



BRIEFING PAPER

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Air passenger rights, compensation & complaints

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Summary

Passengers rights are guaranteed through a combination of EU regulation, international conventions and resolutions, as well as voluntary commitments of airlines. The applicability of these rights depends on the airline a person is travelling with and where they are departing from.

EU Regulation [261/2004/EC](#), for example, establishes common rules on compensation and assistance to passengers in the event of denied boarding, cancellation or long delay of flights. This only applies to passengers flying with a designated EU airline or departing from an EU country. The extent of the compensation offered is determined based on the length of delay and a flight's distances, broken down into short-haul (less than 1,500km), medium-haul (1,500 to 3,500km) and long-haul flights (more than 3,500km).

It should be noted that, under EU rules, an airline is only obligated to pay compensation when the cause of the delay is within their remit. For instance, a claim can likely be made if the delay was caused by poor aircraft maintenance or flight crew being unavailable. However, delays caused by things like extreme weather, air traffic control or airport employee strikes, situations where the entire airport was closed or other 'extraordinary circumstances' are not eligible for compensation.

In terms of non-EU regulated airlines, a passenger's rights depend on the terms and conditions of the contract undertaken with the airline. Most airlines base their terms and conditions on those recommended by the International Air Transport Association. This means that when delays or cancellation happen, most airlines have a contractual obligation to offer passengers a choice between a later flight, mutually agreed alternative transportation or a refund.

If a claim for compensation or reimbursement is rejected by an airline, there are other avenues for to take forward a claim. Some airlines and airports are members of alternative dispute resolution bodies (ADR). ADR means settling a dispute without asking a court to decide on your issue.

Details of how to make a complaint about a flight or an experience at an airport are given on the [CAA website](#).

1. Overview of passenger rights

Passengers rights are guaranteed through a combination of EU regulation, international conventions and resolutions, as well as voluntary commitments of airlines. The applicability of these rights depends on the airline a person is travelling with and where they are departing from.

1.1 EU regulations

EU Regulation [261/2004/EC](#) establishes **common rules on compensation and assistance to passengers** in the event of denied boarding, cancellation and delays of flights. This only applies to passengers flying with a designated EU airline or departing from an EU country (see Section 2).

The [Convention on the Unification of Certain Rules for International Air Carriage](#) ('the Montreal Convention') was adopted in May 1999. This regulates **airline liability in the event of damage to individual passengers, their baggage or goods during international journey**. The EU ratified it via [Council Decision](#) in 2001 and modified [Regulation 2027/97](#) on air carrier liability in the event of accidents, to bring it into line with the Montreal Convention (by adopting [Regulation 889/2002](#)) (see Sections 3 and 4).¹ It came into force for the UK on 28 June 2004 under two statutory instruments: the Carriage by Air Acts (Implementation of the Montreal Convention 1999) Order 2002 ([SI 2002/263](#)) and the Carriage by Air Acts (Application of Provisions) Order 2004 ([SI 2004/1899](#)).

The EU also provides **protection for disabled and reduced-mobility passengers**. [Regulation 1107/2006](#) prohibits airlines from refusing reservation or boarding to such passengers. It gives disabled and reduced-mobility passengers the right to accessible information and free-of-charge assistance in airports as well as on board.²

There have been several changes to the law over the last few years due to cases being heard in the European Court. The European Commission has published [guidelines to clarify the existing rules](#) and ensure they are consistently applied across the EU.

Passengers have other rights, which are common across all modes of transport, including the right to non-discrimination, mobility, information, fulfilment of the transport contract, assistance, quick and accessible complaint handling, full application and effective enforcement of EU law.³

¹ EPRS, [Strengthening air passenger rights in the EU](#), May 2015

² The rights of those with a disability and persons with reduced mobility as regards access to transport are covered in a separate briefing paper ([SN601](#)).

