

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT AVIATION (CONSUMERS) (AMENDMENT)
REGULATIONS 2023

Tuesday 21 November 2023

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 25 November 2023

© Parliamentary Copyright House of Commons 2023

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chair: DEREK TWIGG

- | | |
|---|---|
| † Bell, Aaron (<i>Newcastle-under-Lyme</i>) (Con) | † Opperman, Guy (<i>Parliamentary Under-Secretary of State for Transport</i>) |
| † Byrne, Ian (<i>Liverpool, West Derby</i>) (Lab) | † Robinson, Mary (<i>Cheadle</i>) (Con) |
| † Coyle, Neil (<i>Bermondsey and Old Southwark</i>) (Lab) | † Sunderland, James (<i>Bracknell</i>) (Con) |
| † Fabricant, Michael (<i>Lichfield</i>) (Con) | † Tolhurst, Kelly (<i>Rochester and Strood</i>) (Con) |
| † Greenwood, Margaret (<i>Wirral West</i>) (Lab) | † Vaz, Valerie (<i>Walsall South</i>) (Lab) |
| † Hudson, Dr Neil (<i>Penrith and The Border</i>) (Con) | † Warman, Matt (<i>Boston and Skegness</i>) (Con) |
| † Kane, Mike (<i>Wythenshawe and Sale East</i>) (Lab) | |
| † Knight, Sir Greg (<i>East Yorkshire</i>) (Con) | Stella-Maria Gabriel, <i>Committee Clerk</i> |
| † Levy, Ian (<i>Blyth Valley</i>) (Con) | |
| † Lynch, Holly (<i>Halifax</i>) (Lab) | † attended the Committee |
| † Nichols, Charlotte (<i>Warrington North</i>) (Lab) | |

Fourth Delegated Legislation Committee

Tuesday 21 November 2023

[DEREK TWIGG *in the Chair*]

Draft Aviation (Consumers) (Amendment) Regulations 2023

2.30 pm

The Parliamentary Under-Secretary of State for Transport (Guy Opperman): I beg to move,

That the Committee has considered the draft Aviation (Consumers) (Amendment) Regulations 2023.

It is a pleasure to serve under your chairmanship, Mr Twigg. The regulations were laid before the House on 16 October. The Under-Secretary of State for Transport, my hon. Friend the Member for South Cambridgeshire (Anthony Browne), who is responsible for aviation, sends his apologies. He is attending a sustainable aviation conference—please, no jokes about his taking flights. I hope to be an able stand-in.

The purpose of the instrument is to restate, under the Retained EU Law (Revocation and Reform) Act 2023, the key principles of retained EU case law relating to regulation No. 261/2004. It will help aviation consumers to receive the same protections and rights to compensation that they currently have when they experience flight disruption. Regulation No. 261/2004, which will become assimilated law at the end of the year, sets out the full rules on compensation and assistance for air passengers in the event of their being denied boarding, flight cancellation or long delay. Without the draft regulations before the Committee today, important principles that protect consumers in the UK would clearly be lost.

The territorial application of the statutory instrument is England and Wales, Scotland and Northern Ireland, as civil aviation is a reserved matter. The Joint Committee on Statutory Instruments has considered this instrument and did not report it to the House at its meeting on 25 October. Under article 438, paragraph 3, of the trade and co-operation agreement, the UK and the EU

“shall consult each other on any matter related to”—
aviation—

“consumer protection, including their planned measures”.

The Department for Transport consulted the EU on the provisions of the instrument, and I am pleased to say that the EU had no comments on it.

I hope the Committee understands the need for and the importance of this instrument, and I commend—

Sir Greg Knight (East Yorkshire) (Con): The regulations and the explanatory memorandum refer to the tariff payable in compensation. Is that automatically uplifted with inflation, or will further recourse have to be made to Parliament to secure any inflationary increase?

Guy Opperman: That is an outstandingly good question, in reply to which I am delighted to say that I propose to get the aviation Minister to write to my right hon.

Friend in quite a lot of detail on that point. If he bears with me, however, I might be able to respond to his question in my closing comments.

I commend the instrument to the Committee.

