

Denied Boarding Compensation Regulation (EC) No. 261/2004, Enforcement in the UK

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Summary

On 17 February 2005, EC Regulation 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, is due to enter force across the European Community. Member States are required to ensure and supervise general compliance by their air carriers with this legislation and to lay down rules on sanctions applicable to infringements that are effective, proportionate and dissuasive.

A copy of the text of the EC Regulation is attached to this letter at [Annex A](#). The text can also be downloaded from the EUR-Lex website at http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_046/l_04620040217en00010007.pdf

In order to ensure compliance with the provisions of the EC Regulation in the UK, the Government has prepared the attached draft Civil Aviation (Compensation and Assistance) Regulations, at [Annex B](#), which set out new offences and penalties for non-compliance, and upon which we seek your views. We are conscious that the EC Regulation is currently the subject of a legal challenge in the European Court of Justice, but until the Court has ruled in this case, we must proceed on the basis that the Regulation will enter force as planned in February 2005, and that our national enforcement provisions should be in place at that time.

In addition to the above sanctions, the UK is also required to designate a body responsible for the enforcement of the new EC Regulation, and to receive complaints about alleged infringements. While the same body could in principle perform both roles, we propose to keep these functions separate. Drawing on the experience of both the Civil Aviation Authority's Consumer Protection Group (CPG) and the Air Transport Users Council (AUC) in the field of aviation consumer protection, it is proposed to designate the CPG as the UK's enforcement body, and the AUC as the UK's designated complaints body for this legislation. Our reasons for this are set out in more detail in the consultation document, which can be found at [Annex C](#).

This consultation exercise is undertaken in accordance with the principles of the Government's code of Practice on written consultation. It follows the consultation criteria set out in the Code and reproduced at [Annex D](#). Comments will be available for inspection at Great Minster House unless you specifically state that you wish your comments to be treated in confidence.

The list of those organisations to which this consultation package is being sent is at [Annex E](#).

Although the enforcement Regulations do not require the preparation of a new Regulatory Impact Assessment (RIA), I have attached at [Annex F](#) a copy of the RIA drawn up in connection with the provisions of the EC Regulation, for your information.

Your comments on the various questions raised in the consultation paper are invited by no later than **8 November 2004**. These should be sent to **John Shanley at Zone 1/27, Great Minster House, 76 Marsham Street, London SW1P 4DR** (or by email to john.shanley@dft.gsi.gov.uk). If you have any queries about the consultation paper or the supporting documentation, these should be directed to david.shephard@dft.gsi.gov.uk.

Annex A

32004R0261

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) - Commission Statement **Official Journal L 046, 17/02/2004 P. 0001 - 0008**

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 co-operation 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.

2. Application of this Regulation to Gibraltar airport is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

3. Application of this Regulation to Gibraltar airport shall be suspended until the arrangements in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 enter into operation. The Governments of Spain and the United Kingdom will inform the Council of such date of entry into operation.

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;

(c) "Community carrier" means an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers^[5];

(d) "tour operator" means, with the exception of an air carrier, an organiser within the meaning of Article 2, point 2, of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours^[6];

(e) "package" means those services defined in Article 2, point 1, of Directive 90/314/EEC;

(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.

Article 3

Scope

1. This Regulation shall apply:

(a) to passengers departing from an airport located in the territory of a Member State to which the Treaty applies;

(b) to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies, unless they received benefits or compensation and were given assistance in that third country, if the operating air carrier of the flight concerned is a Community carrier.

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 having tickets issued under a frequent flyer programme or other commercial programme by an air carrier or tour operator.

4. This Regulation shall only apply to passengers transported by motorised fixed wing aircraft.

5. This Regulation shall apply to any operating air carrier providing transport to passengers covered by paragraphs 1 and 2. Where an operating air carrier which has no contract with the passenger performs obligations under this Regulation, it shall be regarded as doing so on behalf of the person having a contract with that passenger.

6. This Regulation shall not affect the rights of passengers under Directive 90/314/EEC. This Regulation shall not apply in cases where a package tour is cancelled for reasons other than cancellation of the flight.

Article 4

Denied Boarding

1. When an operating air carrier reasonably expects to deny boarding on a flight, it shall first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the operating air carrier. Volunteers shall be assisted in accordance with Article 8, such assistance being additional to the benefits mentioned in this paragraph.

2. If an insufficient number of volunteers comes forward to allow the remaining passengers with reservations to board the flight, the operating air carrier may then deny boarding to passengers against their will.

3. If boarding is denied to passengers against their will, the operating air carrier shall immediately compensate them in accordance with Article 7 and assist them in accordance with Articles 8 and 9.

Article 5

Cancellation

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) be offered assistance by the operating air carrier in accordance with Article 9(1)(a) and 9(2), as well as, in event of re-routing when the reasonably expected time of departure of the new flight is at least the day after the departure as it was planned for the cancelled flight, the assistance specified in Article 9(1)(b) and 9(1)(c); and
 - (c) have the right to compensation by the operating air carrier in accordance with Article 7, unless:
 - (i) they are informed of the cancellation at least two weeks before the scheduled time of departure; or
 - (ii) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or
 - (iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.
2. When passengers are informed of the cancellation, an explanation shall be given concerning possible alternative transport.
3. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.
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 6

Delay

1. When an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure:
 - (a) for two hours or more in the case of flights of 1500 kilometres or less; or
 - (b) for three hours or more in the case of all intra-Community flights of more than 1500 kilometres and of all other flights between 1500 and 3500 kilometres; or
 - (c) for four hours or more in the case of all flights not falling under (a) or (b),passengers shall be offered by the operating air carrier:
 - (i) the assistance specified in Article 9(1)(a) and 9(2); and
 - (ii) when the reasonably expected time of departure is at least the day after the time of departure previously announced, the assistance specified in Article 9(1)(b) and 9(1)(c); and
 - (iii) when the delay is at least five hours, the assistance specified in Article 8(1)(a).
2. In any event, the assistance shall be offered within the time limits set out above with respect to each distance bracket.

