

L.N. 280 of 2011

**CONSUMER AFFAIRS ACT
(CAP. 378)**

**Denied Boarding (Compensation and Assistance to Air Passengers)
Regulations, 2011**

IN exercise of the powers conferred by article 7 of the Consumer Affairs Act, the Minister responsible for Consumer Affairs, after consultation with the Consumer Affairs Council, has made the following regulations:-

1. The title of these regulations is the Denied Boarding (Compensation and Assistance to Air Passengers) Regulations, 2011. Title.
2. In these regulations, unless the context otherwise requires:- Interpretation.
 - "the Act" means the Consumer Affairs Act; Cap. 378.
 - "the Director General" means the Director General (Consumer Affairs) as defined in the Act;
 - "operating air carrier" means an air carrier 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 that passenger; and
 - "Regulation 261/2004" means Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 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, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance).
3. Exclusively for the purposes of these regulations, "passengers" are classified as "consumers" according to paragraph (iii) of the definition "consumer" in article 2 of the Act.
4. (1) For the purpose of Article 16 of Regulation 261/2004, the Director General is the designated person responsible for the enforcement of the provisions of Regulation 261/2004 with regard to flights from airports situated in Malta and flights from a third country to airports situated in Malta. Designated person and powers thereof.

(2) In discharging his functions under these regulations, the Director General shall have the same functions and powers prescribed under the Act and, in particular, shall issue such order or decision, or take such measure as he deems appropriate in terms of the Act.

Administrative
fines.

5. An operating air carrier which fails to comply with an obligation imposed on it by Articles 4 to 6, 10, 11 or 14 of Regulation 261/2004 shall be guilty of an infringement punishable by an administrative fine of not less than four hundred and seventy euro (€470) and not exceeding five thousand euro (€5000):

Provided that in the case of non-compliance with a compliance order, the Director General may impose a daily fine of not less than one hundred and twenty euro (€120) and not more than two hundred and thirty euro (€230) for each day of non-compliance.

Due diligence
defence.

6. (1) Subject to the following provisions of this regulation, in proceedings against any operating air carrier for an infringement under regulation 5, 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 such an infringement.

(2) An operating air carrier shall not be entitled to rely on the defence provided by sub-regulation (1) by reason of its reliance on information supplied by another operating air carrier, 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) that it had no reason to disbelieve the information.

Right to appeal.

7. Any person who feels aggrieved by a decision, order, administrative fine or measure imposed or taken by the Director General, may file an appeal before the Competition and Consumer Appeals Tribunal in terms of the Act.

Cap. 378.

