



Canadian Transportation Agency  
**Consultations on proposed  
changes to strengthen the  
Air Passenger Protection Regulations:  
What we heard**



# Table of Contents

Introduction .....	3
General Themes .....	3
Exceptional Circumstances .....	5
Compensation .....	9
Rebooking and Refunds.....	10
Assistance.....	13
Communications.....	15
Chain Reactions (Knock-on effects).....	17
Refunds for Government of Canada Travel Advisories .....	18
Next Steps .....	20

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# Introduction

On June 22, 2023, the *Budget Implementation Act, 2023, No. 1* (BIA) received Royal Assent and came into force. It amended the *Canada Transportation Act* (the Act) to clarify, simplify and strengthen Canada's air passenger protection regime. It requires airlines to provide compensation for inconvenience to passengers when there is a flight disruption, unless there are exceptional circumstances. It also puts the burden on airlines to prove the situation is an exceptional circumstance. The Canadian Transportation Agency (CTA) must amend the *Air Passenger Protection Regulations* (APPR) to reflect the changes made to the Act.

Proposed regulatory changes were developed to respond to the new requirements of the Act and to address implementation issues that had been noted since the APPR came into force in 2019. The CTA published a [consultation paper](#) on the proposed regulatory changes and sought feedback from the public, consumer organizations, industry stakeholders and academics from July 11, 2023 to August 10, 2023.

During the consultation period, the CTA received a total of [291 written submissions](#) – 229 submissions from members of the public, 40 submissions from airlines and other industry representatives, 20 submissions from consumer advocacy organizations, and 2 submissions from academics. This report summarizes the input received.

## General Themes

### Public and consumer advocacy organization views

Consumer advocacy organizations and members of the public were generally supportive of the proposed changes to the regulations with an emphasis on a closer alignment with the European Union's (EU) existing air passenger protection regime. Submissions were in support of the proposed approach to determining exceptional circumstances, which would include criteria to be met and an illustrative list; the new limit for an airline's ability to claim knock-on effects; and changes to communication, assistance and rebooking obligations.

Some submissions proposed additional changes to further enhance the regulations, including:

- Ensuring that the list of exceptional circumstances is not too broad/vague;
- Ensuring the refund process is more accessible and automated for passengers; and

- Removing the distinction between small and large airlines, or changing it to be based on the fleet equipment used by airlines.

## **Air industry views**

Air industry stakeholders voiced concerns over the financial impact and burden the proposed regulatory changes could have on airlines. They also highlighted the need for a shared responsibility model that recognizes air travel is an ecosystem which involves multiple players.

Other issues raised by air industry stakeholders included:

- Concern that aligning the APPR with the EU air passenger protection regime may not be suitable for a Canadian operating environment (less dense, lower population, less competition);
- Concern with how safety issues are addressed as exceptional circumstances
- The need for an expanded list of exceptional circumstances (recommended by multiple stakeholders); and
- Recommendations respecting limits to assistance, knock-on effects and communications.

## **Academic views**

Academic submissions were generally supportive of the changes to the regulations to provide simplicity to the regime with some key concepts to keep in mind.

- Points raised included;
- The need to take into account regional and northern airlines that provide essential services to remote communities;
- Ensuring the Canadian airline market remains competitive because of its proximity to the United States with a much denser population;
- Support for the changes to rebooking provisions to better reflect the needs of the passenger; and
- Concern that a longer list of exceptional circumstances increases the chance of "loopholes".

# Exceptional Circumstances

## Current APPR:

Under the current provisions of the APPR, an airline's obligation to pay passengers compensation for inconvenience when there is a flight disruption depends on how much control the airline has over the situation, which can fall into one of the three following categories:

- Situations within the airline's control;
- Situations within the airline's control, but required for safety; and
- Situations outside the airline's control.

The APPR provides for compensation and assistance to be given to passengers only when the disruption is “within airline control”. It also includes a non-exhaustive list of situations that are considered outside airline control (e.g., labour disruptions, weather). If the disruption falls within the "required for safety" category, the airline must provide rebooking or a refund and assistance, but not compensation. If the disruption falls within the "outside the airline's control" category, the airline must only provide rebooking or a refund.