2.33 pm

Mike Kane (Wythenshawe and Sale East) (Lab): We may be footballing rivals at the weekend, Mr Twigg, supporting Liverpool and Manchester City—I feel my hon. Friend the Member for Liverpool, West Derby breathing down my neck as well—but it is always a pleasure to serve under your chairmanship.

I welcome the Minister to his place and to the active travel brief. I had the great pleasure of cycling the sea-to-sea coastal route from Carlisle to Newcastle, through his beautiful constituency, just recently. I saw the sycamore tree in the gap literally days before it was felled, so I get to have it recorded in *Hansard* how sad I was about that. I know the tree is not technically in the Minister’s constituency.

I welcome the fact that aviation is back on the Green Benches and no longer on the Red Benches. We have a world-class aviation sector, and it is important that it is represented in the Commons. Unfortunately the Under-Secretary of State for Transport, the hon. Member for South Cambridgeshire—my sixth opposite number in government—is not here today, but as Woody Allen said, 80% of success is turning up, so I am glad the hon. Member for Hexham is here to represent the other 20% today.

The draft regulations aim to establish commonality and clear rules on compensation and assistance for passengers in the event of denied boarding, cancellation or long delay of flights. These have often been legally challenged, so clarification is necessary for that reason alone. A cancellation is defined as a flight being axed within 72 hours of its scheduled departure time. According to a recent report I read, in the first six months of this year, a staggering 6,665 UK flights were cancelled within that timescale. It is vital that we beef up protections for passengers who in good faith book tickets for business, for leisure and holidays, or to be reunited with family, only to find that they are not able to travel. The statutory instrument is designed to maintain the status quo and clarify the safeguards on consumer rights in the UK aviation industry.

The financial cost is often incidental to travel. What is important is the time taken in wasted annual leave, the dashed expectation and the disruption to life of many thousands of travellers when flights are cancelled. We have yet to develop a means to compensate them for the time and emotions expended in missed weddings, business meetings and family reunions. It is right that we ensure that the financial recompense is, at the very least, sufficient, clear and easily accessed by consumers.

When flights are cancelled or there are lengthy delays, airlines are required to assist passengers by providing information on their rights, and providing care and assistance during the disruption. The assistance includes, but is not limited to, providing meals during the delay, allowing passengers to communicate messages, and providing hotel accommodation. Airlines must also provide transfers to and from hotels for overnight delays, and passengers must be offered the choice of a refund, rerouting on alternative flights as soon as possible. It is important that airlines assist passengers by clearly setting out the options available to them.

It is also open to airlines to offer incentives to passengers to encourage them to fly at a later date—for example, by providing vouchers of a higher value. Last year, however, certain airlines sat on hundreds of millions of pounds of consumers' money, having issued vouchers which in many cases were time limited. A report in the consumer press last year reported that some vouchers had just six months left on them. That “use it or lose it” element is bizarre and cannot be fair. Consumers should not be left having to fight for refunds, or go through an alternative dispute resolution process to find out how they can get their money back.

Furthermore, if passengers are given a credit note, the vouchers are not protected by the air travel organisers' licence, so if the airline goes bust, their money is lost. With the lack of support given to the aviation sector by the Government over the past few years, during the pandemic, it is not beyond the realms of possibility that airlines will go to the wall, leaving consumers out of pocket again.

EU regulation No. 261/2004 provided for fixed sum compensation in some circumstances, but that does not apply to cancellations more than two weeks in advance, or where a cancellation or long delay is due to “extraordinary circumstances”. The draft SI restates the key principle and provides clarity on the rights of the passenger, but the industry has been clear that airlines are not responsible for delays and cancellations caused by circumstances outside their control, particularly when they have taken reasonable steps to avoid the delay or cancellation. The industry has also called for a clearer definition of extraordinary circumstances, and I agree. What is an extraordinary circumstance?

On 28 August this year, a technical issue caused many hundreds of flights to be delayed or cancelled. I know a UK Civil Aviation Authority investigation is under way and do not want to pre-empt its findings, but I am concerned that, at the time this happened, the Government stated that it was a one in 15 million chance and would not happen again. It struck me that, to arrive at that figure, someone had looked at the total number of flightpaths handled within the automated system—about 15 million—and decided that, because it happened only once, that made the occurrence a one in 15 million chance. Is that an extraordinary circumstance?

