EXPLANATORY MEMORANDUM TO THE

AIR CARRIER LIABILITY (NO 2) REGULATIONS 2004

(SI 2004/1974)

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. This memorandum contains information for the Joint Committee on Statutory Instruments.

3. Description

The main purpose of this instrument is to update a reference to European Community legislation in the Carriage by Air Acts (Application of Provisions) Order 2004. It also corrects the language used in the Air Carrier Liability Regulations 2004 describing the maximum level of the fine that may be imposed on summary conviction for offence provisions described in that Order.

4. Matters of special interest to the Joint Committee on Statutory Instruments

The Joint Committee on Statutory Instruments in a letter to the Department dated 22 June 2004 drew attention to the fact that the penalty level on summary conviction for offences provided for in the Air Carrier Liability Regulations 2004 (S.I. 2004/1418) was described as "not exceeding level 5 on the standard scale" when the wording ought to have been "not exceeding the statutory maximum". These Regulations correct that error.

5. Legislative Background

General: These Regulations amend article 2 of the Carriage by Air Acts (Application of Provisions) Order 2004 by updating the definition given for the Council Regulation (Council Regulation 2027/97) to include the amendment to that Regulation made by Regulation (EC) No 889/2002 of the European Parliament and of the Council.

EC legislation: Regulation 889/2002 is directly applicable and is therefore not the subject of transposition. It was cleared by the Lords Select Committee on the European Communities on 18 July 2000 (1041st sift) and by the House of Commons European Scrutiny Committee on 19 July 2000 (Report No.25 - Session 99/2000).

6. Extent

This instrument applies to all of the United Kingdom.

7. Policy background

On 29 April 2004 the United Kingdom ratified a Convention for the Unification of Certain Rules for International Carriage by Air (the 1999 Montreal Convention). It entered into force on 28 June. Article 3 of the Carriage by Air Acts (Application of

Provisions) Order 2004 consolidates with amendments a number of Orders that provide -

a) for the 1999 Montreal Convention to apply to carriage that is not international carriage for the purposes of certain air carrier liability Conventions pre-dating the 1999 Montreal Convention, and

b) for those earlier Conventions to have the force of law in the UK for international air carriage to which they apply.

It disapplies its provisions in respect of Community air carriers to which the Council Regulation, as defined, has the force of law in the UK. This amendment updates that definition.

This amendment is of a technical nature and formal consultation of this instrument was not considered necessary.

The amendment to the Air Carrier Liability Order 2004 is a response to the JCSI letter.

8. Impact

A Regulatory Impact Assessment has been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

Peter Smith at the Department for Transport - Tel no: 020 7944 5893 - can answer any queries regarding the instrument.