

Draft Regulations laid before Parliament under paragraph 5(5) of Schedule 5 to the Retained EU Law (Revocation and Reform) Act 2023, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2023 No. ****

RETAINED EU LAW REFORM

CIVIL AVIATION

The Aviation (Consumers) (Amendment) Regulations 2023

<i>Made</i>	- - - -	2023
<i>Coming into force</i>	- -	2023

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 11(1) and 20(1)(b) of the Retained EU Law (Revocation and Reform) Act 2023^(a) (“the 2023 Act”).

The Secretary of State is a relevant national authority for the purposes of section 11(1) of the 2023 Act^(b).

In accordance with paragraph 5(5) of Schedule 5 to the 2023 Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Aviation (Consumers) (Amendment) Regulations 2023.

(2) These Regulations come into force on the day after the day on which they are made.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

Amendment of Regulation (EC) No 261/2004

2.—(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^(c) is amended as follows.

^(a) 2023 c. 28.

^(b) The term “relevant national authority” is defined in section 21(1) of the Retained EU Law (Revocation and Reform) Act 2023.

^(c) EUR 2004/261, as amended by S.I. 2019/278.

(2) In Article 2 (definitions), after paragraph (m) insert—

“(n) “arrival time” means the time passengers are permitted to exit the aircraft upon reaching the final destination;

(o) “extraordinary circumstances” means circumstances which cause delay or cancellation and—

(a) that—

(i) by their nature or origin are not inherent in the normal exercise of the activity of the air carrier,

(ii) are beyond the actual control of the air carrier, and

(iii) the air carrier has taken all reasonable measures in relation to but was unable to avoid; or

(b) arose from the impact of an air traffic management decision and could not have been avoided even if all reasonable measures had been taken;

(p) “scheduled arrival time” is the time of arrival at the final destination which is fixed in the flight schedule and indicated on the reservation or other evidence held by the passenger;

(q) “The Montreal Convention” is the Convention for the unification of certain rules for international carriage by air and its annexes, signed in Montreal on 28th May 1999, as amended;”.

(3) In Article 3 (scope), after paragraph (1) insert—

“(1A) For the purposes of this Regulation a flight comprised of more than one leg shall be treated—

(a) as a whole, if it was booked as a single unit, and

(b) as departing from the point of departure of the first leg.”.

(4) In Article 3 (scope), after paragraph (6) insert—

“(7) An obligation to pay compensation or offer assistance in accordance with Articles 7 to 9 does not constitute a liability for damage occasioned by delay for the purposes of Article 19 of the Montreal Convention.

(8) An action to enforce an obligation to pay compensation or offer assistance in accordance with Articles 7 to 9 does not constitute an action for damages for the purposes of Article 29 of the Montreal Convention.

(9) For limitation purposes a claim under this Regulation will be determined in accordance with section 9 of the Limitation Act 1980(a).”.

(5) In Article 6 (delay), after paragraph (2) insert—

“(3) In case of a delay of three hours or more in reaching the final destination, the passengers concerned have the right to compensation laid down in Article 7.

(4) An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.”.

(6) In Article 7 (right to compensation), in paragraph (1), after “denial of boarding” insert “, delay”.

(a) 1980 c. 58; section 9(2) was amended by the Automated and Electric Vehicles Act 2018 (c.18), section 21 and Schedule paragraph 8.

Signed by authority of the Secretary of State for Transport

DATE

Name
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations restate certain EU case law principles relating to Regulation (EC) 261/2004, by way of amendments to that Regulation. The Regulation and the case law principles are secondary retained EU law within the meaning of section 11(2) of the Retained EU Law (Revocation and Reform) Act 2023.

Regulation 2(2) inserts new definitions into Regulation (EC) 261/2004. In particular, it inserts a definition of “extraordinary circumstances” which may give rise to an exemption from an air carrier being required to pay compensation. The definitions are a restatement and codification of existing case law relating to the EU version of the Regulation while the UK was still a Member State. This includes EU derived case law, in particular, *Wallentin-Hermann v. Alitalia* ([2009] C-549/07) as well as UK domestic case law in *Blanche v Easyjet Airline Company Limited* ([2019] EWCA Civ 69).

Regulation 2(3) clarifies, for the purpose of Article 3(1), the circumstances in which a passenger on a flight is entitled to compensation. This codifies a concept set out in various cases including *Wegener v. Royal Air Maroc SA* (Case C-537/17 [2018] Bus LR 1366) and *Chelluri v. Air India Ltd* [2021] EWCA Civ 1953 [2022] Bus. L.R. 286.

Regulation 2(4) codifies key concepts in certain EU case law clarifying the scope of Regulation (EC) 261/2004. The codification relates to interactions with rights and obligations under the Montreal Convention. The text of the Montreal Convention can be found on the IATA website, at www.aita.org. The amendments made by regulation 2(4) replicate key effects of Court of Justice of the European Union decisions *R (International Air Transport Association) v. Department for Transport* (Case C-344/04 [2006] ECR I-403), *Nelson v. Deutsche Lufthansa AG* (Joined Cases C-581/10 and C-629/10 [2013] 1 All ER, and *Cuadrench More v. Koninklijke Luchtvaart Maatschappij NV* (Case C-139/11 [2013] 2 All ER (Comm) 1152).

Regulation 2(5) provides that a delay of 3 hours or more entitles an air passenger to make a claim for compensation as laid out in Article 7 of Regulation (EC) 261/2004, except in extraordinary circumstances. This codifies a key concept from *Sturgeon v Condor Flugdienst GmbH* (Joint Cases C-402/07 and C-432/07).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

An Explanatory Memorandum is available alongside this instrument on the UK legislation website at www.legislation.gov.uk.