

**2005 No. 975**

**CIVIL AVIATION**

**The Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005**

<i>Made</i> - - - - -	<i>29th March 2005</i>
<i>Laid before Parliament</i>	<i>1st April 2005</i>
<i>Coming into force</i> - -	<i>23rd April 2005</i>

The Secretary of State for Transport, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to measures relating to air transport(b), in exercise of the powers conferred by that section hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005 and shall come into force on 23rd April 2005.

**Interpretation**

2. In these Regulations—  
a reference to an Article is a reference to that Article in Council Regulation (EC) No. 261/2004 of 11th 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(c); and  
“operating air carrier” means an air transport undertaking with a valid operating licence that performs or intends to perform a flight under a contract with a passenger or on behalf of another person, legal or natural, having a contract with the passenger.

**Offences**

3.—(1) An operating air carrier who fails to comply with an obligation imposed on it by Article 4 to 6, 10, 11 or 14 shall be guilty of an offence.

(2) A person guilty of an offence under this regulation shall be liable on summary conviction, to a fine not exceeding level 5 on the standard scale.

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(a) 1972 c. 68.

(b) S.I. 1993/2661.

(c) OJ No. L46 of 17th February 2004, p.1. By virtue of Article 18 of the Council Regulation, Council Regulation (EEC) No. 295/91 of 4th February 1991 establishing common rules for a denied boarding compensation system in scheduled air transport, is repealed OJ L36, 8.2.1991, p.5.

### **Due diligence defence**

4.—(1) Subject to the following provisions of this regulation, in proceedings against any operating air carrier for an offence under regulation 3 of these Regulations, it shall be a defence for that operating air carrier to show that it took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) An operating air carrier shall not be entitled to rely on the defence provided by paragraph (1) by reason of its reliance on information supplied by another, unless it shows that it was reasonable in all the circumstances for it to have relied on the information, having regard in particular—

- (a) to the steps which it took, and those that might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether it had any reason to disbelieve the information.

### **Enforcement**

5.—(1) The Civil Aviation Authority shall be the designated body for the purposes of Article 16(1).

(2) The Air Transport Users Council shall be the designated body for the purposes of Article 16(2).

Signed by the authority of the Secretary of State

29th March 2005

*Charlotte Atkins*  
Parliamentary Under Secretary of State  
Department for Transport

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision for the creation of offences for the purposes of enforcing the rights and entitlements set out in Council Regulation (EC) No. 261/2004 which establishes common rules on compensation and assistance to passengers in the event that they are denied boarding onto their flight or that the flight has been cancelled or subjected to lengthy delays.

Regulation 3 provides that anyone failing to offer compensation and or provide assistance in the circumstances provided for by the Council Regulation shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

It will be a defence for an operating air carrier to demonstrate that it took all reasonable steps and was as careful as possible to ensure compliance with the Council Regulation (regulation 4).

The Regulations also designate the Civil Aviation Authority as the body responsible for the enforcement of the Council Regulation and the Air Transport Users Council as the body to receive complaints regarding any alleged breaches of the Council Regulation (regulation 5).

A full regulatory impact assessment of the effect that this instrument will have on the costs of business has been produced and a copy placed in the library of both Houses of Parliament. Copies may be obtained from the Department for Transport, 76 Marsham Street, London SW1P 4DR. Alternatively copies can be obtained from the Department for Transport's website which is at [www.dft.gov.uk](http://www.dft.gov.uk).

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£3.00

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Printed and published in the UK by The Stationery Office Limited  
under the authority and superintendence of Carol Tullo, Controller of  
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.  
E0705 4/2005 150705 19585

ISBN 0-11-072823-8



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