

Annex 1 – Re-routing in accordance with Article 8 of Regulation EU261/2004 and the CAA’s view on compliance

This Annex sets out the law in relation to the right to reimbursement or re-routing following a cancellation of a flight. It includes extracts from Regulation EU261/2004 (“the Regulation”) and relevant case law. It also includes extracts from the interpretative guidelines¹ published by the European Commission in June 2016. The Commission has explained that the guidelines do not cover all the provisions in the Regulation and that they are not exhaustive. Their aim is to provide clarity and to help ensure greater consistency across the EU. The CAA supports the guidelines and considers them to set the minimum compliance standard in a number of areas. We have also set out the CAA’s view on compliance in a number of areas and this is clearly set out below.

Regulation EU261/2004

Recital 12

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

Recital 13

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

Article 4 - Denied boarding

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

Article 5 - Cancellation

- “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) ...**

¹ [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0615\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0615(01)&from=EN)

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

Article 8 - Right to reimbursement or re-routing

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

- (a) — reimbursement within seven days, by the means provided for in Article 7(3), of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant,
 - a return flight to the first point of departure, at the earliest opportunity;**
 - (b) re-routing, under comparable transport conditions, to their final destination at the earliest opportunity; or*
 - (c) re-routing, under comparable transport conditions, to their final destination at a later date at the passenger's convenience, subject to availability of seats.*
1. *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.*
 2. *When, in the case where a town, city or region is served by several airports, an operating air carrier offers a passenger a flight to an airport alternative to that for which the booking was made, the operating air carrier shall bear the cost of transferring the passenger from that alternative airport either to that for which the booking was made, or to another close-by destination agreed with the passenger.”*

Article 11 – Persons with reduced mobility or special needs

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

Article 15 - Exclusion of waiver

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

European Case Law

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

C-12/11 - Denise McDonagh v Ryanair Ltd

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

However, an air passenger may only obtain, by way of compensation for the failure of the air carrier to comply with its obligation referred to in Articles 5(1)(b) and 9 of Regulation No 261/2004 to provide care, reimbursement of the amounts which, in the light of the specific circumstances of each case, proved necessary, appropriate and reasonable to make up for the shortcomings of the air carrier in the provision of care to that passenger, a matter which is for the national court to assess.”

European Commission Interpretative Guidelines

“4.2 Right to reimbursement, re-routing or rebooking in the event of denied boarding or cancellation

Article 8(1) of the Regulation imposes on air carriers the obligation to offer passengers a triple choice, between (i) reimbursement of the ticket price (36) and, in the case of connections, a return flight to the airport of departure at the earliest opportunity, (ii) re-routing to their final destination either at the earliest opportunity or, (iii) re-routing at a later date at the passenger's convenience under comparable transport conditions, subject to availability of seats. As a general principle, when the passenger is informed about the cancellation of the flight and is correctly informed on the available choices, the choice offered to passengers under Article 8(1) is to be made once. In such cases, as soon as the passenger has chosen one of the three options under Article 8(1)(a), (b) or (c), the air carrier no longer has any obligation linked to the other two options. Nonetheless, the obligation to compensation may still apply according to Article 5(1)(c) in connection with Article 7.

The air carrier should simultaneously offer the choice between reimbursement and re-routing. In the case of connecting flights, the air carrier should simultaneously offer the choice between reimbursement and a return flight to the airport of departure and re-routing. The air carrier has to bear the costs for re-routing or a return flight, and must reimburse the costs for the flight borne by the passenger where the air carrier does not comply with its obligation to offer re-routing or return under comparable transport conditions at the earliest opportunity. Where the air carrier does not offer the choice between reimbursement and re-routing and, in the case of connecting flights, reimbursement and a return flight to the airport of departure and re-routing, but decides unilaterally to reimburse the passenger, he or she is entitled to a further reimbursement of the price difference with the new ticket under comparable transport conditions.

However, where an air carrier can demonstrate that when the passenger has accepted to give his or her personal contact details, it has contacted a passenger and sought to provide the assistance required by Article 8, but the passenger has nonetheless made his or her own assistance or re-routing arrangements, then the air carrier may conclude that it is not responsible for any additional costs the passenger has incurred and may decide not to reimburse them.