## Changes as proposed in the consultation paper:

The APPR will not have disruption categories. Passengers will be entitled to compensation for inconvenience for all flight disruptions unless there are exceptional circumstances. As is currently the case, the compensation regime will continue to apply only when passengers are informed of the delay or cancellation 14 days or less before the departure time.

The following criteria for events to be considered exceptional are being considered:

- The event that caused the disruption must have been outside the airline's control, and not inherent to the normal exercise of the activities of the airline; and
- The event could not be avoided even if the airline took all reasonable measures to do so.

For greater clarity, a list of exceptional circumstances, as well as a list of those circumstances that would not be considered exceptional, would be added in the regulations. Below are the non-exhaustive lists of the potential circumstances proposed in the consultation paper.

## **Exceptional circumstances** could include:

- Security risks such as war, political instability, illegal acts, sabotage, and terrorism
- Weather or other atmospheric conditions, or natural disasters, that make it impossible to safely operate the flight
- Airport operational issues for which the airline is not responsible
- Hidden manufacturing defects that come to light and affect flight safety
- Health risks or medical emergencies on route that require a flight diversion or discovered shortly before flight departure that make it impossible to safely operate the flight
- Air traffic management restrictions, airspace closures, and airport closures
- An official NOTAM
- Orders or instructions from state, law enforcement agency, or airport security officials
- Labour disruptions at the airline or by essential air service providers like airport managers, air navigation personnel, or ground handlers

## Circumstances that would **not be considered exceptional**:

- Flight crew or cabin crew unavailability
- Staff shortages at the airline
- Technical problems that are an inherent part of normal airline operations
- Any situation the airline knew about, or should have known about, when it sold the ticket to the passenger
- Any action, or failure to act, by the airline or others with which the airline has a contractual relationship

The consultation paper asked for views on the proposed criteria and the preliminary lists of exceptional circumstances and circumstances which would not be exceptional.

Questions:

- What are your views on the proposed criteria for exceptional circumstances?
- Are there circumstances that should be added or removed from either list?

## **Public and consumer advocacy organization views**

### **Criteria/Test**

One organization suggested that the test for exceptional circumstances should focus exclusively on unforeseeable situations. This would prevent air carriers from avoiding paying compensation for disruptions caused by situations that they should have been aware of or should have planned for.

### **List**

Several consumer organizations expressed concerns that the wording used in the list of exceptional circumstances is too broad/vague, and creates grey areas that could be used by airlines in order to avoid paying compensation to passengers.

Many submissions from the public suggested that mechanical issues and airline staff shortages should be considered within an airline's control, as they are quite commonly used as reasoning for disruptions, and therefore should not be considered exceptional circumstances.

Two organizations suggested eliminating the list of exceptional circumstances, and replacing it with a definition of what constitutes an exceptional circumstance to better reflect the effectiveness of the current European Union regulations. The definition could be incorporated within the criteria/test proposed by the CTA.

## **Air industry views**

### **Criteria/Test**

Many air industry stakeholders commented on the wording "not inherent to the normal exercise of the activities of the airline" within the test for exceptional circumstances, stating that the wording is vague, and its interpretation would vary amongst airlines.

Several stakeholders raised concerns about the wording "all reasonable measures" within the list of exceptional circumstances, suggesting that this should be further clarified or defined.

### **List**

Many air industry stakeholders raised concerns over how air safety is addressed in the list of exceptional circumstances, suggesting that the list should be altered to ensure that airlines are not penalized for unexpected safety situations.

One air industry stakeholder proposed a list of exceptional circumstances, which was endorsed by many other air industry stakeholders, and included the following circumstances:

- Labour shortages within the airline or within an essential service provider;
- Any airport operations issues;
- A collision with wildlife, drones, or any other unforeseeable accident;
- System outage or infrastructure breakdown by governmental or essential service providers, essential to the operation of a flight; and
- More specific criteria of technical defects which could be considered exceptional, including provisions in the Minimum Equipment List (MEL) and the Configuration Deviation List (CDL).

Northern airlines suggested that the list of exceptional circumstances include exemptions for flight safety and specifically for unplanned mechanical delays where an aircraft is unfit to fly in accordance with applicable regulations and maintenance protocols.