³ EPRS, [Strengthening air passenger rights in the EU](#), May 2015; For more discussion, see: [COM/2011/0898 final](#)

1.2 International resolutions and voluntary commitments of airlines

The International Air Transport Association (IATA) has developed conditions of contract ([Resolution 724](#)), which lay down the contractual conditions applicable to the international flights of its member airlines as a binding resolution.

IATA has also developed conditions of carriage ([Recommended Practice 1724](#)), aimed at the harmonization of the general conditions under which passengers travel on inter-carrier journeys. ⁴ Unlike Resolution 724, this Recommended Practice, which focuses on “best practice”, does not bind member airlines, nor does it apply to domestic flights or to services operated by non-member carriers.

The International Civil Aviation Organization (ICAO) has worked in recent years to develop guidance material on passenger rights. In 2015, ICAO adopted a set of [core principles on consumer protection](#) pursuant to a recommendation of the sixth Worldwide Air Transport Conference, providing guidance to regulatory authorities and air transport operators to deal with air passengers before, during and after their travel. The ICAO core principles are developed with a view to facilitate and foster convergence or compatibility of consumer protection regimes worldwide, which can be found in [Policy and Guidance Material on the Economic Regulation of International Air Transport \(Doc 9587\)](#).⁵

These resolutions apply to all mainstream carriers, but it is important to clarify with the airline or check the terms and conditions of carriage ahead of booking with an airline.

Many airlines have also taken the initiative by making voluntary commitments (i.e. non-legally binding self-regulation) to clarify or improve their policies or practices about certain customer services (such as fare offers, ticket refunds, denied boarding, flight delays and cancellations, baggage handling, response to complaints, and special passenger needs).⁶

⁴ ICAO, [Manual on the Regulation of International Air Transport](#), Third Edition, 2016

⁵ Ibid

⁶ Ibid

2. Compensation for delays and cancellations

EU Regulation [261/2004/EC](#) establishes common rules on compensation and assistance to passengers in the event of cancellation, delayed flights and other unforeseen events. It came into force on 17 February 2005. The 2004 Regulation replaced an earlier Regulation dating from 1991.⁷ It was implemented in the UK by the *Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005* ([SI 2005/975](#)).⁸ The regulation only applies if:

- the flight is **departing** from an EU designated country⁹ (regardless of which airline operates it); or
- the flight is **arriving** in an EU designated country, but departing from elsewhere, *only* if the airline is based in one of these countries.¹⁰

The extent of the compensation offered is determined based the length of the delay and on a flight's distances, broken down into short-haul (less than 1,500km), medium-haul (1,500 to 3,500km) and long-haul flights (more than 3,500km).

What if your flight is booked through a codeshare partner or third-party retailer?

If you book with one airline but fly with another (a 'codeshare flight') then it's the nationality of the airline operating the flight that counts in terms of what regulations apply for compensation.

If a flight is booked with a third-party retailer, then any necessary arrangements around flights and refunds must be dealt with directly with the airline concerned.

The section below provides detail on the compensation available to passengers for delays, cancellations and denied boarding under EU regulation. Compensation is also available for [missed connections](#) and [downgraded bookings](#).

It should be noted that, under EU rules, an airline is only obligated to pay compensation when the cause of the delay is within their remit. For instance, a claim can likely be made if the delay was caused by poor aircraft maintenance or flight crew being unavailable. However, delays caused by things like extreme weather, air traffic control or airport employee strikes, situations where the entire airport was closed or other 'extraordinary circumstances' are not eligible for compensation (Section 2.4).

⁷ Regulation [295/91/EEC](#) of 4 February 1991

⁸ the publication of the final regulations was preceded by two rounds of consultation, see: DfT, [Denied boarding and cancellation or long delays of flights - consultation paper](#), 25 February 2005; and: DfT, [Denied Boarding Compensation Regulation - Second Consultation](#), 12 January 2005

⁹ A list of designated countries is available [here](#); essentially it is all EU countries, Iceland, Norway and Switzerland.

