



Department
for Transport

Consultation Document

Applying the Consumer Rights Act 2015 to the rail, aviation and maritime sectors

October 2015

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Foreword

Transport users, like other consumers, have the right to expect that they can get things put right if services are not delivered to the standard they expect.

From 1 October 2015, the Consumer Rights Act 2015 provides consumers with easy to understand rights and remedies when they are supplied with goods and services. Similarly, businesses providing a service are clear about what they should do if a problem arises in how they have delivered it.

Certain of the Act's provisions are due to come into force later, on 6 April 2016, so far as they apply to rail, aviation and maritime consumers ("transport users").

When transport services go wrong, transport users are already entitled to clear remedies. There are well established sector schemes which provide compensation and reimbursement for things like delay, cancellation and denied boarding.

The new law and existing schemes overlap in certain areas. In some respects, the sector schemes go further than the Act. In others, the Act provides greater consumer protection. There is potential for confusion over which should apply.

Transport users are entitled to clarity, and providers have a duty to be clear, about which rules and schemes should apply when things go wrong. Consumers need to know how to make a claim, and what they are entitled to. For providers, confusion over the law could lead to greater costs, which may be passed on to consumers and, in the case of rail, the taxpayer.

This consultation seeks views on the best way to ensure clarity for transport users and providers in the rail, air and maritime sectors, in a way which minimises costs for the industry, whilst leaving in place the package of remedies currently available to transport users.

How to respond

The consultation period began on 29 October 2015 and will run until 30 November 2015. Please ensure that your response reaches us by the closing date.

If you would like further copies of this document, it can be found at <https://www.gov.uk/dft#consultations>. If you would like alternative formats (Braille, audio CD, etc) please contact webmasterdft@dft.gsi.gov.uk.

You can respond by completing the electronic survey at:

<https://www.surveymonkey.com/r/LCB58KD>, or

please complete the consultation response Word form provided with the consultation at <https://www.gov.uk/dft#consultations>, and email it to CRA.Transport@dft.gsi.gov.uk, or

to respond by post:

Please send your response to Andrew Kelly marked:

"Applying the Consumer Rights Act 2015 to the rail, aviation and maritime sectors"

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When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled. If you have any suggestions of others who may wish to be involved in this process please contact us.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance

with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The proposal

Purpose of the Consultation

- 1.1 The purpose of this consultation is to seek your views as to whether or not you support the Government's proposal to exempt the transport sector from certain provisions of the Consumer Rights Act 2015 ("the CRA").
- 1.2 For the purposes of this consultation, the transport sector means EU licensed rail passenger services (see paragraph 2.2), maritime passenger services, and consumer passenger and cargo services in aviation. The proposed exemption (from sections 57(3) and 57(4)(a) of the CRA) relates to levels of liability for operators under the CRA in the event of disruption, such as delays or cancellation.
- 1.3 In each transport mode there already exist recognised and robust frameworks (set out in more detail in later sections of this consultation) to compensate and/or reimburse consumers in the event of services not being delivered on time or being cancelled.
- 1.4 We propose that transport operators should be able, as now, to conclude contracts with passengers that limit their liability to the levels set out in the sector-specific schemes. Those schemes have been designed with each transport sector in mind, taking into account the conditions in that sector, and the balance between passengers and operators. The schemes provide a balanced, targeted package of rights and remedies for passengers to address the specific problems which occur when journeys are disrupted, and the redress that passengers need. The schemes are also more generous than the CRA in many respects, in that they provide a range of measures, including a full or partial refund, compensation, and practical care and assistance, such as food and drink, and re-routing or overnight accommodation in cases of severe disruption (the types of assistance offered vary between schemes).
- 1.5 The Services Chapter of the CRA¹ provides for statutory remedies in the event of breach of statutory contract terms; we believe that the existing arrangements in each mode provide an established, equitable and commensurate package of remedies for consumers. Our proposal will mean that passengers will be able to continue to rely on those schemes, where they apply, as now, and transport operators will not be faced with additional, overlapping claims under the Services Chapter of the CRA.
- 1.6 Making the proposed exemption will avoid the risk of adding unnecessary complexity and duplication, which could result in additional confusion for

¹ Chapter 4 of Part 1 of the CRA

customers and additional cost to transport operators as a result of their increased liabilities.

Summary of Government policy on consumer rights

- 1.7 Consumers need to have confidence that they can get things put right if something goes wrong when they buy goods, or services are not delivered to the standard they expect. If consumers understand their rights, trust that traders and service providers will put things right when they go wrong, and know how to seek redress, they are likely to place more value on better service. This drives improved efficiency in service providers and helps to encourage economic growth. UK consumer law, including the consumer rights set up in specific sectors such as transport, should be clear, simple and effectively enforced, to help consumers have confidence in the services they use.

Summary of existing compensation arrangements for aviation, maritime and rail passengers

- 1.8 Aviation, maritime and EU licensed rail passenger operators currently provide significant consumer protection through schemes that give compensation to customers when services are delayed or cancelled, or in cases of denied boarding or downgrading.
- 1.9 Passengers' rights are not limited to a full or partial refund of their ticket price, but go further in protecting passengers by providing, for example, (depending on the scheme) compensation (in some cases in addition to a refund), refreshments, re-routing and accommodation. The schemes are set in out in detail later in this consultation.
- In the rail sector, the current minimum requirements for passenger compensation are part of a wider package of measures set out in the National Rail Conditions of Carriage² (NRCoC). They include, for example, the right to an immediate full refund from a ticket office if a customer decides not to travel when the train they intended to use is cancelled or delayed, or help where necessary in cases of travel disruption such as re-routing or overnight accommodation. As these rights are provided in the NRCoC, customers do not have to go to court to establish a breach of their statutory rights in order to receive a price reduction, as they might if the service provider refused to comply with a consumer claiming their rights under the CRA. There is also an EU Regulation on rail passengers' rights and obligations, which must be applied in full by 2024³. In addition, the Government is using the franchising programme to roll out the improved Delay Repay scheme

² National Rail Conditions of Carriage applying from 19 July 2015:

http://www.nationalrail.co.uk/static/documents/content/NRCOC_effective_from_19_July_2015.pdf.

³ Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations.

across all franchises, which will provide passengers with more generous compensation than the minimum rates payable under the NRCoC or the EU Regulation.

