



Department  
for Transport

From the Parliamentary  
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Earl of Kinnoull  
Chairman House of Lords  
European Union Committee  
House of Lords  
London  
SW1A 0PW

1 June 2020

Dear Lord Kinnoull,

### **6913/20: COVID-19: Commission guidance on EU passenger rights**

Thank you for your letter dated 19 May 2020. I am writing in response to the queries raised by the EU Goods Sub- Committee.

The Sub-Committee asked for the Government's position on the desirability of airlines offering credit vouchers instead of refunds to passengers who have had their flights cancelled as a result of the COVID-19 pandemic.

The Air Passenger Rights regulation is enshrined in EU law and we are bound by those rules during the EU Exit Transition Period. Any changes to the regulation are a matter for the EU. The Government champions consumer rights and we have been clear that consumers should maintain their right to a full cash refund.

The current Air Passenger Rights Regulation does not preclude industry from offering vouchers, providing they also offer a cash refund as an alternative option. We have been closely following the work of the EU and Member States in this area, and as your letter notes, the Commission has published a Recommendation on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled travel and transport services. We have provided Parliament with an Explanatory Memorandum C(2020) 3125 on that document, and we believe that the Commission's recommendations are pragmatic suggestions, which will help to ensure consumer rights are protected, while recognising the pressure industry are facing.

Both the department and the EU Commission have expressed that we are open to the use of vouchers providing the cash refund option is made available.

The department holds regulator meetings with the aviation industry, the Civil Aviation Authority and consumer groups at both official and Ministerial level. We are keen to understand the impacts on businesses due to COVID-19 and to work with industry to find a solution, which maintains consumer protection while recognising the pressure the sector is facing. The department is also using these conversations to reaffirm industry's obligations and to seek reassurance that every effort is being made to fulfil these.

The Civil Aviation Authority as the independent regulator for aviation is responsible for any action taken against individual airlines. The industry is facing an unprecedented level of disruption due to COVID-19 and the CAA is continuing to take a balanced and proportionate approach to enforcement.

The CAA has a range of tools to address non-compliance including court action. However, its aim is to achieve the right balance of formal and informal approaches, depending on what is appropriate in the circumstances. The CAA is working with airlines and airports to provide flexibility within the regulatory framework, where appropriate, to help manage and mitigate COVID-19 impacts. In assessing compliance from airlines, the CAA has been clear that it should not be unduly difficult for consumers to receive a refund and this should be done in a timely manner.

The aviation sector has largely paused; however, it is important that where needed our airports remain open so that British Nationals can get home. However, ultimately, aviation is a private market, and if a carrier wishes to run a flight they are not prevented from doing so.

Across the transport modes, most businesses are trying to do the right thing in these unprecedented circumstances but, where enforcement bodies have significant evidence that businesses are trying to take advantage of the crisis we would expect them to take action.

Within the Tourism sector consumers also have a number of avenues, which they can explore if they feel airlines and travel companies have acted unfairly, including the Civil Aviation Authority and the Competition Market's Authority Taskforce.

With regard to our domestic rail industry, as set out in our Explanatory Memorandum C(2020) 3125 on the Commission's new Recommendation, the Government has provided financial assistance to sustain and support rail operators and to ensure that services necessary for essential travel continue to operate during the pandemic. This assistance also includes measures to extend cash refunds to all ticket types, regardless of whether the train is

cancelled, including provision of fee-free refunds of all Advance rail tickets held on 23rd March when travel restrictions were introduced. This is in addition to passengers' rights to a fee-free refund when their train is cancelled. From 23rd March onwards, the usual rules apply to Advance tickets so they will only be refunded if the train is cancelled, but all other ticket types are still refundable.

Regarding international rail, Eurostar is required, as an international passenger rail operator, to comply with the EU's Rail Passenger Rights Regulation. The Government has been engaging closely with Eurostar throughout this period, including on the issue of refunds for passengers. The Government understands that Eurostar is offering e-vouchers to all passengers whose services have been cancelled, however Eurostar also understands that offering a voucher is not appropriate in all cases and has confirmed that they are able to offer a full refund on request for cancelled services. The Commission's position regarding the interpretation of the EU Rail Passenger Rights Regulation in the context of the current Covid-19 pandemic is consistent with the Government's position of championing consumer rights, including making clear that consumers should maintain their right to a full refund.

With respect to travel insurance and the FCO's current travel advice against all but essential international travel, it is understandable that insurers are not offering cover for COVID-19 in new policies. This is because the risk has already crystallised and the policies would be unaffordable as a result. Insurance companies who have suspended new sales have made it clear that their intention is to start selling new travel policies as soon as it is viable for them to do so. Of course, this will depend on when Government decides to lift the travel and other restrictions currently in place in response to the COVID-19 outbreak.

We are however looking carefully at how the insurance market will reflect risks from COVID19 in their respective policies in the future. The Government remains committed to ensuring that consumers have access to financial products that suit their needs. We recognise that travel insurance will play a key role in the recovery of the tourism sector, and officials are in regular contact with the relevant departments, Financial Conduct Authority and the Association of British Insurers to monitor the situation and explore potential solutions.

I note your question around liability, the COVID-19 situation and response continues to evolve and the FCO advice is critical to this. We are working closely with our FCO colleagues to understand the impacts of their advice and their response to COVID.

For package holidays under the Package Travel and Linked Travel Arrangements Regulations 2018, where there is an insolvency protection

scheme in place, we are not seeking a change to the current regulation. We are, however, working across Whitehall to consider the policy and fiscal implications of the Commission's insolvency protection recommendation.

The Government continues to monitor the situation, and the department is working closely with all sectors, the regulator and consumer groups to ensure that any policy interventions balance the needs of business with the need to ensure that consumer rights are protected in this time.

Finally, you refer to the suspension of the Air Passenger Rights in relation to Gibraltar. As you may be aware, the suspension applies until the arrangements in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 enter into operation, which has yet to happen. The suspension means that the Regulation does not apply to flights into and out of Gibraltar airport. However, flights from Member States or the UK would be covered based on the airport of departure.

I am copying this letter to Sir William Cash, Chairman of the Commons European Scrutiny Committee, and am copying this letter to Chris Johnson, Clerk to your Committee, Jessica Mulley, Clerk to the Commons Committee, Indira Rao, Legal Adviser to the Commons Committee, Les Saunders, Cabinet Office, and Margaret Browne, departmental scrutiny coordinator.

A handwritten signature in black ink, appearing to read 'R Maclean', with a period at the end.

**RACHEL MACLEAN**

**PARLIAMENTARY UNDER SECRETARY OF STATE FOR TRANSPORT**