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 (Text with EEA relevance)

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(3)], in the light of the joint text approved by the Conciliation Committee on 1 December 2003,

Whereas:

(1) Action by the Community in the field of air transport should aim, among other things, at ensuring a high level of protection for passengers. Moreover, full account should be taken of the requirements of consumer protection in general.

(2) Denied boarding and cancellation or long delay of flights cause serious trouble and inconvenience to passengers.

(3) While Council Regulation (EEC) No 295/91 of 4 February 1991 establishing common rules for a denied boarding compensation system in scheduled air transport[(4)] created basic protection for passengers, the number of passengers denied boarding against their will remains too high, as does that affected by cancellations without prior warning and that affected by long delays.

(4) The Community should therefore raise the standards of protection set by that Regulation both to strengthen the rights of passengers and to ensure that air carriers operate under harmonised conditions in a liberalised market.

(5) Since the distinction between scheduled and non-scheduled air services is weakening, such protection should apply to passengers not only on scheduled but also on non-scheduled flights, including those forming part of package tours.

(6) The protection accorded to passengers departing from an airport located in a Member State should be extended to those leaving an airport located in a third country for one situated in a Member State, when a Community carrier operates the flight.

(7) In order to ensure the effective application of this Regulation, the obligations that it creates should rest with the operating air carrier who performs or intends to perform a flight, whether with owned aircraft, under dry or wet lease, or on any other basis.

(8) This Regulation should not restrict the rights of the operating air carrier to seek compensation from any person, including third parties, in accordance with the law applicable.

(9) The number of passengers denied boarding against their will should be reduced by requiring air carriers to call for volunteers to surrender their reservations, in exchange for benefits, instead of denying passengers boarding, and by fully compensating those finally denied boarding.

(10) Passengers denied boarding against their will should be able either to cancel their flights, with reimbursement of their tickets, or to continue them under satisfactory conditions, and should be adequately cared for while awaiting a later flight.

(11) Volunteers should also be able to cancel their flights, with reimbursement of their tickets, or continue them under satisfactory conditions, since they face difficulties of travel similar to those experienced by passengers denied boarding against their will.

(12) The trouble and inconvenience to passengers caused by cancellation of flights should also be reduced. This should be achieved by inducing carriers to inform passengers of cancellations before the scheduled time of departure and in addition to offer them reasonable re-routing, so that the passengers can make other arrangements. Air carriers should compensate passengers if they fail to do this, except when the cancellation occurs in extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

(13) Passengers whose flights are cancelled should be able either to obtain reimbursement of their tickets or to obtain re-routing under satisfactory conditions, and should be adequately cared for while awaiting a later flight.

(14) As under the Montreal Convention, obligations on operating air carriers should be limited or excluded in cases where an event has been caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. Such circumstances may, in particular, occur in cases of political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier.

(15) Extraordinary circumstances should be deemed to exist where the impact of an air traffic management decision in relation to a particular aircraft on a particular day gives rise to a long delay, an overnight delay, or the cancellation of one or more flights by that aircraft, even though all reasonable measures had been taken by the air carrier concerned to avoid the delays or cancellations.

(16) In cases where a package tour is cancelled for reasons other than the flight being cancelled, this Regulation should not apply.

(17) Passengers whose flights are delayed for a specified time should be adequately cared for and should be able to cancel their flights with reimbursement of their tickets or to continue them under satisfactory conditions.

(18) Care for passengers awaiting an alternative or a delayed flight may be limited or declined if the provision of the care would itself cause further delay.

(19) Operating air carriers should meet the special needs of persons with reduced mobility and any persons accompanying them.

(20) Passengers should be fully informed of their rights in the event of denied boarding and of cancellation or long delay of flights, so that they can effectively exercise their rights.

(21) Member States should lay down rules on sanctions applicable to infringements of the provisions of this Regulation and ensure that these sanctions are applied. The sanctions should be effective, proportionate and dissuasive.

(22) Member States should ensure and supervise general compliance by their air carriers with this Regulation and designate an appropriate body to carry out such enforcement tasks. The supervision should not affect the rights of passengers and air carriers to seek legal redress from courts under procedures of national law.

(23) The Commission should analyse the application of this Regulation and should assess in particular the opportunity of extending its scope to all passengers having a contract with a tour operator or with a Community carrier, when departing from a third country airport to an airport in a Member State.

(24) Arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries. Such arrangements have yet to enter into operation.