- In the aviation sector, international conventions govern compensation for loss, injury and damage arising from international carriage by air⁴. They apply to the carriage of passengers, baggage and cargo for reward. In instances of denied boarding, cancellation or delay, the current compensation regime is governed by EU Regulation 261/2004⁵, under which a passenger whose journey is disrupted may be entitled to a choice between a full refund (within seven days) and rerouting to their final destination, plus compensation and practical help at the airport.
- In the maritime sector, Regulation (EU) 1177/2010⁶ gives rights to cruise or ferry passengers when they are travelling by sea or inland waters. It imposes obligations on cruise, ferry, port/terminal operators, travel agents and other parties. The Regulation prevents discrimination against, and requires assistance to be provided to, disabled persons and persons with reduced mobility. It also gives rights to all passengers in case of cancellation or delay; and these rights include refreshments and accommodation, automatic rights to compensation (payable within one month of a claim being made), reimbursement of ticket price (payable within seven days), and alternative travel arrangements (depending on the length of the delay). At the request of the passenger, compensation and reimbursement can be made either in the form of cash, a cheque, by electronic means, vouchers and/or other services. A complaints procedure is also operated by voluntary complaint handling bodies within the UK and compliance with the Regulation is monitored by the UK National Enforcement Body, namely the Maritime and Coastguard Agency (MCA).

The Consumer Rights Act 2015 ("the CRA")

1.10 The CRA received Royal Assent in March 2015, and the majority of the provisions came into force on 1 October 2015⁷. The CRA clarifies, simplifies

⁴ The Convention for the Unification of Certain Rules for International Carriage by Air, the Warsaw Convention, 1929, together with amending and supplementary instruments, collectively known as "the Warsaw system, and The Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention), 1999. The Conventions have been extended through domestic and EU law to apply also to domestic flights.

⁵ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91.

⁶ Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004

⁷ The Consumer Rights Act 2015 (Commencement No.3, Transitional Provisions, Savings and Consequential Amendments) Order 2015 (S.I. 2015/1630) brings into force Part 1 of the Act on

and enhances consumer rights when buying goods, services and digital content. Prior to the CRA there were a number of laws that already existed to provide rights to consumers, and the CRA brings many of them together to help consumers be better informed and better protected when they are contracting for goods or services.

- 1.11 Chapter 4 of Part 1 of the CRA (“the Services Chapter”), together with certain amendments to the Unfair Contract Terms Act 1977 provided for in Schedule 4 to the CRA, will commence at the later date of 6 April 2016 in relation to consumer transport services in the rail, aviation and maritime sectors⁸.

Relevant provisions in the Services Chapter

- 1.12 The Services Chapter applies to all consumer service contracts except those which are expressly excluded from one or all of its provisions.
- 1.13 The Services Chapter provides consumers with a number of statutory rights; the trader must perform the service with reasonable care and skill⁹, within a reasonable time¹⁰, and for a reasonable price¹¹. These three rights correspond to rights (or ‘implied terms’) previously found in the Supply of Goods and Services Act 1982 (“the 1982 Act”). In addition, the CRA provides that the service must be performed in line with certain information given about it or about the trader¹².
- 1.14 The Services Chapter introduces statutory remedies available to consumers if each of the statutory rights set out in the Chapter are not met. Depending on the right which is breached, a consumer may be entitled to require that the service is properly performed, through it (or part of it) being done again (unless it is impossible to do so)¹³. The consumer may alternatively be entitled to a reduction in price in certain circumstances (if repeat performance is impossible, or if repeat performance cannot be done within a reasonable time) which could be up to a full refund¹⁴. In the transport sector, a consumer would not normally be able to require repeat performance as completing the performance of the service in conformity with the contract would be impossible¹⁵: the consumer would never be able to travel again at the time and on the date they were supposed to. So the right to a price reduction will always be the relevant remedy.

consumer contracts for goods, digital content and services, Part 2 of the Act on unfair terms and Chapter 1 of Part 3 of the Act on enforcement etc, so far as not yet in force.

⁸ Article 4 of the Consumer Rights Act 2015 (Commencement No.3, Transitional Provisions, Savings and Consequential Amendments) Order 2015 (S.I. 2015/1630)

⁹ Section 49

¹⁰ Section 52

¹¹ Section 51

¹² Section 50, provided the consumer took that information into account when deciding or after entering into the contract.

¹³ Section 55

¹⁴ Section 56

¹⁵ Section 55(3)

- 1.15 The service provider must give the refund using the same means of payment as the consumer used to pay for the service, unless the consumer expressly agrees otherwise¹⁶. The refund must be paid without undue delay, and in any event within 14 days of the service provider agreeing that the consumer is entitled to one¹⁷. The service provider must not impose any fee on the consumer in respect of the refund¹⁸.
- 1.16 The CRA also makes clear that the specific rights to repeat performance and price reduction under the Services Chapter do not affect the consumer's right to seek common law remedies for breach of contract, including damages and/or treating the contract at an end where the breach is very serious¹⁹.
- 1.17 Under the 1982 Act, the parties to a consumer contract had (subject to compliance with the Unfair Contract Terms Act), the freedom to contract out of the implied terms (corresponding to the CRA rights on reasonable price, time, and care and skill), and expressly to agree to negative or vary any rights, duties or liabilities arising as a result of breach of those terms²⁰. However, section 57 CRA contains new restrictions on the ability of traders and consumers to contract out of statutory rights and remedies under a services contract. Terms excluding a service provider's obligations to perform the service with reasonable care and skill or to be bound by information provided about the trader or the service will not be binding on a consumer.
- 1.18 Section 57(3) of the CRA also provides that traders cannot limit their liability to consumers for breach of any of the statutory rights provided under the CRA (care and skill, reasonable price and reasonable time, as well as information on trader/service) to less than the price paid.
- 1.19 And under section 57(4)(a) of the CRA, a term of a contract to supply services is also not binding if it excludes or restricts a consumer's right or remedy for breach of any one of those four statutory rights.
- 1.20 The provisions of the Services Chapter are set out at Annex A.

Proposal to disapply sections 57(3) and 57(4)(a) of the CRA for aviation, maritime and EU licensed rail passenger operators

- 1.21 Section 48(5) and (6) of the CRA provides a power, exercisable by statutory instrument, to disapply a provision of the Services Chapter in relation to a particular service in the circumstances specified in the instrument. The power can be used where it would not be appropriate to apply one or more

¹⁶ Section 56(5) CRA

¹⁷ Section 56(4) CRA

¹⁸ Section 56(6) CRA

¹⁹ Section 54(6) CRA.

²⁰ Section 16(1) of the Supply of Goods and Services Act 1982. This was subject to the limits in the Unfair Contract Terms Act 1977.

of the CRA's services provisions, for example, where there are already sector-specific consumer rights in place and the application of a provision in the Services Chapter would result in overlaps, potential confusion for consumers and traders, and unnecessary or disproportionate costs.

1.22 The Government believes that the best balance for customers and industry is to disapply sections 57(3) and 57(4)(a) of the CRA in relation to aviation, maritime and EU licensed rail passenger operators, and to allow transport operators to continue to rely in their contracts with consumers on existing and well-established sector-specific compensation arrangements that already provide a significant level of consumer protection.

