

Scottish Disability Equality Forum (SDEF)

Consultation enforcement of regulations regarding disabled people and air transport

As you may be aware the current consultation on the enforcement of regulations regarding disabled people and air transport is shortly coming to a close. It can be found on the Department for Transport website - [Access to Air Travel for Disabled Persons and Persons with Reduced Mobility: UK Consultation](#).

The regulations impose new legal obligations on airport operators, air carriers, their agents or tour operators.

Consultation questions (see information that follows)

- The Regulation requires sanctions to be effective, proportionate and dissuasive. Do you consider that the proposed offences and penalties meet these objectives?
- Are you content with the Government's proposed delegation of responsibilities to the CAA and to the Disability Rights Commission / Commission for Equality and Human Rights, and to the Equality Commission for Northern Ireland?
- Do you agree with the regulatory impact assessment? In particular, do you agree with the assumptions made about the costs and benefits of the respective sanctions regimes, and can you provide any more information about how the proposed approach to enforcement may affect your business, or your members' businesses?
- Do you have any further comments in connection with the Government's approach to the enforcement of the Regulation?

The consultation sets out offences and penalties as follows:

The partial **Regulatory Impact Assessment** (RIA) which accompanies this consultation paper (**Annex C**) makes a number of assumptions about the costs and benefits of different penalty regimes. **We would be interested in your views on this and any further information you can provide.**

We propose that the majority of offences under the Regulation should attract a penalty not exceeding Level 5 on the standard scale (currently £5,000). This is consistent with many offences in other aviation legislation.

The exceptions to this are offences relating to failure to comply with articles 3, 4(1), 4(4), 5, 8(1) and 13, where we propose that the fine should be up to the statutory maximum (currently £5,000) on summary conviction (through a magistrate's court) or an unlimited fine on conviction on indictment (through a Crown Court).

In considering the level of fine, we have taken account of the impact of non-compliance on passengers and the cost of rectifying non-compliance. Articles 3, 4(1), 4(4), 8(1) and 13 are fundamental to the principle of non-discrimination and offences

connected with these are likely to merit a fine higher than £5,000 if the penalty is to be "effective, proportionate and dissuasive". Article 5 concerns the designation of points of arrival and departure at an airport. As this is likely to require investment, a fine of less than £5,000 may not provide a financial incentive to install the necessary facilities.

The table below sets out the obligations the Regulation creates, on whom this falls and the proposed penalty for each offence. We would be interested in your views on the level of penalty proposed.

Article	Obligation	Direction of Responsibility	Proposed penalty
3	Not to refuse to accept a reservation and to embark a disabled person / person with reduced mobility (PRM).	Air carrier, agent or tour operator to passenger	<Unlimited fine
4.1(b)	Make reasonable efforts to propose an acceptable alternative. Offer reimbursement or re-routeing.	Air carrier, agent or tour operator to passenger	<Unlimited fine
4.3	Make publicly available in accessible formats the safety rules applying to carriage of disabled persons / PRMs and any restrictions on carriage.	Air carrier, agent or tour operator to passenger	Level 5 (<£5,000).
4.4	Inform passenger of reasons for exercising derogation.	Air carrier, agent or tour operator to passenger	<Unlimited fine
5	Designation of points of arrival and departure.	Airport to passenger	< Unlimited fine
6.1 -6.3	Transmission of information on need for assistance.	Air carrier, agent or tour operator to airport and operating air carrier	Level 3 (<£1,000)
6.4	Inform managing body of destination airport (in EU).	Operating air carrier to airport	Level 3 (<£1,000)
7.1-7.3 7.5-7.6	Provision of assistance at airport.	Airport to passenger	Level 5 (<£5,000)
8.1	Not to charge passengers for assistance.	Airport to passenger	< Unlimited fine
8.2	Provision of written justification for refusing request to contract out supply of assistance.	Airport to requesting body	Level 3 (<£1,000)
8.5	Separation of accounts.	Airport to user (air carrier)	Level 5. (<£5,000)
8.6	Make available an overview of accounts.	Airport to user and enforcement body.	Level 5. (<£5,000)
9.1	Set quality standards in cooperation	Airport to user	Level 5.

	with airport users...and organisations representing disabled passengers and PRMs.		(<£5,000)
9.3	Publish quality standards.		Level 5. (<£5,000)
10	Provision of assistance by air carriers.	Air carrier to passenger	Level 5 (<£5,000)
11	Ensure / provide training.	Air carrier and airport to staff	Level 5. (<£5,000)
13	Not to limit or waive obligations.	All obliged parties elsewhere in regulation	<Unlimited fine

In addition to the proposed penalties, under magistrates' sentencing guidelines, a court has a duty to consider compensation (up to £5,000) in every case where loss, damage or injury has resulted from the offence. However, it would normally be more appropriate to seek compensation through the civil courts, particularly where the circumstances are complicated.

In Scotland, where a person is convicted of a criminal offence, a court may make a compensation order requiring him to pay compensation to the victim for any personal injury, loss, or damage caused either directly or indirectly by the acts which constituted the offence. The order can be made along with any other disposal open to the court, except probation, absolute discharge or where sentencing of the offender is deferred. When the offence is tried under solemn criminal procedure (the procedure used in the prosecution of serious crimes in Scotland), the order may be for an unlimited amount; in summary proceedings before a sheriff or stipendiary magistrate, the order may be for up to £5,000 (although this is soon to be changed to £10,000); while in summary proceedings before a lay magistrate the order may be for up to £2,500. In all cases, the court must have regard to means of the offender in fixing the amount. A compensation order takes precedence over a fine where an offender has insufficient means to pay both.

Where an obligation exists under the Regulation but is not made an offence in the draft Statutory Instrument, we believe that no enforcement by the CAA would be required as this would be a commercial matter which is capable of being resolved between the parties concerned, or through the civil courts if necessary. An example of this might be Article 9.5 which only applies where an air carrier and airport managing body have agreed to the provision of a higher standard of service.

SDEF is putting in a response to this consultation so I would be grateful if you could comment on the questions below or raise issues that are pertinent. I am also keen to hear of **people's experiences** of air travel and particular problems they have encountered.

Liz Rowlett (liz.rowlett@sdef.org.uk) Policy, Information and Parliamentary Officer
Scottish Disability Equality Forum