

## **Flight Problems: Your Rights under Reg. 261 for Flight Cancellations, Delays and Denied Boarding. FAQs**

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### **What is Regulation 261 and when does it apply?**

[Regulation 261/2004](#) is a European Union law, which is still part of UK law, that protects passengers in the event that their flight is:

- Cancelled, or
- Delayed, or
- They are denied boarding – 'bumped'.

It applies if:

- You are taking a flight with *any* airline which *departs* from any EU airport, or
- Your flight is on an EU licensed airline that departs from an airport outside the EU and is returning to the EU.

So all British Airways, Virgin Atlantic, Lufthansa, easyjet, Ryanair, Alitalia, TAP flights and many many more airlines would be covered whether they were flying in or out of the EU because they are all EU licensed airlines.

However if you were flying on say Emirates or Cathay Pacific or American Airlines or any other non-EU licensed airline you would only be protected for the outbound flight not the inbound flight from outside the EU.

You must arrive at check-in by the time stipulated in writing by your airline, tour operator or travel agent or, if no time is stipulated, at least 45 minutes before departure.

You are covered if you have a ticket as a member of a frequent flyer programme but not if you are travelling free of charge e.g. an infant.

It applies to 'operating air carriers' i.e. the airline on which you flew – not necessarily the airline that sold you a ticket. This can cause a problem with code-sharing flights where airline A, an EU licensed airline, sells you the ticket but the flight is on airline B, which is the 'operating carrier', and is licensed outside the EU. You will be covered on the outbound flight but not the inbound flight so check your ticket carefully.

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### **Does Regulation 261 apply after Brexit?**

Minor amendments have been made to bring it into line with UK law such as changing the currency from Euros into pounds but your rights remain essentially the same.

### **What compensation do I get for a cancelled flight?**

Yes, up to £520 per person depending on the length of the flight and the length of the delay

It also matters why the flight was cancelled or how long in advance you were notified of the cancellation.

If you want compensation on top of a refund or re-routing it may be available. It depends on

- How long the delay was, and
- The distance of your flight, and
- When you were informed of the cancellation.

Compensation is now calculated in pounds so you will have to work out how much that is in sterling.

No compensation is payable if:

- You were informed of the cancellation more than 14 days before departure
- You were informed of the cancellation between 7 and 14 days before departure and you are offered re-routing which leaves no more than two hours before the scheduled time and reaches your final destination no more than four hours late
- You were informed of the cancellation less than 7 days before departure and you are offered re-routing which allows you to depart no more than one hour before the scheduled time and to reach your final destination less than two hours late.
- The flight was cancelled for 'extraordinary circumstances'.

Compensation is payable *per person* so for a long delay on a long haul flight the compensation could amount to as much as £2080 for a family of four.

You may be offered vouchers instead of money but you don't have to take them, you can insist on money. If you accept vouchers the carrier must obtain a signed agreement from you.

If you are entitled to compensation this table tells you how much:

<b>Length of Flight</b>	<b>Length of Delay</b>	<b>Amount of Compensation</b>
0-1,500 kms	Up to 2 hours	£110
0-1,500 kms	Over 2 hours	£220
1,500-3,500 kms	Up to 3 hours	£175
1,500-3,500 kms	Over 3 hours	£350
Over 1,500 kms within the EU	Up to 3 hours	£175
Over 1,500 kms within the EU	Over 3 hours	£350
Over 3,500 kms	Up to 4 hours	£260

Over 3,500 kms	Over 4 hours	£520
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Compensation may also be available under the Montreal Convention, s.75 of the Consumer Credit Act 1974 or simply for breach of contract.

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## **Am I entitled to a refund or re-routing for a cancelled flight?**

Under Reg. 261 if your flight is cancelled you must be offered the choice of:

- A refund, or
- Re-routing

### *Refund*

If you decide you don't want to fly the refund must be paid to you within seven days.

The refund must cover the price of

- The part of the journey not yet made
- The part of the journey already made if it no longer serves any purpose
- And, when relevant, a return flight at the earliest opportunity to the first point of departure

The refund must be paid in cash, by electronic bank transfer, bank orders or bank cheques.

If the refund is paid in travel vouchers and/or other services this must be with your signed agreement.

### *Re-routing*

If you choose re-rerouting you must be offered:

- Re-routing under comparable transport conditions to your final destination at the earliest opportunity, or
- Re-routing under comparable transport conditions at a later date at your convenience if seats are available

If you are offered re-routing to a destination served by several airports and you are offered an alternative airport to the one you were booked for the operating carrier must bear the cost of transporting you to the original airport or to another close-by destination that you agree to.

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## **What care and assistance do I get if my flight is cancelled or delayed?**

You are entitled to *care and assistance* in the event of your flight being cancelled or delayed. This article is not concerned with *compensation* for cancellation or delays. That is dealt with in other articles.