- For Rail, the current rules on compensation are part of a wider package of measures that aim to balance the interests of customers and taxpayers. The rules provide a clear and established set of remedies, based on the length of delay, which are available to passengers without the need to go to court to claim. Through its role in designing and procuring rail franchise services, the Government will progressively secure further benefits for passengers, including improved compensation through the roll-out of improved Delay Repay schemes.
- For Aviation, the current rules on compensation are based on international conventions²¹ and EU Regulation 261/2004²². These are all well-established throughout the industry and provide consistent protection for the passenger on an international and EU level in an inherently cross-border industry. The international convention rules provide an exclusive framework for the liability of the carrier in various situations, including where the passenger dies or is injured, or in the event of loss or damage to baggage or cargo. For disrupted journeys, or in cases of denied boarding or downgrading, the further levels of compensation under EU Regulation 261/2004 are fixed, depending on the length of the delay and distance of the flight. Again the compensation and other assistance under that Regulation are intended to provide a balance between airlines and passengers at an EU-wide level.
- For Maritime, the current rules on passenger compensation are based on Regulation (EU) 1177/2010 and these are now well established throughout the industry, ensuring that there is a uniform and clear approach in ensuring that passengers can have prompt access to compensation as well as other mechanisms in the event of delays or

²¹ The Convention for the Unification of Certain Rules for International Carriage by Air (Warsaw Convention), 1929, together with amending and supplementary instruments, collectively known as "the Warsaw system", and The Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention), 1999.

²² Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91.

cancellations to their journeys by sea. The framework is furthermore supported by voluntary complaint handling bodies within the UK and monitored at EU level through National Enforcement Bodies in order to ensure a consistent approach when operators are dealing with complaints throughout the EU and also aims to clarify any inconsistencies in the regulatory regime.

- 1.23 Given the existence of these well-established sector-specific regimes and with a view to avoiding potentially confusing overlaps, the Government proposes to make an order to exempt aviation, maritime and EU licensed rail passenger operators from these specific provisions of the Services Chapter of the CRA, which would prevent service providers in these sectors from limiting their liability by reference to the existing sector-specific schemes. As now, service providers in these sectors will be able to include terms in their contracts for carriage by reference to the circumstances and limits on compensation provided under the sector-specific regimes.
- 1.24 Making this exemption will avoid the risk of adding unnecessary complexity and duplication, which could result in additional confusion for customers and additional cost to transport operators. The existing schemes are well established and can be used without needing to resort to the courts to seek redress whereas the provisions of the CRA might create uncertainty about appropriate levels of compensation in the event of breach of a statutory right which would be likely to generate unnecessary and costly litigation. An exemption should therefore help to keep costs down, which would otherwise be passed back to customers through increased ticket prices. In the case of the rail industry, it would reduce the risk of these costs being passed back to taxpayers.
- 1.25 Sections 2-4 of this consultation document cover each sector in more detail, and include an explanation of the exemption being sought, a description of the current arrangements in place, the reasons for seeking an exemption for that mode, and the impacts of the exemption not being granted.

Devolved administrations

- 1.26 The Consumer Rights Act applies throughout the UK²³. Initial discussions have taken place with the devolved administrations on an exemption, and this dialogue will continue as part of this consultation.

²³ Subject to some minor exceptions which are not relevant to this consultation: section 99 CRA

Rail

Introduction

- 2.1 We seek your views as to whether or not you support the Government's proposal to exempt EU licensed rail passenger services from certain provisions of the CRA, so that train operators can continue to rely in their contacts with train customers on the well-established sector-specific delay compensation arrangements, which already provide a significant level of consumer protection.

Scope of exemption proposed

- 2.2 We propose to disapply sections 57(3) and 57(4)(a) of the CRA (see paragraphs 1.18-1.19) in respect of any liability which an EU licensed rail passenger operator may have to a consumer arising from the delay or cancellation of a service. EU licensed rail passenger operators are those operating mainline services in the UK pursuant to a licence under Directive 2012/34 establishing a single European railway area (recast). The National Rail Conditions of Carriage (NRCoC), which cover, among other things, customers' rights if their train journey is disrupted, and their entitlements to compensation, apply to all EU licensed rail passenger operators.
- 2.3 The scope of the proposed exemption is limited to liabilities for delays or cancellations where there are well-established compensation arrangements that already provide a significant amount of consumer protection. Train operators would continue to be able to limit their liabilities to less than the price paid in the circumstances provided under their existing compensation arrangements.
- 2.4 However, the rights and remedies in the Services Chapter would apply to rail passengers in all other cases. For example, if a passenger had paid for a First Class ticket but no First Class accommodation was available, or they had been promised an on-board WiFi service that was not available, they would be able to make a claim under the CRA for a price reduction which, in appropriate circumstances, could be up to a full refund.

Current compensation arrangements for delays, cancellations or missed connections

- 2.5 Rail passengers travelling on mainline services benefit from standard rates of compensation for delays or cancellations, set out under the NRCoC and, for some train operators, the Delay Repay scheme, without having to establish a breach of a statutory right (eg that the train operator failed to exercise reasonable care and skill and this resulted in the delay). They do not have to go to court to establish their right to compensation. These compensation arrangements are part of a wider package of benefits to passengers, which

also includes the provision of assistance through re-routing or overnight accommodation if their journey is subject to severe disruption.

National Rail Conditions of Carriage

- 2.6 Compensation for delays is, as a minimum, based on the conditions in the National Rail Conditions of Carriage (NRCoC). The NRCoC, which are drawn up by the Association of Train Operating Companies (ATOC) but must be approved by the Department for Transport, are the contract that rail passengers enter into when they purchase a ticket to travel on scheduled mainline services. Each train operator's EU licence requires that they apply the NRCoC²⁴.
- 2.7 If the train a passenger intended to use is cancelled or delayed and the passenger decides not to travel, under the NRCoC²⁵ they will receive a full refund immediately on returning the unused ticket to any ticket office, which will be paid in cash wherever possible. No administrative charge is payable²⁶. ATOC are in the process of amending the NRCoC to ensure that by 6 April 2016, when the relevant provisions in the CRA will come into force, the NRCoC will reflect the refund rules in section 56(4)-(6) of the CRA (summarised in paragraph 1.15).
- 2.8 If passengers decide to travel and arrive more than 60 minutes late at their destination station, they are entitled to compensation for the delay, but they are not also entitled to a full refund.
- 2.9 The minimum standard for passenger compensation for delay is set out in NRCoC condition 42. In the event of a delay of more than 60 minutes, and where the delay was within the control of the rail industry (train operators or Network Rail etc), this sets minimum compensation at 50% of the fare paid for a single or a return ticket where there is delay on both legs of the journey, or 50% of the fare paid for the relevant portion of a return ticket where there is delay on only one leg of the journey. These minimum standards were raised as part of recent improvements (from 19 July 2015) to the NRCoC.
- 2.10 The compensation is payable in rail vouchers or in cash if the passenger requests this. The right for passengers to receive compensation in cash was introduced in the recent (19 July 2015) improvements to the NRCoC. The compensation arrangements in the NRCoC will be further improving over time to align with EU Regulation 1371/2007 on rail passengers' rights and obligations, which must be applied in full by 2024²⁷.