(25) Regulation (EEC) No 295/91 should accordingly be repealed,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject

1 This Regulation establishes, under the conditions specified herein, minimum rights for passengers when:

a they are denied boarding against their will;

b their flight is cancelled;

c their flight is delayed.

F1 2 . . . . . .

F2 3 . . . . . .

Textual Amendments

F1 Art. 1(2) omitted (31.12.2020) by virtue of The Air Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/278), regs. 1(3), **8(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F2 Art. 1(3) omitted (31.12.2020) by virtue of The Air Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/278), regs. 1(3), **8(2)**; 2020 c. 1, Sch. 5 para. 1(1)

Article 2

Definitions

For the purposes of this Regulation:

a "air carrier" means an air transport undertaking with a valid operating licence;

b "operating air carrier" means an air carrier that performs or intends to perform a flight under a contract with a passenger or on behalf of another person, legal or natural, having a contract with that passenger;

[[F3]c ‘Community carrier’ means an air carrier with a valid operating licence granted by a Member State in accordance with Chapter II of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community as it has effect in EU law;**]**

d "tour operator" means, with the exception of an air carrier, an organiser within the meaning of **[**[F4]regulation 2(1) of the Package Travel and Linked Travel Arrangements Regulations 2018**]**;

e "package" means those services defined in **[**[F5]regulation 2(5) of the Package Travel and Linked Travel Arrangements Regulations 2018**]**;

f "ticket" means a valid document giving entitlement to transport, or something equivalent in paperless form, including electronic form, issued or authorised by the air carrier or its authorised agent;

g "reservation" means the fact that the passenger has a ticket, or other proof, which indicates that the reservation has been accepted and registered by the air carrier or tour operator;

h "final destination" means the destination on the ticket presented at the check-in counter or, in the case of directly connecting flights, the destination of the last flight; alternative connecting flights available shall not be taken into account if the original planned arrival time is respected;

i "person with reduced mobility" means any person whose mobility is reduced when using transport because of any physical disability (sensory or locomotory, permanent or temporary), intellectual impairment, age or any other cause of disability, and whose situation needs special attention and adaptation to the person's needs of the services made available to all passengers;

j "denied boarding" means a refusal to carry passengers on a flight, although they have presented themselves for boarding under the conditions laid down in Article 3(2), except where there are reasonable grounds to deny them boarding, such as reasons of health, safety or security, or inadequate travel documentation;

k "volunteer" means a person who has presented himself for boarding under the conditions laid down in Article 3(2) and responds positively to the air carrier's call for passengers prepared to surrender their reservation in exchange for benefits.

l "cancellation" means the non-operation of a flight which was previously planned and on which at least one place was reserved.

[[F6]m ‘UK air carrier’ means an air carrier with a valid operating licence granted by the Civil Aviation Authority in accordance with Chapter II of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the United Kingdom.**]**

Textual Amendments

F3 Art. 2(c) substituted (31.12.2020) by The Air Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/278), regs. 1(3), **8(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F4 Words in Art. 2(d) substituted (31.12.2020) by The Air Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/278), regs. 1(3), **8(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F5 Words in Art. 2(e) substituted (31.12.2020) by The Air Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/278), regs. 1(3), **8(3)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

F6 Art. 2(m) inserted (31.12.2020) by The Air Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/278), regs. 1(3), **8(3)(d)**; 2020 c. 1, Sch. 5 para. 1(1)

Article 3

Scope

1 This Regulation shall apply:

a to passengers departing from an airport located in **[**[F7]the United Kingdom**]**;

[[F8]b to passengers departing from an airport located in a country other than the United Kingdom to an airport situated in—

i the United Kingdom if the operating air carrier of the flight concerned is a Community carrier or a UK air carrier; or

ii the territory of a Member State to which the Treaty applies if the operating air carrier of the flight concerned is a UK air carrier,

unless the passengers received benefits or compensation and were given assistance in that other country.**]**

2 Paragraph 1 shall apply on the condition that passengers:

a have a confirmed reservation on the flight concerned and, except in the case of cancellation referred to in Article 5, present themselves for check-in,
as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the tour operator or an authorised travel agent,
or, if no time is indicated,
not later than 45 minutes before the published departure time; or

b have been transferred by an air carrier or tour operator from the flight for which they held a reservation to another flight, irrespective of the reason.

3 This Regulation shall not apply to passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public. However, it shall apply to passengers