



## Aviation Predictions 2021

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From UK spaceflight to drones, we offer our international experts' predictions on the opportunities and challenges that the aviation market may face in the coming year and beyond.

### 1. The future of flight: hydrogen-powered aircraft

2020 bore witness to a landmark moment in aviation: the world's first hydrogen fuel cell powered flight of a commercial-grade aircraft, which took place in the UK. Earlier exploration into hydrogen-power had focused on wide-bodied aircraft and floundered. Those behind this cutting-edge technology identified smaller aircraft with a 500 mile range as the market where the science could deliver an economically viable, climate-friendly reality. Neglected regional and general aviation airports may yet experience a renaissance and come to the forefront of a green air travel revolution. So often berated when it comes to environmental issues, the aviation industry is now at the fore of bringing real change and a positive response to climate change. Hydrogen-powered aircraft have the potential to meet the industry's long-term aim of zero emissions while offering a reduction in operating costs compared to traditional turbine engines. A win-win. The future is bright. The future is hydrogen.

### 2. COVID-19 and air passenger claims: the new DVT?

The London aviation insurance market last saw a major class action in England and Wales nearly 20 years ago when passengers mounted a group action against more than 50 carriers for the onset of deep vein thrombosis (DVT) in the course of flight. Ensuing litigation resulted in a win for carriers in the House of Lords. It also gave birth to a multi-million pound market for in-flight compression stockings. Dial forward to 2020 and the COVID-19 pandemic presents potential pickings for claimant lawyers. In 2021 we may see group action against carriers for how they have dealt with flight cancellations and ticket refunds: there has been some inconsistency of approach on that front. What too of passengers who claim to have contracted COVID-19 in-flight? The physical and associated financial impact for some COVID-19 sufferers may be significant and of uncertain duration, so whetting the appetite for claims. Claimants would need to evolve novel legal argument to find the existence of an 'accident' necessary to establishing convention Article 17 liability and proving a responsibility on the part of a particular carrier might also be difficult. However, if the stakes are high enough, and evidence related to specific flights can be established, group litigation might well be a runner.

### 3. Pre-flight passenger testing: the new norm?

In seeking to resuscitate the global commercial air travel industry, it is all but inevitable that compulsory pre-flight testing, to screen passengers for COVID-19, will replace existing quarantine measures. In the course of 2020, in response to the pandemic, the public has adjusted to voluntary testing. Yesterday's taboo has become today's norm. Taking this beyond the response to COVID-19, the time may be ripe to embrace additional pre-flight passenger testing. Disruptive passenger behaviour in-flight is irksome at best, can cause flight diversion (a costly operational headache for the carrier) and has the potential to cause serious incident or accident, with attendant costs to aviation insurers. Against a backdrop of growing public acceptance of testing, has the time come to introduce mandatory breathalyser tests prior to boarding?



#### 4. UK Spaceflight : on your bike, Baikonur?

The Space Industry Act 2018 promises to usher in a new era in British spaceflight. This will include the expansion of commercial space, sub-orbital and associated activities, bringing additional opportunities for the global space insurance market. That ambition can only be realised if there are UK spaceports with ground or air launch capabilities. The UK's ambition may not be to displace Baikonur or French Guiana. However, the dream is that future annals of commercial spaceflight activity in its broadest sense, will speak of North Uist, Unst, the A' Mhòine peninsular, Prestwick, Campbeltown, Snowdonia and Newquay. The earmarked sites are not without geographical challenge and operations will have to counter seasonal UK weather conditions. Spaceflight operations above the UK skies also have the potential for air traffic control headaches and there are associated environmental concerns (e.g. fuel spillages on sites and noise pollution on launch). In 2021 work will also continue apace to flesh out the regulations for UK spaceflight, to put meat on the bones of the Space Insurance Act 2018. This will include regulations governing licencing, spaceflight accident investigation and, importantly, insurance that will herald a new dawn for UK spaceflight capabilities.