When passengers are offered the option of continuation or re-routing of a journey, this must be 'under comparable transport conditions'. Whether transport conditions are comparable can depend on a number of factors and must be decided on a case-by-case basis. Depending on the circumstances, the following good practices are recommended:

- if possible, passengers should not be downgraded to transport facilities of a lower class compared with the one on the reservation (in the event of downgrading, the compensation provided for in Article 10 applies),
- re-routing should be offered at no additional cost to the passenger, even where passengers are re-routed with another air carrier or on a different transport mode or in a higher class or at a higher fare than the one paid for the original service,
- reasonable efforts are to be made to avoid additional connections,
- when using another air carrier or an alternative mode of transport for the part of the journey not completed as planned, the total travel time should, if possible, be as reasonably close as possible to the scheduled travel time of the original journey in the same or higher class of carriage if necessary,
- if several flights are available with comparable timings, passengers having the right to re-routing should accept the offer of re-routing made by the carrier, including on those air carriers cooperating with the operating carrier,

- if assistance for people with disabilities or reduced mobility was booked for the original journey, such assistance should equally be available on the alternative route.

If a passenger has booked an outbound flight and a return flight separately with different air carriers and the outbound flight is cancelled, reimbursement is due for this flight only. However, in the case of two flights which are part of the same contract but still operated by different air carriers, in addition to their right to compensation from the operating air carrier, passengers should be offered two options in the event of cancellation of the outbound flight: i) to be reimbursed for the whole ticket (i.e. both flights) or ii) to be re-routed on another flight for the outbound flight.”

“4.4.8. Compensation for late arrival when a passenger accepts a flight to an airport alternative to that for which the booking was made.

Compensation is due in such a case. The time of arrival to be used for calculating the delay is the actual time of arrival at the airport for which the booking was originally made or another close-by destination agreed with the passenger in accordance with Article 8(3) of the Regulation. Costs incurred for the transport between the alternative airport and the airport for which the booking was originally made or another close-by destination agreed with the passenger should be borne by the operating air carrier.”

The CAA’s view on compliance with Article 8

This section is primarily concerned with the CAA’s view on the acceptable means of compliance for airlines in relation to their obligations under Article 8 of the Regulation. The CAA has developed this view in the context of its role as the body in the UK responsible for the enforcement of the Regulation. It is intended to provide clarity for airlines over the circumstances in which the CAA would be likely to consider enforcement action for breaches of Article 8 which harm the collective interests of consumers².

The CAA’s view on the acceptable means of compliance is not intended to limit or modify the rights of individual passengers under the Regulation. Ultimately, it is the role of the courts to interpret and apply the provisions of the Regulation. It is important to note, however, that it is the CAA’s view, and it should not be taken as a substitute for independent legal advice as to the view that a court would be likely to take. It is also important, therefore, to distinguish between the CAA’s view on the acceptable means of compliance and any views it might have on how the courts might interpret the legal obligations in Article 8. In relation to the latter, the CAA’s view is that, taking the specific wording of Article 8(1)(b) literally, the obligation to provide passengers with “re-routing under comparable transport conditions, to their final destination at the earliest opportunity” means that passengers choosing the option of re-routing under Article 8(1)(b) are entitled to be re-routed on the next available flight to their final destination, in the same class of cabin, regardless of which airline is operating the flight.

² Further information on how the CAA prioritises its work can be found in its Prioritisation Principles, which are published here: www.caa.co.uk/cap1233.

The CAA's view on acceptable means of compliance

The CAA recognises that its view on the legal obligation under Article 8(1)(b) outlined above could, in some scenarios, lead to outcomes where the benefit to consumers of being re-routed on the next available flight is significantly outweighed by the cost incurred by the airline³ in re-routing them. This is especially the case where, at late notice (e.g. an on-the-day cancellation), the airline is obliged to purchase tickets on another airline (or other transport mode) even though the affected passengers would arrive at their destination only slightly earlier than if the airline re-routed the passengers on its own services.

Given the variety of scenarios in which airlines might find themselves needing to identify re-routing options under Article 8(1)(b), including both the passenger's individual circumstances⁴ as well as the re-routing options⁵ available to the airline, the CAA considers that it would not be possible from a practical point of view for it to prescribe detailed rules covering every possible scenario against which it will assess airlines' compliance. In addition, the CAA does not wish for its views on the acceptable means of compliance with Article 8 to be confused with its view, set out in the previous section, on the legal obligation and the rights of individual passengers.