²⁴ See Statement of National Regulatory Provisions Condition 3

²⁵ Condition 26(a) and 27

²⁶ Condition 26 Notes (ii) an administrative charge cannot be applied in the case of a cancellation or delay

²⁷ Discussed in DfT consultation on Rail Passengers' Rights and Obligations

(<https://www.gov.uk/government/consultations/rail-passengers-rights-and-obligations>).

Passenger's Charters

- 2.11 All franchised train operators are required under their franchise agreement to have in place a Passenger's Charter which will include arrangements for compensation for passengers. In their Passenger's Charters, most train operators offer more than the NRCoC minimum, including in some cases Delay Repay. They can also, at their discretion, go beyond the commitments in their Passenger's Charter on an ex gratia basis.

Delay Repay Compensation

- 2.12 In addition to its role in approving the NRCoC, the Government has the power to secure further improvements to passengers through its role designing and procuring rail franchise services on the national rail network. Improvements to rail compensation are being delivered through the rollout of Delay Repay, which provides enhanced compensation for passengers (including season ticket holders) based on delays to individual journeys. This is being introduced as franchises are replaced or as opportunities arise within existing franchises. Where a train operator is required under the terms of its franchise to operate Delay Repay, the franchise agreement will include a term requiring payments to be made to passengers in accordance with the scheme.
- 2.13 Under Delay Repay, all passengers are entitled to claim compensation for each delay of 30 minutes or more, whatever the cause, on effectively a "no-fault basis": there are no exclusions for delays outside the control of the rail industry (such as those due to vandalism, suicides or exceptionally severe weather).
- 2.14 This more generous entitlement to compensation is 50% of the single fare for delays of between 30 and 59 minutes, and 100% of the single fare for delays between 60 and 119 minutes. For delays of 2 hours or more, the entitlement is 100% of the return fare. The entitlement for holders of season tickets is calculated using the proportional daily cost of the season ticket. Delay Repay offers higher rates of compensation than the minimum rates set out in the NRCoC and EU Regulation 1371/2007²⁸. A list of operators who apply Delay Repay²⁹ is provided at Annex B.

Benefits of retaining the current rail compensation arrangements

- 2.15 The current compensation arrangements have a clear and established rationale, based on the length of delay experienced by passengers, which is well understood by the rail industry. In all cases, including under the NRCoC, rail customers do not have to go to court to establish a breach of a statutory right in order to claim a price reduction. The procedures for

²⁸ Article 17 (Compensation of the ticket price) of EU Regulation 1371/2007.

²⁹ Some exceptions to the standard Delay Repay policy apply, see Annex B.

claiming compensation are straightforward. Delay Repay procedures also enable passengers to download and submit claim forms online via the train operator's website. Through new franchises, we are requiring operators to commit to using technology to provide new ways for passengers to make claims (for example, smartphones using an 'app'). We are also seeking to introduce systems to provide automated Delay Repay compensation for passengers who wish to "opt-in" to these.

- 2.16 The current rules governing compensation are part of a wider package of measures, which also include the provision of assistance, for example in the form of re-routing or overnight accommodation if passengers are stranded and cannot reach their final destination. The wider package of measures will also be improving over time to meet the requirements in EU Regulation 1371/2007³⁰ (eg passengers will be offered free meals and refreshments in the case of a delay of more than an hour if they are available on the train or in the station or can reasonably be supplied³¹). Taken as a whole, the Government considers that the remedies available to passengers through both the NRCoC and the roll-out of Delay Repay provide a comprehensive and proportionate package that strikes a fair balance between the interests of customers and taxpayers.
- 2.17 For these reasons, the Government believes that these arrangements should continue and section 57(3) and 57(4)(a) of the CRA should be disapplied.

Likely impacts and consequences for the rail industry and consumers if sections 57(3) and 57(4)(a) were to apply

- 2.18 The Government considers that applying these sections of the CRA to EU licensed rail operators would unbalance the current arrangements and impose disproportionate costs on the rail industry.
- 2.19 UK train operating companies would face additional costs if the existing caps on their liabilities to passengers for delays and cancellations were no longer binding. While the total number of passengers eligible for compensation would not increase, the amount of compensation payable to some passengers is likely to rise. This would increase the overall amount payable by train operators in compensation.
- 2.20 In addition, train operators could face additional legal and administrative costs were these provisions of the CRA to apply. These costs could be significant if there was an increase in litigation due to uncertainty about appropriate levels of compensation. While the additional administrative costs would be borne by train operators, the legal costs may even fall to consumers in the event of an unsuccessful challenge.

³⁰ Discussed in DfT consultation on Rail Passengers' Rights and Obligations (<https://www.gov.uk/government/consultations/rail-passengers-rights-and-obligations>).

³¹ Article 18 (Assistance) of EU Regulation 1371/2007.

- 2.21 Furthermore, any increase in costs is likely to be passed on either to customers through increased fares, or to taxpayers through reduced bid premiums. As the UK rail industry receives public subsidy and many rail fares are regulated, it is likely that these costs would be borne by UK taxpayers. The issue of compensation therefore needs to be considered in the wider context of the balance between fare payers and taxpayer funding for the railways.
- 2.22 Train operators are currently responsible for less than a third of the delays on their own services, with the remainder being due to factors outside their control. Where delays are within the control of franchised train operators, the Government holds the operators to account for their performance through its management of franchise contracts. For these reasons, the Government considers that any additional improvement in train operator performance arising from an increase in their liability to pay compensation is likely to be limited.

Questions

- 2.23 We welcome views on the Government's proposal to disapply sections 57(3) and 57(4)(a) of the CRA for EU licensed rail passenger operators so that operators can continue to cap their liabilities to consumers in cases of delays, cancellations or missed connections.

Q1: Do you agree that the existing schemes should continue to apply to the EU licensed rail sector? Please provide evidence to support your views. If you do not agree, please give reasons.

Q2: Do you agree that sections 57(3) and 57(4)(a) should not apply to the EU licensed rail sector? Please provide evidence to support your views. If you do not agree, please give reasons.

Q3: Do you agree with our assessment of the likely impacts on EU licensed rail passenger operators if the exemption was not granted? If you do not agree, please give reasons. Are there any other impacts that are not referred to?

Q4: What is your estimate of the costs that might fall on EU licensed rail passenger operators if the exemption was not granted? Please provide clear reasoning on the assumptions and methodology used.

Aviation

Scope of exemption proposed

- 3.1 The exemption that we propose for operators in the aviation sector is from sections 57(3) and 57(4)(a) of the Act, so that where flights are governed by the existing international and EU aviation legal framework air carriers will continue to be able to exclude or restrict their liability for breach of an implied term and to limit their liability by reference to the existing frameworks.
- 3.2 It would still be open to a consumer to bring a claim under the Services Chapter where those frameworks do not apply, for example on a flight not governed by the international aviation conventions, and in circumstances not governed by the Regulation.

