



## Flight Cancellation - Advice

The document contains air passenger information setting out legal rights should your flight be cancelled. This information applies to all passengers regardless of whether you have booked directly with an airline, with a tour operator or through a travel agency.

We advise everyone to check your insurance policy to see what insurance cover you have for flight cancellation, disruption and abandonment.

For the latest information about your flight check your airline's website. Your airline must explain your legal rights which you will find on their website – along with information about making a claim for compensation.



### Departure from an EU Airport

#### Departure Inside 7 days

Under *Regulation (EC) 261/2004* you are entitled to the following if:

- Your flight was cancelled inside 7 days from the due date of departure and including the date of departure;
- Your new flight leaves more than 1 hour before your original flight should have departed;
- Your new flight arrives more than 2 hours after your original flight should have arrived.

#### 1. Refund or re-routing

- If you choose not to travel the airline must provide you with a refund of your unused tickets within 7 days;
- If your flight is a 'connecting flight' and you no longer wish to continue with your journey the airline must provide you with a full refund of the total cost of your ticket and of any you will not be using relating to your intended journey within 7 days along with a free flight back to your original point of departure.

Alternatively:

- You can choose to accept an offer of re-routing to your final destination as soon as practicably possible;
- The airline must pay any costs for transfers to another airport if your new flight departs from there.

NOTE 1: The airline is not legally obliged to reimburse you any other costs or financial losses associated with your trip such as hotel accommodation, resort transfers, car hire, etc. You will need to liaise with your holiday company if appropriate or insurer in relation to these expenses and losses.



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NOTE 2: For passengers checking in – in the event of a flight cancellation the airline is legally required to display information at its check-in desks advising passengers of their rights. You should also receive a copy of your legal rights when checking-in if you are advised that your flight has been cancelled.

NOTE 3: If you are a checked in passenger and you airline fails to provide meals and refreshments after a reasonable time of waiting you can purchase such and reclaim your expenses from the airline providing they are reasonably incurred.



### 2. Compensation

You are entitled to receive compensation from your airline if your flight is cancelled unless the airline can show that the cancellation was caused by an “extraordinary circumstance” which was outside its reasonable control and it could not avoid even if it had exercised reasonable skill and care. An extraordinary circumstance might include weather conditions, industrial action, terrorism, etc.

If the cancellation was not due to an extraordinary circumstance then under *Regulation (EC) 261/2004* the airline is legally obligated to pay the following compensation per full fare paying passenger;

Length of Delay	Delay to Destination	Compensation Payable
Up to 1500km	Less than 2 hours	125 Euros
Up to 1500km	More than 2 hours	250 Euros
1500km to 3500km	Less than 3 hours	200 Euros
1500km to 3500km	More than 3 hours	400 Euros
More than 3500km	Less than 4 hours	300 Euros
More than 3500km	More than 4 hours	600 Euros

### 3. Assistance at the Airport

In the event of a flight cancellation all checked in passengers are entitled to receive the following services if they are continuing with their journey which the airline must provide free of charge:

- Meals and refreshments usually after 2 hours and thereafter in relation to waiting time;
- Two free telephone calls – emails - telexes or faxes;
- Hotel accommodation and transfers to and from the accommodation for lengthy delays.





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### Departure Inside 7 to 14 days

Under *Regulation (EC) 261/2004* you are entitled to the following if:

- Your flight was cancelled between 7 and 14 days from the due date of departure;
- Your new flight leaves more than 2 hours before your original flight should have departed;
- Your new flight arrives more than 4 hours after your original flight should have arrived.

#### 1. Refund or re-routing

The same options as explained above for flight departures inside 7 days.

#### 2. Compensation

The same compensation as set out above for flight departures inside 7 days

#### 3. Assistance at the airport

The same assistance for checked in passengers as set out above for flight departures inside 7 days.

### Departure Outside 14 days

Under *Regulation (EC) 261/2004* you are entitled to the following if:

- Your flight was cancelled more than 14 days from the due date of departure;
- Your new flight leaves less than 2 hours before your original flight should have departed;
- Your new flight arrives less than 4 hours after your original flight should have arrived.

#### 1. Refund or re-routing

- If you choose not to travel the airline must provide you with a refund of your unused tickets within 7 days;
- The airline must provide you with a full refund of the total cost of your ticket and those of any you will not be using relating to your intended journey within 7 days along with a free flight back to your original point of departure.



Alternatively:

- You can choose to accept an offer of re-routing to your final destination as soon as practicably possible;
- The airline must pay any costs for transfers to another airport if your new flight departs from there.



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NOTE: The airline is not legally obliged to reimburse you any other costs or financial losses associated with your trip such as hotel accommodation, resort transfers, car hire, etc. You will need to liaise with your holiday company if appropriate or insurer in relation to these expenses and losses.