Article 7

Right to Compensation

1. Where reference is made to this Article, passengers shall receive compensation amounting to:
 - (a) EUR 250 for all flights of 1500 kilometres or less;
 - (b) EUR 400 for all intra-Community flights of more than 1500 kilometres, and for all other flights

between 1500 and 3500 kilometres;

(c) EUR 600 for all flights not falling under (a) or (b).

In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger's arrival after the scheduled time.

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 %.

3. The compensation referred to in paragraph 1 shall be paid in cash, by electronic bank transfer, bank orders or bank cheques or, with the signed agreement of the passenger, in travel vouchers and/or other services.

4. The distances given in paragraphs 1 and 2 shall be measured by the great circle route method.

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 9

Right to Care

1. Where reference is made to this Article, passengers shall be offered free of charge:

(a) meals and refreshments in a reasonable relation to the waiting time;

(b) hotel accommodation in cases

- where a stay of one or more nights becomes necessary, or

- where a stay additional to that intended by the passenger becomes necessary;

(c) transport between the airport and place of accommodation (hotel or other).

2. In addition, passengers shall be offered free of charge two telephone calls, telex or fax messages, or e-mails.

3. In applying this Article, the operating air carrier shall pay particular attention to the needs of persons with reduced mobility and any persons accompanying them, as well as to the needs of unaccompanied children.

Article 10

Upgrading and Downgrading

1. If an operating air carrier places a passenger in a class higher than that for which the ticket was purchased, it may not request any supplementary payment.
2. If an operating air carrier places a passenger in a class lower than that for which the ticket was purchased, it shall within seven days, by the means provided for in Article 7(3), reimburse
 - (a) 30 % of the price of the ticket for all flights of 1500 kilometres or less, or
 - (b) 50 % of the price of the ticket for all intra-Community flights of more than 1500 kilometres, except flights between the European territory of the Member States and the French overseas departments, and for all other flights between 1500 and 3500 kilometres, or
 - (c) 75 % of the price of the ticket for all flights not falling under (a) or (b), including flights between the European territory of the Member States and the French overseas departments.

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.
2. In cases of denied boarding, cancellation and delays of any length, persons with reduced mobility and any persons accompanying them, as well as unaccompanied children, shall have the right to care in accordance with Article 9 as soon as possible.

Article 12

Further Compensation

1. This Regulation shall apply without prejudice to a passenger's rights to further compensation. The compensation granted under this Regulation may be deducted from such compensation.
2. Without prejudice to relevant principles and rules of national law, including case law, paragraph 1 shall not apply to passengers who have voluntarily surrendered a reservation under Article 4(1).

Article 13

Right of Redress

In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from any person, including third parties, in accordance with the law applicable. In particular, this Regulation shall in no way restrict the operating air carrier's right to seek reimbursement from a tour operator or another person with whom the operating air carrier has a

contract. Similarly, no provision of this Regulation may be interpreted as restricting the right of a tour operator or a third party, other than a passenger, with whom an operating air carrier has a contract, to seek reimbursement or compensation from the operating air carrier in accordance with applicable relevant laws.

Article 14

Obligation to Inform Passengers of their Rights

1. The operating air carrier shall ensure that at check-in a clearly legible notice containing the following text is displayed in a manner clearly visible to passengers: "If you are denied boarding or if your flight is cancelled or delayed for at least two hours, ask at the check-in counter or boarding gate for the text stating your rights, particularly with regard to compensation and assistance".
2. An operating air carrier denying boarding or cancelling a flight shall provide each passenger affected with a written notice setting out the rules for compensation and assistance in line with this Regulation. It shall also provide each passenger affected by a delay of at least two hours with an equivalent notice. The contact details of the national designated body referred to in Article 16 shall also be given to the passenger in written form.
3. In respect of blind and visually impaired persons, the provisions of this Article shall be applied using appropriate alternative means.

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.
2. 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.

Article 16

Infringements

1. Each Member State shall designate a body responsible for the enforcement of this Regulation as regards flights from airports situated on its territory and flights from a third country to such airports. Where appropriate, this body shall take the measures necessary to ensure that the rights of passengers are respected. The Member States shall inform the Commission of the body that has been designated in accordance with this paragraph.
2. Without prejudice to Article 12, each passenger may complain to any body designated under paragraph 1, or to any other competent body designated by a Member State, about an alleged infringement of this Regulation at any airport situated on the territory of a Member State or concerning any flight from a third country to an airport situated on that territory.
3. The sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive.

Article 17

Report

The Commission shall report to the European Parliament and the Council by 1 January 2007 on the operation and the results of this Regulation, in particular regarding:

- the incidence of denied boarding and of cancellation of flights,
- the possible extension of the scope of this Regulation to passengers having a contract with a Community carrier or holding a flight reservation which forms part of a "package tour" to which Directive 90/314/EEC applies and who depart from a third-country airport to an airport in a Member State, on flights not operated by Community air carriers,
- the possible revision of the amounts of compensation referred to in Article 7(1).

The report shall be accompanied where necessary by legislative proposals.

Article 18

Repeal

Regulation (EEC) No 295/91 shall be repealed.