Current compensation arrangements in the aviation industry

The international framework – the Carriage by Air Conventions

- 3.3 International flights are governed by a series of international Conventions (“the Carriage by Air Conventions”³²) which provide the framework for liability of the carrier if a passenger dies or is injured, or if baggage or cargo is destroyed, damaged or lost. The Carriage by Air Conventions also provide for compensation in the event of delay.
- 3.4 Which Convention applies to a particular flight depends on which Convention the countries of departure and arrival are both party to, but the most recent Convention, the Montreal Convention, to which the UK and EU are both party, governs compensation in relation to injury or death on board an aircraft and delayed or lost luggage.
- 3.5 The Carriage by Air Conventions are part of the law of the UK under the Carriage by Air Act 1961 and, for Community air carriers, EU Regulation No 2027/97, as amended by EC Regulation 889/2002³³.
- 3.6 The Montreal Convention also applies to domestic flights in the UK as a result of EU Regulation 2027/97, as amended, and the Carriage by Air Acts (Application of Provisions) Order 2004³⁴.

³² The Convention for the Unification of Certain Rules for International Carriage by Air (Warsaw Convention), 1929, together with amending and supplementary instruments, collectively known as “the Warsaw system”, and The Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention), 1999.

³³ Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air, as amended by Regulation (EC) No 889/2002.

³⁴ SI 2004/1899.

3.7 The courts have held that the Carriage by Air Conventions are intended to provide a uniform and exclusive code in relation to those matters with which they deal, and that allowing additional domestic rules to apply alongside them (including claims for breach of implied terms) would distort the operation of the whole of the Convention scheme³⁵.

EU Regulation 261/2004

3.8 Under EU Regulation 261/2004 (“the Regulation”)³⁶, airline passengers are entitled to a range of compensation and assistance if their flight is delayed or cancelled, or they are denied boarding or downgraded.

3.9 The Regulation applies to all services departing from an airport in the EU and on services from a third country into the EU operated by a Community carrier. The Regulation extends to Iceland, Liechtenstein, Norway and Switzerland.

3.10 In the event of denied boarding, cancellation or delay at the airport of departure, assistance may include food, drink, access to communications and overnight accommodation if necessary.

3.11 If boarding is denied, or a flight is cancelled, or delayed at the airport of departure for 5 hours or more, in addition to assistance, the passenger has the right to a full refund of their ticket price within seven days, together with a return flight to the first point of departure, where applicable. In the event of denied boarding and cancellation they may also choose to be rerouted to their final destination (in which case they will not receive a refund).

3.12 In addition compensation is payable if a passenger is denied boarding, or their flight is cancelled or delayed on arrival by more than 3 hours³⁷. The amounts are fixed and based on the flight route and distance, rather than ticket price.

a. Flights within the EU:

- 250 euros compensation for a flight of 1,500 km or less (short-haul)
- 400 euros compensation for a flight of over 1,500 km (medium and long-haul)

b. Other flights with an EU connection:

- 250 euros compensation for a flight of 1,500 km or less (short-haul)

³⁵ *Sidhu and others v British Airways Plc* [1997] AC 430; *Stott v Thomas Cook Tour Operators Ltd* [2014] UKSC 15.

³⁶ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91.

³⁷ Payment of compensation under the Regulation is subject to a defence of extraordinary circumstances.

- 400 euros compensation for a flight of over 1,500 km up to 3,500 km (medium-haul)
 - 600 euros compensation for a flight of over 3,500 km³⁸ (long-haul).
- 3.13 Passengers make their claim initially with their airline. If the issue cannot be resolved, they can take their complaint to the Civil Aviation Authority (CAA) or similar body elsewhere in the EU. Although passengers may ultimately have to take their claim under the Regulation to court, it is intended that the fixed levels of compensation under the Regulation should ordinarily be accessed without recourse to litigation.
- 3.14 The Regulation sets minimum standards; it does not prevent passengers from bringing further compensation claims. Such claims would themselves be subject to the limitations set down in the Carriage by Air Conventions, which would preclude a claim under the Services Chapter of the CRA. However, it would be possible to bring such a claim where none of the Conventions apply, and where the circumstances do not fall within the Regulation (i.e. it is not a case of denied boarding, cancellation, delay or downgrading).

Benefits of the current aviation compensation regime

- 3.15 It is the Government's view that the international and EU-wide regime should be preserved because it provides an appropriate level of protection for passengers (and consumers with claims under the Conventions relating to cargo) that is broadly comparable to the protections that would be offered by the Consumer Rights Act if applied in full. The existing regime achieves this without putting UK airlines at an economic disadvantage, which could potentially lead to higher fares for passengers, as well as less choice and reduced connectivity as some routes become uneconomical.
- 3.16 The Regulation provides passengers with a predictable level of protection, which combines fixed rate monetary compensation with a range of assistance. It also ensures a consistent approach for passengers and other consumers using air services throughout Europe and, through the Carriage by Air Conventions, the world. The fixed rates of compensation, based on the length of the delay and distance of the flight, are relatively generous and are straightforward for the industry and the CAA to administer and for the consumer to understand.
- 3.17 Treating the Carriage by Air Conventions as exclusive and preventing other claims, such as for breach of the implied terms under the CRA, is a continuation of the existing legal position, confirmed by the UK Supreme Court. As set out above, it was never the policy intention behind the CRA to displace such sector-specific consumer protection regimes.

³⁸ If a passenger is offered rerouting on an alternative flight which arrives within 2, 3, or 4 hours (depending on distance and route) of the scheduled arrival time of the original flight, the air carrier may reduce the compensation by 50%.

Likely impacts and consequences for the aviation industry and consumers if sections 57(3) and 57(4)(a) were to apply

- 3.18 If an exemption is not granted, airlines which conclude consumer contracts under the law of any part of the UK would not be able to limit their liability under those contracts by reference to the circumstances and the limits set down in the Carriage by Air Conventions and the Regulation. The relationship between the international and EU aviation regime and the new consumer protection regime would not be wholly clear. We consider that airlines should be permitted to limit or exclude their liability by reference to the recognised framework, and not leave open the possibility of a claim and parallel remedy arising under the Services Chapter in the circumstances in which those instruments govern the airline's obligations to the passenger.
- 3.19 There is a possibility that UK airlines could face additional costs to meet a requirement to pay passengers the full ticket price in addition to the circumstances in which Regulation 261/2004 provides for a refund. They could also face claims for damages for breach of implied terms under the Services Chapter in addition to existing levels of compensation in the event of denied boarding, delay and cancellation. Although any further damages would themselves be subject to the limits in the Carriage by Air Conventions, where those Conventions apply, any additional costs would be likely to be passed on to the consumer through higher fares.
- 3.20 In addition, there could be a lack of certainty about the legal relationship between the Carriage by Air Conventions, Regulation 261/2004 and the CRA's provisions, which may lead to costly litigation and a lack of clarity for the consumer as to what they are entitled to. As the aviation sector is an international industry with a global customer base, there would likely be severe difficulties in communicating with clarity to the consumer what their rights are under the overlapping schemes. It is therefore the Government's view that applying sections 57(3) and 57(4)(a) of the Act to the aviation sector would represent a backward step by introducing an additional layer of confusion for the consumer without markedly increasing the overall level of consumer protection. As noted above, one of the intentions of the Act was to increase clarity and disapplying these sections is consistent with this aim.
- 3.21 Furthermore, the industry would face extra administrative costs from operating two overlapping redress systems. Again, these costs could be passed on to consumers through higher fares.
- 3.22 Finally, the risk of higher compensation burdens might incentivise the airline industry to build extra leeway into their timetabling as their compensation liability becomes increasingly difficult for them to predict. This has the potential to decrease connectivity, increase journey times for passengers and put the UK aviation sector at a competitive disadvantage in an international market.

