

Re-routing in accordance with Article 8 of Regulation (EU) 261/2004 as retained (and amended in UK domestic law) under the European Union (Withdrawal) Act 2018 and the CAA's view on compliance

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Chapter 1

Introduction

- 1.1 This document sets out the law in relation to the right to reimbursement or re-routing following a cancellation of a flight. It includes extracts from Regulation (EU) 261/2004 as retained (and amended in UK domestic law) under the European Union (Withdrawal) Act 2018¹ (“UK (EU) Reg No 261/2004”) and relevant case law. It also includes extracts from the interpretative guidelines² published by the European Commission in June 2016. The Commission has explained that the guidelines do not cover all the provisions in UK (EU) Reg No 261/2004 and that they are not exhaustive. Their aim is to provide clarity and to help ensure greater consistency across the EU. The CAA supports the guidelines and considers them to set the minimum compliance standard in several areas.
- 1.2 This document also sets out the CAA’s view on compliance with Article 8 of UK (EU) Reg No 261/2004 in a number of areas and this is clearly set out below. In addition, we have set out the factors that the CAA will take into account in considering whether to take action against a particular airline for non-compliance with UK (EU) Reg No 261/2004, including formal enforcement action.

¹ 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) (Retained EU Legislation)

² [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0615\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0615(01)&from=EN)

Chapter 2

Legal framework

Regulation EC261/2004 (retained EU legislation)

- 2.1 The following extracts from UK (EU) Reg No 261/2004 set out the relevant text from the Recitals and Articles that relate to the re-routing obligations.

Recital 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.”

Recital 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.”

Recital 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.”

Article 4 – Denied boarding

- “1. Volunteers shall be assisted in accordance with Article 8, such assistance being additional to the benefits mentioned in this paragraph.*
- 2. ...*
- 3. ... and assist them in accordance with Articles 8 and 9.”*

Article 5 – Cancellation

- T “1. In case of cancellation of a flight, the passengers concerned shall:*
- (a) be offered assistance by the operating air carrier in accordance with Article 8; and*
- (b) ...*
- (c) ...*

2. *When passengers are informed of the cancellation, an explanation shall be given concerning possible alternative transport.*
3.
4. *The burden of proof concerning the questions as to whether and when the passenger has been informed of the cancellation of the flight shall rest with the operating air carrier.”*

Article 8 – Right to reimbursement or re-routing

“1. Where reference is made to this Article, passengers shall be offered the choice between:

(a) — reimbursement within seven days, by the means provided for in Article 7(3), of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant,

— a return flight to the first point of departure, at the earliest opportunity;

(b) re-routing, under comparable transport conditions, to their final destination at the earliest opportunity; or

(c) re-routing, under comparable transport conditions, to their final destination at a later date at the passenger's convenience, subject to availability of seats.

2. Paragraph 1(a) shall also apply to passengers whose flights form part of a package, except for the right to reimbursement where such right arises under Directive 90/314/EEC.

3. When, in the case where a town, city or region is served by several airports, an operating air carrier offers a passenger a flight to an airport alternative to that for which the booking was made, the operating air carrier shall bear the cost of transferring the passenger from that alternative airport either to that for which the booking was made, or to another close-by destination agreed with the passenger.”

Article 11 – Persons with reduced mobility or special needs

“1. Operating air carriers shall give priority to carrying persons with reduced mobility and any persons or certified service dogs accompanying them, as well as unaccompanied children.”

Article 15 – Exclusion of waiver

“1. Obligations vis-à-vis passengers pursuant to this Regulation may not be limited or waived, notably by a derogation or restrictive clause in the contract of carriage.

If, nevertheless, such a derogation or restrictive clause is applied in respect of a passenger, or if the passenger is not correctly informed of his rights and for that reason has accepted compensation which is inferior to that provided for in this

Regulation, the passenger shall still be entitled to take the necessary proceedings before the competent courts or bodies in order to obtain additional compensation.”

- 2.2 The following extract also sets out the ability to reduce the level of compensation if re-routing is made within certain time frames which lead to less inconvenience for passengers.

Article 7 – Right to compensation

“1. ...

2. When passengers are offered re-routing to their final destination on an alternative flight pursuant to Article 8, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked

(a) by two hours, in respect of all flights of 1500 kilometres or less; or

(b) by three hours, in respect of all intra-Community flights of more than 1500 kilometres and for all other flights between 1500 and 3500 kilometres; or

(c) by four hours, in respect of all flights not falling under (a) or (b),

the operating air carrier may reduce the compensation provided for in paragraph 1 by 50 %.”

European case law

C-12/11 Denise McDonagh v Ryanair Ltd

- 2.3 The case of McDonagh v Ryanair Ltd³ confirms that if an airline fails to provide care and assistance, a passenger can claim a refund of the expenses they incurred in purchasing their own meals, hotel accommodation etc.

“Consequently, the answer to the fourth and fifth questions is that Articles 5(1)(b) and 9 of Regulation No 261/2004 must be interpreted as meaning that, in the event of cancellation of a flight due to ‘extraordinary circumstances’ of a duration such as that in the main proceedings, the obligation to provide care to air passengers laid down in those provisions must be complied with, and the validity of those provisions is not affected

However, an air passenger may only obtain, by way of compensation for the failure of the air carrier to comply with its obligation referred to in Articles 5(1)(b) and 9 of Regulation No 261/2004 to provide care, reimbursement of the amounts which, in the light of the specific circumstances of each case, proved necessary, appropriate and

³

<http://curia.europa.eu/juris/document/document.jsf?sessionId=6429AFD509A9A2678DDDAF269076D34D?text=&docid=133245&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=4430644>

reasonable to make up for the shortcomings of the air carrier in the provision of care to that passenger, a matter which is for the national court to assess.”

C-354/18 Rusu v SC Blue Air — Airline Management Solutions SRL

- 2.4 The case of *Rusu v SC Blue Air*⁴ confirms that Article 8 requires airlines to offer passengers the option of reimbursement or re-routing. It also states that airlines must provide comprehensive information to passengers about the re-routing options, including flights on other airlines, to allow them to make an informed choice. The Court also found that there was no obligation on the passenger to do their own research to find information on alternative flights. In addition, the Court found that airlines were responsible for offering and organising re-routing and had the burden of proving that the re-routing offered was at the earliest opportunity.

“The sixth and eighth questions

48. *By its sixth and eighth questions, which should be examined together, the referring court asks, in essence, whether Article 4(3) of Regulation No 261/2004, read in conjunction with Article 8(1) of that regulation, is to be interpreted as requiring the operating air carrier to present the passengers concerned with comprehensive information regarding all the options set out in the second of those provisions, or whether that provision also obliges the passengers in question to contribute actively to seeking information to that end.*
- 49 *In that regard, first of all, Article 4(3) of Regulation No 261/2004 provides inter alia that, if the operating air carrier denies boarding to passengers against their will, it is to assist them in accordance with Article 8 of that regulation.*
- 50 *Next, Article 8 of Regulation No 261/2004, entitled ‘Right to reimbursement or re-routing’, states, in paragraph 1 thereof, that passengers are to be offered the choice between three options which are specified therein, in essence: (i) reimbursement of the ticket cost and, when relevant, a return flight to the first point of departure, at the earliest opportunity; (ii) re-routing, under comparable transport conditions, to their final destination at the earliest opportunity; and (iii) re-routing, under comparable transport conditions, to that destination at a later date at the passenger’s convenience, subject to availability of seats.*

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<http://curia.europa.eu/juris/document/document.jsf?text=&docid=216542&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=4433748>