Article 19

Entry into Force

This Regulation shall enter into force on 17 February 2005.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Done at Strasbourg, 11 February 2004.

For the European Parliament
The President
P. Cox

For the Council
The President
M. McDowell

[1] OJ C 103 E, 30.4.2002, p. 225 and OJ C 71 E, 25.3.2003, p. 188.

[2] OJ C 241, 7.10.2002, p. 29.

[3] Opinion of the European Parliament of 24 October 2002 (OJ C 300 E, 11.12.2003, p. 443), Council Common Position of 18 March 2003 (OJ C 125 E, 27.5.2003, p. 63) and Position of the European Parliament of 3 July 2003. Legislative Resolution of the European Parliament of 18 December 2003 and Council Decision of 26 January 2004.

[4] OJ L 36, 8.2.1991, p. 5.

[5] OJ L 240, 24.8.1992, p. 1.

[6] OJ L 158, 23.6.1990, p. 59.

Commission Statement

The Commission recalls its intention to promote voluntary agreements or to make proposals to extend Community measures of passenger protection to other modes of transport than air, notably rail and maritime navigation.

Annex B Statutory Instruments

2004 No.

Civil Aviation

The Civil Aviation (Compensation and Assistance) Regulations 2004

Made - - - - 2004

Laid before Parliament 2004

Coming into force - - 2004

The Secretary of State for Transport, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972⁽¹⁾ in relation to measures relating to air transport⁽²⁾, in exercise of the powers conferred by that section hereby makes the following Regulations:

Citation and Commencement

1. These Regulations may be cited as the Civil Aviation (Compensation and Assistance) Regulations 2004 and shall come into force on *** 2004.

Interpretation

2. In these Regulations-

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

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

"Council Regulation" means Council Regulation (EC) No.261/2004 of 11th 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⁽³⁾;

"delay" has the same meaning as that contained in Article 6(1)(a) to (c) of the Council Regulation;

"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) of the Council Regulation, except where there are reasonable grounds to deny them boarding, such as reasons of health, safety or security, or inadequate travel documentation;

"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 the passenger;

⁽¹⁾ 1972 c.68.

⁽²⁾ S.I. 1993/2661.

⁽³⁾ OJ No. L46 of 17th February 2004, p.1. By virtue of Article 18 of the Council Regulation, Council Regulation (EEC) No. 295/91 of 4th February 1991 establishing common rules for a denied boarding compensation system in scheduled air transport, is repealed OJ L36, 8.2.1991, p.5.

Provision of Information

-3. (1) When requested to do so by the body designated by the United Kingdom for the purposes of enforcing these Regulations an operating air carrier shall provide it with such information as it may specify relating to those matters contained in Articles 4-11 of the Council Regulation.

(2) Any information generated by an operating air carrier in relation to those matters set out above shall be retained by the employer for a period of not less than two years.

(3) For the purposes of carrying into effect these Regulations, the body designated by the United Kingdom in accordance with regulation 6 may exercise the powers set out in paragraph (4).

1. (4) The powers of the body designated by the United Kingdom are the following, namely-
 - a. to make such examination and investigation as may in any circumstances be necessary for the purposes mentioned in paragraph (1);
 - b. to require any person whom the body designated by the United Kingdom has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (a) to answer (in the absence of persons other than a person nominated by him to be present and any persons whom the body designated by the United Kingdom may allow to be present) such questions as the body designated by the United Kingdom thinks fit to ask and to sign a declaration of the truth of his answers;
 - c. to require the production of, inspect, and take copies of or any entry in-
 - (i) any records which by virtue of these Regulations are required to be kept, and
 - (ii) any other books, records or documents which it is necessary for the body designated by the United Kingdom to see for the purposes of any examination or investigation under sub-paragraph (a);
 - d. to require any person chosen by the body designated to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the body designated by the United Kingdom to exercise any of the powers conferred on it by this paragraph;
 - e. any other power for which it is necessary for the purpose mentioned in paragraph (1).

(5) No answer given by a person in pursuance of a requirement imposed under sub-paragraph 4(b) shall be admissible in evidence against that person or the husband or wife of that person in any proceedings.

(6) Nothing in this regulation shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court or, as the case may be, an order for the production of documents in the Court of Session.

Offences

-4. (1) Subject to Article 5(3) of the Council Regulation, an operating air carrier who fails to comply with the provisions contained in Articles 4 to 11 of the Council Regulation shall be guilty of an offence.

(2) An operating air carrier who fails to comply with the provisions in regulation 3 shall be guilty of an offence.

(3) An operating air carrier who fails to ensure that:

- d. the information required to be made available in a manner clearly visible to passengers at the check-in counter under Article 14(1) of the Council Regulation; or

- e. each passenger affected by denied boarding or cancellation is provided with a written notice setting out the rules for compensation and assistance as detailed in Articles 4 to 9 of the Council Regulation, along with the contact details of the complaints body designated by the United Kingdom by virtue of Article 14(2); or
- f. each passenger affected by a delay of at least 2 hours is provided with a written notice in the same terms as those in (b); or
- g. in respect of blind and visually impaired people, that the provisions of Article 14(3) are applied, them being appropriate alternative means,

shall be guilty of an offence.

- 2. (2) A person guilty of an offence under these Regulations shall be liable-
on summary conviction, to a fine not exceeding level 5 on the standard scale, and
on conviction on indictment, to a fine.

Offences by Bodies Corporate

-5. (1) Where an offence under these Regulations has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such capacity, he as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts and defaults of a member in connection with his functions as if he were a director of the body corporate.

Enforcement

6. For the purposes of Article 16(1) of the Council Regulation the body designated by the United Kingdom shall be the body responsible in the United Kingdom for the enforcement of these Regulations.