## **Academic views**

### **Criteria/List**

One academic proposed that a definition for exceptional circumstances be used instead of a list, as a list may be misused. Another academic was concerned about the elimination of unexpected mechanical defects from the list of exceptional circumstances, recommending that this remain a part of the list. They argued that airlines already do their due diligence by following strict maintenance schedules set out by other regulations to prevent mechanical issues.



# Compensation

## **Current APPR:**

Airlines do not have to pay compensation for inconvenience for flight delays and cancellations outside their control or required for safety. However, if the delay or cancellation was within their control, airlines must pay compensation for any delay or cancellation that makes the passenger 3 or more hours late to their final destination. Compensation is due for delays and cancellations that occur 14 days or less before the passenger's original departure time and the amount owed depends on the size of the airline, and/or the length of delay. Airlines must, after they receive a passenger complaint, either provide the appropriate compensation, or provide an explanation as to why compensation is not payable.

## **Changes as proposed in the consultation paper:**

Passengers will be entitled to compensation for inconvenience for all flight disruptions unless there are exceptional circumstances. Following the BIA's amendments to the Act, the burden to prove if a flight disruption was caused by an exceptional circumstance has shifted to airlines. The proposed amendments to the APPR would specify that if an airline refuses a compensation claim, it must give the passenger a detailed explanation, including documentary evidence that the circumstances were exceptional, and reference the applicable terms and conditions of the passenger's ticket, including fare rules.

## **Public and consumer advocacy organization views**

Common points from public feedback were that compensation payments should be automated to ensure timely payment when compensation is due and that compensation amounts should be raised.

One consumer organization expressed concern that documentation provided to passengers may be highly technical, and/or may not be available in passenger's language of choice. This organization said that, as a result, these explanations should be provided using plain language summaries. They also suggested that airlines should document passengers' language preference and provide any documents in that preferred language.

## **Air industry views**

One air industry stakeholder stated that because the burden of proof has been shifted to airlines, the current 30 day window to address passenger claims will be unrealistic, and proposed this window be expanded.

Some air industry stakeholders suggested that in order to provide proof to passengers of an exceptional circumstance, airlines may need access to third party information (airport, security, customs, and navigational services).

## **Academic views**

One academic proposed that airlines be required to submit operational as well as commercial data to determine their decision-making process in accepting or denying passenger claims.

# **Rebooking and Refunds**

## **Current APPR:**

Under the current APPR, there is a complex set of rebooking and refund requirements based on whether an airline is a large or small and if the flight disruption is outside the airline's control or within the airline's control but required for safety. The current rebooking requirements are:

- Large airlines must rebook the passenger on their own or a partner airline's next available flight within 9 hours. If that's not possible, they must book with another airline leaving from that airport
- Small airlines must rebook the passenger on their own or a partner airline's flight. At no point do they have to rebook the passenger on another airline
- After 48 hours, large airlines must rebook the passenger on any airline leaving from a nearby airport, if there is one. They must get the passenger to the other airport at no charge

Current refund requirements specify that airlines must provide the option for either a refund or alternate travel arrangements following a delay of three hours or more or a cancellation, depending on whether an airline is a large or small and if the flight disruption is outside the airline's control or within the airline's control but required for safety. The

airline must provide the refund within 30 days, regardless of the refund format (for example, cash, credit, travel voucher, etc.).

### **Changes as proposed in the consultation paper:**

The proposed amendments to these provisions would simplify the rebooking and refund provisions and provide more choice for the passenger and include the following:

#### **Rebooking**

- Large airlines - no change to 9 hour timeframe
- Small airlines must rebook the passenger on their own or a partner airline's next available flight within 24 hours. If that's not possible, they must book with any airline leaving from that airport
- The 48 hour nearby airport provision would apply to both large and small airlines

These proposed amendments would also include a clarification that as soon as airlines know they cannot offer a flight on their own or a partner airline within the relevant 9/24 hour timeframe, airlines should promptly rebook the passenger on another airline.