However, as explained previously, the CAA recognises that it is important for airlines to have clarity on the CAA's views on the acceptable means of compliance with Article 8, and in particular in relation to identifying re-routing options under Article 8(1)(b), and to understand when the CAA would consider enforcement action for breaches of Article 8 which harm the collective interests of consumers. With this in mind, the subsections below set out the CAA's view on the acceptable means of compliance with Article 8 in a number of key areas.

Re-routing on other airlines and transport modes

As explained above, although not always the case, airlines identifying re-routing options under Article 8(1)(b) will often be able to identify a number of potential re-routing options. The CAA's view is that, in such cases, in order to avoid further disruption to the journey plans of affected passengers, when offering the choice between the three options⁶ under Article 8(1)(a), (b) and (c), airlines should always seek to offer the affected passengers the re-routing option under Article 8(1)(b) which re-routes the passengers on the same day as their original flight and via the same route⁷. If this is impossible⁸, airlines should seek to

³ Costs which are ultimately passed through to aviation consumers.

⁴ That is, the need to attend a specific event at a specific time.

⁵ Relevant considerations are the time of day of the original flight as compared to the time of day of the re-routed flight, the frequency of flights on the route (both of the airline that cancelled the flight as well as other airlines operating the route), the availability of indirect flights, the availability of flights from nearby airports, and the total journey time as compared to the original flight.

⁶ As set out in the European Commission Interpretative Guidelines, as a general principle, when the passenger is informed about the cancellation of the flight and is correctly informed on the available choices, the choice offered to passengers under Article 8(1) is to be made once.

⁷ That is, for direct flights, the same departure and arrival airport.

⁸ Because the airline does not operate any such flights itself or because there are no such flights with other airlines operating on that day.

identify alternative re-routing options under Article 8(1)(b) which minimise the disruption to the journey plans of affected passengers.

The CAA accepts that, when offering the choice between the three options under Article 8(1)(a), (b) and (c), airlines will normally prefer to offer affected passengers a re-routing option on their own services or, where applicable, those of their partner airlines. In many cases, this will also be the best outcome for affected passengers. However, in circumstances where there is no re-routing option under Article 8(1)(b) on its own services or, where applicable, on the services of its partner airlines, on the same day as the original flight and via the same route, the CAA's view is that the airline should next seek to identify re-routing options on the services of alternative airlines on the same day as the original flight and via the same route. If such a re-routing option is available, affected passengers should be offered the choice of this option at the same time as they are offered the choice between the options set out in Article 8(1)(a), (b) and (c).

In circumstances where there are no re-routing options under Article 8(1)(b) on its own services, or those of an alternative airline, on the same day as the original flight and via the same route, the CAA's view is that the airline should next identify re-routing options available on the same day as the original flight but involving (a) the use of alternative airports located in close proximity to the original departure and/or arrival airports on both its own services and those of alternative airlines; (b) the use of alternative indirect flight routes⁹ on both its own services and those of alternative airlines; and (c) the use of alternative modes of transport. Given that such re-routing options are likely to lead to additional disruption¹⁰ to the journey plans of the affected passengers, airlines should seek to identify re-routing options which minimise this disruption. In cases where more than one such re-routing option is available, airlines may wish to allow affected passengers to choose between these re-routing options at the same time as they are offered the choice between the options set out in Article 8(1)(a), (b) and (c).

In circumstances where there are no re-routing options under Article 8(1)(b) on the same day as the original flight, the CAA's view is that the airline should identify re-routing options both before and after the day of the original flight, both on its own services and those of other airlines and transport modes, and via the same route as the original flight as well as alternative routes. Given that such re-routing options are likely to lead to additional disruption¹¹ to the journey plans of the affected passengers, airlines should seek to identify re-routing options which minimise this disruption. In cases where more than one such re-routing option is available, airlines may wish to allow affected passengers to choose between the re-routing options at the same time as they are offered the choice between the options set out in Article 8(1)(a), (b) and (c).

⁹ That is, a connecting flight involving the same original departure and final arrival airport but via an intermediate connecting airport(s).

¹⁰ Note that, in respect of the use of alternative airlines and other modes of transport, the European Commission Interpretative Guidelines state that "[...] for the part of the journey not completed as planned, the total travel time should, if possible, be as reasonably close as possible to the scheduled travel time of the original journey in the same or higher class of carriage if necessary".

