

EXPLANATORY MEMORANDUM TO
THE CIVIL AVIATION (ACCESS TO AIR TRAVEL FOR DISABLED
PERSONS AND PERSONS WITH REDUCED MOBILITY) REGULATIONS
2014

2014 2833

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The instrument revokes S.I. 2007/1895, The Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2007, using powers under Section 2(2) of the European Communities Act (1972). In doing so, it makes a number changes to the enforcement regime for Regulation (EC) No. 1107/2006 of the European Parliament and of the Council of 5 July 2006.
 - 2.2 The instrument replaces the current criminal offences (provided in regulations 3 to 6 of S.I 2007/1895) with statutory civil enforcement powers.
 - 2.3 The instrument provides clarification of the scope of the ‘injury to feelings’ compensation provision which allows claims by disabled persons and persons with reduced mobility for a damages award.
 - 2.4 The instrument removes reference to the Equality and Human Rights Commission (EHRC).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 Regulation (EC) No. 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility (PRM) when travelling by air (“the EC Regulation”) imposes legal obligations on airports, airlines, and their agents or tour operators in respect of the service assistance at airports and on board the aircraft to disabled persons and PRMs.
 - 4.2 Article 16 of the EC Regulation requires Member States to ensure compliance with the rules and lay down penalties for infringements that are effective, proportionate and dissuasive. Articles 14 and 15 of the EC Regulation requires Member States to designate a body or bodies responsible for enforcement and complaints handling of the Regulation.
 - 4.3 Statutory Instrument (SI) 2007/1895 - The Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations

2007 exists to meet the requirements of the EC Regulation. It provides the CAA with criminal enforcement powers and includes, at Regulation 9(2), an ‘injury to feelings’ compensation provision. SI 2007/1895 designates the Civil Aviation Authority as the National Enforcement Body (NEB) and the Equality and Human Rights Commission (EHRC) as the complaints handling body.

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 SI 2007/1895 provides the CAA with criminal enforcement powers. Whilst such powers meet the requirements of the EC Regulation, criminal enforcement is costly and time consuming for both businesses and the CAA.

7.2 The instrument introduces a civil enforcement regime (modelled on that in Part 8 of the Enterprise Act 2002). It is not possible to utilise the Enterprise Act directly for the enforcement of the EC regulation, as infringement of EC Regulation 1107/2006 would not constitute either a “community infringement” or a “domestic infringement” for the purposes of the Enterprise Act.

7.3 Under the civil regime the enforcer will consult with a business which it believes does not, or intends not to, comply with the requirements of the EC Regulation, with a view to obtaining an undertaking to cease the non-compliant behaviour. If a business does not agree to an undertaking, or gives an undertaking but fails to comply with it, the enforcer can apply to a court for an enforcement order. The court may issue an enforcement order or may decide to accept undertakings from the business as an alternative. If a business fails to comply with an order it could be found to be in contempt of court, and so potentially be liable to a fine or imprisonment of the individuals concerned. The instrument also gives powers to the enforcer to require businesses to provide information to help with their enquiries, and creates offences for obstructing or failing to co-operate with an enforcer, withholding information requested by an enforcer, or providing false or misleading information.

7.4 Regulation 9(2) of SI 2007/1895 permits ‘injury to feelings’, which allows claims by disabled persons and PRM for a damages award, but only when an award is outside the scope of international conventions governing air flights. Additional clarification of the scope of the ‘injury to feelings’ provision would be advantageous following the Supreme Court ruling on 5 March 2014 that Mr Stott (a paraplegic) was not entitled to his claim for damages for ‘injury to feelings’ because the incident happened at a time when the Montreal Convention (1999) applied.

7.5 The EHRC no longer holds responsibility for complaints handling or conciliation services. The Home Office (HO), who held sponsorship responsibility for the EHRC, decided to end, in 2012, the EHRC arrangements of conciliation services which was part of the 'Building a fairer Britain: Reform of the EHRC' consultation document (Spring 2011). In October 2012 the CAA took over the complaints handling function.

8. Consultation outcome

8.1 An informal consultation took place in February and March 2014. The majority of respondents, consisting of both industry and disabled groups, supported the proposed civil only enforcement regime and to retain the 'injury to feelings' compensation provision. The S.I. removes the Equality Human Rights Commission as the complaints handling body.

9. Guidance

9.1 The CAA will update their Regulatory Enforcement Policy guidance during the autumn of 2014. The CAA will also notify stakeholders of the changes directly.

10. Impact

10.1 The CAA's review, undertaken in November 2013, to assess the level of compliance by airports and airlines with the EC Regulation, showed that the quality of the assistance provided by airports to PRMs is generally good. Data gathered from the CAA's airport questionnaire shows that, in 2012, airports received approximately 1 PRM complaint for every 1,700 disabled and PRM assisted. Between July 2012 and September 2013, the CAA received 75 complaints about airports (as compared with 108 complaints about airlines).

10.2 There are some 1,200 International Air Transport Association agents in the UK selling tickets on behalf of airlines. Based on membership of the main trade associations, there are around 120 airlines which arrange special assistance services for the disabled and PRMs travelling from UK airports. This suggests that in total a maximum of 1,500 businesses may be subject to the EC Regulation and the enforcement regime.

10.3 The CAA recovers its costs from Industry through its charging schemes. The ongoing impact on business can only be an estimate (based on known levels of current compliance) as it's difficult to predict the number of non-compliance cases that will arise. The best estimate annual gross cost to business is estimated to be £13,000.

10.4 The change will benefit consumers by fully realising the benefits of the EC Regulation's service assistance provisions to disabled and PRMs by providing an effective, proportionate and dissuasive enforcement regime that ensures that the provisions are adhered to by the relevant businesses.

10.5 An Impact Assessment is published alongside the Explanatory Memorandum at www.legislation.gov.uk.

11. Regulating small businesses

11.1 We do not expect impacts from the UK enforcement regime to be high or have a significant impact on small businesses. The enforcement regime will only apply where companies have not complied with their obligations under the EC Regulation. The CAA's approach to enforcement is to provide assistance and guidance in the first instance, which will limit any additional burdens on small businesses.

12. Monitoring & review

12.1 No formal review commitment or date has been included in the proposed Regulations because the changes are minor / low-cost in nature and replicate already well-established enforcement provisions used for other consumer related legislation.

13. Contact

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