#### **Refunds**

- If passengers' flights are cancelled or they are bumped from their flight (denied boarding), they can request a refund immediately
- For flight delays, passengers could choose a refund once the delay reaches 3 hours or more from the planned departure time
- During all disruptions, the airline must provide information to passengers in a proactive and timely way. This information must include the passengers' right to rebooking or a refund and how to claim these
- The maximum time limit for an airline to provide a refund be reduced

### **Public and consumer advocacy organization views**

Several consumer organizations were supportive of the proposed changes to rebooking obligations, and two proposed the elimination of distinctions between small and large airlines for rebooking obligations advising that they should be held to the same standard, to better protect passengers.

Two consumer organizations proposed reducing the 30 day deadline for airlines to provide refunds to passengers to a 7 day deadline to reflect the regulations of the European Union.

In general, the public agreed with the proposed 24 hour rebooking requirement for small airlines and the 3 hour timeframe for refund availability.

Many members of the public argued that refunds using flight vouchers with expiry dates should not be permitted, and that refunds should be more accessible (e.g., at customer service counters, instead of a customer service phone line, which can have long wait times).

## **Air industry views**

Several small/regional airlines and airports expressed concerns over the changes to rebooking obligations for small airlines, stating that rebooking on another airline and/or within 24 hours may not be realistic (e.g., if only one airline operates from the airport, or if there is low flight volume).

One industry stakeholder suggested that the proposed rebooking obligations only be applicable when viable rebooking options exist. This suggestion was supported by several other industry stakeholders. They also argued that the time frame allowing passengers to choose a refund once there has been a flight delay of over 3 hours was too short and should be increased.

Another air industry stakeholder suggested that having to rebook on unaffiliated airlines should not be an obligation, and that passengers have the flexibility to choose the rebooking option that best suits their needs (e.g., can choose to rebook with same airlines vs a different one).

One air industry stakeholder suggested that instead of reducing the deadline to provide a refund in general, it could be reduced only for refunds of tickets booked directly through an airline. It argues that processing refunds of tickets booked indirectly through third-party agencies is too complex for a reduced timeframe, as some third-party tickets are processed on a monthly basis by airlines.

## **Academic views**

One academic suggested that a 48 hour rebooking window is too long and can be financially and emotionally straining for passengers. Instead, a recommendation was made for airlines to have 24 hours to offer a rebooking on their own flights, with an obligation to rebook on other airlines after 24 hours, at the originating airline's expense. They stated that the requirement to provide a refund should also hold for this same 24 hour period.

# Assistance

## Current APPR:

Airlines do not have to provide any standard of treatment ("assistance") to passengers if a disruption is outside their control. For disruptions within their control, even if required for safety, airlines must give passengers assistance. Specifically, they must provide:

- food and drink in reasonable quantities (which may depend on the length of the delay, the time of day and the location of the airport, etc.);
- access to a means of communication; and
- hotel or other comparable accommodation (that is reasonable in relation to the airport location) if the passenger must wait overnight.

Some airlines at times have taken steps to ensure their passengers receive assistance even when a situation was outside of their control. However, there have been situations when passengers have found themselves in transit (or at a location remote from their final destination) without access to food, accommodation, or a means of communication after their flight was cancelled or delayed and the airlines deemed that situation outside their control.

## Changes as proposed in the consultation paper:

The APPR would require airlines to give passengers assistance for all flight disruptions after a defined delay at departure, including in exceptional circumstances. Specifically, it is proposed that:

- Airlines would have to offer passengers assistance starting 2 hours after the scheduled departure time unless passengers have been advised of the delay at least 12 hours before the departure time
- When a disruption occurs, airlines would have to inform passengers, in a proactive and timely manner, of their right to assistance and how to obtain it. (Note: As with the current APPR, these elements of assistance may depend on the length of the delay, the time of day and the location of the airport, etc.)
- When disruptions are caused by exceptional circumstances, an airline would be responsible to provide passengers with some assistance for a certain period of time

## **Public and consumer advocacy organization views**

The public was supportive of the requirement for airlines to provide assistance in the case of all disruptions. Some members of the public felt minimums should be elaborated in the regulations to specify the amount of assistance (e.g., minimum dollar values for food vouchers).

Consumer organizations were supportive of this new proposal for the provision of assistance in all cases, including exceptional circumstances.