¹⁰ CAA, [Is your flight covered by EU rules?](#) [accessed 3 June 2015]

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In terms of non-EU regulated airlines, a passenger's rights depend on the terms and conditions of the contract undertaken with the airline. Most airlines base their terms and conditions on those recommended by IATA. This means that when delays happen, most airlines have a contractual obligation to offer passengers a choice between a later flight, mutually agreed alternative transportation or a refund.

2.1 Delay

Any passenger who is delayed is entitled to compensation if their flight is delayed by more than three hours. The amount compensation they are entitled to depends on the length of delay and the distance of the flight (see box below).

Compensation for delay

For **short-haul** flights that cover less than 1,500km:

- For delays of under three hours, you cannot claim compensation.
- For delays of more than three hours, you can claim €250.

For **medium-haul** flights that cover 1,500km – 3,500km, or flights within the EU of more than 1,500km:

- For delays of under three hours, you cannot claim compensation.
- For delays of more than three hours, you can claim €400.

For **long-haul** flights that cover more than 3,500km:

- For delays of under three hours, you cannot claim compensation.
- For delays of three to four hours, you can claim €300.
- For delays of more than four hours, you can claim €600.

Affected passengers are also entitled to care and assistance if their flight is delayed by two, three or four hours, depending on whether they were on a short, medium or long-haul flight, respectively. In each case, an airline must provide:

- a reasonable amount of food and drink (often provided in the form of vouchers);
- a means for of communication (often by refunding the cost of calls);
- accommodation, if delayed overnight (usually in a nearby hotel); and
- transport to and from the accommodation.¹¹

The airline must provide a passenger with these items until it is able to fly them to their destination, no matter how long the delay lasts or what has caused it.

Once a flight has been delayed for more than five hours, the passenger is entitled to a refund if they no longer wish to travel. They will also receive a refund for any unused parts of their booking (e.g. the return flight), and a flight back to their departure airport if they have already completed part of their journey.¹²

¹¹ CAA, [Short-haul delays: care and assistance](#) [accessed 21 May 2019]

¹² CAA, [Short-haul delays](#) [accessed 22 May 2019]

2.2 Cancellation

Any passenger whose flight is cancelled is, at the very least, entitled to a refund, as well as money back for all parts of the ticket that haven't been used. For instance, if a return flight has been booked and the outbound leg is cancelled, a person can get the full cost of the return ticket back from the airline.¹³

If a person, still wishes to travel, the airline must offer an alternative flight. It's up to the passenger as to whether to fly as soon as possible after the cancelled flight, or at a later date. Compensation may also be available depending on how much notice was given ahead of the cancellation and when the new flight departed/arrived. The level of compensation depends on the distance of the flight (see boxes below).

As per delays, if an alternative flight is arranged, a passenger is entitled to care and assistance. This usually means food, drink, access to communication (this could be by refunding the reasonable cost of phone calls) and accommodation (if necessary).¹⁴

Compensation for cancellation: short haul

For **short-haul** flights that cover less than 1,500km:

Seven to 14 days' notice:

- If your new flight arrives more than four hours after your original flight, you can claim €250.
- If your new flight takes off more than two hours before your original flight, and arrives more than two hours after it, you can claim €250.
- If your new flight takes off more than two hours before your original flight, and arrives less than two hours after it, you can claim €125.

Less than seven days' notice:

- If your new flight arrives more than two hours after your original flight, you can claim €250 – no matter what time it departs.
- If your new flight takes off more than one hour before your original flight, and arrives less than two hours after it, you can claim €125.

Compensation for cancellation: medium haul

For **medium-haul** flights that cover 1,500km – 3,500km, or flights within the EU of more than 1,500km:

Seven to 14 days' notice:

- If your new flight arrives more than four hours after your original flight, you can claim €400 – no matter what time it departs.
- If your new flight takes off more than two hours before your original flight, and arrives three to four hours after it, you can claim €400.
- If your new flight takes off more than two hours before your original flight, and arrives less than three hours after it, you can claim €200.

