



STATUTORY INSTRUMENTS.

**S.I. No. 646 of 2010**

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EUROPEAN COMMUNITIES (RAIL PASSENGERS' RIGHTS AND  
OBLIGATIONS) REGULATIONS 2010

**(Prn. A10/1937)**

## EUROPEAN COMMUNITIES (RAIL PASSENGERS' RIGHTS AND OBLIGATIONS) REGULATIONS 2010

I, NOEL DEMPSEY, Minister for Transport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), for the purpose of giving full effect to Regulation (EC) No. 1371/2007 of the European Parliament and of the Council of 23 October 2007<sup>1</sup>, hereby make the following regulations:

*Citation*

1. These Regulations may be cited as the European Communities (Rail Passengers' Rights and Obligations) Regulations 2010.

*Interpretation*

2. (1) In these Regulations—

“Authority” means National Transport Authority;

“documents, records or other information” has the meaning assigned to it by Regulation 6(9);

“provider”, means railway undertaking, carrier, substitute carrier, infrastructure manager, station manager, tour operator or ticket vendor (within the meaning of the Regulation (EC)), as the case may be;

“Regulation (EC)” means Regulation (EC) No. 1371/2007 of the European Parliament and of the Council of 23 October 2007<sup>1</sup>.

(2) A word or expression which is used in these Regulations and is also used in the Regulation (EC) has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Regulation (EC).

*Designated body*

3. The Authority is designated as the body responsible for the enforcement of the Regulation (EC).

*Improvement plan*

4. (1) Where the Authority, on its own initiative or following a complaint to it by a rail passenger, is of the opinion that an activity being or likely to be carried on by or under the control or on behalf of a provider and the activity involves, or is likely to involve a contravention of the Regulation (EC), the Authority may give a direction in writing to a provider requiring the submission to the Authority, within a time specified in the direction of a plan

<sup>1</sup>OJ No. L 315, 3.12.2007, p. 14

*Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 31st December, 2010.*

(“improvement plan”) specifying the remedial action proposed to be taken to rectify the matters set down in the direction.

(2) Where an improvement plan is submitted in accordance with paragraph (1) or re-submitted under subparagraph (b), the Authority shall, within 30 days, write to the provider—

- (a) stating that it is satisfied with the remedial action taken or proposed to be taken, or
- (b) if the Authority is not satisfied that the plan is adequate, directing that the plan be revised and re-submitted to the Authority within a time specified in the direction.

(3) The Authority may withdraw a direction under this Regulation at any time before a date specified in it or may extend and further extend such date.

*Improvement notice*

5. (1) Where the Authority, on its own initiative or following a complaint to it by a rail passenger, is of the opinion that a provider is contravening or has contravened or is failing to comply or has failed to comply with the Regulation (EC) or has failed, following a direction under Regulation 4, to submit or implement an appropriate improvement plan, the Authority may serve on a provider a notice (“improvement notice”) in writing stating that the Authority is of that opinion and the improvement notice shall—

- (a) specify the provision as to which the Authority is of that opinion,
- (b) give particulars of the reasons why the Authority is of that opinion,
- (c) where applicable, state that the provider has failed to submit or implement an improvement plan, and
- (d) direct that the provider remedy the alleged contraventions by a date specified in the notice, which shall not be earlier than the expiration of the period within which an appeal can be brought under paragraph (4).

(2) An improvement notice may include directions as to the measures to be taken to remedy the alleged contraventions set out in the notice.

(3) Where the Authority proposes to serve an improvement notice, the Authority shall first notify the provider in writing of the Authority’s intention to serve the improvement notice and the provider in question may, within 21 days, make representations to the Authority who shall consider them.

(4) Where the Authority decides, having considered any representations made to it under paragraph (3), to serve an improvement notice and so serves it, and where the provider in question is aggrieved by the improvement notice, then that provider may, within the period of 14 days beginning on the day on

which the notice is served on it, appeal to the High Court against the notice and in determining the appeal the judge may—

- (a) if he or she is satisfied that in the circumstances of the case it is reasonable to do so, confirm the notice with or without modification, or
- (b) cancel the notice.