## **Air industry views**

Most Northern airlines and industry groups highlighted that the requirement to provide assistance could be difficult or impossible in the northern regions given the remoteness of the location. Some of these locations have no availability or access to hotels and/or restaurants. They recommended that the regulations should clarify that assistance only needs to be offered when the capacity is available to do so.

Most larger airlines brought up the risk that during large-scale disruptions, hotels may increase their prices. These airlines recommended capping hotel prices and limiting assistance requirements – some suggested a maximum of 24 hours with others recommending three nights.

Some airlines suggested that the assistance requirements should not be overly prescribed, as this would not allow them to innovate and differentiate from their competition. For example, some airlines may already offer assistance while other more budget friendly airlines may not.

## **Academic views**

One academic was of the view that the assistance provisions could be strengthened by requiring that in the event that airlines do not provide passengers with the required assistance, that airlines be required to provide extra compensation to the passenger depending on the length of the delay.

# Communications

## **Current APPR:**

In all disruption situations, an airline must explain the reason for the disruption in plain language. It must tell passengers about the assistance, compensation, and remedies they are entitled to, including filing a complaint with the CTA. Airlines must also relay any new information about a disruption as soon as possible; during delays, this means every 30 minutes until a new departure time is confirmed or the passenger has been rebooked. Airlines must ensure their communications are accessible to persons with disabilities, for example by providing visual instead of audible announcements on request.

Despite these protections, passengers complain that they do not always receive complete or timely information. This was particularly observed in situations where passengers purchased their ticket through third parties (such as travel agents, tour operators, online sellers, etc.). Also, assistance (e.g. food, accommodation) is not always offered proactively to passengers who have to make a request to obtain it.

Implementation of communications provisions has also shown that audible announcements that are general in nature are not necessarily the most effective way to communicate key information to passengers.

## **Changes as proposed in the consultation paper:**

The amendments to the APPR would clarify, simplify and strengthen existing requirements around what information airlines need to communicate to passengers and how they must communicate it. It is proposed that:

- Airlines confirm/ask for passengers' preferred means of communication, such as their cell number or email, at check-in (check-in desk, kiosk, online check-in), so that passengers can receive detailed information without delay in the event of a flight disruption.
- Airlines would have to provide disruption information in a proactive and timely manner on their websites and other digital platforms, and to passengers using each passenger's preferred means of communication. This information would also have to be provided through on-site audible announcements when passengers are at the gate.

- Airlines must tell passengers, via their preferred means of communication, about the specific entitlements they have at that moment, and how to claim them. This includes:
  - the specific food, drink, and (when applicable) overnight accommodation entitlements the passenger has;
  - the passenger's right to rebooking or a refund; and
  - the passenger's right to compensation.
- Airlines' disruption announcements and information in their preferred means of communication must tell passengers about the recourse they have, including their right to make a complaint to the CTA.

The consultation paper asked for views on whether there is a better or more efficient way that information can be shared with passengers other than as proposed?

### **Public and consumer advocacy organization views**

The public wanted airlines to communicate clear reasons for a disruption, rather than the current vague language they felt is being used.

Consumer advocacy organizations expressed concerns that airlines would no longer be required to provide all the information prescribed by the APPR through audible announcements at the gate and that communication should not be limited to just electronic means of communication, citing the need for the regulations to remain accessible.

### **Air industry views**

Most larger airlines were in agreement that stronger communication regulations were important. However, most requested a 12 month implementation period to update technology and infrastructure.

Northern airlines raised the issue that there may not always be cell service in remote areas and that there be exceptions to accommodate for this.

### **Academic views**

Academics agreed that there needed to be more timely communication to air passengers highlighting that a major concern of Canadian travelers is the lack of timely



communication during a flight disruption. One academic also suggested service standards for customer service communication be made available publicly and airlines be required to report on these standards to ensure compliance.

## **Chain Reactions (Knock-on effects)**

### **Current APPR:**

The APPR recognize that sometimes a disruption on one flight leads to a disruption on the next flight that was meant to use the same plane (or flight crew). If a disruption is caused by a situation outside the airline's control or required for safety, the subsequent flights affected can claim that same situation as the reason for their disruption. In these situations, the airline does not owe the passengers any compensation or assistance.

