EXPLANATORY MEMORANDUM TO

THE AIR PASSENGER RIGHTS AND AIR TRAVEL ORGANISERS' LICENSING (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. [XXXX]

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 This instrument makes the changes needed to retained EU legislation on air passenger rights. These changes ensure that the legislation continues to function correctly after the UK has left the EU and provides continuity for passengers in terms of the passenger rights and insolvency protection regime that applies in relation to air travel. It also ensures that the scope of the enforcement regime in place is consistent with the scope of the retained EU legislation. In addition, the instrument amends domestic legislation made to implement mutual recognition of insolvency protection regimes for package travel between EU Member States under the EU Package Travel Directive. This reflects that, in a no-deal scenario, the UK's insolvency protection regime may not be recognised by EU Member States.

Explanations

What did any relevant EU law do before exit day?

2.2 This instrument amends the following EU Regulations as retained by the European Union (Withdrawal) Act 2018 ("the Withdrawal Act"):

- Regulation 261/2004 which establishes the rights of passengers – including the right to compensation and assistance – if they are denied boarding against their will, or their flight is cancelled or delayed;
- Regulation 1107/2006 which establishes the rights of disabled passengers and those with reduced mobility to access air transport and to receive free-of-charge assistance to enable them to use it on an equal footing with other passengers; and
- Regulation 2027/97 which harmonises the obligations of Community air carriers with regards to liability for injury to passengers and damage to baggage in line with the provisions of the Convention for the Unification of Certain Rules for International Carriage by Air ("the 1999 Montreal Convention").

The Air Travel Organisers' Licence ("ATOL") scheme protects consumers who have booked holidays with a travel business holding an ATOL, in the event that the business ceases trading. The Package Travel Directive (Directive 2015/2302) provides for mutual recognition of insolvency protection regimes between Member States. The mutual recognition elements of the Package Travel Directive were in part implemented in the UK by the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 ("the 2012 ATOL Regulations"). The 2012 ATOL Regulations exempt businesses established in EEA Member States and their UK agents from the requirement in UK law to hold an ATOL, because the protection scheme in that

Member State is recognised in the UK. They also require UK established businesses to hold an ATOL for sale of flight packages within the EEA and this insolvency protection is recognised in other Member States.

Why is it being changed?

2.3 This instrument makes the changes needed to retained EU legislation on air passenger rights and domestic legislation made to implement the UK's obligations under the Package Travel Directive. These changes ensure that the legislation continues to function correctly after the UK has left the EU. They also ensure that there is continuity in terms of the passenger rights that apply to air travel and that consumers will continue to be protected if there is no mutual recognition of insolvency protection regimes after Exit day.

What will it now do?

2.4 The rights of air passengers set out in Regulations 261/2004 and 1107/2006 will remain the same, as will the obligations on air carriers regarding their liability for injury to passengers and damage to baggage under Regulation 2027/97. This instrument makes the changes needed to ensure that the retained Regulations function correctly after Exit day, to provide continuity in terms of the routes and operators which currently fall within the scope of the EU Regulations and to ensure that the regime in place to enforce Regulation 261/2004 is consistent with the scope of the retained Regulation.

This instrument also removes mutual recognition provisions in the 2012 ATOL Regulations meaning that in a scenario where the UK leaves the EU without a deal, EEA established businesses will be required to hold an ATOL for package holiday sales in the UK. UK businesses will not be required to hold an ATOL for their package sales outside the UK but within the EEA.

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.

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. Regulation 5 also makes provision for extra-territorial application of UK offences to also capture breach of Regulation 261/2004 occurring outside the UK.

5. European Convention on Human Rights

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

"In my view the provisions of the Air Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is made in exercise of powers in section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 ("the Withdrawal Act"). The instrument is also being made under section 2(2) of the European Communities Act `972 ("the ECA") and section 71 of the Civil Aviation Act 1982, which contains the domestic powers underpinning the ATOL scheme.

6.2 The Withdrawal Act makes provision for repealing the ECA and will retain certain EU law, as it stands at the moment of exit, in UK law. It provides for 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 UK'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 deal with deficiencies in retained EU law, to ensure that the United Kingdom's legal system continues to function properly outside the EU.

6.4 In relation to passenger rights legislation, this instrument amends the retained versions of Council Regulation 2027/97 (as amended by Regulation 889/2002), Regulation 261/2004 and Regulation 1107/2006 to ensure that these Regulations continue to function properly once the UK has left the EU. It also makes consequential changes to domestic primary and secondary legislation relating to air carrier liability which reflect the changes made to Council Regulation 2027/97.

