

Flight Compensation and Brexit





FLIGHT COMPENSATION

EXAMINING THE IMPLICATIONS OF A BREXIT DEAL OR NO DEAL

Overview

With a new deadline of 31st January 2020 now fast approaching, Brexit could have imminent and serious implications for consumer rights in relation to the ability to claim flight compensation. This brief report specifically examines the potential impact that all forms of Brexit, including a so called 'no-deal', could have on the flight compensation sector.

Timeline

- Since 2004, passengers traveling between, or on airlines registered to EU Member States, have been entitled to compensation for delayed or cancelled flights under the EU Law EC 261/2004.
- However on Thursday 23rd June 2016, the UK voted to leave the European Union, in a decision now commonly referred to as 'Brexit'.
- On Wednesday 14th November 2018, Theresa May and the EU agreed a preliminary [Withdrawal Agreement and Political Declaration](#).
- Despite its considerable length (585 pages), this document did not cover the future trading relationship between the UK and EU. It was originally rejected by the UK Parliament on Tuesday 15th January 2019, and has subsequently been rejected a number of times since.
- Failure to pass the Withdrawal Agreement means that the UK is now in a situation where it is approaching a hard-stop to its EU membership on 31st January 2020, with no legislation in place for a future trading relationship with the other 27 EU Member States.

Possible outcomes

Due to the country's inability to pass the Withdrawal Agreement through the UK Parliament, Article 50 (the clause in the EU Lisbon Treaty that outlines the steps to be taken by a country seeking to leave the bloc voluntarily) has already been extended twice. As a result, Theresa May's successor as Prime Minister, Boris Johnson, is posturing to take the UK out of the EU with or without a deal.

This therefore leaves the UK with three options ahead of its January 31st deadline:

- 1. Revoke Article 50**
- 2. Leave the EU with a deal**
- 3. No-deal Brexit**

Here, we look at the implications of these options on consumer rights in the flight compensation sector.

1. Revoke Article 50

Last year, a European Court of Justice (ECJ) ruling confirmed that the UK could revoke Article 50 directly, without having to ask the other 27 EU countries for permission. If it does so between now and the new Brexit deadline, current consumer rights around flight compensation claims will remain the same, and be protected under 261/2004.

2. Leave the EU with a deal

If the UK leaves with a deal, Flight compensation can still be claimed as stated above and amendments will be made to reference domestic legislation. However, there will be a transition period until 31st December 2020 (which could be extended). During this period, the European Small Claims Procedure for airlines outside the UK, but within the EU, could still be utilised.

3. No-deal Brexit

Passenger rights will in fact continue to be protected. On Tuesday 26th June 2018 the [European Union \(Withdrawal\) Act](#) was passed by the UK Parliament. This incorporated EU legislation (including regulations under section 3) into domestic UK law.

The specific UK domestic legislation is called [The Air Passenger Rights and Air Travel Organisers' Licensing \(Amendment\) \(EU Exit\) Regulations 2018](#) which under Part 4, section 8, enshrines regulation EC 261/2004 into domestic law.

This section makes amendments to EC 261/2004, like converting Euros to GBP such as:

- (a) £220 for all flights of 1500 kilometres or less;
- (b) £350 for all flights between 1500 and 3500 kilometres;
- (c) £520 for all flights not falling under (a) or (b).

The full text of section 8 can be found in the Appendix of this report, and we provide a brief excerpt here:

“1. A body designated under the Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005(3) for the purposes of this paragraph is responsible for the enforcement of this Regulation. Where appropriate, this body shall take the measures necessary to ensure that the rights of passengers are respected.

2. Without prejudice to Article 12, each passenger may complain to any body designated for the purposes of paragraph 1 or to a body designated for the purposes of this paragraph, about an alleged infringement of this Regulation.”

This comes into force the day after the UK leaves the EU with or without a deal. This is positive from a passenger rights point of view as it ensures they can continue to claim compensation from airlines.

However, the process for claiming against non-UK airlines will change if the UK leaves without a deal. Currently in draft form and subject to the UK leaving without a deal, there is a proposal to

change the Civil Procedure Rules via [The Civil Procedure Rules 1998 \(Amendment\) \(EU Exit\) Regulations 2019](#).

The changes include the disapplication of the recast Brussels Regulation and the Lugano Convention in relation to questions of jurisdiction and enforcement of judgments. The CPR amendments, which will only take effect if there is a no deal Brexit, include sweeping changes to CPR Part 6 in relation to service of documents and Part 74 in relation to enforcement of foreign judgments.

Permission to serve out of the jurisdiction:

CPR 6.31 and 6.33 will be amended to remove the ability to serve proceedings out of the jurisdiction without the court's permission where the court has jurisdiction under the recast Brussels Regulation or the Lugano or Brussels Conventions, as these will no longer apply to the UK post-Brexit.

It will still be possible to serve out without permission where the court has jurisdiction under the Hague Convention on Choice of Court Agreements 2005 or under sections 15B or 15C of the Civil Jurisdiction and Judgments Act 1982 (which has been amended to incorporate provisions mirroring the consumer/employee friendly jurisdiction rules in the recast Brussels Regulation) in cases brought by or against UK domiciled consumers or employees, or brought by employees working in the UK or engaged by a UK business.

