EXPLANATORY MEMORANDUM TO

THE CIVIL AVIATION (INSURANCE) (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. 1363

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport ("the Department") and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 These Regulations make the necessary corrections, arising as a result of the United Kingdom's exit from the European Union ("EU"), to Regulation (EC) 785/2004 which prescribes minimum insurance requirements for air carriers and aircraft operators in respect of passengers, baggage, cargo and third parties. These Regulations will be made in accordance with powers in section 8 of the European Union (Withdrawal) Act 2018 ("the Act") to give effect to these changes.

Explanations

What did any relevant EU law do before exit day?

2.2 Regulation (EC) 785/2004 establishes minimum insurance requirements for air carriers and aircraft operators in respect of passengers, baggage, cargo and third parties. It also requires that air carriers and aircraft operators should have insurance which covers specific risks including acts of war, terrorism, hijacking, acts of sabotage, unlawful seizure of aircraft and civil commotion.

Why is it being changed?

2.3 Regulation (EC) 785/2004 will be retained in United Kingdom law by operation of the Act. These Regulations make the necessary changes to the retained version of Regulation (EC) 785/2004 and some minor amendments to the Civil Aviation (Insurance) Regulations 20051, to ensure that the law continues to operate effectively after the United Kingdom has left the EU.

What will it now do?

2.4 The policy content of Regulation (EC) 785/2004 remains unchanged. The corrections made through these Regulations are set out below in paragraphs 7.1 to 7.6.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

[1] SI 2005/1089.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State has made the following statement regarding Human Rights:

"In my view the provisions of the Civil Aviation (Insurance) (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 These Regulations are made in exercise of powers in section 8 of the Act.

6.2 The Act makes provision for repealing the European Communities Act 1972 and will preserve EU law, as it stands at the moment of exit, in United Kingdom law. It enables the creation of a new body of domestic legislation by bringing the texts of directly applicable EU legislation into domestic legislation, as well as saving EU-derived domestic legislation which was made to implement the United Kingdom's obligations as a member of the EU.

6.3 The Act also contains temporary power to make secondary legislation to enable Ministers and the devolved administrations to make secondary legislation to correct legislation that would no longer operate appropriately once the United Kingdom has left the EU, so that the domestic legal system continues to function correctly outside the EU.

6.4 Regulation (EC) 785/2004 establishes minimum insurance requirements for air carriers and aircraft operators in respect of passengers, baggage, cargo and third parties. Its content will be retained in United Kingdom law by virtue of the Act. These Regulations makes the necessary changes to the retained version of Regulation (EC) 785/2004, as well as a minor amendment to the Civil Aviation (Insurance) Regulations 2005. In doing so, these Regulations make provision in relation to powers in Regulation (EC) 785/2004 (e.g. to adjust the prescribed minimum insurance requirements) so as to confer these powers on the Secretary of State.

7. Policy background

What is being done and why?

7.1 These Regulations make minor changes to the version of Regulation (EC) 785/2004 on insurance requirements for air carriers and aircraft operators which is retained in United Kingdom law by virtue of the Act. These changes include amendments to Articles 1, 2, 4, 5, 6, 7, 10 and 11 to reflect that the retained legislation applies only to the United Kingdom. Several definitions in Article 3 are amended to ensure that references throughout these Regulations reflect these changes, and Articles 8 and 9 are revoked as each has become redundant.

7.2 The amendments to ensure that the powers to legislate contained in Articles 5(5), 6(1) and (5), and 7(2) continue to function correctly are more substantive. Article 5(1) sets out how air carriers and aircraft operators should demonstrate compliance with the insurance requirements set out in the Regulation. Article 5(5) contains a provision

which allows the Commission to determine the appropriate measures for the application of Article 5(1) in cases of exceptional insurance market failure. When the United Kingdom has left the EU, the Commission will no longer be able to perform this role in relation to United Kingdom air carriers and aircraft operators. Instead, these Regulations will allow the Secretary of State to make regulations which enable paragraph 1 to be applied with modifications.