(5) A provider who appeals against an improvement notice shall at the same time notify the Authority of the appeal and the grounds for appeal and the Authority shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(6) Where an appeal against an improvement notice is taken, the notice shall take effect on the day next following the day on which the notice is confirmed on appeal or the appeal is withdrawn or on the day specified in the notice as that on which it is to come into effect, whichever is the later.

(7) Where no appeal is taken against an improvement notice, the notice shall take effect on the expiration of the period during which such an appeal may be taken or on the day specified in the notice as that on which it is to come into effect, whichever is the later.

(8) The Authority may withdraw an improvement notice at any time before the date specified in it under paragraph (1)(d). The Authority may extend or further extend that date at any time when an appeal against the notice is not pending.

(9) A provider who fails to comply with an improvement notice commits an offence and is liable—

- (a) on summary conviction, to a fine not exceeding €5,000, or
- (b) on conviction on indictment, to a fine not exceeding €150,000.

*Authorised officers and powers to call production of documents, records or other information*

6. (1) The Authority may appoint such and so many persons as it sees fit to be authorised officers for the purpose of obtaining documents, records or other such information or of carrying out such inspections or any other functions as the Authority may deem necessary for the exercise by the Authority of its functions under the Regulation (EC).

(2) A person appointed to be an authorised officer by the Authority shall be furnished by the Authority with a certificate of his or her appointment. The certificate shall identify the matters in respect of which he or she may act under the Regulation (EC) and the period during which the authorisation stands.

(3) An authorised officer, when exercising a power conferred under this Regulation shall, if requested by any person thereby affected, produce the certificate to that person for inspection together with an appropriate form of identification.

(4) Subject to this Regulation, an authorised officer may, in respect of the functions of the Authority, serve on a provider a notice in writing, requiring, the provider, within such period as may be specified in the notice, not being less than 21 days from the date of the service of the notice, to do either or both of the following, namely—

- (a) to deliver to, or to make available for inspection by, the authorised officer such documents, records or other information as are in the possession, power or procurement of the provider and as contain, or may (in the authorised officer's opinion formed on reasonable grounds) contain, information relevant to the functions of the Authority under the Regulation (EC), and
- (b) to give to the authorised officer, in writing, such information, explanations and particulars as the authorised officer may reasonably require, being information, explanations and particulars that are relevant to the functions of the Authority under the Regulation (EC) and which are specified in the notice.

(5) Where, in compliance with the requirements of a notice served on a provider under paragraph (4), a provider makes available for inspection by an authorised officer, documents, records or other information, the provider shall afford the authorised officer reasonable assistance, including information, explanations and particulars, in relation to the use of all the electronic or other automatic means, if any, by which the documents, records or other information, in so far as they are in a non-legible form, are capable of being reproduced in a legible form, and any data equipment or any associated apparatus or material.

(6) Where, under paragraph (4), a provider makes documents, records or other information available for inspection by the authorised officer, the authorised officer may make extracts from or copies of all or any part of the documents, records or other information.

(7) Nothing in this Regulation shall be taken to compel the production by any person of a document, which he or she would be exempt from production in proceedings in a court on the ground of legal privilege.

(8) A person who—

- (a) obstructs or impedes an authorised officer in carrying out his or her functions under this Regulation, or
- (b) gives false or misleading information, explanations or particulars to an authorised officer when required under paragraph (4),

commits an offence and is liable on summary conviction to a fine not exceeding €5,000.

(9) In this Regulation “documents, records or other information” includes—

- (a) books, accounts, rolls, registers, papers and other documents, whether—
  - (i) comprised in bound volume, loose-leaf binders or other loose-leaf filing system, loose-leaf ledger sheets, pages, folios or cards, or
  - (ii) kept on microfilm, magnetic tape or in any non-legible form (by the use of electronics or otherwise) which is capable of being reproduced in a legible form,
- (b) every electronic or other automatic means, if any, by which any such thing in non-legible form is so capable of being reproduced, and
- (c) documents in manuscript, documents which are typed, printed, stenciled or created by any other mechanical or partly mechanical process in use from time to time and documents which are produced by any photographic or photo static process.

