



## Flight Delays - Advice

The document is dedicated to providing advice for air passengers setting out your legal rights when a flight is delayed. Your rights are the same whether you have booked a package holiday, a dynamic package or booked flights directly with an airline.

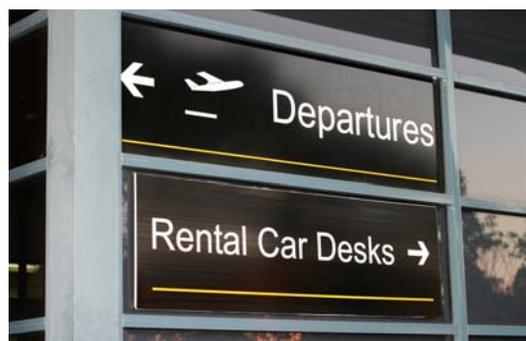
We advise everyone to check your insurance policies to see what cover you have for flight cancellation, disruption and abandonment.

Check your airline's website for the latest advice and information about your rights. Information about making a compensation claim will be displayed on your airline's website.

### Departure from a European Union (EU), European Economic Area (EEA) or Swiss Airport

Under *Regulation (EC) 261/2004* you are entitled to the following depending on the distance of your intended destination and length of the delay:

- Assistance and welfare at the airport;
- A Refund;
- Compensation (in limited circumstances).



#### Assistance at the airport

<u>Distance of Flight</u>	<u>Length of Delay</u>	<u>Assistance</u>
Over 3500km	More than 4 hours	Meals and refreshments in relation to waiting time and two free telephone calls, emails, telexes or faxes.
1500-3500km	More than 3 hours	Meals and refreshments in relation to waiting time and two free telephone calls, emails, telexes or faxes.
Up to 1500km	More than 2 hours	Meals and refreshments in relation to waiting time and two free telephone calls, emails, telexes or faxes.

NOTE 1: For delays: overnight hotel accommodation and free transfers to and from the accommodation should be provided by the airline without charge.

NOTE 2: For passengers checking in – in the event of a flight delay the airline must by law display information at its check-in desks informing passengers of their legal rights. Passengers should also be given a copy of their legal rights if during check-in a flight delay is advised.



## Flight Delays - Advice

NOTE 3: If an airline fails to provide meals and refreshments to checked-in passengers then after a reasonable time of waiting passengers may purchase such items and reclaim their reasonably and necessarily incurred expenses from the airline.

\*See Important Information about assistance and welfare below

### Reimbursement or Refund

If a flight is delayed by more than 5 hours affected passengers are entitled to choose not to travel and to be reimbursed the full price of the flight ticket and for any later flights identified on the same ticket.

Passengers who abandon their travel plans and obtain a refund are not entitled to further assistance (eg hotel and transport costs).

If a flight is a connecting flight and is delayed by more than 5 hours the passenger is entitled to a refund of the total cost of the ticket if they do not want to complete their journey. In addition the passenger is entitled to a free flight back to their place of departure – providing that the flights are on the same ticket or part of the same contract.



In the case of holidaymakers who have purchased 'regulated' package holidays as defined by the *Package Travel [Etc] Regulations 1992* the tour operator is obligated, after a reasonable period of delay, at the holidaymaker's request to:

- Provide a full refund of the total cost of the package holiday if the holidaymaker chooses to abandon the holiday before it has begun; or
- Provide an alternative holiday which is acceptable to the affected holidaymaker at no additional cost to the holidaymaker or with a refund of the difference in the cost if the alternative holiday is offered at a lower price.

### Flights to an EU, EEA or Swiss Airport

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



## Flight Delays - Advice

### Assistance at the Airport

The same options as explained above for flight delays leaving the EU, EEA or Switzerland.

\*See Important Information about assistance and welfare below

### Reimbursement or Refund

The same options as explained above for flight delays leaving the EU, EEA or Switzerland.

### Other Flights

If your delayed flight was not due to depart from an EU, EEA or Swiss airport or was not a flight due to arrive into the EU, EEA or Switzerland on an EU, EEA or Swiss airline then there are no relevant fixed laws on compensation no matter what the reason for the delay may be.

Many airlines follow a practice referred to as "General conditions of Carriage" and most will as gestures of goodwill provide assistance during lengthy delays such as food and refreshments.