Parliamentary Under Secretary of State

Annex C

Department for Transport

Consultation Document

Enforcement of the Denied Boarding Compensation Regulation (EC) no. 261/2004 in the United Kingdom

Background

Overbooking is a recognised practice amongst scheduled airlines grounded in their experience that a proportion of passengers booked onto a particular flight will not turn up for check in, particularly those holding flexible tickets. In order to avoid flying with empty seats, airlines will use past experience to estimate the number of "no shows" and sometimes overbook accordingly. While this commercial practice can benefit the travelling public - by maximising load factors airlines can keep fares lower than they might otherwise be - there is no doubting the considerable inconvenience caused to those passengers denied boarding when more passengers check in than were expected.

In 1991, the European Commission introduced Regulation 295/91 to ensure that passengers affected by denied boarding at EU airports, received fair treatment and proper compensation for the inconvenience caused. This Regulation created basic protection for passengers, minimum compensation levels and a requirement to provide meals and refreshments in reasonable relation to the waiting time, to those affected.

On 21 December 2001, the European Commission issued a proposal to update, extend and replace the provisions of Regulation 295/91, due to its concern that the number of passengers denied boarding against their will remained too high. In addition, the Commission was concerned about the number of passengers affected by cancellations without prior warning and those affected by long delays. The resulting new Regulation (261/2004) seeks to deter airlines from excessive overbooking or cancellations for commercial reasons, by increasing the level of compensation payable when this occurs. In addition, the Regulation extends the right to compensation to include cancelled flights, unless certain criteria are met, and creates new rights for passengers affected by cancellations and long delays. Its provisions extend to passengers departing from the EU (including non-EU airlines), and to passengers leaving third countries for an EU State unless they received benefits or assistance in that third country.

The new EC Regulation was ratified by both the European Council and the European Parliament at the turn of the year and is due to enter force on 17 February 2005.

Purpose of this Consultation Exercise

As the EC Regulation has been ratified by the European Council and Parliament, the purpose of this consultation is to seek your views on these enforcement Regulations and not the EC Regulation itself.

Although the new Regulation will have direct application in the UK, all Member States are required to ensure and supervise general compliance with its provisions by their air carriers. To this end, Member States must lay down rules on effective, proportionate and dissuasive sanctions applicable to infringements and ensure that these sanctions are applied. Member States are also required to designate a body responsible for the enforcement of the Regulation and to receive complaints. In order to meet our obligations we have prepared draft enforcement Regulations, which set out the offences and penalties for non-compliance.

Key Provisions of the Civil Aviation (Compensation and Assistance) Regulations

Regulation 3 gives to the UK's designated enforcement body the power to demand certain documents and records in connection with the provisions of the EC Regulation. The type of documentation sought might include,

Records of offers of assistance pursuant to Article 5(1)(a) & (b)

Any explanation given pursuant to Article 5(2)

Offers of assistance pursuant to Article 6(1)

Details of compensation payments required by Article 7

Records of offers of choice pursuant to Article 8(1)

Details of the assistance offered pursuant to Article 9, and

Copies of the notice required to be provided by virtue of Articles 14(2), or details of the alternative means required by Article 14(3).

Regulation 3(2) requires operating air carriers to retain such information or documentation for a period of two years. This retention period is similar to that required under other aviation legislation, for example the Civil Aviation (Working Time) Regulations 2004 [SI 2004/756].

Your views are sought on whether this is a reasonable retention period for such information. If not, what would you consider should be the appropriate retention period?

Regulation 4 establishes offences for non-compliance with the provisions of the EC Regulation, or for failing to provide, when demanded, the information sought under the preceding Regulation, and the associated penalties. On summary conviction, an air carrier will be liable to a fine of up to level 5 on the standard scale (currently £5,000). On conviction on indictment, the penalty is an unlimited fine. These penalties are the same as applicable for an offence under the Air Carrier Liability Order 1998.

Your views are sought on whether the enforcement Regulations adequately meet the requirement that the sanctions should be effective, proportionate and dissuasive?

Enforcement

Article 16 of the Regulation requires that all Member States should designate a body responsible for the enforcement of the EC Regulation and to receive complaints about alleged infringements. While it is possible to designate the same organisation to assume both responsibilities, we are minded to keep these two functions separate. The reason for this is that the Civil Aviation Authority's Consumer Protection Group (CPG) and the Air Transport Users Council (AUC) already operate in the area of passenger protection. Both have clearly defined functions, CPG enforces certain legal requirements and codes of practice for the protection of airlines' customers, while the AUC investigates passenger complaints where the person aggrieved has not been able to obtain satisfaction from the airline concerned. The complaint and enforcement roles envisaged by the Regulation appear to be natural extensions to the existing functions of these organisations. Accordingly, rather than create a new body, we propose to designate the AUC as the UK's denied boarding compensation Regulation complaint body, and the CPG as the enforcement body. Initial complaints would be directed to the AUC for investigation. However, where it appears that an operating air carrier is persistently or intentionally failing to comply with the provisions of EC Regulation 261/2004, then the AUC would refer the matter to CPG for possible enforcement action.

Are you content with the Government's proposed division of responsibilities between the CPG and AUC?

Summary of Points upon which Views are Sought

- The UK's enforcement Regulations require operating air carriers to retain records of compensation, care and assistance provided to passengers in connection with the Denied Boarding Compensation Regulation for a period of two years. Do you consider this to be a reasonable retention period? If not, how long do you consider such records should be retained?
- The Regulation requires sanctions to be effective, proportionate and dissuasive. Do you consider that the proposed offences and penalties meet these objectives?
- Are you content with the Government's proposed division of responsibilities between the CPG and AUC?
- Do you have any further comments in connection with the Government's approach to the enforcement of the denied boarding compensation Regulation?