Less than seven days' notice:

If you received less than seven days' notice of the cancellation, you can claim compensation based on the timings of the alternative flight:

¹³ CAA, [Long-haul cancellations](#) [accessed 22 May 2015]

¹⁴ Ibid

- If your new flight arrives more than three hours after your original flight, you can claim €400 – no matter what time it departs.
- If your new flight departs more than one hour before your original flight, and arrives less than three hours after it, you can claim €200.

Compensation for cancellation: long haul

For **long-haul** flights that cover more than 3,500km:

Seven to 14 days' notice:

- If your new flight arrives more than four hours after your original flight, you can claim €600 – no matter what time it departs.
- If your new flight departs more than two hours before your original flight, and arrives less than four hours after it, you can claim €300.

Less than seven days' notice:

- If your new flight arrives more than four hours after your original flight, you can claim €600 – no matter what time it departs.
- If your new flight departs more than one hour before your original flight, and arrives less than four hours after it, you can claim €300.

2.3 Denied boarding

Any passenger who is involuntary denied boarding ('bumped' off their flight where giving up their reservation was not voluntary), is entitled to compensation provided they checked into their flight on time.¹⁵

The airline must give the passenger either a refund of the ticket price or an alternative flight, plus additional compensation based on the delay time of the alternative flight offered by the airline (see box below).

Compensation for denied boarding

For **short-haul** flights that cover less than 1,500km:

- If the delay is less than two hours, you can claim €125.
- If the delay is more than two hours, you can claim €250.

For **medium-haul** flights that cover 1,500km – 3,500km, or flights within the EU of more than 1,500km:

- If the delay is less than three hours, you can claim €200.
- If the delay is more than three hours, you can claim €400.

For **long-haul** flights that cover more than 3,500km:

- If the delay is less than four hours, you can claim €300.
- If the delay is more than four hours, you can claim €600.

Passengers are entitled to a cash payment, usually paid by cheque or bank transfer. Some airlines may also offer an alternative such as travel vouchers or free travel services. Passengers are free to choose which suits them best.

As per cancellations, alternative flights can either be as soon as possible or at a later date that suits the passenger. In the event that the

¹⁵ Information in this section taken from CAA, [Your rights when you are bumped from a flight](#) [accessed 22 May 2019]

passenger chooses to fly as soon as possible, the airline must also provide care and assistance while they wait for the flight (i.e. food, drink, communications and accommodation, if there is an overnight stay).

2.4 Extraordinary circumstances

An airline is not obliged to pay compensation if it can prove that a delay or cancellation was caused by '**extraordinary circumstances**'. This is defined in paras 14 and 15 of the preamble to the 2004 Regulation as follows:

(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

What constitutes 'extraordinary circumstances' has been subject to legal challenge. The cases have centred on whether technical faults on an aircraft could be an extraordinary circumstance.¹⁷ The [Jet2 v Huzar judgement](#) in July 2014 found that for a technical problem with a plane to constitute an extraordinary circumstance, the circumstances must be 'out of the ordinary'. The CAA explained further:

The Court's view was that, although the fact that a particular technical problem may be unforeseeable, this does not mean that it is out of the ordinary or unexpected. Indeed, the Court's view was that difficult technical problems arise as a matter of course in the ordinary operation of a carrier's activity – some may be foreseeable and some not but in general they are properly described as inherent in the normal exercise of the carrier's activity.

