

THE PERILS OF RUSHING PASSENGER RIGHTS REGULATIONS

Proposed Air Passenger Protect Regulations have been published in Canada Gazette 1 and the Government has targeted July 1 as the implementation deadline. Transport Canada and the CTA appear to be modelling the foundation of the Canadian Passenger Protect regulations on European regulation 261/2004 which has many shortcomings and is itself under review in order to make passenger rights clear, simple and operationally reasonable.

Cost to industry is a serious concern to ATAC. Airlines 4 Europe (A4E) has indicated that passenger protect fees in the European air industry now rank among the largest expenses of airlines, along with fuel, and wages.

Airlines are one significant element in the air travelers' ecosystem and there are many players and factors impacting flights including the weather, airport authorities, security, customs, air navigation services, and extraordinary circumstances. The regulations need to reflect this complex system and not solely penalize airlines for disruptions attributable to other and often multiple factors.

The proposed "Passenger Protect Regulations" need to define the broad categories of large and small carriers. The proposed threshold of one million passengers for each of the past two years is totally inadequate. The regulator needs to consider different metrics in making the distinction as this can be a game changer in the viability of some sectors of the industry, particularly small carriers, LCCs, charter operators, and Northern and remote airlines.

The distinction between large and small carriers must go beyond simply the level of compensation. It needs to take into account many other factors, including to the following:

1. Standards of treatment: the requirement to provide wi-fi, and food and drink for delays exceeding two hours. Absence of infrastruc-

ture and commodities in certain remote and Northern airports would make it unlikely to be able to comply with the standards of treatment established by the regulations. What are the consequences if the airport does not have these capabilities?

2. There must be an exemption for Northern and remote operations in terms of passenger protect regulations.
3. The regulation is silent on cascading delays. This is of high importance for regional carriers whose routes are often made up of multiple legs.

The following must be addressed in the final drafting of regulations:

1. The list of events that affect compensation to passengers and are considered under the "control of the air operator".
2. A clear definition of exemptions from paying compensation under circumstances ruled "extraordinary".
3. A clear definition of the compensation differences between delays caused by snags resulting from maintenance vs occurring during scheduled flights as it relates to safety.
4. Seating requirements for family members in the various age categories travelling together on the same flight. Clarification is needed in terms of the compensation when the airline does not have the technology or capability to track the family members to assign seating at the time of the booking.
5. Air Operators would like to see a caveat that the compensation should not exceed the value of the original ticket. Particularly, if the operator is obligated to fly the passenger on a later flight that is not part of a code-share agreement.
6. Are compensation levels being attached to the price of the ticket, with business and

first-class passengers receiving more as they paid more for the original ticket?

7. Clarification on the policies that airlines must establish regarding the transportation of musical instruments. Regulations must allow the option for airlines to state in their tariff that they do not carry musical instruments.
8. The Implementation Period for the new regulation and data collection is too short. We recognize that the regulation is on the fast track for implementation. However, the logistics of ensuring that processes are in place are not to be taken lightly. The proposed three-month window for compliance after Gazette 2 is not feasible. A time frame minimum of one year or more for implementation is more reasonable and achievable, for systems to be fully functional and reliable.

ATAC will work to ensure that the proposed Passenger Protect Regulations define accurately the factors that the industry is directly responsible for:

- Airlines are only one of many moving parts of the air transport industry and play one of the roles that account for the delay or cancellation of flights.
- It is in the best interest to avoid the inconsistent interpretations and growth of "claims harvesters" who diminish compensation paid to the traveler.
- It is essential that an industry working group be formed to clearly define a non-exhaustive list of situations considered "outside airlines' control".
- It is important that the metrics differentiating between large and small airlines take into consideration the fabric of our industry and the Minister's objective of creating LCCs.

The European and American experience has proven that if the language of the regulation is onerously prescriptive and operationally expensive, it will result in a significant increase in costs to the travelling public, unnecessary expensive litigation and the demise of some small operators and discontinued service to various Canadian markets. This must be avoided at all cost in Canada. We trust that the Minister will take heed of the industry's comments.