Annex D

Code of Practice on Consultation

The code of practice applies to all UK public consultations by government departments and agencies, including consultations on EU directives.

Though the code does not have legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), it should otherwise generally be regarded as binding unless Ministers conclude that exceptional circumstances require a departure.

The code contains six criteria. They should be reproduced in all consultation documents. There should be an explanation of any departure from the criteria and confirmation that they have otherwise been followed.

Consultation Criteria

Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.

Be clear about what your proposals are, who may be affected, what questions are being asked and the time-scale for responses.

Ensure that your consultation is clear, concise and widely accessible.

Give feedback regarding the responses received and how the consultation process influenced the policy.

Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.

Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

A full version of the code of practice is available on the Cabinet Office web-site at:
<http://www.cabinetoffice.gov.uk/regulation/consultation/code/index.asp>

If you consider that this consultation does not comply with the criteria or have comments about the **consultation process** please contact:

Andrew D Price
Consultation Co-ordinator
Department for Transport
Zone 9/9 Southside
105 Victoria Street
London, SW1E 6DT
email: andrewD.price@dft.gsi.gov.uk

Annex E

List of Consultees

Operators

UK AOC holders (excluding helicopter operators)

Representative Bodies

Airport Operators Association
Air Transport Users Council
Association of British Travel Agents
Association of European Airlines
BARUK
British Air Transport Association
British Business & General Aviation Association
Consumers Association
European Low Fares Airline Association
European Regions Airline Association
Federation of British Tour Operators
Institution of Trading Standards
International Air Carrier Association
International Air Passenger Association
International Air Transport Association
National Association of Citizens' Advice Bureaux
National Consumer Council

Unions

Amicus
Association of Flight Attendants
BALPA
BASSA
Cabin Crew 89
Guild of Air Pilots and Air Navigators
International Transport Workers Federation
Transport and General Workers Union
Trades Union Congress

Government Bodies

Civil Aviation Authority (Consumer Protection Group)
Home Office
Scottish Executive
Welsh Assembly
Northern Ireland Office
Small Business Service

Annex F

Partial Regulatory Impact Assessment

Title

Proposal for a Regulation of the European Parliament and of the Council establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delays of flights.

Issue

Overbooking is a widespread practice amongst scheduled airlines. There is always a proportion of passengers booked onto a flight who do not check in, mainly those holding flexible tickets, and airlines use past experience to estimate the number of these "no-shows". Sometimes they will overbook, to avoid flying with empty seats. On most flights their estimates are correct but on some occasions too many passengers turn up and some are denied boarding, which can result in considerable inconvenience to those passengers.

It is appropriate that passengers denied boarding should be entitled to appropriate levels of compensation, and that this should act as an incentive to airlines to minimise its incidence. Legislation on denied boarding needs to be aware, however, that there are potential benefits to passengers, as well as costs, resulting from overbooking. Scheduled airlines maintain that overbooking is a legitimate commercial practice which benefits passengers by keeping fares lower than they would otherwise be. Overly punitive rates of compensation may bring this practice to an end and result in increased costs to consumers in the form of higher fares.

Many airlines already have a system of calling for volunteers to give up seats in return for compensation, before resorting to denying passengers boarding against their will. British Airways has a scheme whereby passengers are offered a flat rate of compensation (higher than the statutory minimum).

Objective

The proposal, which would replace an existing Regulation, EEC No. 295/91 on Denied Boarding, aims both to deter airlines from excessive overbooking or cancellation, and to extend the minimum levels of compensation. It would extend the right to compensation in cases of cancelled flights and create new rights for passengers affected by cancellations and long delays, for example, giving passengers affected by significant delays the right to meals and, where appropriate, overnight accommodation. The Regulation would apply to all passengers on all flights leaving the EU (including on non-EU airlines), as in the present Regulation. However, the new Regulation would also apply to flights on EU airlines returning to the EU.

The original proposal suggested a fivefold increase in the minimum level of compensation (to €750 for flights of less than 3,500 km and €1,500 for flights of more than 3,500 km); extending denied boarding compensation, a right to reimbursement and care to passengers whose flights are cancelled; providing assistance to passengers in case of delays; and broadening the scope of the Regulation to include non-scheduled flights (for both seat-only and inclusive tour passengers) and flights returning to the EU from non-EU airports.

Since the proposal was published, the text has been discussed in Transport Council Working Groups and a new version agreed by Ministers at the December 2002 Transport Council. This forms the Council's 'Common Position'. The main change is that compensation levels agreed by Council are much lower than in the Commission's original proposal. Three levels of compensation are proposed : €250 for flights of up to 1,500 km; €400 for intra-EU flights over 1,500 km; and €600 for all other flights. The following assessment is based on the text agreed by Council, but it should be noted that the European Parliament adopted, at Second Reading, 15 amendments to the Council's Common

Position. These have not all been accepted by the Council and accordingly the dossier has moved to conciliation to resolve the differences.

Risk Assessment

The Commission states that in 1999, according to the data made available to it, there were an estimated 250,000 passengers who were denied boarding on scheduled services by the main Community carriers, equivalent to around 1.1 per 1000 passengers. The Commission's objective is to reduce this number. Figures from the United States suggest that the level there is some ten times lower, primarily because a system of calling for volunteers is compulsory. As outlined above, the incidence of denied boarding is relatively low, and a case could be made for maintaining the status quo. The complaints statistics of the Air Transport Users Council indicate that overbooking is not an area of major concern for air passengers. Airlines already work to keep the levels of denied boarding to a minimum whilst seeking to optimise load factors by ensuring that the maximum number of seats are sold.