The nature of the exemption

- 3.23 Subject to Parliamentary approval, we propose to disapply sections 57(3) and 57(4)(a) of the CRA in relation to consumer contracts for carriage by air where the Regulation governs liability. This will mean that in cases of denied boarding, delay, cancellation and downgrading a passenger's rights will be those under the Regulation rather than the services Chapter of the CRA.
- 3.24 We also intend to ensure that the existing position, in which the Carriage by Air Conventions provide an exclusive legal regime, is preserved. This will mean, as now, that where one of those Conventions applies, no claim will be possible under the Services Chapter of the CRA.

Questions

- 3.25 We welcome views on the Government's proposal to continue to permit air carriers to restrict their liability to consumers by reference to the existing international and EU aviation legal framework, through an exemption from sections 57(3) and 57(4)(a) of the Consumer Rights Act.

Q5: Do you agree that the existing international and EU aviation legal framework should continue to apply to air passenger and cargo consumer services? Please provide evidence to support your views. If you do not agree, please explain why.

Q6: Do you agree that the proposed exemption will achieve the intended purpose? Please provide evidence to support your views. If you do not agree, please explain why.

Q7: What do you consider are the likely impacts, and potential costs, if an exemption is not made and air carriers were not permitted to limit their conditions of carriage in relation to breach of the implied terms under the Services Chapter of the Act?

Maritime

Introduction

- 4.1 We seek your views as to whether or not you support the Government's proposal to apply to the maritime sector the specific exemption from the Consumer Rights Act (set out previously) in order to maintain the *status quo* established through Regulation (EU) 1177/2010 in compensating and reimbursing passengers travelling by sea who have their journey delayed or cancelled.

Scope of exemption proposed

- 4.2 We propose to disapply sections 57(3) and 57(4)(a) of the CRA in respect of any liability which a maritime passenger operator may have to a consumer arising from the delay or cancellation of a service. The proposed exemption would apply to those operating maritime services in the UK which are covered by Regulation (EU) 1177/2010 which concerns the rights of passengers when travelling by sea and inland waterways.

Current compensation arrangements for delays, cancellations and missed connections

- 4.3 Under Regulation (EU) 1177/2010³⁹, maritime passengers are entitled to a full reimbursement of the ticket price if they decide not to travel where the carrier expects the departure of a service to be cancelled or delayed by more than 90 minutes. In appropriate cases, a passenger is also entitled to a return service free of charge to their first point of departure.
- 4.4 Maritime passengers are also entitled to compensation if they are facing a delay in arrival at their final destination. Compensation is calculated as a percentage of the ticket price, with a ceiling of 50%, as follows –
- 4.5 The minimum level of compensation shall be 25% of the ticket price for a delay of at least:
- a. 1 hour in the case of a scheduled journey of up to 4 hours;
 - b. 2 hours in the case of a scheduled journey of more than 4 hours, but not exceeding 8 hours;
 - c. 3 hours in the case of a scheduled journey of more than 8 hours, but not exceeding 24 hours; or
 - d. 6 hours in the case of a scheduled journey of more than 24 hours.

³⁹ Regulation (EU) 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004

- 4.6 If the delay exceeds double the time set out in paragraphs (a) to (d), the compensation is 50% of the ticket price.
- 4.7 There is no requirement for passengers to go to court to establish their loss. Payment of compensation is automatic.
- 4.8 Reimbursement of the ticket price (paragraph 4.3) must be paid within seven days, whereas compensation for delay in arrival (paragraph 4.4) must be paid within one month of the passenger submitting a claim. At the request of the passenger, reimbursement and compensation can be made either in the form of cash, a cheque, by electronic means, vouchers and/or other services.
- 4.9 The purpose of the proposed exemption for the maritime sector is to ensure that the rights of consumers protected under the EU Regulation remain unaffected by certain provisions within the Act. This approach will allow maritime services that are subject to the EU Regulation to continue to operate current delay in arrival compensation schemes.

Benefits of the retaining the current maritime compensation arrangements

- 4.10 Regulation (EU) 1177/2010 also provides for a graduated range of financial and other types of compensation. These include offering passengers departing from port terminals where a carrier reasonably expects the departure of a passenger service or a cruise to be canceled or delayed by more than 90 minutes beyond its scheduled departure, free of charge, snacks, meals or refreshments in reasonable relation to the delay. Furthermore, where a stay of one or more nights, or a stay which is additional to that intended by the passenger, becomes necessary, and where and when physically possible, the carrier must offer passengers departing from port terminals, free of charge, adequate accommodation on board, or ashore, and transport to and from the port terminal and place of accommodation. However, for each passenger, the carrier may limit the total cost of accommodation ashore, not including transport to and from the port terminal and place of accommodation, to EUR 80 per night, for a maximum of three nights.

Likely impacts and consequences for the maritime industry and consumers if sections 57(3) and 57(4)(a) were to apply

- 4.11 The Consumer Rights Act will alter the 'national law' relating to damages that were in force at the time the EU Regulation was negotiated. Without an exemption, there is a risk of a lack of clarity as to whether or not the EU legislation (Regulation (EU) 1177/2010) takes precedence over the provisions in the domestic legislation (Consumer Rights Act). This may lead to costly litigation.
- 4.12 In addition, this could result in an increase in fares and other charges. Any extra costs would be absorbed by the maritime service operators, which would be likely to pass them on to consumers through higher fares or to

Government through subsidies paid to the maritime industry (the latter applies in Scotland where many local services are funded or part-funded by the Scottish Government).

- 4.13 The new provisions in the Act could also lead to an increase in the duration of ferry crossings, allowing more leeway in timetables to reduce potential compensation payments, which would ultimately be to the detriment of the consumer. This might dampen the effect of the Act as delayed services would still arrive on time according to new timetables and reduce the potential for compensation payments. This means that there is a risk that punctuality and delay management do not improve significantly relative to current experience, and compensation levels do not increase substantially either.