The current APPR do not put any limit on the number of flights that can claim the original disruption was the reason why they were delayed or cancelled. This creates a lack of clarity for both passengers and airlines regarding how long a prior disruption can still be considered to have an impact.

### **Changes as proposed in the consultation paper:**

Under the APPR, passengers would be entitled to compensation for all flight disruptions unless there are exceptional circumstances. It is proposed that only two flights in a row can claim the same exceptional circumstance as the reason they have been delayed or cancelled. This would limit the exemption to pay compensation for inconvenience to only:

- The flight that actually experiences the exceptional circumstance; and
- The next flight scheduled to use that plane (or flight crew).

No further flights could claim the original exceptional circumstance as the cause of a disruption.

### **Public and consumer advocacy organization views**

Some of the consumer groups agreed with the proposed two-flight limit. One suggested that the two-flight limit only be applicable to the next flight scheduled to use the same aircraft, and not the crew. One consumer group suggested the knock-on provision be entirely eliminated arguing that airlines may use this as a loophole.

## **Air industry views**

Most airlines were against the two-flight knock-on effect proposal and most recommended that the limit be a time-based limit instead of flight segment-based limit. The airlines recommended a limit of 48 hours to allow time for recovery, arguing that the flight segment limit would potentially have greater negative impacts on regional airlines operating short haul flights.

Industry also cautioned against aligning with the Europe Union (which has a two-flight limit) on this issue stating that the operating environment in Canada is quite different from the EU, given the more variable weather, greater distances between destinations and low population density.

Industry stated this two-flight limit could put more pressure on airlines to include more buffer times between flights, resulting in reduced service.

Northern airlines highlighted that given the remote nature of their operations, most scheduled flights may have two or more stops ("milk runs") before the aircraft reaches its final destination. This would result in each leg of the flight being impacted by a delay. These airlines suggested that this new rule could result in the cancellation of entire flight routes rather than risk impacting other routes. They emphasize that these flights are essential to communities and this will have a negative impact on the health and safety of the residents in remote communities.

## **Academic views**

Both academic submissions highlighted that knock-on effects could disproportionately impact regional and Northern airlines, due to their business being centered around shorter haul flights using one aircraft for multiple rotations. One suggested that Northern airlines be exempt from this provision.

# **Refunds for Government of Canada Travel Advisories**

## **Current APPR:**

Passengers do not have any right under the APPR to a refund if they cancel their ticket based on Government of Canada travel advisories. Advisories give Canadians information and advice about situations that could affect their safety when they travel outside Canada.

They set risk levels such as "Exercise a high degree of caution", "Avoid non-essential travel", or "Avoid all travel".

### **Changes as proposed in the consultation paper:**

It is proposed to give passengers the right to a refund, under the APPR, with no charge or penalty when they cancel their ticket because of a Government of Canada travel advisory, if:

- The advisory is for the passenger's destination country or a connecting country,
- The advisory risk level has risen since the passenger bought their ticket, and
- The new recommendation is either "avoid non-essential travel" or "avoid all travel."

### **Public and Consumer Organization views**

Some members of the public felt this provision was excessive and that travel insurance covers any risk when a travel advisory is issued that may be of concern. Others agreed that this new provision is important and that passengers should be entitled to this right.

### **Air Industry views**

Some industry organizations suggested that this would position airlines as the insurer of these advisories and may increase the financial risk of providing service to certain destinations. This may cause airlines to avoid certain destinations with frequent travel advisories in order to avoid potential mass refund claims. Others suggested that customers have the ability to purchase a more flexible ticket and this impacts different ticket pricing models.

International airlines suggested that this change would make Canada an outlier on this matter. These airlines suggested that if passengers were to cancel their ticket last minute because of a travel advisory, it would cause significant financial losses for the airlines as they would still be obliged to operate this flight.

In order to avoid last minute cancellations, some airlines suggested adding in a time limitation. One suggestion was to require the request for a refund occur within 7 days of the change in the travel advisory.

### **Academic views**

Academics did not comment on the new travel advisory provision.

## **Next Steps**

The CTA appreciates the participation of the public, consumer advocacy organizations, the air industry and academics throughout the consultation process. Draft regulations will be prepared, taking into consideration the input received. These draft regulations will be published in Canada Gazette, Part I for further public review and comment.