Notwithstanding the Jet2 v Huzar judgment, European case law (in particular the Wallentin-Hermann v Alitalia³ case) still applies and therefore there may be technical faults that are not inherent in the ordinary operation of a carrier's activity, for example where the fault is the result of a hidden manufacturing defect, and hence such technical faults could constitute an extraordinary circumstance.¹⁸

In September 2015 the European Court looked at the same issue in the case of KLM v van der Lans. The court found that technical problems were not extraordinary and neither was the early failure of an aircraft

¹⁶ EU Regulation [261/2004/EC](#)

¹⁷ CAA, [Am I entitled to compensation?](#) [accessed 22 May 2019]

¹⁸ CAA, [Financial compensation, technical faults and time limitations: Compliance report](#), CAP 1275, 23 March 2015, p5

component. The ruling noted two types of technical fault that may be extraordinary, a hidden manufacturing defect and damage to an aircraft caused by sabotage or terrorism.¹⁹

2.5 Dispute resolution

If a claim for compensation or reimbursement is rejected by an airline, there are other avenues for a passenger to take forward the claim. Some airlines and airports are members of alternative dispute resolution bodies (ADR). ADR means settling a dispute without asking a court to decide on the issue.

Some of these bodies have been approved by the CAA for providing a high standard of dispute resolution for consumer disputes stemming from a contract for aviation services; others will have been approved by other EU Member States.²⁰ A full list of airlines that are members of an ADR scheme are available on the [CAA website](#).

Airline ADR schemes must handle the following types of complaints:

- Denied boarding, delay, or cancellation;
- Destruction, damage, loss, or delayed transportation of baggage;
- Destruction, damage, or loss of items worn or carried by the passenger;
- Problems faced by disabled passengers or passengers with reduced mobility when using air transport services (i.e. complaints about airlines arising under Regulation EC1107); and
- Any more general disputes arising where the consumer alleges that the business is not trading fairly. The CAA refers to these situations where the consumer has been misled, for example into paying more for the flight or into buying something that they didn't actually want, where the consumer has been harmed by the use by the business of an unfair contract term, or where the consumer has been otherwise harmed by the breach by the business of general consumer protection law.²¹

Background about ADR

For many years, the main body to which UK air passengers could go for advice or to make a complaint was the Air Transport Users' Council (AUC), set up by the CAA in 1973 but with no statutory authority.

In March 2011 the CAA announced its intention to create a new independent body to represent passengers' interests, replacing the AUC, to be called the Aviation Consumer Advocate Panel (ACAP).²²

For a while, the CAA's [Passenger Advice and Complaints Team \(PACT\)](#) handled complaints. However, this was not an ombudsman scheme and the CAA were unable to impose its findings on airlines.

The EU Alternative Dispute Resolution (ADR) Directive ([Directive 2013/11/EU](#)) required Member States to act to increase consumers' access to ADR.

¹⁹ CAA, [Am I entitled to compensation?](#) [accessed 22 May 2019]

²⁰ CAA, [What to do if your claim is rejected](#) [accessed 22 May 2019]

²¹ CAA, [Alternative dispute resolution](#) [accessed 22 May 2019]

²² CAA press notice, "[CAA strengthens passenger representation and streamlines complaints system](#)", 9 March 2011

The CAA was appointed by the government to be the UK's competent authority to approve ADR providers as fit to offer ADR services to consumers of aviation services.²³

In January 2015 the CAA published a consultation on implementation of the ADR Directive.²⁴ ADR is directly funded by the businesses that use it, with the CAA providing regulatory oversight. This is consistent with how ombudsman-style schemes work in other sectors such as energy and financial services.

The CAA published a first-year review of ADR in the aviation sector in December 2017.²⁵ It found that ADR had helped resolved more than 10,000 passenger complaints in first 12 months. More than 75 per cent of complaints have been resolved in consumers' favour, with disputed issues including statutory compensation for delay and cancellation. At the time, 35 airlines had signed up to ADR. Jet2 was the only top 10 UK airline not to join. Aer Lingus and Emirates had also not signed up.²⁶

2.6 Level of compliance

In March 2015 the CAA published two reports looking at the compliance with passengers' rights regulations of the largest 15 airlines operating in UK.