Questions

Q8: Do you agree that the existing provisions set out in the EU passenger rights legislation relating to delays and cancellations in the maritime sector should continue to apply to maritime passengers? Please provide evidence to support your views. If you do not agree, please give your reasons.

Q9: Do you agree that the proposed exemption disapplying sections 57(3) and 57(4)(a) for the maritime sector will achieve the intended outcome as set out in this Consultation Document? Please provide evidence to support your views. If you do not agree, please give your reasons.

Q10: What do you consider are the likely impacts and potential costs on the maritime sector if the proposed exemptions are not granted? Please provide your evidence and assumptions. Are there any other impacts that have not been identified in this Consultation Document?

Consultation Questions

Rail:

Q1: Do you agree that the existing schemes should continue to apply to the EU licensed rail sector? Please provide evidence to support your views. If you do not agree, please give reasons.

Q2: Do you agree that sections 57(3) and 57(4)(a) should not apply to the EU licensed rail sector? Please provide evidence to support your views. If you do not agree, please give reasons.

Q3: Do you agree with our assessment of the likely impacts on EU licensed rail passenger operators if the exemption was not granted? If you do not agree, please give reasons. Are there any other impacts that are not referred to?

Q4: What is your estimate of the costs that might fall on EU licensed rail passenger operators if the exemption was not granted? Please provide clear reasoning on the assumptions and methodology used.

Aviation:

Q5: Do you agree that the existing international and EU aviation legal framework should continue to apply to air passenger and cargo consumer services? Please provide evidence to support your views. If you do not agree, please explain why.

Q6: Do you agree that the proposed exemption will achieve the intended purpose? Please provide evidence to support your views. If you do not agree, please explain why.

Q7: What do you consider are the likely impacts, and potential costs, if an exemption is not made and air carriers were not permitted to limit their conditions of carriage in relation to breach of the implied terms under the Services Chapter of the Act?

Maritime:

Q8: Do you agree that the existing provisions set out in the EU passenger rights legislation relating to delays and cancellations in the maritime sector should continue to apply to maritime passengers? Please provide evidence to support your views. If you do not agree, please give your reasons.

Q9: Do you agree that the proposed exemption disapplying sections 57(3) and 57(4)(a) for the maritime sector will achieve the intended outcome as set out in this Consultation Document? Please provide evidence to support your views. If you do not agree, please give your reasons.

Q10: What do you consider are the likely impacts and potential costs on the maritime sector if the proposed exemptions are not granted? Please provide your evidence and assumptions. Are there any other impacts that have not been identified in this

Consultation Document?

What will happen next

A summary of responses, including the next steps, will be published within three months of the consultation closing on 30 November 2015. Paper copies will be available on request.

Annex A Consumer Rights Act 2015: Chapter 4 - Services

Order-making power

48 Contracts covered by this Chapter

- (1) This Chapter applies to a contract for a trader to supply a service to a consumer.
- (2) That does not include a contract of employment or apprenticeship.
- (3) In relation to Scotland, this Chapter does not apply to a gratuitous contract.
- (4) A contract to which this Chapter applies is referred to in this Part as a “contract to supply a service”.
- (5) The Secretary of State may by order made by statutory instrument provide that a provision of this Chapter does not apply in relation to a service of a description specified in the order.
- (6) The power in subsection (5) includes power to provide that a provision of this Chapter does not apply in relation to a service of a description specified in the order in the circumstances so specified.
- (7) An order under subsection (5) may contain transitional or transitory provision or savings.
- (8) No order may be made under subsection (5) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

Relevant statutory duties

49 Service to be performed with reasonable care and skill

- (1) Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill.
- (2) See section 54 for a consumer’s rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

50 Information about the trader or service to be binding

- (1) Every contract to supply a service is to be treated as including as a term of the contract anything that is said or written to the consumer, by or on behalf of the trader, about the trader or the service, if—

- (a) it is taken into account by the consumer when deciding to enter into the contract, or
 - (b) it is taken into account by the consumer when making any decision about the service after entering into the contract.
- (2) Anything taken into account by the consumer as mentioned in subsection (1)(a) or (b) is subject to—
- (a) anything that qualified it and was said or written to the consumer by the trader on the same occasion, and
 - (b) any change to it that has been expressly agreed between the consumer and the trader (before entering into the contract or later).
- (3) Without prejudice to subsection (1), any information provided by the trader in accordance with regulation 9, 10 or 13 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ([SI 2013/3134](#)) is to be treated as included as a term of the contract.
- (4) A change to any of the information mentioned in subsection (3), made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader.
- (5) See section 54 for a consumer's rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

51 Reasonable price to be paid for a service

- (1) This section applies to a contract to supply a service if—
- (a) the consumer has not paid a price or other consideration for the service,
 - (b) the contract does not expressly fix a price or other consideration, and does not say how it is to be fixed, and
 - (c) anything that is to be treated under section 50 as included in the contract does not fix a price or other consideration either.
- (2) In that case the contract is to be treated as including a term that the consumer must pay a reasonable price for the service, and no more.
- (3) What is a reasonable price is a question of fact.

52 Service to be performed within a reasonable time

- (1) This section applies to a contract to supply a service, if—
- (a) the contract does not expressly fix the time for the service to be performed, and does not say how it is to be fixed, and

- (b) information that is to be treated under section 50 as included in the contract does not fix the time either.
- (2) In that case the contract is to be treated as including a term that the trader must perform the service within a reasonable time.
- (3) What is a reasonable time is a question of fact.
- (4) See section 54 for a consumer's rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

53 Relation to other law on contract terms

- (1) Nothing in this Chapter affects any enactment or rule of law that imposes a stricter duty on the trader.
- (2) This Chapter is subject to any other enactment which defines or restricts the rights, duties or liabilities arising in connection with a service of any description.

Relevant statutory remedies

54 Consumer's rights to enforce terms about services

- (1) The consumer's rights under this section and sections 55 and 56 do not affect any rights that the contract provides for, if those are not inconsistent.
- (2) In this section and section 55 a reference to a service conforming to a contract is a reference to—
 - (a) the service being performed in accordance with section 49, or
 - (b) the service conforming to a term that section 50 requires to be treated as included in the contract and that relates to the performance of the service.
- (3) If the service does not conform to the contract, the consumer's rights (and the provisions about them and when they are available) are—
 - (a) the right to require repeat performance (see section 55);
 - (b) the right to a price reduction (see section 56).
- (4) If the trader is in breach of a term that section 50 requires to be treated as included in the contract but that does not relate to the service, the consumer has the right to a price reduction (see section 56 for provisions about that right and when it is available).
- (5) If the trader is in breach of what the contract requires under section 52 (performance within a reasonable time), the consumer has the right to a price

reduction (see section 56 for provisions about that right and when it is available).