¹¹ See footnote 10.

For the avoidance of doubt, the CAA does not consider that airlines are obliged to take manifestly unreasonable steps to re-route affected passengers, such as by offering transportation by private jet or private international taxi for long distance journeys.

Major disruption

As explained above, there are a variety of scenarios in which airlines might find themselves needing to arrange re-routing under Article 8(1)(b). Some of these scenarios will be relatively straightforward in that, because of the availability of flights and seats, the airline will be able to re-route affected passengers on its own services on the same day as the original flight. However, other scenarios will be more difficult to deal with, for example where a large number of passengers need to be re-routed because the airline has cancelled a route (as opposed to just a single flight) or where the airline has had to cancel a large number of flights due to industrial action (either of its own staff or those of third parties). In addition, the cancellation may take place at a particularly busy time of year when the availability of seats is less than it otherwise would be.

Although the CAA acknowledges that there will be scenarios where re-routing passengers will pose a substantial practical challenge for airlines, and indeed may expose airlines to material costs where re-routing is required on alternative airlines, the CAA does not consider that this should be a reason for passengers to accept inferior re-routing options. The CAA's view is that the steps for identifying and offering re-routing to affected passengers outlined in the previous subsection should be followed in all cases.

For the avoidance of doubt, in circumstances where an airline decides to cancel a large number of flights, for example because they decide to cancel all or part of the flying on a particular route, the airline is still bound by the obligation to offer a refund or re-route under to Article 8(1). The CAA does not consider that it is acceptable to automatically refund passengers in these circumstances and re-routing options must be identified and offered on the basis set out above. Indeed, in cases of 'commercial' cancellations, where multiple flights are cancelled because they are uneconomic to operate, the CAA considers that there should be sufficient time for airlines to identify suitable re-routing options in advance of announcing the cancellations, and also to ensure that sufficient staff and other resources are available to rebook passengers on alternative flights.

We note that there are some rare cases where airlines may be the only operator on a route (e.g. on some island routes), and in these cases the options for re-routing may be limited to the use of indirect services, alternative airports, or alternative modes of transport. We also note that extreme weather conditions or industrial action by third parties (e.g. air traffic controllers) may severely limit options on other airlines and may make it impossible to organise re-routing on the same day. In the latter case, we expect airlines to do their best to identify re-routing options for affected passengers.

Re-routing agreements with other carriers

We are aware that some airlines have agreements in place with other airlines that facilitate re-routing and allow passengers to be easily transferred onto other airlines. Such arrangements are welcome in that they can minimise both the cost to airlines of re-routing

passengers and the inconvenience experienced by passengers in being re-routed. However, where airlines do not have such arrangements in place, we do not accept that this should be a barrier to re-routing passengers on other airlines.

Re-routing in a different class of cabin

The European Commission Interpretative Guidelines adequately cover the issue of re-routing passengers in a different class of cabin. For the avoidance of doubt, the CAA does not consider that the different service levels offered by different airlines according to their business model (e.g. low-cost airlines versus full service airlines) constitute different classes of cabin.

Prioritisation

We expect airlines to give priority to re-routing persons with reduced mobility and any persons or recognised assistance dogs accompanying them as well as unaccompanied children. We also expect that when organising re-routing airlines will not split up families. If airlines intend to use alternative airports they should take account of the needs of unaccompanied children and passengers with reduced mobility.

Suitability of re-routing options

In some cases, due to the specific circumstances of the passenger, for example if they need to arrive at their final destination on a certain date and by a certain time, the re-routing option identified by the airline may not be suitable for the passenger. Alternatively, the passenger may feel that the airline has not sufficiently explored the range of re-routing options in order to find the most suitable option for them. In such circumstances, the passenger may choose to re-route themselves and seek to claim back the expense from the airline. A dispute between the passenger and the airline may then arise.

The CAA's view is that, if airlines follow the steps for identifying and offering re-routing to affected passengers described in the first subsection above, in the vast majority of cases airlines will be able to offer a reasonable re-route to affected passengers. Passengers, for their part, should give the airline a reasonable opportunity to identify and offer a re-routing option. In the CAA's view, it should therefore rarely be reasonable for affected passengers to make their own arrangements to re-route themselves.