The first – a review of airline policies in relation to supporting passengers during disruption and providing information – found “a number of examples of very good practice as well as some airlines we are very concerned about”.²⁷ It praised easyJet, Ryanair and Wizz Air, acknowledged that British Airways, Emirates and Lufthansa were taking steps to improve and highlighted Aer Lingus and Jet2 as “falling well below what is expected of them from their passengers and the law”.²⁸ The CAA subsequently proceeded with an enforcement process against Aer Lingus and Jet2, using its powers under Part 8 of the [Enterprise Act 2002](#).

The second report looked at whether airlines are following the law as clarified by the Supreme Court with respect to financial compensation from technical airline faults. It found that “the vast majority of ... airlines” were respecting the court's decision and paying compensation”, but was “extremely disappointed to find that it appears a small number of airlines are letting their passengers down by failing to consistently pay compensation and also applying a two year limit to claims”.²⁹ The CAA subsequently proceeded with an enforcement

²³ CAA, [Alternative dispute resolution](#) [accessed 22 May 2019]

²⁴ CAA, [Reforming consumer complaints handling: Consultation on the CAA's draft policy](#), CAP 1257, December 2014, p4

²⁵ CAA, [ADR in the aviation sector – a first review](#), CAP 1602, 27 December 2017

²⁶ CAA press notice, [Thousands more airline passengers are now receiving compensation thanks to Alternative Dispute Resolution](#), 27 December 2017

²⁷ CAA, [A right to know: Compliance report](#), CAP 1227, 23 March 2015, p3

²⁸ see, e.g. “[Proof airlines will do ANYTHING to avoid paying out for your flight delay as Jet2 makes legal threat to complainants](#)”, *Daily Mail*, 3 June 2015; and “[Airlines defy Supreme Court and refuse to pay £50m delay compensation to holidaymakers](#)”, *The Independent*, 8 February 2015

²⁹ op cit., [Financial compensation, technical faults and time limitations: Compliance report](#), p2

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process against Jet2 and Wizz Air under Part 8 of the 2002 Act and is using other powers in Part 8 to “obtain further information from Ryanair on their approach to assessing passenger claims for flights disrupted by technical faults”.³⁰

The CAA published a follow-up report in May 2016 extending the March 2015 review to the next 15 largest airlines by passengers carried. All the airlines reviewed were considered to have either ‘very good’ or ‘good’ compliance in terms of information rights and were meeting the financial compensation requirements. No further enforcement action was required from this report.³¹

The CAA reviewed compliance of the top 31 airlines with various aspects of Regulation 261/2004, including care and assistance, denied boarding, downgrading and missed connections. The CAA found that Vueling and SWISS fell below the compliance standard for care and assistance and said that it would commence enforcement action against both airlines. It also found that five airlines were not paying compensation for missed connections and have refused to change their position. The airlines concerned told the CAA that in their view the law is unclear. The CAA commenced enforcement action against American Airlines, Emirates, Etihad, Turkish Airlines and Singapore Airlines.³²

The CAA said that it would conduct a review of airline policies and procedures in relation to cancellations and their obligations to offer passengers the choice between a refund or re-routing later in 2017.³³

³⁰ *ibid.*, p3

³¹ CAA, [Information rights and financial compensation: Compliance report](#), CAP 1305, 6 May 2016

³² CAA, [Compliance report – assisting passengers during disruption](#), CAP 1500, 22 February 2017

³³ *Ibid*

3. Compensation for lost or damaged baggage

When the Montreal Convention came into force, [Regulation 889/2002/EC](#) also took effect. This ensures that air passengers can claim compensation from the airline in the event of loss, damage, destruction or delay of baggage. Each passenger can claim up to £1000³⁴ for lost, damaged or delayed luggage but they must provide evidence.