I know the independent review panel is considering, among other things, the immediate causes of the incident and how to prevent a repeat occurrence from happening in the future. It is also looking into airlines' and airports' costs of providing care, assistance and rerouting to customers. It is clear that, for some time, there has been a significant gap in the guidance. I hope the draft instrument will clear up the confusion and avert further legal challenge.

Michael Fabricant (Lichfield) (Con): I am very much enjoying the hon. Gentleman's speech. Has he looked at the United States Federal Aviation Administration and the protections it offers, and considered how they compare with those of the EU/UK legislation?

Mike Kane: The hon. Gentleman has a beautiful constituency and a beautiful cathedral, and I got to see the Staffordshire hoard when I stayed overnight there. I

shall escape from this Committee room and run to the House of Commons Library, where I promise to look up the federal regulation—

Michael Fabricant: Will the hon. Gentleman write to me?

Mike Kane: Sorry, but I have to be on the other side of a general election before that would be worthwhile. We will see though; that is not hubris.

Returning to the definition of extraordinary circumstances, is an outbreak of sickness among the crew extraordinary? Bird strike? I do not know the answer, and I wonder whether we all need clearer guidance on what constitutes an extraordinary circumstance. As I said, the industry feels strongly that airlines should not be held responsible for delays and cancellations caused by circumstances outside their control and where they have taken reasonable steps to avoid the disruption. They argue strongly that changes to compensation should not remove the current approach, but should keep the status quo. The industry also called for clarification of the definition of extraordinary circumstances.

Regarding the consultation on the instrument, I note that there was no external consultation. The explanatory memorandum states that

“Department for Transport Ministers and officials have regular engagement with the aviation industry. The Department also works closely with the CAA”

and the EU. I understand very well why there was no external consultation on the instrument, as it merely replicates and clarifies existing legislation, but I have questions about the responses on consumer rights and how to ensure that in future consultations are more widely promoted.

The Government consultation last year on consumer reform garnered only 65 responses, with only 29% of them coming from individuals. I find it very hard to believe that fewer than 19 people in total have an opinion on such matters. It may be because I have an airport in my constituency, or because of my shadow ministerial role, but I receive more casework than that every year. How was the consultation promoted? Which advocacy and support groups were informed of the consultation? How many of the respondents were elderly people or people with disabilities? The Opposition will not oppose the statutory instrument today, but we ask for wider consultation on such measures.

2.42 pm

Guy Opperman: I shall attempt to answer the hon. Gentlemen's questions, but I will start with the fact that Hadrian's Wall and the sea-to-sea route are in part in my constituency, as is “Sycamore gap”—or it was, until someone who we sincerely hope will be caught and sent to prison decided to use a chainsaw to cut it down.

The hon. Gentleman said there was a lack of support for airports during covid. With great respect, I have to push back on that. I have the privilege, with the hon. Member for Newcastle upon Tyne North (Catherine McKinnell), to represent Newcastle Airport. I know, because we meet regularly, that the airport was given huge amounts of taxpayer support during covid. It would have genuinely struggled without that support from the Treasury, as would many other businesses.

[Guy Opperman]

The hon. Gentleman talked about the NATS failure on 28 August. Clearly, that is a matter for an independent investigation, and like him, I await the results.

As for consultation, the consumer policy was consulted on in January 2022 and responded to in June 2023. Industry and consumer groups were engaged with in an ongoing series of workshops. I think a large number of consumer groups were involved, but I will get the aviation Minister to write to the hon. Gentleman giving chapter and verse on that—when one is not the Minister, one is always keen for others to write.

I shall endeavour to answer the question posed by my right hon. Friend the Member for East Yorkshire. The rates are not uprated with inflation or downrated with deflation; however, the ongoing consultation on regulation No. 261/2004 might consider that matter, and I will ensure that the details are sent to my hon. Friend the aviation Minister.

Question put and agreed to.

2.44 pm

Committee rose.