If your flight is *cancelled* and you choose *re-routing* the operating carrier should also offer you, free of charge:

- Meals and refreshments in reasonable proportion to your waiting time, and
- Hotel accommodation if a stay of one night or more becomes necessary
- Transport between the airport and the accommodation
- Two telephone calls, telex or fax messages, or e-mails

If your flight is *delayed* then similar rights are available but it depends on how long the delay lasts. The rights you will get are triggered if:

- A flight of less than 1,500 kms is delayed for two hours or more;
- A flight within the EU of more than 1,500 kms is delayed for three hours or more;
- Flights of more than 1,500 kms but less than 3,500 kms are delayed for three hours or more; or
- Flights of more than 3,500 kms are delayed for four hours or more

If this is the case then the operating carrier must offer you:

- Meals and refreshments in reasonable proportion to your waiting time, and
- Hotel accommodation if a stay of one night or more becomes necessary
- Transport between the airport and the accommodation
- Two telephone calls, telex or fax messages, or e-mails

In addition, if your flight is delayed for more than five hours you have the right to a refund. The refund must cover the price of:

- The part of the journey not yet made
- The part of the journey already made if it no longer serves any purpose
- And, when relevant, a return flight at the earliest opportunity to the first point of departure

The refund must be paid in cash, by electronic bank transfer, bank orders or bank cheques within seven days.

If the refund is paid in travel vouchers and/or other services this must be with your signed agreement.

You are entitled to care and assistance even if you are not eligible for compensation.

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### What compensation do I get for a delayed flight?

Curiously Regulation 261 does not actually provide for compensation if your flight is *delayed* but the European Court of Justice in the case of [Sturgeon v Condor](#) has decided that compensation is payable in a similar, but not identical way, as for cancellation.

The Court said that compensation is triggered if your flight is delayed by more than *three* hours. If this happens you get the same compensation as if the flight was cancelled. In practice this means:

Length of Flight	Length of Delay	Amount of Compensation
Up to 1,500 kms	More than 3 hours	£110
1,500 kms to 3,500 kms	More than 3 hours	£350
More than 3,500 kms within the EU	More than 3 hours	£350
More than 3,500 kms	3-4 hours	£220
More than 3,500 kms	More than 4 hours	£520

Note however that, as with cancellations, compensation is not payable if the delay was due to 'extraordinary circumstances' but you are still entitled to care and assistance for the delay.

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## **What compensation do I get for denied boarding?**

Some airlines routinely overbook flights because passengers sometimes don't turn up. They have sophisticated algorithms to help them calculate this and mostly they get it right. But sometimes too many passengers turn up and the airline has to turn some away. This is called 'denied boarding' or being 'bumped'. Fortunately it doesn't happen very often but if it does then you have a right to compensation under Reg. 261 – so long as you fall within the scope of the Regulation.

You have to be leaving from an EU airport or returning to the EU on an EU licensed carrier.

You have to have a confirmed reservation on the flight and you must have presented yourself for check-in:

- At the time stipulated in writing by your carrier, tour operator or travel agent; or if no time is stipulated
- At least 45 minutes before the published departure time

### *Volunteers*

If the flight is overbooked the carrier must first of all call for volunteers and offer them 'benefits' to surrender their reservation. At this stage you may be offered vouchers to agree not to fly. However you should think very carefully about this. Sometimes the vouchers have very restrictive conditions attached to them such as how long they are valid for and what they cover. For instance they may only be valid for a year, they will probably not be transferable and they may not cover 'taxes, fees and charges'.

As well as vouchers you are also entitled to a refund or re-routing. But volunteers are not entitled to care and assistance e.g. refreshments, meals, phone calls or hotel accommodation so be careful to negotiate for these as well as the flight voucher.

However if the airline is desperate you may be able to negotiate a more generous offer. Don't always accept the first offer. Don't accept the legal minimum, see the table below, because you will get that anyway if you are bumped against your will.

### *Involuntary denied boarding*

If the airline can't get enough volunteers it will then deny boarding to passengers against their will. In such a case you are entitled to compensation, as well as a later flight *and* care and assistance.

As with delay and cancellation there is a sliding scale of compensation depending upon the length of the flight and the length of the delay.

This table sets out the level of compensation you are entitled to:

<b>Length of Flight</b>	<b>Length of Delay</b>	<b>Amount of Compensation</b>
0-1,500 kms	Up to 2 hours	£110
0-1,500 kms	Over 2 hours	£220
1,500-3,500 kms	Up to 3 hours	£175
1,500-3,500 kms	Over 3 hours	£175
Over 1,500 kms within the EU	Up to 3 hours	£175
Over 1,500 kms within the EU	Over 3 hours	£220
Over 3,500 kms	Up to 4 hours	£220
Over 3,500 kms	Over 4 hours	£520

No compensation is payable if the denied boarding was due to 'extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.'