Many airlines already operate a system of calling for volunteers, which the US experience suggests is more important to reducing the rates of involuntary denied boarding than a stringently high rate of compensation. The rate of involuntary denied boarding in the US in the first quarter of 2002 was only 0.08 per 1,000 passengers. The volunteer system has already been promoted by the Commission in other initiatives. In 2000, the Commission raised the possibility of requiring airlines to provide passengers with statistics on denied boarding, which would provide a commercial incentive for carriers to keep their rates down. Calling for volunteers is also promoted in the recently launched European Airline Passenger Service Voluntary Commitment, to which all the major full-service UK airlines (scheduled and chartered) are signatories.

The Association of European Airlines (AEA), representing the main full service scheduled airlines, submitted a preliminary study of the impact of the proposal to the European Parliament Rapporteur in March 2002. For a sample of five major airlines, the AEA reported that the total number of passengers denied boarding in 2001 (voluntarily and involuntarily) was 214,000, out of a total of 168 million passengers (the latter figure representing some 35% of the overall passengers carried by European airlines in 2001). Some 0.13% of the overall number of passengers carried by these airlines were therefore denied boarding⁴ and the cost to them in denied boarding compensation was some €41.2 million. Non-scheduled (charter) airlines do not overbook and would only exceptionally deny boarding for technical reasons.

As regards cancellations, the no-fills carriers (which are more prone to cancellations on the day of the flight than the full service scheduled airlines) have estimated that there were 1,091 cancellations over the 12-month period to September 2001 which would be covered by the proposed Regulation. These affected 126,981 passengers or roughly 0.25% of all their passengers. For cancellations made on the day of the flight, we might assume a slightly lower percentage for the full service scheduled carriers, though they are more likely to cancel flights in advance. Figures for individual airlines are not available as the information is commercially sensitive. Charter carriers only cancel flights for technical reasons and the percentage of their passengers affected would be much smaller.

CAA figures for UK airports for the year ending November 2002 revealed the following delays : for flights of over 3,500km, scheduled airlines had 496 flights delayed by over four hours, affecting 71,796 passengers. Charter airlines had 29 such flights delayed by over four hours, affecting 6,987 passengers. Together these amounted to 0.05% of all passengers. For flights of under 3,500 km, 5,704 flights by scheduled airlines were delayed by over two hours, and 1,511 flights by charter airlines. 3% of one charter airline's flights were delayed by over 2 hours. These affected 557,744 and 305,946 passengers respectively (0.54% of all passengers). The UK currently accounts for some 27% of all air traffic management (ATM) delays in European airspace. In August 2002, the average ATM related

⁴ British Airways' rate of denied boarding is less than half this amount.

delay for all flights in the UK was 3.6 minutes. The average per delayed flight was 22.5 minutes. Punctuality figures for February 2003 for members of the Association of European Airlines showed an average delay per delayed flight of 50 minutes⁵.

Currently there are no legal rights for passengers subject to long delays, although airlines which are signatories to the European Airline Passenger Service Voluntary Commitment already offer meals and refreshments to passengers in case of delays. Some airlines also offer a refund in case of delays. For example, easyJet already offers reimbursement in case of delays, refunds for delays of over 4 hours (so the flight is free), refreshments after 3 hours and a contribution to hotel costs when flights are cancelled after 8.00pm.

The cost to passengers of delays and cancellation will depend on the time for which they are delayed and the costs of the consequences of their being delayed. It is difficult to quantify the latter costs, particularly if it results in business being lost. On the other hand, as paragraph 13 notes, some airlines offer reimbursement if the delay is lengthy, which will reduce the monetary impact. Paragraph 12 indicates that about 80,000 passengers flying over 3,500 kms suffered delays of more than 4 hours in 2002 while about 865,000 passengers who flew less than 3,500 kms suffered delays of more than 2 hours. In total, this suggests that passengers were delayed for more than 2 million hours in 2002. The value of time for air passengers might be about £7/hour for leisure passengers and £40 for business ones. Assuming 20% of delayed passengers are on business trips would suggest an average value of about £13.50/hour and an aggregate passenger time cost of about £25m.

Evidence from the Air Transport Users Council suggests that certain (non-EU) airlines are much more prone to overbooking than others, and even that some airlines routinely flout the existing Regulation on Denied Boarding Compensation. The existing Regulation does not explicitly require Member States to have sanctions to enforce the Regulation. The new Regulation would require this, thereby providing better enforcement.

Options

At the Transport Council in December 2002 the UK was the only country to oppose the Regulation, largely on the grounds that there should be a link between compensation and ticket price. Although it would be possible to continue to oppose the Regulation, in a qualified majority voting situation this is unlikely to be productive unless other countries change their position. Therefore we do not believe that this is a realistic option. There are two other possible options :

- *Option 1:* to support the proposal agreed by Transport Council;
- *Option 2:* to seek to influence the Council's negotiating position in conciliation so as to accept those European Parliament amendments that would limit the impact of the proposal on the UK aviation industry. In particular, the amendment seeking to limit assistance in the event of **delays**, to meals and accommodation, rather than also providing for reimbursement or re-routing, would assist charter operators if applied to package holiday passengers. However, any changes will also depend on the view of the European Parliament.

