1371/2007 in relation to complaints handling and the enforcement of the rights of rail passengers in rail transport.

The purpose of this consultation is to ask stakeholders for any comments they may have on the proposed draft Statutory Rule (SR).

European Regulation (EC) No 1371/2007 (the Regulation) on rail passengers' rights and obligations is one of a series of measures that form part of the 3rd Railway package. It is a mandatory instrument aimed at enhancing the rights of passengers on international and domestic rail services. The policy is aimed at strengthening the rights of rail passengers particularly in the areas of information and ticketing provision, compensation and assistance, and the rights for persons of reduced mobility and enforcement of those rights.

One of the key agreements reached between the Council and the European Parliament during negotiations of the Regulation was to allow Member States to grant certain exemptions. Article 2(4) allowed Member States to grant an exemption for all domestic services from the non-core provisions of the Regulation for an initial period of five years, followed by a maximum of two further periods of five years each (making a maximum of 15 years).

The Rail Passengers' Rights and Obligations (Exemptions) Regulations (Northern Ireland) 2011 provided an exemption from the provisions of Regulation (EC) No. 1371/2007 until 31st December 2014 in Northern Ireland.

As many of the requirements of the EC Regulation are being met by the rail transport provider, there does not appear to be a need to renew the exemptions. The Department therefore, now propose to make Regulations to give effect to Regulation (EC) No. 1371/2007. The Department of Transport in London are also consulting on a similar basis.

The proposed Rail Passengers Rights and Obligations (Designation and Enforcement) Regulations (Northern Ireland) 2016 are being introduced by the Department to give effect to Articles 30 and 32 of Regulation EC No. 1371/2007.

Article 30 relates to the designation of an enforcement body and a complaints handling body. Article 32 refers to penalties which are applicable as a result of any infringement of Regulation (EC) No. 1371/2007.

The proposed Regulations provide for the operational implementation of Regulation EC No. 1371/2007 in relation to the complaints handling and enforcement of these aspects of the rights of passengers in rail transport.

Regulation 4 of the proposed Rail Passengers Rights and Obligations (Designation and Enforcement) Regulations (Northern Ireland) 2016 implements Article 30(1) of Regulation 1371/2007 by designating the Department for Infrastructure as being responsible for enforcement of Regulation 1371/2007 and gives that Department the right to ask for information to assist it in carrying out their functions.

Regulation 5 implements Article 30(2) of Regulation 1371/2007 by designating the Department for Infrastructure as the body to which complaints may be made by passengers about alleged infringements of Regulation 1371/2007, where they have made a complaint to the railway undertaking which has not been resolved within 3 months.

Regulation 6 implements the enforcement measures which would apply where EC Regulation No. 1371/2007 has been contravened.

Regulation 7 implements Article 32 of Regulation 1371/2007 by setting penalties applicable to those found guilty of infringements of Regulation (EC) No. 1371/2007 or failing to comply with a notice issued under regulation 6.

Regulation 8 enables persons who have suffered an infringement of their rights under Regulation (EC) No. 1371/2007 to seek compensation separately from any criminal penalty that may be imposed.

This formal consultation is open from 30th August 2016 until 21st November 2016.

RESPONDING TO THE CONSULTATION

The Department would welcome any comments you may wish to make on the proposed legislation before it is brought to the Assembly for making.

The Department also invites your views on the potential impact, if any, you consider that the proposed legislation might have on equality of opportunity, human rights issues and rural impact.

The list of consultees is also provided (Appendix B). If you consider that this consultation should be copied to additional interested parties please contact me as soon as possible and I will ensure their inclusion.

An electronic copy of the Consultation Paper is available on the Department's Internet site at <https://www.infrastructure-ni.gov.uk/consultations/rail-passengers-rights-and-obligations-designation-and-enforcement-regulations-northern-ireland-2016> and copies can also be made available in alternative formats, if so required.

Comments on the proposed regulations should be made in writing and may be forwarded via e-mail to george.kearns@infrastructure-ni.gov.uk or janette.galloway@infrastructure-ni.gov.uk or, alternatively, via post to George Kearns/Janette Galloway, Department for Infrastructure, Transport Policy, Strategy and Legislation Division, 3rd Floor, Clarence Court, 10–18 Adelaide Street, Belfast BT2 8GB.

The closing date for receipt of all responses is 21st November 2016.

The Department tries to make its consultation procedure as thorough and open as possible. Following the end of this consultation we shall publish details of the responses received. Information you provide in your response, including **personal information** could be published or disclosed under the Freedom of Information Act 2000 (FOIA). Under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with obligations of confidence. If you want the information that you provide to be treated as confidential it would be helpful if you could explain why. Although we will take full account of your explanation we cannot give an assurance that confidentiality can be maintained in all circumstances. Any automatic confidentiality disclaimer generated by your IT system will not be regarded as binding on the Department.

For further information about the confidentiality of responses please contact the Information Commissioner's Office or see their website at: www.ico.gov.uk.

 STATUTORY RULES OF NORTHERN IRELAND

2016 No.

TRANSPORT

 The Rail Passengers Rights and Obligations (Designation and Enforcement)
 Regulations (Northern Ireland) 2016

Made - - - - - ****2016

Coming into operation - - - - - ****2016

The Department for Infrastructure (1), being a Department designated (2) for the purposes of section 2(2) of the European Communities Act 1972(3) in relation to measures relating to railways and railway transport, in exercise of the powers conferred by that section makes the following Regulations -

Citation and commencement

1.—(1) These Regulations may be cited as the Rail Passenger Rights and Obligations (Designation and Enforcement) Regulations (Northern Ireland) 2016 and come into operation on the *****2016.

