

CTA CONSULTATION PAPER: PROPOSED CHANGES TO CLARIFY, SIMPLIFY AND STRENGTHEN THE AIR PASSENGER PROTECTION REGULATIONS

RESPONSE BY INTERNATIONAL AIRLINES GROUP

INTRODUCTION

1. International Airlines Group (IAG) is the parent company of Aer Lingus, British Airways, Iberia and Vueling. It is one of the world's largest airline groups, with a fleet of 558 aircraft operating to 256 destinations across the globe. For the current Summer 2023 season our airlines are operating 41 direct services per week between the UK, Ireland and Canada. In 2022 our airlines carried 94.7m customers across their networks and we pride ourselves on the high quality of products and services we offer in the different markets in which we operate.
2. Whilst the vast majority of customer journeys are completed without incident, there are regrettably instances where disruption does occur. Some of these will be due to factors within the control of the airline, but others will be the result of events over which the airline has no control whatsoever. Where disruption does occur, our airlines will always aim to help customers with their onward journeys and deal with any problems. This is a core part of customer service and operations within airlines, and it is in our business interests to facilitate the best outcomes for our customers.
3. It is becoming increasingly challenging for airlines to comply with the growing number of passenger protection regulations in different countries, often with varying and sometimes conflicting requirements. A common principle governing good regulation around the world is that it should be demonstrable that the benefits to consumers exceed the costs the regulated industry will bear in complying with the regulation. We urge the CTA to consider, not only the consumer benefits, but also the wider impact the proposed measures will have on airlines serving customers travelling to, from and within Canada.
4. IAG welcomes the opportunity provided by the CTA to respond to the consultation paper on proposed changes to the Air Passenger Protection Regulations (APPR). This response is made on behalf of all our airlines and in the following sections we offer our thoughts on the seven areas of the APPR where a need to amend the regulation has been identified.

Part 1-Identifying the exceptional circumstances.

5. The CTA cites a lack of clarity leading to differing interpretations as the reason for removing the 3 categories of disruption situation in the current APPR that determine whether or not passengers are entitled to compensation. The proposed changes instead place the burden of proof wholly on airlines to determine that a disruption scenario was completely outside of their control and could not have been avoided

whatever remedial action was taken. In our view, the proposed changes do not increase the level of clarity and could even hinder it further, particularly as the 'situations within the airlines control but required for safety' category will no longer apply.

6. As IATA have noted, one of the major problems with the EU261/2004 regulation has been the lack of a definition of what constitutes an 'extraordinary circumstance'. If the proposed changes to the APPR are implemented in regulation, we believe it is imperative that the list of qualifying 'exceptional circumstances' is as complete as possible and suggest the following amendments:

List of events that qualify as exceptional circumstances:

- Include all three 'required for safety' criteria included in the current APPR. Operating safely is an airline's number one priority and duty to its customers. Airlines should not be penalised for deciding to delay or cancel a flight due to issues that could affect the safe operation of that flight.
- Add 'order from a state aviation safety regulator or aircraft manufacturer to ground a particular aircraft type or aircraft operating with a particular component(s) due to safety concerns.'
- Add 'a partial or total closure of the border or airspace, or a partial or total closure, or reduction in capacity at an airport for a substantial period'.
- Add 'bird strikes' as these can cause damage to an aircraft that can have safety implications for continuing a flight and are manifestly not within the control of the airline.
- Add 'mass cancellation events such as global pandemics, mass airspace closure due to volcanic ash clouds.'
- Add 'aircraft damage or flight disruption caused by a foreign object or meteorological events including lightning strikes, hailstones, thunderstorms and severe turbulence that require an aircraft to discontinue its journey'.
- We propose rewording 'weather or other atmospheric conditions, or natural disasters that make it impossible to safely operate the flight' to read 'weather or other atmospheric conditions, or natural disasters *incompatible with the safe operation of the flight*'. As currently drafted, issues arise around how 'impossible' would be defined.

List of circumstances that would not be considered exceptional:

- Amend 'flight or cabin crew unavailability' to include 'unless unavailability is caused by flight or cabin crew short notice sickness or injury, or if crew movements to support airline operations are hindered by government mandated health-related travel restrictions.'
- Remove 'any action, or failure to act, by the airline or others with which the airline has a contractual relationship' It is not clear what is meant by this statement which underlines our point above about lack of clarity in the new proposals.