### Flights to an European Union (EU), European Economic Area (EEA) or Swiss Airport

This information applies if your flight was:

- A flight to an EU airport, EEA airport or to Switzerland; and
- From an airport outside the EU, EEA or Switzerland; and
- On an EU, EEA or Swiss airline.

If your flight was cancelled you have the same rights to a refund, re-routing, compensation and assistance as explained above for cancelled flights due to leave the UK.

### Assistance and Welfare - Important note

If you are abroad and your flight is cancelled you must be careful if your airline or holiday company advises you not to check-in as strictly *Regulation (EC) 261/2004* only applies to passengers who have checked-in.

You should ask your airline and/or holiday company to confirm that you have the same rights to a refund, re-routing, compensation and assistance as a checked-in passenger and ask for this to be confirmed in writing for your security.

If your airline or holiday company confirms that you have the same rights as a checked-in passenger then they are obligated to meet the costs of assistance which will, for example, include meals, refreshments and accommodation whilst you await repatriation.

If your airline or holiday company does not arrange these services or refuses to assist you then you must keep all the receipts you receive for services you pay for during the period between your scheduled departure and repatriation as you will need to produce these as proof of your out of pocket expenses – without receipts you may find it difficult to recover your money.



Check the terms of your insurance policy and find out what assistance your insurer can provide and what you are covered for in the circumstances.



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If you decide to make your own alternative arrangements to get home or continue your journey then again you must clear this with your airline or holiday company as they may subsequently refuse to meet your incurred expenses or may say that your claim is unreasonable and only offer to reimburse you a smaller sum. Again speak to your insurer before you proceed to make your own travel arrangements.

### Other Flights

If your cancelled flight does not fall into one of the above categories of a flight departing from an EU, EEA or Swiss airport or a flight due to arrive into the EU, EEA or Switzerland on an EU, EEA or Swiss airline then there are no set laws on compensation regardless of the reason for the cancellation.

The majority of airlines do follow a practice referred to as “**General conditions of Carriage**” and generally most will provide welfare such as food and accommodation for passengers who are subject to lengthy delays.

This is however in principal subject to whether the country from which the airline is operated is a signatory to the *Montreal Convention*.

**Note: If your flight was part of a regulated package holiday your tour operator should arrange and provide assistance during a delay.**

### Montreal Convention

For passengers whose flights are cancelled for any other reason than an “extraordinary circumstances” the *Montreal Convention* (which came into force in the UK on 28 June 2004), places legal obligations on airlines to accept liability for “damage occasioned by delay” (Articles 19 and 22.1) and to compensate passengers.

However this liability is capped at a limit of £4,694 Special Drawing Rights (SDRs) and an airline will not be liable if “it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures” (Article 19). Most airlines’ conditions of carriage exclude liability for any consequential losses.

When you travel on an airline you will usually be bound by the airline’s own “Conditions of Carriage” which explain the airline’s contractual liability in the event of a delay or cancellation. When a flight is cancelled an airline is contractually obligated to arrange alternative means of transport (whether by air or other).

Airlines will in practice reimburse expenses that are directly incurred because of a delay such as for meals and accommodation. These expenses are often said to be ‘necessarily’ incurred.

Airlines will in practice not accept liability for inconvenience or vexation or for any consequential losses (such as lost earnings) arising from a delay, unless ordered to do so usually as the outcome of court action.

Because the *Montreal Convention* only refers to the “delay in transportation by air” it should be possible to claim that a cancellation is the same as a delay - as a passenger will typically be delayed when a cancellation occurs. However – generally delays and cancellations are treated differently.



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**Note: The deadline that applies for bringing claims in the court for delay is 2 years from the date the delay commenced.**

### EU Countries

*Regulation (EC) 261/2004* applies to all countries within the European Union, European Economic Area and Switzerland.

### Further Information

For further information about passenger rights and for free advice please contact the Air Transport User's Council by visiting <http://www.auc.org.uk/> or by calling telephone 020 7240 6061.

The Air Transport User's Council is the UK's consumer council for air travel and is funded by the Civil Aviation Authority.

#### Other useful websites are:

Montreal Convention - <http://www.legislation.gov.uk/ukxi/2002/263/contents/made>  
Regulation (EC) 261/2004 - <http://www.auc.org.uk/default.aspx?catid=306&pagetype=90&pageid=6547>

### Simpson Millar Solicitors LLP

Simpson Millar's Holiday and Travel Law Solicitors are leading experts and accept personal injury claims arising from accidents abroad – accidents at sea and accidents in the air on a 'no win no fee basis'.

If your personal injury claim is accepted and at the time of making your initial enquiry and you quoted 'claim250' you will receive a cheque for £250 within 7 days of your claim being accepted which is yours to keep win or lose and in addition to any compensation you might later recover.

#### Disclaimer

This guide contains information on current legal issues applicable at the time of writing. Note there may have been changes subsequently which have not been incorporated in to the material. This guide is intended for information purposes only and its content should not be applied to any particular set of facts or relied upon without legal or other professional advice. For further information on how we can help you please contact:

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