Interpretation

2. In these Regulations—

“Carrier, railway undertaking, station manager, ticket vendor and tour operator” have the same meanings as those contained in Article 3 of Regulation 1371/2007;

“Relevant person” means a railway undertaking, a station manager, a ticket vendor or a tour operator;

“Regulation 1371/2007” means Regulation (EC) No 1371/2007 (4) of the European Parliament and of the Council of 23rd October 2007 on rail passengers rights and obligations.

3. The Interpretation Act (Northern Ireland) 1954 (5) shall apply to these Regulations as it applies to an Act of the Assembly.

Establishment/Designation of Enforcement Bodies

4.—(1) For the purpose of Article 30(1) of Regulation 1371/2007 the body responsible for the enforcement of that Regulation is the Department for Infrastructure.

(2) The railway undertaking must supply to the Department for Infrastructure such information and documents as that Department may reasonably require for the purpose of, or in connection with, the exercise of any of its functions under Regulation 1371/2007 or these Regulations.

(1) 2016 c.5 (NI) section 1
 (2) SI 1996/266
 (3) 1972 c. 68.
 (4) OJ No. L315, 28.10.2007, p22
 (5) 1954 c.33 (N.I.)

Establishment/Designation of Passenger Complaints Handling System

5. (1) The designated body for the purpose of Article 30(2) of Regulation 1371/2007 to which any passenger may submit a complaint about an alleged contravention of Regulation 1371/2007 is the Department for Infrastructure; and
- (2) A complaint shall be in writing.

Enforcement measures

6. (1) If the Department for Infrastructure is satisfied that a relevant person has without reasonable excuse contravened Regulation 1371/2007 the Department may issue a notice.

(2) A notice issued under paragraph (1) shall –

- (a) identify in reasonable detail the alleged contravention to which the notice relates; and
- (b) invite the person to whom the notice has been issued to demonstrate to the reasonable satisfaction of the Department —
 - (i) that the alleged contravention has not occurred; or .
 - (ii) the measures which that person has implemented or proposes to implement in order to remedy or avoid any recurrence of the contravention.

(3) Where the Department is not satisfied that the matters specified in paragraph 2(b) have been demonstrated it may issue a further notice requiring the person to take such measures as are specified in the notice, within such period as may be specified.

(4) It shall be the duty of a person to whom a notice has been issued under paragraph (2) or (3) to comply with that notice.

Offence and level of fine

7. For the purposes of Article 32 of Regulation 1371/2007, a relevant person who contravenes Regulation 1371/2007 or fails to comply with a notice issued under regulation 6 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Reimbursement and compensation of the ticket price

8. A railway undertaking shall develop and maintain a system of reimbursement and compensation in accordance with the requirements of Articles 16, 17 and 18, but subject to Article 6 (2), of Regulation 1371/2007.

Compensation claims

9. A claim by a person for a contravention of any of that person's rights under Regulation 1371/2007 may be the subject of civil proceedings in the same way as any other claim in tort

Sealed with the Official Seal of the Department for Infrastructure on ***2016

Tom Reid
A senior officer of the Department



EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to Article 30 of Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23rd October 2007 concerning the rights of rail passengers. This is directly applicable in member states. These Regulations also provide for the operational implementation of Regulation 1371/2007 in relation to the complaints handling and enforcement of these aspects of the rights of passengers in rail transport.

Regulation 4 implements Article 30(1) of Regulation 1371/2007 by designating the Department for Infrastructure as being responsible for the enforcement of Regulation 1371/2007 and gives that Department the right to ask for information to assist it in carrying out their functions.

Regulation 5 implements Article 30(2) of Regulation 1371/2007 by designating the Department for Infrastructure as the body to which complaints may be made by passengers about alleged infringements of Regulation 1371/2007.

Regulation 6 implements the enforcement measures which would apply where the EC regulation No. 1371/2007 has been contravened.

Regulation 7 implements Article 32 of Regulation 1371/2007 by setting penalties applicable to those found guilty of infringements of Regulation 1371/2007 or failing to comply with a notice issued under regulation 6.

Regulation 8 requires the railway undertaking to develop and maintain a system of reimbursement and compensation in line with Regulation 1371/2007.

Regulation 9 enables persons who have suffered an infringement of their rights under Regulation 1371/2007 to seek compensation separately from any criminal penalty that may be imposed.

LIST OF CONSULTEES

Age NI
Association of Train Operating Companies
Citizens Advice Bureau
Campaign for Better Transport
Consumer Council
City, District and Borough Councils identified as interested consultees
Community Transport Association
Department of Transport (London)
Department for Transport, Tourism and Sport, Dublin
Disability Action
Equality Commission for NI
Health and Safety Executive (NI)
Heritage Railway Association
Iarnrod Eireánn
Inclusive Mobility Transport Advisory Committee (IMTAC)
NI Human Rights Commission
Northern Ireland Railways
Office of Rail and Road (ORR)
Railway Preservation Society of Ireland
Transport Focus
Northern Ireland Political Parties and Westminster Representatives

Those bodies listed in the Department's Equality Scheme and identified as being suitable consultees