Part 2-Airlines responsibilities regarding claims for compensation.

7. Given the proposed amendments to the APPR make it incumbent on airlines to prove that a disruption event was due to exceptional circumstances and supply supporting documentary evidence, we caution that it may not always be possible to supply certain documents for reasons of confidentiality e.g. if related to manufacturer or regulator issued safety notices.
8. Compensation for denied boarding should not be payable if due to operational reasons, health, safety or security reasons, or if the customer does not have the correct travel documentation.
9. The amendments must make clear that where one customer makes a claim for compensation on behalf of a group, the group must be travelling under the same booking reference. Additionally, the other customers on the booking must provide authority for the booker to accept payment on their behalf. Otherwise, the process is open to abuse and on occasion there are separation cases where one partner would rather the other does not receive the refund or compensation amount.
10. Where payments are made by airlines to customers, the APPR need to make clear that payment is made to the original form of payment the customer used when booking in cases of refunds. A payment source of the customer's choosing can be used for expenses and compensation. Where indirect bookings are concerned, the airline obligation must end once payment has been made to the third party whose responsibility it then is to ensure the payment reaches the customer.
11. Requiring airlines to resolve customer complaints regarding delays and cancellations within 30 days is unrealistic given the significant increase in claims that is likely to result from the revised APPR together with the investigation and documentary evidence provision airlines will have to undertake to prove exceptional circumstances apply. We support the IATA recommendation that the 30-day period begins when the customer presents adequate documentation to support their claim for compensation.

Part 3-Rebooking and refunds.

12. IAG believes allowing passengers to claim a refund once a delay reaches 3 hours at point of departure is excessive. International airlines based overseas need to be given more time to recover a delayed or cancelled flight before being required to refund customers. Where a delay is due to technical reasons, the airline may be able to promptly source the spare parts necessary to affect a repair, but fitting those parts may take longer than 3 hours. In situations where a flight has been cancelled, the airline may be able to fly in a replacement aircraft from another base or point on its network, but this may again take longer than 3 hours. In both cases, the airline may be able to carry its customers to their destination.
13. In our response to the 2021 CTA consultation on refund requirements we suggested that the definition of a 'lengthy' delay for international flights departing from Canada should be more than 9 hours for flights > 3500km and 12 hours for flights > 6000km,

aligning with proposed reforms to the EU261 regulation. We further noted that if a 'lengthy' delay is notified to customers a minimum period of time prior to the scheduled time of departure (e.g. 12 hours) and an alternative routing offered, the requirement to refund should not apply.

14. During the pandemic airlines were faced with having to enact mass cancellations where rerouting customers was not an option. Millions of customers required refunds at the same time as the airline staff processing refunds were adjusting at short notice to new ways of working resulting from public health restrictions. Huge backlogs ensued so we request flexibility in the amount of time airlines are given to refund customers when such scenarios occur. Resolving cases within 30 days may not always be achievable.

Part 4-Assistance.

15. The third proposed change in the consultation 'an airline would be responsible to provide some assistance for a certain period of time' where circumstances are deemed to be exceptional is ambiguous. For both airlines and their customers, greater clarity on what is meant by 'some assistance' and how long 'a certain period of time' is, will be required.

Part 5-Communications.

16. Airlines provide customers with ample opportunity to supply their mobile numbers and email addresses at the point of booking. For customers not booking directly with the airline and instead using third party providers, it is the responsibility of those providers to ensure contact details are correctly captured. We suggest it is not practical for customers contact details to be taken or reconfirmed at the check-in desk as this will slow the overall check-in process down, impacting the customer experience and potentially resulting in delays.

Part 6- Chain reactions (knock-on effects).

17. IAG believes the proposed changes to the APPR are impractical as they are arbitrary and devoid of operational or commercial reality. Much greater clarity is therefore required. For example, if exemption from the requirement to pay compensation only applies to 'the next flight scheduled to use that plane', does that mean only the cancelled flight and the return flight from the point of destination (also cancelled) would meet the criteria?
18. Airline schedules are built around rotations (e.g Toronto-Calgary/Calgary-Toronto operated by the same aircraft is one rotation) and aircraft operate on planned daily 'lines of work' consisting of rotations which vary in number depending on sector length. Operational reality requires considerably more flexibility when dealing with disruption caused by exceptional circumstances. At the very least, the next rotation rather than simply the next flight due to be operated by an aircraft should be eligible for exemption. In circumstances where an airline may have one or more aircraft stuck

away from base due to exceptional circumstances, it is unlikely it will be unable to recover its schedule without delaying or cancelling more than 'the next flight.'

