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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

This instrument makes provision for the effective implementation, in Great Britain (see *regulation 2*), of Regulation (EC) No. 1371/2007 of the European Parliament and of the Council of 23rd October 2007 on rail passengers' rights and obligations (“the European Regulation”). The European Regulation harmonises, across the European Union, the rules regarding the rights and obligations of rail passengers. The European Regulation applies to all train journeys and services, whether international or domestic, licensed under Directive 95/18/EEC of the European Parliament and of the Council dated 19th June 1995 on the licensing of railway undertakings (OJ No. L143, 27.6.1995, p.70). The European Regulation reproduces large parts of the Convention concerning International Carriage by Rail of 9th May 1980 (Cm 4873) (COTIF), as amended by a Protocol signed at Vilnius on 3rd June 1999. In the UK, COTIF is implemented by the Railways (Convention on International Carriage by Rail) Regulations 2005 (S.I. 2005/2092) (“the COTIF Regulations”).

This instrument first makes provision concerning the relationship between domestic law and the European Regulation (Part 2). Then, it deals with the regulatory enforcement of the European Regulation (Part 3).

Where this is not incompatible with the European Regulation, the United Kingdom continues to have an international obligation to comply with COTIF. By virtue of its direct applicability, and COTIF itself (see its Article 3(2)), the European Regulation prevails over COTIF and the COTIF Regulations. *Regulation 4* provides that the implementing measures under these Regulations also prevail, in case of a conflict, over the COTIF Regulations and COTIF itself, where the two are inconsistent, and amends the COTIF Regulations accordingly.

*Regulation 5* provides that the right, under the Civil Liability (Contribution) Act 1978 (in England and Wales) and the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 (in Scotland), of a person found liable for an accident, to recover a contribution from those who have also been responsible for the accident, does not apply where the right to a contribution is already governed by the European Regulation.

The European Regulation makes provision for payment of an advance payment, shortly after an accident, to victims of the accident and their dependents, to cover their short-term needs, even though liabilities have yet to be determined. *Regulation 6* sets out an obligation to give advance notice of court proceedings relative to such a payment to the undertaking. It also gives jurisdiction to the court to reduce the award where the railway undertaking has acted reasonably. Finally, it deals with the relationship between claims for advance payments and other claims, including claims for an interim payment under, in England and Wales, Part 25 of the Civil Procedure Rules 1999 or, in Scotland, rule 43.11 of the Rules of the Court of Session and, for the Sheriff Court, rule 36.9 of the Ordinary Cause Rules.

*Regulations 7 and 8* deal with the relationship between rights under the European Regulation and claims, in England and Wales, under the Fatal Accidents Act 1976 or, in Scotland, the Damages (Scotland) Act 1976, preventing overlaps but leaving rights outside the scope of the Regulation intact.

Under section 2 of the Damages Act 1996 (as amended – “the 1996 Act”), in England and Wales, a court may normally order periodical payments to be made in respect of personal injury even when the claimant does not consent, but retains a discretion not to order such payments even where the claimant asks. In Scotland, a court can only order such payments if both parties consent. *Regulation 9* amends the 1996 Act, reminding the reader of these provisions that they are subject to Article 30(1) of Annex I to the European Regulation, under which periodical payments must be paid if national law so permits and the claimant so requests.

**Changes to legislation:** *The Rail Passengers' Rights and Obligations Regulations 2010 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

*Regulations 10 and 11* make provision in respect of the rights, under the European Regulation, of disabled persons and persons with reduced mobility (DPRMs). To prevent double-regulation, *regulation 10* excludes from the scope of section 19 of the Disability Discrimination Act 1995, on discrimination in the provision of goods, facilities and services, the rights that are governed by the European Regulation. *Regulation 11* creates a right to damages, enforceable in the courts, for breach of the rights of DPRMs. *Regulation 12* provides that, in respect of that right, the Commission for Equality and Human Rights fulfils a role similar to the one it has in respect of the 1995 Act in making arrangements for conciliation.

The European Regulation requires the designation of enforcement bodies to take the measures necessary for its effective implementation. *Regulation 13(1)* designates the Office of Rail Regulation (ORR), except for the purposes of handling individual complaints (as to which see below on regulation 18), and for the purpose of enforcing Article 26 of the European Regulation on the personal security of rail passengers (as to which see below on regulation 16). *Regulation 13(2)* places the ORR under an obligation to use its powers under this instrument and any other enactment, including Part I of the Railways Act 1993 (“the 1993 Act”), the Railway (Licensing of Railway Undertakings) Regulations 2005 (“the 2005 Regulations”) and regulations 14 and 15 of this instrument, to take the measures necessary to ensure that the European Regulation is complied with. Furthermore, by virtue of *regulation 13(3)*, the general duties under section 4 of the 1993 Act do not apply in those circumstances.

*Regulations 14 and 15* provide for enforcement of the European Regulation through the railway licensing regimes. They require the ORR to impose, or require to be imposed by the Secretary of State, on station operators and railway undertakings, licence conditions under section 8 of the 1993 Act (for station operators) and Statements of National Regulatory Provisions (SNRPs) under the 2005 Regulations (for railway undertakings) sufficient to ensure that the Regulation provisions listed in the Schedule are complied with. As far as existing licences and SNRPs are concerned, the ORR is given the power to modify them, or, where appropriate, require them to be modified by the Secretary of State, if necessary or expedient.

By virtue of Part 3 of the Railways and Transport Safety Act 2003, many of those providing railway services are already required to have in place an agreement with the British Transport Police Authority, under which it polices the railway services and property for which they are responsible. In most cases, this will be sufficient to ensure the enforcement of Article 26 of the European Regulation on the personal security of rail passengers. For the cases where it is not, *regulation 16* provides an enforcement mechanism in respect of Article 26 of the European Regulation additional to the one mentioned above in connection with regulation 13. Under section 119 of the 1993 Act, the Secretary of State may give directions to a person who provides railway services or who owns or operates a rail network or a station or other railway assets. Such directions must be given with a view to protecting such assets or persons on or in such assets from acts of violence. *Regulation 16* requires the Secretary of State to use this power to issue instructions where it is necessary or expedient to do so for the purposes of enforcing Article 26 of the European Regulation.

Under section 16 of the Channel Tunnel Rail Link Act 1996, the licensing regime does not cover the operators of stations in the Channel Tunnel Rail Link. Nor are ticket vendors which are not railway undertakings covered by that regime. Nonetheless, under *regulation 17*, the ORR will be able to enforce requirements imposed on them by the European Regulation in the same way as it enforces breaches of licensing requirements.

Under the European Regulation, bodies must be designated to handle complaints for breach of the rights conferred by it. *Regulation 18* designates the Passengers' Council (known as “Passenger Focus”) and the London Transport Users' Committee (known as “London TravelWatch”), each within its existing functions – disregarding certain instruments that may have been made to restrict their functions in some areas. *Regulation 18* also modifies the legislation applying to those bodies, so that, in matters relating to the European Regulation, they report, not only to the Secretary of State, but also to the ORR, as the enforcement body.

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*Regulation 19* concerns the protection of information obtained under or by virtue of these Regulations. It provides that section 145 of the 1993 Act applies to that information too. That section restricts the use of information relating to an individual or business during the lifetime of the individual or the continuation of the business. This is, however, without prejudice to the duty enforcement bodies have to exchange information under Article 31 of the European Regulation, thanks to section 145(2)(k) of that Act.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from David Hibbs, at the Department for Transport, tel. 020 7944 5036, and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website ([www.opsi.org.uk](http://www.opsi.org.uk)).

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

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