Identifying the Benefits

Option 1

The proposal would have two main benefits. Firstly it would increase the disincentive to airlines to overbook (though clearly this disincentive will be smaller than if the fivefold increase in the minimum level of compensation had been accepted). The requirement on airlines to call for volunteers to surrender reservations in exchange for agreed benefits should also push down the levels of denied boarding.

⁵ This excludes flights delayed by less than 15 minutes which are regarded as being on time.

Secondly, passengers who are nevertheless denied boarding will receive greater compensation for the inconvenience suffered. Passengers will therefore benefit though the loss to airlines means that there is no net benefit to the economy. In addition, passengers will be entitled for the first time to compensation for cancelled flights, as well as the right to reimbursement and re-routing. In case of long delays, passengers will be entitled to assistance such as meals and accommodation, which not all airlines currently offer.

The proposal would widen the scope of the existing Regulation to include non-scheduled flights and flights by Community carriers back to the EU. The proposal also imposes certain obligations on airlines with regard to the treatment of persons with reduced mobility in case of denied boarding, cancellations and delay.

Option 2

If the proposal loads excessive new costs onto airlines, these are likely to be passed on to passengers through higher ticket prices. It is therefore worthwhile considering whether the Council's negotiating position can be influenced to accept those EP amendments that might improve the balance between protecting those passengers who are affected by denied boarding, cancellations or long delays, and the majority who are not but would have to pay more for their tickets as a result.

Quantifying the Benefits

Option 1

The proposal as currently amended would increase the numbers of passengers who could claim compensation, as well as the level of compensation. If the current levels of compensation were doubled, the compensation claimed by the 214,000 passengers denied boarding by the AEA airlines in 2001 would double from €41.2 million to €82.4 million.

During 2001, the five sample AEA airlines cancelled a total of 35,860 flights. However, these included schedule changes made many weeks or months in advance, and the AEA calculate that some 26,688 of these would have been eligible for compensation under the original proposal. The AEA assumed an average load in the realms of 43 passengers per flight, giving a total of 1.15 million passengers claiming compensation for cancellations. This would increase the total number of passengers claiming compensation from 214,000 in 2001 (under the current Regulation), to 1.36 million under the new proposal. However, the proposal as revised by the Council restricts passengers' rights to compensation only to flights which are cancelled within two weeks of departure.

As set out in paragraph 12 above, the number of UK passengers benefiting from assistance in case of delays would be approximately one million.

Option 2

The benefits of the EP amendments will depend on which, if any, amendments are accepted. If costs to airlines are reduced, this will lead to a smaller increase in fares to the majority of passengers.

Issues of Equity and Fairness

It is intended by the Commission that the proposed measures should impact equally across the airline industry. It is right that all passengers should be treated equally, whether on a scheduled or charter carrier (but see below for discussion of package tour passengers). However, both the no-frills carriers and the European Regions Airline Association have expressed concern that the proposal could impact disproportionately on their services, given that their average fares are lower. Rather than have a flat rate of compensation, they argue that levels of compensation should be linked to fares. An amendment to link compensation to ticket price, as the UK would have wished, was put forward in the European Parliament but was not supported. The no-frills carriers argue that passengers should be allowed the choice of low fares in return for less protection. They also claim that the proposal discriminates

against airlines in relation to other modes of transport where passengers are not protected against cancellations or delays.

There may also be an issue concerning the inclusion in the proposal of flights by Community carriers from third countries to the EU where passengers do not benefit from compensation in the third country. The Commission believe that this is appropriate to ensure that passengers flying to a third country with an EU carrier are covered on both the outward and return journey. Community airlines have argued that this is discriminatory and will put them at a competitive disadvantage in relation to non-EU airlines. It is important to note, however, that a similar provision was included in the 1998 proposal, which cleared UK Parliamentary Scrutiny.

Charter carriers also believe that the proposal impacts disproportionately on them. Since most of their passengers are flying as part of a package holiday, charter carriers are under an obligation to carry their passengers to their destination as soon as possible and do not have the option of cancelling flights and leaving passengers to fend for themselves. For this reason they believe that the ability of scheduled carriers to cancel flights and cite extraordinary circumstances gives these carriers a competitive advantage. Charter carriers also have less scope to transfer passengers to alternative services and are concerned that giving passengers the right to re-routing would be costly.

Finally, airlines have also made the point that the common position does not seek to extend such rights to other modes of transport. This is however the subject of a proposed amendment of the European Parliament.

Identifying and Quantifying the Costs

Option 1

Full service scheduled carriers

In its response to the Commission's original proposal the Association of European Airlines (AEA) proposed that the current compensation levels (set by the 1991 Regulation) should be increased by 50%, to €225 for flights of less than 3,500 km and €450 for flights of more than 3,500 km. This would represent an increase on the current minimum level (above the rate of inflation in the EU, which was 28% for 1991-2001), but without penalising airlines to the extent that they were unable to overbook and without resulting in significant price increases being passed on to the consumer. We can therefore assume that the airlines could comfortably live with such an increase without it imposing significantly higher costs.

As outlined above, the AEA have estimated that for their sample of five leading European airlines, the cost of denied boarding compensation in 2001 was €41.2 million. With a doubling of compensation levels, as agreed in the Council's Common Position, this figure would reach €82.4 million⁶.

It is not possible to be categorical in quantifying the financial costs to airlines resulting from the proposal's provisions on cancellations⁷. British Airways estimates that the potential additional costs could total up to £36 million. The proposal would also place additional burdens on customer services. If costs were passed on directly to the consumer, this could amount on average to around **£1 per one way ticket**.

No frills carriers

The 'no frills' (or low cost) carriers should be treated differently for a number of reasons. They rarely overbook and are therefore not affected by provisions on denied boarding. However, they do cancel

⁶ BA currently pays above the minimum rates of compensation. A doubling of the minimum would therefore not necessarily lead to a doubling of costs.