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## What is meant by ‘extraordinary circumstances’?

You will not be entitled to compensation for denied boarding, long delays or flight cancellations if these events were due to:

“... extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.”

This term is not defined in the Regulations although some basic guidance is given in the Preamble. In addition the European Court of Justice has also provided guidance and the European Commission has published Interpretive Guidelines.

These events listed in the Preamble to the Regulations are ‘deemed’ to be extraordinary circumstances:

- Political instability
- Meteorological conditions (bad weather)
- Unexpected flight safety shortcomings
- Strikes that affect the operation of the operating carrier
- Air traffic management decisions

Examples of such events include:

- Airports closed by drone incursions
- Volcanic ash
- Political unrest
- Bird strikes
- Strikes by staff not employed by the carrier
- Terrorist threats

Examples of events which are not deemed to be extraordinary include:

- Staff shortages
- [Wildcat strikes by the carriers own staff](#)
- [Routine maintenance problems](#) that are inherent in the operation of the airline – but not hidden manufacturing faults
- A set of [mobile stairs colliding with an aircraft](#) is regarded as inherent in the operation of an airline

However it is for the carrier to prove that there was an extraordinary event and also to show that it was that event that *caused* the delay *and* that it could not have been avoided by taking all reasonable measures.

For instance light snow at an airport in a winter sports area might not amount to extraordinary circumstances.

If bad weather causes delays that might be regarded as extraordinary but if this has a knock on effect for later flights it might be argued that these subsequent delays are down to the carrier not taking reasonable measures to prevent the delays – perhaps by not having enough crew or spare aircraft on standby.

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### **What if I have connecting flights?**

If you were flying on connecting flights *on the same reservation* and the first flight is delayed and you miss your connection then if you are delayed by more than three hours *at your final destination* then you are entitled to compensation.

For instance you may have booked flights on the same reservation from Edinburgh to Miami via London. If your first flight is delayed by say 90 minutes and this causes you to miss your connection to Miami and you arrive late in Miami by over three hours you will be entitled to compensation.

If you are on separate tickets then you will only get compensation if your first flight was delayed by more than three hours – and only for the first leg of the journey. If you miss your connection in those circumstances you will not get compensation for your second flight unless it too was independently delayed for more than three hours.

It gets more complicated if your connection involves non-EU countries and non-EU airlines. For instance in the case of [CS and Others v Ceske Aerolinie](#) the claimants had booked a single reservation on a flight from Prague to Bangkok. The flight connected in Abu Dhabi. The first leg of the flight from Prague to Abu Dhabi was with Ceske Aerolinie but the second leg was with Etihad Airways under a code-share agreement. The Ceske flight arrived on time in Abu Dhabi but the Etihad flight was delayed by eight hours.

Ceske refused to pay compensation because they said that the delay was caused by a non-EU airline. However the European Court of Justice held that if you have a single reservation for a flight starting in the EU with an EU licensed carrier for a destination outside the EU and you are connecting in a non-EU country on a non-EU airline you are entitled to compensation even if the first flight arrived on time but you were delayed by the second flight.

Note that this only applies if you have a through ticket. If you had booked two separate flights no compensation would be payable.

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### **What delays count?**

When measuring whether you have been delayed the important thing to note is that it is not the departure time that matters but the time of arrival *at your final destination*.

Your flight may depart say 3¼ hours late but because of favourable weather conditions arrives only 2 hours and 45 minutes late, in which case you would not be entitled to compensation.

A [European Court of Justice case](#) held that arrival time means the moment that the doors of the plane are opened at the gate, not the time that the plane touches down. This may make a significant difference at airports where it takes a long time to taxi from the runway to the gate.

If you are diverted to another airport and are then transported to your original airport and arrive late then the delay is determined by the time you arrive at your original airport.

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### **How long have I got to claim?**

Under the law of England, Wales and Northern Ireland you have up to six years to make a claim. It is only five years in Scotland. This was decided by the Court of Appeal in 2014.

How long you get depends upon the statute of limitations in each country so for some countries like France it is only three years.

### **Is Regulation 261 the only compensation available for delayed flights?**

Compensation is also available under the Montreal Convention for delays, but not cancellations, but there are no standard rates of compensation available as under Reg. 261 and you will have to prove your actual financial loss. Click [here](#) for the FAQs on the Montreal Convention.

You might also be able to make a claim against your credit card company under s.75 of the Consumer Credit Act 1974 – but only if you could have made the claim against the airline in question.

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### **Further reading**

[Regulation \(EC\) No 261/2004 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](#)

[The Air Passenger Rights and Air Travel Organisers' Licensing \(Amendment\) \(EU Exit\) Regulations 2019](#)

[Dawson v Thomson Airways Limited](#) [2014] EWCA Civ 845

[European Commission Interpretive Guidelines](#)

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