*Application to High Court for non-compliance with Regulation 6(4).*

7. (1) Where a provider fails to comply with the requirements of a notice in accordance with Regulation 6(4), the Authority may make an application to a judge of the High Court for an order requiring a provider to do either or both of the following, namely—

- (a) to deliver to an authorised officer, or to make available for inspection by the authorised officer, such documents, records or other information as are in the power, possession or procurement of a provider and as contain, or may (in the authorised officer's opinion formed on reasonable grounds) contain, information relevant to the functions of the Authority under the Regulation (EC), and
- (b) to give to the authorised officer such information, explanations and particulars as the authorised officer may reasonably require, being information, explanations and particulars that are relevant to the functions of the Authority under the Regulation (EC) and which are specified in the application.

(2) Where the judge, to whom an application is made under this Regulation, is satisfied that there are reasonable grounds for the application being made, that judge may, subject to such conditions as he or she may consider proper and specify in the order, make an order requiring the provider to whom the application relates—

- (a) to deliver to an authorised officer, or to make available for inspection by the authorised officer, such documents, records or other information, and
- (b) to give to the authorised officer such information, explanations and particulars,

as may be specified in the order.

*Service of directions, notices, etc.*

8. (1) Where a direction, notice or notification is required under this Regulation to be given to or served on a provider, the direction, notice or notification shall be in writing and shall be addressed to the provider and shall be given in one of the following ways:

- (a) by delivering it to the provider;
- (b) by leaving it at the address at which the provider ordinarily resides or carries on business;
- (c) by sending it by post in a pre-paid registered letter or by any other form of recorded delivery service, addressed to the provider at the address at which the provider ordinarily resides or carries on business;
- (d) if an address for the service of direction, notices or notifications has been furnished by the provider or a person, by leaving it at, or sending it by pre-paid registered post or by any other form of recorded delivery service addressed to the provider to, that address;
- (e) in any case where the Authority considers that the immediate giving of the direction, notice or notification is required, by sending it, by means of a facsimile machine or electronic mail, to a device or facility for the reception of facsimiles or electronic mail located at the address at which the provider or a person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the provider, that address, but only if—
  - (i) the sender's facsimile machine generates a message confirming successful transmission of the total number of pages of the notice, or
  - (ii) the sender's facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, as the case may be, and the direction, notice or notification is also given or served in one of the ways mentioned in any of the preceding paragraphs.

(2) For the purposes of this Regulation, a company registered under the Companies Acts shall be deemed to be ordinarily resident at its registered office and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

(3) A copy of a direction or notice, which has endorsed on it a certificate purporting to be signed by an officer of the Authority (authorised in that behalf by the Authority) stating that the copy is a true copy of the direction or notice may, without proof of the signature, be produced in every court and in all legal proceedings and is evidence, unless the contrary is shown, of the direction or notice.

*Prosecution of summary offences*

9. Proceedings for an offence under these Regulations may be prosecuted summarily by the Authority.

*Offences by bodies corporate*

10. Where an offence under these Regulations is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in any such capacity, that person as well as the body corporate commits an offence and is liable to be proceeded against and punished as if he or she had committed the first-mentioned offence.

*Cost of prosecutions*

11. Where a person is convicted of an offence under these Regulations, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order that person to pay to the Authority the costs and expenses, measured by the court, incurred by the Authority in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees or persons engaged by the Authority.



GIVEN under my Official Seal,  
22 December 2010.

NOEL DEMPSEY,  
Minister for Transport.

EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

The purpose of these Regulations to designate the National Transport Authority (NTA) as the enforcement body for the Regulation and to provide for penalties for infringement of the Regulation.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
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