7.3 Article 6 sets out levels of insurance in respect of liability for passengers, baggage and cargo. Under Article 6(1), the minimum insurance cover for liability in respect of passengers is set at 250,000 SDRs[2] per passenger. For non-commercial operations by aircraft with a MTOM[3] of 2,700 kg or less, there is an option for Member States to set a lower level of minimum insurance cover, which the United Kingdom has chosen to exercise. To ensure that the flexibility provided for in Article 6(1) is retained, Article 6(1) is amended to include a provision for the Secretary of State, by regulations, to set a lower level of minimum insurance cover in respect of non-commercial operations by aircraft with a MTOM of 2,700kg. The current level in respect of such operations is 100,000 SDRs and is prescribed in regulation 5 of the Civil Aviation (Insurance) Regulations 2005. This level continues to apply until the power in Article 6(1) is exercised.

7.4 Article 6(5) sets out that the values referred to in Article 6 may be amended if required because of changes to international treaties. These Regulations include a provision for the Secretary of State, by regulations, to make the necessary amendments to these values if required. Article 7(2) sets out that the values referred to in Article 7(1) may be amended where it is required as a result of changes to international treaties, and this is amended to enable the Secretary of State, by regulations, to amend the values in Article 7.

7.5 To ensure the appropriate level of parliamentary scrutiny of regulations made by the Secretary of State in the exercise of any of these powers, Regulation 9A provides that the exercise of such powers is subject to the affirmative resolution procedure.

7.6 These Regulations also amend the Civil Aviation (Insurance) Regulations 2005 to amend regulation 3 and revoke regulation 4(2), which will not be relevant once the United Kingdom has left the EU as the retained version of Regulation (EC) 785/2004 will only apply to the United Kingdom.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There are no current plans to consolidate.

[2] Special Drawing Right; it is an international reserve asset.
[3] Maximum Take-off Mass.

10. Consultation outcome

10.1 The CAA has been consulted throughout the preparation of this statutory instrument and the aviation industry has been informed of the Department's intentions to lay statutory instruments using powers in the Act to fix deficiencies in retained EU legislation. Consultation took the form of regular meetings with representatives of air carriers, airports and others as well as representative trade associations both individually on a bilateral basis and in group settings at stakeholder workshops. Workshops at official level took place in February and September 2017 and in July 2018, and at Ministerial level in February 2017. Department for Transport representatives have regularly updated the sector at long established stakeholder forums for the general and business aviation sector and with the aerospace sector.

11. Guidance

11.1 No guidance is necessary.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because it makes only minor changes to correct deficiencies in retained EU law and the impact on businesses and the public sector is limited to minor familiarisation costs.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that the impact on business, charities or voluntary bodies in respect of the changes to the Retained Regulation 785/2004 are limited to minor familiarisation costs.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is: this legislation does not make any substantive changes to insurance requirements for air carriers and aircraft operators. Monitoring of the policy content of the retained version of Regulation 785/2004 will take place in the course of normal departmental business.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Rosanna Thomson at the Department for Transport Telephone: 07773073594 or email: Rosanna.thomson@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Michael Clark, Deputy Director for Technology and International Aviation, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Baroness Sugg, Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 77	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 The Parliamentary Under Secretary of State, Baroness Sugg has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

1.2 "In my view the Civil Aviation (Insurance) (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate".

1.3 This is the case because: The changes made by these Regulations to Regulation (EC) 785/2004 are primarily very minor and do no more than is strictly necessary to ensure the correct functioning of the retained legislation once the United Kingdom has left the EU. As set out in the 'Policy Background' section above, where these Regulations make provisions for the Secretary of State to make regulations under Articles 5, 6 and 7, these will be subject to the affirmative procedure to ensure the appropriate level of parliamentary scrutiny.

2. Good reasons

2.1 The Parliamentary Under Secretary of State, Baroness Sugg has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

2.2 "In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.3 These are:

- Ensuring that the insurance requirements for air carriers and aircraft operators continue to be clear once the United Kingdom has left the EU by ensuring that the legislation functions correctly.
- Ensuring that where Regulation 785/2004 allows flexibility for Member States to set minimum levels of insurance, the United Kingdom continues to benefit from this flexibility. The relevant provisions are described above in paragraphs 7.2 – 7.6.
- Ensuring that where courses of action were available to the Commission in exceptional cases of insurance market failure, equivalent courses of action are available to the United Kingdom in such circumstances. The relevant provisions are described above in paragraph 7.2 – 7.6.

3. Equalities

3.1 The Parliamentary Under Secretary of State, Baroness Sugg has made the following statement(s):

3.2 "The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

3.3 The Parliamentary Under Secretary of State, Baroness Sugg has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

3.4 "In relation to the draft instrument, I, Baroness Sugg have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.