#### 5. Consumer supply chains: drones are go

Drone package delivery is set to be a major success story of 2021. It is perhaps one of the few industries to have been given a boost by the COVID-19 pandemic. In the current world of quarantine, lockdowns and restrictions on movement from the home, the time is ripe for drones to adopt a strong presence in the home delivery market. There is always a flip-side of course and the shift to drone delivery will serve further to erode the traditional high street. From an aviation insurance perspective, higher levels of drone traffic in our skies dials up heightened potential for accidents and incidents and associated insurance liability claims. We have already seen the potential that a misuse of drones has for interference in airport operations: in December 2018 Gatwick airport suffered a 30 hour shutdown following drone sightings close to the runway, impacting on around 140,000 passengers and over 1000 flights. The Gatwick incident remains unresolved. A similar event in the future, which cannot be ruled out, would likely have a sideways impact upon the wider drone industry in terms of a temporary shutdown of drone operations, at short notice, and in the mid-term, changes to regulation.

#### 6. Aviation Regulation 2021: all up for grabs?

Aviation regulation is heavily embedded in EU regulation, from flight operations and safety to aviation security, airport slot allocation process to air traffic management, consumer protection to emissions trading. Post-Brexit, we do not foresee major kneejerk reaction and change to the aviation status quo, but instead a gradual review and readjustment to a more UK-centred approach, where required. This is not without risk as anything that provokes the EU could result in restrictions being imposed on UK carriers operating in European airspace.

#### 7. A Chinese perspective: Golden Week foreshadows a bright return

In 2021, Chinese aviation is set to roar back into business. In the 'Golden Week' holidays from 1 to 8 October 2020, around 13.26m people travelled by air in China, equivalent to 91.1% of passenger numbers in the same period in 2019. This indicates strong recovery, certainly by China's domestic aviation industry, to the relief of Chinese airlines (who struggled to pay staff salaries just months ago) and the aviation industry in general. There are shoots of recovery also on the international front, with interesting lessons to be learned: China replaced restrictions on carriers with 'reward and circuit breaker' rules in June. These mandated one week's suspension of a route if five passengers tested positive in a single flight, while rewarding an additional flight per week to carriers with a clean slate in terms of COVID-19 positive passengers over any three week period. Pre-flight testing and compulsory 14-day quarantine (for international flights), plus health QR-code monitoring and travel tracking (for domestic flights) seem to have worked well for China. All augurs well for a bright return to form for Chinese aviation. This may also shine a golden light on potential recovery (and risk exposure) for the aviation industry globally.



## 8. A French perspective: global regulators will consider one-pilot manned aircraft

A few decades ago, cockpit flight crew minima for commercial passenger aircraft operations (20 seats plus) was reduced from three to two. In supporting the resurgence of the industry, airlines, looking to shave their operating costs, may ponder the feasibility of single pilot aircraft. Current regulation does not permit this, primarily from a practical perspective: the cockpit flight deck architecture of commercial aircraft is not designed with single pilot operation in mind. However, single pilot autonomous flight and, beyond that, fully autonomous flight is the future for the next generation of commercial aircraft. Back in January 2020, Airbus achieved an autonomous take-off and in July 2020, an A350 completed a whole flight, unmanned: taxi, take-off and landing. There is still the hurdle of public trust to overcome. If aircraft manufacturers can do that, then the science-fiction of autonomous flight looks set to become a reality.

## 9. A French perspective: regulatory inquiries will be launched by national regulators over airline ticket refunds

Even in cases of flight cancellation due to 'extraordinary circumstances', while airlines are relieved of their obligation to pay compensation they are still obliged to refund tickets to passengers pursuant to regulation EC261/2004. In the light of flight cancellations due to the COVID-19 pandemic, there has been mixed response by carriers. Some have made prompt refunds, other airlines, finding themselves with significant cash flow issues, have failed to refund tickets in timely fashion and/or urged passengers to accept vouchers in lieu. We predict many national regulators will launch inquiries, with the prospect of fines for recalcitrant airlines, further impacting airlines during the COVID-19 crisis.

## 10. A Canadian perspective: increase in Canadian class actions expected as COVID-19 continues to disrupt business and affect consumers

2020 saw an increase in class actions in many areas, including claims of price gouging and health related claims, more of which are expected to arise over the coming months. The aviation and tourism industry has been hit particularly hard because most flights and vacations were cancelled due to COVID-19. Several proposed class actions, both in Canada and other jurisdictions, have been commenced by consumers seeking refunds for flight bookings that were cancelled because of COVID-19. All of the major Canadian airlines (including Air Canada, WestJet and Air Transat) and a number of foreign carriers are challenging these proposed class action lawsuits. As of January 2021, none of the actions have been certified.



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