However, as described previously, the CAA's view that it is the responsibility of the airline to be proactive in identifying suitable re-routing options and contacting affected passengers to expressly offer them the choice of options required by Article 8(1). In circumstances where the airline has failed to contact affected passengers in a reasonable period of time, these passengers may then be justified in making their own arrangements and seeking reimbursement for the cost of doing so, so long as, consistent with the principles set out in *McDonagh v Ryanair Ltd*, the expenses incurred by the passenger were necessary, appropriate and reasonable to make up for the shortcomings of the airline in offering the passenger a suitable re-routing option.

Re-routing via alternative airports

Where airlines offer to re-route passengers to / from a different airport than the original flight, the airline should organise the transport to / from that airport. The CAA does not expect airlines to fail in this obligation. However, where such a failure occurs, the airline should provide prompt re-imbusement of any expenses incurred by affected passengers in travelling to / from the alternative airport and should inform the affected passenger directly, for example by email, about how to make a claim.

Reimbursement of care and assistance expenses

In the case of a flight cancellation, airlines are required to provide the care and assistance to passengers set out in Article 5(1)(b). Again, the CAA does not expect airlines to fail in this obligation. However, where such a failure occurs, the case of *McDonagh v Ryanair Ltd* has confirmed that passengers can claim a refund from the airline of the expenses incurred in purchasing their own meals, hotel accommodation, etc, so long as the expenses were necessary, appropriate and reasonable to make up for the shortcomings of the air carrier in the provision of care to that passenger. Airlines should provide prompt re-imbusement of any such expenses.

Passenger information

In order for consumers to be properly informed of their rights and options in the event of a flight cancellation, airlines should inform consumers of their policies on rerouting, making clear that they will offer re-routing on other airlines and, where necessary, other transport modes. This information should be provided on airlines' websites and it should be prominently included in the information sent to consumers regarding the cancellation of their flight. Airlines should also make it easy for consumers to contact them to explore alternative re-routing options if the re-route offered to them is not suitable.

In addition, airlines should inform consumers of how to make a complaint or a claim for expenses in cases where a dispute arises between the airline and the passenger.

Demonstrating compliance

Airlines should ensure that they have the systems and processes in place to be able to re-route passengers on cancelled flights to their final destination at the earliest opportunity, under comparable transport conditions, and in accordance with the acceptable means of compliance set out in this section. Airlines that are unable to demonstrate that they have the appropriate systems and processes in place will be more likely to be subject to enforcement action by the CAA.

Airlines should also ensure that they have the systems and processes in place to record the re-routing options identified under Article 8(1)(b) and the choices that they offered affected passengers under Article 8(1)(a), (b) and (c). This should include when and how the offer of a re-routed flight was made, and the rerouting options offered. Again, airlines that are unable to demonstrate that they have the appropriate systems and processes in place to capture and report on this information may be more likely to be subject to enforcement action by the CAA.

Passenger complaints

As set out above, in some situations disputes will arise between passengers and their airlines over the suitability of the re-routing options being offered. As set out in the previous section, we expect airlines to keep records of the re-routing options identified and offered to passengers on cancelled flights. In handling any complaints and/or claims arising over the suitability of the rerouting options, we would expect airlines to make this information available to the passenger concerned.

In circumstances where the availability of re-routing options is very limited, for example because the airline may be the only operator on a route (e.g. on some island routes), or because extreme weather conditions have severely limited the options on other airlines, we expect airlines to provide detailed information to any passengers that make a complaint, as well to ADR bodies or to the CAA's Passenger Advice and Complaints Team, about the conditions or restrictions (e.g. the weather) that limited the re-routing options, the time period affected by the conditions or restrictions, and the steps taken to organise re-routing. We expect airlines to provide official documents (e.g. NOTAMs) which detail the operational restrictions.

Passengers that are unable to secure a satisfactory resolution to their complaint or claim can escalate it to the CAA's Passenger Advice and Complaints Team or, if the airline participates in alternative dispute resolution (ADR), the relevant ADR provider or, as appropriate, to the Consumer Council for flights operating to and from Northern Ireland. As in the previous paragraph, in handling any such complaints or claims, we would expect airlines to make information on the re-routing options identified and offered to the affected passenger available to either PACT or the relevant ADR provider. Failure to supply this information is likely to result in the complaint or claim being upheld in favour of the consumer.

This position does not of course affect a consumer's right to take their own individual cases through the court system for consideration of their own particular circumstances.