Most airlines will reimburse a passenger for the essentials that need to be purchased when a bag is delayed. If away from home, this may cover essential toiletries, underwear and laundry costs. If a bag is delayed on return home, airlines may consider that losses were less given clothes and other essentials are available. Some airlines have a daily rate which they will pay per day a bag is delayed.³⁵

Any lost, delayed or damaged luggage must be reported at the airport. In doing so, a Property Irregularity Report may be issued by the airline. This must be kept, and it is the responsibility of the passenger to contact the airline in writing:

- *Within seven days for lost or stolen items, or damaged baggage* – a passenger will have to demonstrate that the bag and its contents were worth the amount being claimed by using receipts, credit card records or any other proof of value. Airlines also do not allow for “new for old” replacement when considering the value of a claim. They will look at the value of the item based on its age when lost.; or
- *Within 21 days for delayed bags from receiving the delayed bag.*³⁶

³⁴ 1,131 [Special Drawing Rights \(SDR\)](#) (or the sterling equivalent)

³⁵ CAA, [Lost, delayed or damaged baggage](#) [accessed 22 May 2019]

³⁶ CAA, [Lost, delayed or damaged baggage](#) [accessed 22 May 2019]

4. Compensation for death or bodily injury

The Montreal Convention establishes a regime of unlimited airline liability for death or bodily injury in the event of an accident. It applies to flights between the UK and the [other countries](#) that have ratified the Convention, such as the United States. Specifically:

- It establishes strict liability up to 113,100 [Special Drawing Rights \(SDR\)](#), irrespective of a carrier's fault.
- The second tier is based on presumption of fault of a carrier and has no limit of liability.³⁷

In cases of death or injury to passengers, the Convention allows contracting parties to require air carriers to make prompt advance payments to assist entitled persons in meeting immediate economic needs. Further, air carriers must be adequately insured, thereby ensuring the availability of financial resources for purposes of compensation.

Legal action for damage resulting from the death or injury of a passenger may be filed in the country where, at the time of the accident, the passenger had his or her principal and permanent residence, subject to certain conditions.

³⁷ Aviation Law Blog, [Status Quo for Limits of Liability under Montreal Convention](#), 23 February 2015

5. Making a complaint

Details of how to make a complaint about a flight or an experience at an airport are given on the [CAA website](#).

In the first instance a passenger must complain to the relevant airline. The CAA recommends providing as much detail as possible and that in case anything should go wrong with a claim, it is useful to have a record of any communications.

In contacting an airline, the aim is to set out the case clearly and concisely. A passenger should explain what happened and when, and why they are entitled to receive a payment. When submitting a claim, a passenger should specifically:

- state exactly what compensation and expenses they are claiming;
- send a claim to the airline's customer relations department;
- give the airline as much information as possible (e.g. full contact details, booking reference and travel dates; details of disruption, names of any staff spoken to); and
- provide as many supporting documents and as much evidence as possible (e.g. copies of all relevant receipts, if claiming expenses, tickets, boarding cards and booking confirmations).

If a passenger has already done this and is still dissatisfied with the response an airline has provided, they can:

- refer the complaint to an ADR body;
- if the airline or airport does not have an agreement with an ADR, refer the complaint to the CAA; or
- take direct legal action.

The CAA cannot take up complaints about flights that originated outside the UK. If the flight originated in another EU country, a passenger should contact the national enforcement body in that country. A list is available on the [European Commission website](#).

Complaints about a tour operator or travel agent should be taken up with a trade association such as the [Association of British Travel Agents \(ABTA\)](#) or the [Association of Independent Tour Operators \(AITO\)](#). These associations have codes of conduct for their members. ABTA and AITO also offer arbitration procedures through which customers can pursue complaints. The tour operator's brochure or travel agent's invoice should indicate if they are members of an association.

6. Plans for new EU Regulation

In March 2013 the Commission announced [proposals to revise the 2004 Regulation](#) following concerns that passengers were having difficulty claiming what they were entitled to under the law and were frustrated when air carriers did not appear to apply it properly.³⁸

As part of the EU [ordinary legislative procedure](#), following discussions in the Council and a [debate](#) in the European Parliament, the Parliament adopted a [resolution](#) on 5 February 2014, in which the Parliament asked for additional provisions in the Regulation, such as:

- an airline contact person being present at the airport in the event of problems;
- further cabin luggage allowances;
- higher amounts of compensation in the event of delay;
- an exhaustive list of extraordinary circumstances in which compensation does not have to be paid; and
- guarantee mechanisms against air carrier bankruptcy.

