



Tightening Passenger Rights

June 2009

The Passenger Rights Regulation

The rights of passengers will be bolstered from 3 December 2009 when a new EU Regulation comes into force. Regulation 1371/2007 on rail passengers' rights and obligations will have direct force in the UK without the need for national legislation.

This Regulation will firm up and add to existing compensation, information and assistance obligations. It will directly affect the provision of services to the public.

Key issues

Key issues covered in the Passenger Rights Regulation include:

- Rights of compensation to passengers for personal injury and damage/ loss of property including luggage and up-front payment where injury occurs;
- Rights of compensation and assistance for passengers in the event of delay and cancellation;
- A requirement to ensure the personal security of passengers in stations and on trains;
- Strengthening of the insurance obligations for all liabilities under the Regulation;
- An obligation to provide information, tickets, through tickets and reservations to passengers including special assistance and information for disabled users.

New liabilities for carriers

The Regulation adds certain absolute liabilities on industry parties to compensate passengers for personal injury, death and loss as well as damage to luggage to the existing regime. In addition there are specific compensation provisions for delays and cancellations.

The majority of the obligations already exist for international transport and the Regulation effectively copies these existing provisions into contracts (tickets) for domestic services. The obligations are not, however, always clearly expressed and there remains some doubt about their exact meaning.

Among other provisions, the following are likely to be important to carriers and others:

- The carrier will be primarily liable (subject to later adjustment of responsibility under CAHA or otherwise) where death or personal injury occurs for whatever reason;

- Carriers will be obliged to make interim payments to passengers who are injured pending the final outcome of any claim;
- In addition to replacement services and refunding tickets, carriers will be liable to refund part of the ticket price whenever delays exceed one hour;
- Carriers will also be liable for damage to registered luggage and, when linked to personal injury, hand luggage.

Carriers cannot contract out of these obligations and consequently will have to implement them in addition to existing passenger compensation arrangements.

There are also provisions making a carrier vicariously liable for the faults of their contractors (including for this purpose, Network Rail) which are likely to extend the scope of liability.

Personal security in stations and on trains

In addition to existing obligations under safety law and the other responsibilities industry parties have as occupiers and managers, the Regulation adds a requirement for railway undertakings (TOCs), infrastructure managers and station managers to take adequate measures to ensure passengers' personal security in stations and on trains and to "manage risks."

Insurance obligations

The Regulation obliges carriers to be adequately insured for the liabilities under it. Although, in principle, this is unlikely to be an issue for most TOCs, the nature of some of the liabilities in the Regulation may give rise to a need to review current insurance practices.

Under the Regulation, carriers are likely to have an increased front-line exposure to small claims for personal injury and delay, each of comparatively small sums.

Information to passengers including Persons of Reduced Mobility

The Regulation is fairly prescriptive on information which must be provided to all passengers and how tickets must be sold and explained. In addition there are particular obligations for assistance to be provided to Persons of

The full scope of this obligation is not certain, however, it arguably places a degree of responsibility on industry parties in respect of criminal activity in or near stations. The Regulation may add to the arguments available to members of the public that the industry is liable to them when security incidents occur. It may consequently add to the security measures which the industry must take on its own property.

Nonetheless, the Regulation will make it necessary in some cases to make payments up front which are not subsequently returnable and/or strict liability payments which can not be recovered from other parties.

Overall exposure to low level claims may therefore increase and insurers and carriers may need to consider the impact this may have upon their current policies.

Conclusion

The Regulation contains a number of provisions which will not exceed current good practice. However, it does apparently rely upon a fairly inflexible mechanism for passenger compensation and assistance which may result in carriers and others becoming responsible for matters which go beyond their current obligations. This in turn may have

Reduced Mobility ("PRM") and disabled people. This is in addition to the TSI on PRM. Industry members will need to check their existing procedures and information to ensure that they are complying with these prescribed obligations.

an impact upon the insurance coverage required by industry members.

The direct effect of the Regulation and the fact that it is expressed in a more generic style than most English legislation may also result in industry parties being unclear in certain circumstances where their actual responsibilities lie.

Contacts



Simon Coppen
Partner

Tel: 0117 939 2291

Email: simon.coppen@burges-salmon.com



Ann Metherall
Partner

Tel: 0117 902 6629

Email: ann.metherall@burges-salmon.com



Ian Tucker
Senior Associate

Tel: 0117 902 6332

Email: ian.tucker@burges-salmon.com

Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

© Burges Salmon LLP 2009. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting marketing@burges-salmon.com.