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

If, however, your flight was part of a **regulated package holiday** then your **tour operator** is under a contractual duty to provide assistance during the delay.

### Compensation for Delays – Watch this Space

If the delay has been caused by 'extraordinary circumstances' 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.

There is presently no entitlement to compensation for flight delays in the *Regulation (EC) 261/2004*.

However a European Court Ruling on the 19<sup>th</sup> November 2009 indicated that unless an airline can prove that a delay was due to an 'extraordinary circumstance' which the airline could not have avoided even if it had taken all reasonable measures then compensation should be paid in line with the table below:





## Flight Delays - Advice

<u>Length of Delay</u>	<u>Delay to Destination</u>	<u>Compensation Payable</u>
Up to 1500km	More than 3 hours	250 Euros
1500km to 3500km	More than 3 hours	400 Euros
More than 3500km	More than 3 hours but less than 4 hours	300 Euros
More than 3500km	More than 4 hours	600 Euros

*This position is at the time of writing subject to a “stay” until such time that the Court of Justice of the European Union has ruled on questions referred to it by the Administrative Court of the High Court of Justice in the UK following an order after an application had been made by a number of airlines. By making this order the High Court has put all claims relating to compensation for flight delays on hold pending the ruling of the Court of Justice of the European Union – Thus for the present time UK law cannot compel airlines to pay compensation for flight delays.*

*Update: There have been a few cases since the landmark case in 2009, either implementing the above ruling or evaluating the importance of the term ‘extraordinary circumstances.’ In one case, it was held that a technical defect did not amount to an ‘extraordinary circumstance’ regardless of the airline having taken reasonable measures to avoid delays. This was because it is considered to be inherent in the normal course of operations that an unforeseen situation may arise and it would therefore be expected to be resolved without disruption.*

### Montreal Convention

When a flight is delayed for a reason other than "extraordinary circumstances" the Montreal Convention (in force in the UK since 28 June 2004), compels airlines to accept responsibility for "damage occasioned by delay" (Articles 19 and 22.1) and to compensate passengers.

This liability is limited to £4,694 Special Drawing Rights.

However an airline will not be responsible for any loss 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). The majority of airlines' conditions of carriage do not accept liability for consequential losses.

When you fly with an airline you will be bound by that airline's "Conditions of Carriage". This will set out the airline's contractual liability should there be a flight delay.

Airlines will as a general rule reimburse expenses that are directly incurred because of a delay such as for meals and hotel accommodation if the delay is a lengthy one. These expenses are deemed as 'necessarily' incurred.

Airlines do not accept responsibility for the inconvenience or upset a delay causes or for consequential losses (eg lost wages) that occur as a result of a flight delay, unless ordered by a court to pay such.

**Note: If you are contemplating court action against an airline for a flight delay then there is a strict deadline of 2 years in which to commence an action.**



## Flight Delays - Advice

### Assistance and Welfare - Important Advice

It is very important that if your flight is delayed and your holiday company or airline advises you not to check-in you ask your airline/holiday company to confirm that you still have the same rights as someone who has checked-in. Ask for confirmation in writing/text or email.

The reason for this is because *Regulation (EC) 261/2004* only applies to those passengers who have checked-in.

The importance of ensuring you are protected by the Regulation is that the protection means that the airline is obligated to meet the costs of assisting you – for example providing meals and refreshments and, if applicable, hotel accommodation during a delay.

Sometimes airlines fail to provide the services they are supposed to provide such as food, refreshments and accommodation. If your airline does not offer or provide assistance and you incur expenses then ensure you keep all the receipts you are given. You will need to produce proof of your 'necessarily' incurred expenses when you try to reclaim them at a later date. Without proof of your out of pocket expenses you may find that the airline will only offer to repay a proportion of your expenses.

You should carefully check any insurance policies you have to find out if your insurer can provide you with assistance and also what, if any, benefits you are entitled to because your flight is delayed.

### EU Countries

*Regulation (EC) 261/2004* only applies to member states of 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>



## Flight Delays - Advice

### 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'.

#### 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:

**Nick Harris - Head of International Travel Law**  
**Simpson Millar LLP Solicitors**

T: 0808 145 1353 Email: [holidayclaims@simpsonmillar.co.uk](mailto:holidayclaims@simpsonmillar.co.uk)