Although the Council has held debates on the Commission proposal since October 2013 and made some progress on the file, it has not agreed on a general approach for negotiations with the Parliament. Delegations have expressed different views on, for example, the following issues:

- whether the list of extraordinary circumstances should be included as a separate fully binding list;
- thresholds for compensation in case of cancellation and delay;
- whether compensation for missed connecting flights should be excluded or if airlines can have a partial exemption in certain circumstances; and
- whether dispositions on the 'one-bag rule' for hand luggage should be included in the Regulation.³⁹

Additionally, this may remain on hold within the Council, pending resolution of the dispute between Spain and the UK over the inclusion of Gibraltar airport in the Regulation (see box).⁴⁰

Further details on this resolution are available in a European Parliament [press release](#) and a [background note](#) of February 2014. Information concerning the next stages of this procedure is available in the [European Parliament Legislative Train file](#) and in the procedure file [2013/0072\(COD\)](#) of the Legislative Observatory, the European Parliament's database for monitoring the EU decision-making process.

³⁸ EC press notice, "[Air Passenger Rights Revision - Frequently Asked Questions](#)", MEMO 13/203, and [COM\(2013\) 130 final](#), 13 March 2013; neither of the last two proposals would apply to passengers with reduced mobility, persons accompanying them, unaccompanied children, pregnant women and persons with specific medical needs

³⁹ EPRS, [Strengthening air passenger rights in the EU](#), May 2015

⁴⁰ Ibid

Gibraltar

One area of disagreement over the proposed new Regulation is Gibraltar. The 2004 Regulation was adopted prior to the 2006 Cordoba Agreement.⁴¹ The Regulation contains a clause suspending its application to Gibraltar Airport, which was apparently “normal practice at that time”. The Commission’s proposal for a new Regulation does not contain provision to remove the Gibraltar Airport suspension. The UK Government is pressing for the new Regulation to extend to Gibraltar Airport in line with the EU Treaties.⁴²

In summarising the issue for the European Scrutiny Committee in early 2015, the Minister set out the Government’s view as follows:

- the issue over Gibraltar's suspension from the present Regulations remains unresolved, which is stalling the progress of several aviation files, including air passenger rights;
- the Government is keen to make progress on these aviation dossiers, not least because of the key economic gains that this would bring for aviation industry across the EU;
- these improvements must, however, be consistent with the EU treaties;
- the treaties are clear — Gibraltar is included in aviation measures;
- EU citizens using Gibraltar Airport should not be denied EU rights because Spain chooses to pursue a sovereignty dispute; and
- as we know, this is of the utmost importance to the UK.⁴³

This is not the first time that Gibraltar has been a sticking point in negotiations in this area. As indicated above, the EC’s attempt to revise the 1991 Regulation fell by the wayside. This was due to a disagreement between the UK and Spain over application to Gibraltar.⁴⁴

⁴¹ in September 2006 the governments of Spain, the UK and Gibraltar signed the Cordoba Agreement, which included measures on issues such as border crossings and access for flights. It also committed the parties to a tripartite forum for regular talks. However, Spain does not appear to have adhered to the spirit or the letter of the Cordoba Agreement, and has sought to exclude Gibraltar from EU aviation legislation, see: Gibraltar Government press notice, “[Suspension of Gibraltar Airport from EU legislation would be illegal](#)”, 152/2015, 10 March 2015

⁴² [HC Deb 9 June 2015, c29WS](#)

⁴³ European Scrutiny Committee, *Thirty Ninth Report of Session 2014-15*, HC 219-xxxvii, 27 March 2015, head 6, para 6.12

⁴⁴ op cit., [Denied boarding and cancellation or long delays of flights - consultation paper](#), p1

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