Methods of service:

Various rules in sections II and III of CPR Part 6 (relating to service of the claim form and service of other documents, respectively) will be amended to remove references to the ability of a party to nominate the business address of a solicitor in an EEA state outside the UK, or of a European Lawyer in any EEA state, as the party's address for service, as these provisions will no longer apply post-Brexit. This is however subject to transitional provisions where a party has given such an address before exit day.

CPR 6.41, which sets out the requirements where a party wishes to serve the claim form or other documents in accordance with the EU Service Regulation, will be deleted as that route will no longer be available post-Brexit. Transitional provisions provide that where a party has filed the documents required for service pre-Brexit, but the documents have not been forwarded to the Senior Master by exit day, the court may treat the request as a request for service under a relevant convention or treaty relating to service (such as the Hague Service Convention) or for service through a foreign government or British Consular authority.

Enforcement of judgments:

CPR Part 74 will be amended to remove provisions governing the procedure for applications in relation to recognition and enforcement of judgments under the recast Brussels Regulation and the Brussels and Lugano Conventions, as they will no longer apply to the UK post-Brexit. There are transitional provisions for judgments given in proceedings commenced before exit day, which the UK will continue to enforce under current rules although it seems the EU will not reciprocate ([see here](#)).

There will also be amendments to remove provisions relating to European Small Claims Procedure, European Enforcement Orders and the enforcement of Community judgments, which will become redundant post-Brexit.

References to the European court:

CPR Part 68, dealing with references to the Court of Justice of the European Union (CJEU), will be revoked as post-Brexit the English courts will no longer be able to refer questions to the CJEU for a preliminary ruling. Transitional provisions provide that proceedings that were stayed for such a reference before exit day will continue to be stayed unless or until the court directs otherwise.

Conclusion

Consumer rights in relation to claiming Flight Compensation will be protected with or without a Brexit deal. However, the ability for consumers to claim compensation from EU airlines not based in the UK will be severely hampered in the event of a no deal.

Appendix

Amendment of Regulation (EC) No 261/2004

8.—(1) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 is amended as follows.

(2) In Article 1 (subject) omit paragraphs 2 and 3.

(3) In Article 2 (definitions)—

(a) for point (c), substitute—

“(c) ‘Community carrier’ means an air carrier with a valid operating licence granted by a Member State in accordance with Chapter II of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community as it has effect in EU law(1);”;

(b) in point (d), for “Article 2, point 2, of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours” substitute “regulation 2(1) of the Package Travel and Linked Travel Arrangements Regulations 2018”(2);

(c) in point (e), for “Article 2, point 1, of Directive 90/314/EEC” substitute “regulation 2(5) of the Package Travel and Linked Travel Arrangements Regulations 2018”;

(d) after point (l) insert—

“(m) ‘UK air carrier’ means an air carrier with a valid operating licence granted by the Civil Aviation Authority in accordance with Chapter II of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the United Kingdom.”.

(4) In Article 3 (scope)—

(a) in paragraph 1, in point (a), for “the territory of a Member State to which the Treaty applies” substitute “the United Kingdom”;

(b)for point (b) substitute—

“(b)to passengers departing from an airport located in a country other than the United Kingdom to an airport situated in—

(i)the United Kingdom if the operating air carrier of the flight concerned is a Community carrier or a UK air carrier; or

(ii)the territory of a Member State to which the Treaty applies if the operating air carrier of the flight concerned is a UK air carrier, unless the passengers received benefits or compensation and were given assistance in that other country.”;

(c)in paragraph 6, for “Directive 90/314/EEC” substitute “the Package Travel and Linked Travel Arrangements Regulations 2018”.

(5) In Article 6 (delay), in paragraph 1, in point (b), omit “intra-Community flights of more than 1500 kilometres and of all other”.

(6) In Article 7 (right to compensation)—

(a)for paragraph 1 substitute—

“1. Where reference is made to this Article, passengers shall receive compensation amounting to—

(a)£220 for all flights of 1500 kilometres or less;

(b)£350 for all flights between 1500 and 3500 kilometres;

(c)£520 for all flights not falling under (a) or (b).

In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger’s arrival after the scheduled time.”;

(b)in paragraph 2, in point (b), omit “intra-Community flights of more than 1500 kilometres and for all other”.

(7) In Article 8 (right to reimbursement or re-routing), in paragraph 2, for “Directive 90/314/EEC” substitute “the Package Travel and Linked Travel Arrangements Regulations 2018”.

(8) In Article 10 (upgrading and downgrading)—

(a)in paragraph 2, in point (b), omit the words from “intra-Community” to “other”;

(b)in paragraph 2, in point (c), omit the words from “, including” to the end.

(9) In Article 16 (infringements)—

(a)for paragraphs 1 and 2 substitute—

“1. A body designated under the Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005(3) for the purposes of this paragraph is responsible for the enforcement of this Regulation. Where appropriate, this body shall take the measures necessary to ensure that the rights of passengers are respected.

2. Without prejudice to Article 12, each passenger may complain to any body designated for the purposes of paragraph 1 or to a body designated for the purposes of this paragraph, about an alleged infringement of this Regulation.;”;

(b)omit paragraph 3.

(10) Omit Article 17 (report).

(11) After Article 19 (entry into force) omit the paragraph beginning with the words “This Regulation”.

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