⁷ Passengers would be entitled to compensation for all cancellations made within two weeks of departure, unless suitable alternative flights are offered, as defined in the proposal.

flights and would be affected by the right to compensation in such cases. In fact, given the demanding schedules to which they operate, they are more prone to cancelling flights as a measure to avoid lengthy 'knock-on' delays. They would be affected by the new right to compensation in case of cancellations and are particularly concerned that the compensation levels would be disproportionate in relation to their lower fares (their average fare is €69).

Information provided by the five main no-frills carriers⁸ states that they cancelled 1,357 flights in the 12 months to September 2002. 1,091 of these were estimated to fall within the scope of the Regulation⁹. These cancellations affected 126,981 passengers (about 0.25% of all their passengers). However, excluding cancellations resulting from air traffic control delays, as would be allowed in the Regulation as amended by Council at First Reading, would reduce the number of cancellations falling within the scope of the Regulation to around 670. Based on the levels of compensation proposed by the European Parliament, the cost of compensation payments and related assistance for cancellations and delays, other than caused by "force majeure", would be approximately €35m. Based on 32.6 million passengers last year, if the cost was passed directly to the passenger, **this would add just over €1 to the cost of a ticket** - an increase of around 1.5% on the average fare.

The no-frills carriers have argued for compensation to be linked to the fare paid. The UK argued for this in Council but received no support from other Member States.

Charter carriers

Charter airlines do not overbook, nor cancel flights for commercial reasons. Their liability under this Regulation would therefore be limited to delays and to those occasions where they were forced to cancel flights or deny boarding for technical reasons. Since the major charter carriers already offer meals and refreshments under the voluntary commitment, this provision would not impose significant new costs. However, charter airlines are concerned at the potential cost to them if passengers exercised their right to be re-routed on other airlines in the case of long delays. Around 300,000 charter passengers were subject to long delays last year on flights leaving UK airports. If half this number exercised their right to re-routing on other airlines, this could cost the airlines at least £20 million. This figure could potentially be doubled if flights returning to the UK are taken into account. Charter airlines argue that this right should not apply to passengers travelling on an inclusive tour. Package travel passengers already have rights to claim damages from the tour operator under EC Directive 90/314 on package travel in respect of cancellation or changes to the service.

Tour Operators

If airlines were to pass on the costs and ticket prices increase, there would be a consequential impact on tour operators who would have to raise holiday prices.

Option 2

A number of the European Parliament's amendments to the proposal could reduce costs to airlines. The extent of this reduction would depend on whether those amendments were accepted.

Competition Assessment

We have examined the market for air travel and, for the purposes of this assessment, concluded that no frills, charter and schedule flights all compete in the same market. The current structure of the

⁸ EasyJet, Go, Buzz, Ryanair and Virgin Express. Go and Buzz have subsequently been bought by easyJet and Ryanair respectively.

⁹ This estimate excludes only cancellations made due to weather problems, i.e. those which airlines can confidently predict would be covered by the "force majeure" clause. In practice, airlines might cite "force majeure" in the case of certain other types of cancellation.

proposed regulations would have a disproportionate effect on no frills airlines and, to a lesser degree, charter flights. Competition concerns that may arise from the fixed fee proposed would be negated if compensation were linked to price. That said, the low costs involved in implementing the fixed fee are unlikely to change the market structure or nature of competition in this market. Under either the fixed or the proportionate fee there will be no distortion of competition for flights departing the EU as the Regulation applies to all airlines.

We have also looked at routes where airlines compete with other modes of transport, and concluded that there is unlikely to be any significant effect on competition. Whilst the price of fares will rise, the amount per ticket is relatively small, and the added security given to consumers through this measure may actually enhance the desirability of flying.

Results of Consultations

Regrettably, the Commission carried out no formal consultation on the proposal. DfT consulted UK passenger airlines and aviation organisations with an interest and received thirteen replies. As outlined above, the main concerns of respondents focused on the proposed rates of compensation and the widening of the Regulation's scope. The Association of British Travel Agents (ABTA) and the Federation of Tour Operators (FTO) both endorsed strongly the view of the International Air Carrier Association (IACA) - speaking for the charter carriers - that package travel passengers should be excluded. DfT has also kept in close touch with interested parties throughout the negotiations.

Enforcement, Sanctions, Monitoring and Review

The Regulation would be directly applicable to the UK. The proposal also, however, requires Member States to lay down rules on penalties and enforcement and the UK would therefore be required to draw up secondary legislation to this effect. Member States are required to set "effective, proportionate and dissuasive penalties" for infringement and to designate bodies responsible for enforcement of the Regulation. Although the Civil Aviation Authority has an interest in the current Regulation, it does not actively enforce it. It is likely that the Government would designate the CAA as the responsible body in the UK, with modest resource implications. In addition it is likely that the UK would designate the Air Transport Users Council as the body responsible for handling passengers' complaints, again with some resource implications.

The Commission states in its Explanatory Memorandum that it would monitor the working of the legislation closely, including its effects on the rates of denied boarding and cancellation. The Commission would issue a report within five years of the regulation coming into force and propose further measures if no significant change had been achieved.

Small Business Services

There should be no direct impact on small businesses.

Recommendation

Assuming costs are passed on to the passenger, **we estimate that this proposal could add, on average, around £1.50 to the cost of a single air ticket.** We wish to reduce the cost to airlines but without removing important rights for passengers.

Declaration

"I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs."

Tony McNulty MP
Parliamentary Under Secretary