19. Delays and cancellations are rarely the fault of airlines in isolation, with other stakeholders in the aviation ecosystem often having a considerable impact on the ability of airlines to deliver the services their customers expect. For example, the current prolonged period of industrial action by Air Traffic Controllers in France is having a profound impact on the ability of carriers in Europe to operate their schedules as planned during the peak summer season and customer disruption has regrettably been the result. The APPR must take account of the fact that delays and cancellations resulting from such circumstances can affect many flights across an operating day rather than simply a single flight and the one immediately following it on an aircraft operating plan.

Part 7-Refunds for changes to government travel advisories.

20. In our view airlines should not be required to refund customers if government travel advisories change in the manner suggested. Airlines will enact their own commercial policies specific to the circumstances of the time and responses should not be dictated at a blanket level by government regulation. In this particular set of circumstances, we believe travel insurance should provide redress should customers decide to cancel their bookings as it is unfair to expect airlines to bear the financial burden for decisions taken at a governmental level into which they have no input.
21. We further note, as experienced during the pandemic, that multiple and sometimes conflicting government travel advisories could be in place at the same time for a particular country or geographical area. It is not clear how the APPR would apply in such situations and whether it would be Canadian government travel advice that would determine whether refunds would be payable over that of other countries.

Part 8-Further comments.

22. Although not detailed in the consultation paper, we note the CTA slide deck 'Update on Air Passenger Protection and Launch of Pre-Consultations on Proposed Changes to Regulations' of 11th July, in particular Slide 14 'Other New Measures to Support Passenger Protection.' Certain proposals here cause us concern, and as it is not clear whether these are part of the current consultation on changes to the APPR or will be subject to future consultation, we offer some brief thoughts here.
23. The slide suggests that 'maximum administrative penalties' will increase from \$25,000 to \$250,000 which in our view is wholly disproportionate. It is not clear what infractions might incur such a penalty, whether the penalty will be levied per case/complaint and from when these new charges will be implemented.
24. Related to the point above, the CTA will be granted 3 years to issue a notice of violation rather than the current 1. It will be challenging for airlines to maintain records of potentially every cancellation and delay longer than 3 hours back over a 3-year period, as well as all the documentary proof of exceptional circumstances that may now have to be sent to customers. Third party booking platforms such as

Amadeus do not hold customer bookings in active records for as long as three years and it is a complex and costly process to retrieve them after such a long period of time.

25. We are concerned that the CTA plan to implement a cost recovery process whereby airlines will pay for the administration of customer appeals. Given the significant increase in the number of claims and appeals that will almost certainly result from the proposed revisions to the APPR, we again highlight the cost and administrative burden this will place on airlines.
26. Lastly, the CTA propose to 'strengthen baggage protection to include delayed baggage' without providing any further detail on what this means in practice.

SUMMARY

27. The overwhelming majority of flights operated by IAG airlines take place with no disruption to customers, and where disruption does occur, we have robust processes in place to ensure affected customers are able to continue their journeys with the minimum of inconvenience or receive a refund if eligible. As we have pointed out in our consultation response, with any new regulation or changes to existing rules it should be demonstrable that the benefits to consumers are greater than the costs the regulated industry will bear in complying with the regulation. We have some doubts as to whether this is the case with the proposed changes to the APPR.
28. Although the CTA stress that the motivation behind the proposed changes is to provide greater clarity and certainty to airline passengers regarding when they are entitled to compensation from airlines when flights are disrupted, we feel there must be a balance. Over-burdening airlines that do things well with regulation to address issues with the small number that may not benefits neither the customer nor the airline industry. The CTA proposals will add a significant cost and administrative burden to airlines and in certain aspects are not compatible with airline planning and operational procedures. We feel a better balance is provided by the provisions of the current APPR and respectfully request the CTA reconsider its approach for the reasons we have discussed in our submission.

End.