- (6) This section and sections 55 and 56 do not prevent the consumer seeking other remedies for a breach of a term to which any of subsections (3) to (5) applies, instead of or in addition to a remedy referred to there (but not so as to recover twice for the same loss).
- (7) Those other remedies include any of the following that is open to the consumer in the circumstances—
 - (a) claiming damages;
 - (b) seeking to recover money paid where the consideration for payment of the money has failed;
 - (c) seeking specific performance;
 - (d) seeking an order for specific implement;
 - (e) relying on the breach against a claim by the trader under the contract;
 - (f) exercising a right to treat the contract as at an end.

55 Right to repeat performance

- (1) The right to require repeat performance is a right to require the trader to perform the service again, to the extent necessary to complete its performance in conformity with the contract.
- (2) If the consumer requires such repeat performance, the trader—
 - (a) must provide it within a reasonable time and without significant inconvenience to the consumer; and
 - (b) must bear any necessary costs incurred in doing so (including in particular the cost of any labour or materials).
- (3) The consumer cannot require repeat performance if completing performance of the service in conformity with the contract is impossible.
- (4) Any question as to what is a reasonable time or significant inconvenience is to be determined taking account of—
 - (a) the nature of the service, and
 - (b) the purpose for which the service was to be performed.

56 Right to price reduction

- (1) The right to a price reduction is the right to require the trader to reduce the price to the consumer by an appropriate amount (including the right to receive a refund for anything already paid above the reduced amount).
- (2) The amount of the reduction may, where appropriate, be the full amount of the price.
- (3) A consumer who has that right and the right to require repeat performance is only entitled to a price reduction in one of these situations—
 - (a) because of section 55(3) the consumer cannot require repeat performance; or
 - (b) the consumer has required repeat performance, but the trader is in breach of the requirement of section 55(2)(a) to do it within a reasonable time and without significant inconvenience to the consumer.
- (4) A refund under this section must be given without undue delay, and in any event within 14 days beginning with the day on which the trader agrees that the consumer is entitled to a refund.
- (5) The trader must give the refund using the same means of payment as the consumer used to pay for the service, unless the consumer expressly agrees otherwise.
- (6) The trader must not impose any fee on the consumer in respect of the refund.

Provisions preventing the trader from contracting out of statutory rights and remedies

57 Liability that cannot be excluded or restricted

- (1) A term of a contract to supply services is not binding on the consumer to the extent that it would exclude the trader's liability arising under section 49 (service to be performed with reasonable care and skill).
- (2) Subject to section 50(2), a term of a contract to supply services is not binding on the consumer to the extent that it would exclude the trader's liability arising under section 50 (information about trader or service to be binding).
- (3) A term of a contract to supply services is not binding on the consumer to the extent that it would restrict the trader's liability arising under any of sections 49 and 50 and, where they apply, sections 51 and 52 (reasonable price and reasonable time), if it would prevent the consumer in an appropriate case from recovering the price paid or the value of any other consideration. (If it would not prevent the consumer from doing so, Part 2 (unfair terms) may apply.)
- (4) That also means that a term of a contract to supply services is not binding on the consumer to the extent that it would —

- (a) exclude or restrict a right or remedy in respect of a liability under any of sections 49 to 52,
 - (b) make such a right or remedy or its enforcement subject to a restrictive or onerous condition,
 - (c) allow a trader to put a person at a disadvantage as a result of pursuing such a right or remedy, or
 - (d) exclude or restrict rules of evidence or procedure.
- (5) The references in subsections (1) to (3) to excluding or restricting a liability also include preventing an obligation or duty arising or limiting its extent.
- (6) An agreement in writing to submit present or future differences to arbitration is not to be regarded as excluding or restricting any liability for the purposes of this section.
- (7) See Schedule 3 for provision about the enforcement of this section.

Annex B Train operators using Delay Repay

Delay Repay is currently operated by the following train operators:

- Abellio Greater Anglia⁴⁰
- Chiltern Railways⁴¹
- London Midland
- CrossCountry
- East Midlands Trains
- Virgin Trains East Coast
- Govia Thameslink Railway
- Southeastern
- Virgin Trains West Coast
- c2c
- ScotRail
- Translink

The roll out of Delay Repay will continue in the new Northern and TransPennine Express franchises starting in April 2016.

Delay Repay is also operated by the Northern Ireland Railways train operator, Translink.

⁴⁰ The entitlement to 100% of the return fare for delays of 120 minutes or more does not apply on Abellio Greater Anglia. It is intended that the new East Anglia franchise commencing in October 2016 will include this entitlement.

⁴¹ The entitlement to 100% of the return fare for delays of 120 minutes or more does not apply on Chiltern Railways. Exclusions for delays outside industry control also apply on Chiltern Railways. It is intended that the new Chiltern franchise commencing in December 2021 will include the entitlement to 100% compensation and remove the exclusions.

Annex C Consultation principles

The consultation is being conducted in line with the Government's key consultation principles which can be accessed on the Gov.uk website at: <https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

Consultation Co-ordinator
Department for Transport
Zone 1/29 Great Minster House
33 Horseferry Road
London SW1P 4DR

Email: consultation@dft.gsi.gov.uk

Annex D List of those invited to respond

ABTA
Air Travel Insolvency Protection Advisory Committee (ATIPAC)
Airport Operators Association (AOA)
Associated British Ports (ABP)
Association of Train Operating Companies (ATOC)
Belfast City Airport
Belfast Harbour Commissioners
Belfast International Airport
British Airways/International Airlines Group
British Air Transport Association (BATA)
British Chambers of Commerce
British Independent Retailers Association
British Ports Association (BPA)
British Retail Consortium
Campaign for Better Transport
Chamber of Shipping
Chartered Trading Standards Institute
Citizens Advice
City of Derry Airport
Civil Aviation Authority (CAA)
Civil Aviation Authority Consumer Panel
Coleraine Harbour Commissioners
Competition and Markets Authority
Consumer Council for Northern Ireland (CCNI)
Cruise Lines International Association UK and Ireland / Hill Dickinson (CLIA UK NI / Hill Dickinson)
Department for Regional Development, Northern Ireland
Department of Enterprise, Trade and Investment, Northern Ireland
Department of Justice, Northern Ireland
Disabled Persons Transport Advisory Committee (DPTAC)
easyJet
Federation of Small Businesses
Flybe
Jet2.com
Larne Port
Londonderry Port and Harbour Commissioners
London TravelWatch
Monarch
Money Saving Expert
Norwegian Air Shuttle
Office of Rail and Road (ORR)
Passenger Transport Executive Group

Ryanair
St Angelo Airport – Fermanagh and Omagh District Council
Thomas Cook Airlines
Thomson TUI Airways
Translink
Transport Focus
Transport for London
Transport Scotland
United Kingdom Major Ports Group Ltd (UKMPG)
Virgin Atlantic Airways
Warrenpoint Harbour Authority
Welsh Government
Which?