6.5 The instrument makes changes to the offences in the Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005. This change takes place in two stages and ensures that the scope of enforcement regime is consistent with the scope of the retained Regulation 261/2004 as amended by this instrument. First, under section 2(2) of the ECA, this fills a gap in the existing implementation of Regulation 261/2004 by providing for offences in relation to a breach of Regulation 261/2004 abroad. This reflects that a breach of obligations under Regulation 261/2004 could occur outside the UK, by a carrier in respect of whom the Civil Aviation Authority (CAA) is currently responsible for enforcing the Regulation. This change will come into force before Exit day. Second, the instrument widens the scope of the offences for breach of the Regulation after the UK leaves the EU to align with the changes being made to this Regulation by Part 4 of the instrument. This change will come into force on Exit day and ensures that the retained Regulation is fully enforceable by the CAA.

6.6 In relation to the ATOL scheme, the instrument makes changes to reflect that the mutual recognition of insolvency protection regimes under the Package Travel Directive will no longer apply between the UK and EEA Member States after the UK has left the EU. The Package Travel and Linked Travel Arrangements (Amendment) (EU Exit) Regulations 2018 make similar changes to the Package Travel and Linked Travel Arrangements Regulations 2018, which also implement that Directive.

7. Policy background

What is being done and why?

7.1 Regulation 261/2004: The EU Regulations that this instrument amends provide an important consumer protection regime for air passengers. Regulation 261/2004 sets out the rights of passengers – including the right to compensation and assistance – in cases of denied boarding as well as cancellations and long delay of flights. The rights and the circumstances in which they apply remain unchanged. As well as technical changes, this instrument makes the following changes to Regulation 261/2004 as retained by the Withdrawal Act:

7.2 Scope of the Retained Regulation: Currently, the EU Regulation applies to passengers departing from an airport located in the territory of an EU Member State, and to passengers departing from an airport located in a third country to an airport in an EU Member State if the flight is being operated by an EU carrier.

7.3 This instrument amends the retained Regulation 261/2004 so that it continues to apply to passengers departing from an airport in the UK or from an airport in another country if the carrier is a UK carrier. The original EU Regulation will continue to apply to flights from airports in EU Member States, and flights from third countries if they are being operated by an EU carrier.

7.4 To ensure that there is continuity for consumers in terms of the routes and flights in respect of which the rights contained in Regulation 261/2004 apply, this instrument also extends the application of the retained Regulation to passengers departing from an airport in another country to a UK airport if the flight is being operated by an EU carrier. It would also apply to passengers departing from an airport in another country to an airport in an EU Member State if the flight is being operated by a UK carrier. This ensures that passengers will continue to enjoy the same rights as today.

7.5 Enforcement Regime: The CAA will continue to enforce passenger rights legislation. For the purposes of Regulation 261/2004 the CAA's enforcement function is set out in the Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005 ("the 2005 Regulations). Regulation 3 of the 2005 Regulations sets out offences for breach of Regulation 261/2004. These offences currently only apply to breaches of the Regulation 261/2004 which take place in the UK whereas the CAA's responsibility for enforcing Regulation 261/2004 also extends to UK carriers operating flights from third countries to the UK. This means that there is a gap in the existing implementation of the enforcement regime, so this instrument uses section 2(2) of the ECA to extend the offences so that they are aligned with the scope of the CAA's current responsibility for enforcing Regulation 261/2004. These changes come into force before Exit day.

7.6 This instrument also changes the scope of the offences in regulation 3 of the 2005 Regulations so that after Exit day, the scope of the offences will be consistent with the scope of the retained Regulation 261/2004. This means that CAA will be able to fully enforce the retained Regulation in relation to routes operated by UK air carriers from an airport in a country other than the UK to the territory of an EU Member State, where this is currently enforced by other Member States. These changes come into force on Exit day.

7.7 Similar changes are made by this instrument to the complaints provision in Article 16(2) of Regulation 261/2004 to ensure that the CAA is the designated body for

complaints for all flights in respect of which it is responsible for enforcing the Regulation.

7.8 Conversion from Euros to Pounds Sterling: Article 7 of Regulation 261/2004 sets out in Euros the amount of compensation passengers are eligible to receive, depending on the distance their flight covers and the length of time they are delayed. For the purposes of the retained Regulation 261/2004, the amounts of compensation are calculated in pounds sterling. This instrument sets out that the values in Article 7 will be replaced with the following: (a) £220 instead of €250 for all flights of 1500 kilometres or less, (b) £350 instead of €400 for all flights between 1500 and 3500 kilometres and £520 instead of €600 for all flights not falling under (a) or (b). The exchange rate used to calculate these amounts is the average for the year to 31 December 2017.

7.9 Regulation 1107/2006: This Regulation sets out the rights of disabled persons and persons with reduced mobility when travelling by air, for example the right to assistance at airports without additional charge and, and the right to assistance by air carriers without additional charge. These rights remain unchanged. To ensure that there is continuity for consumers in terms of the routes in respect to which the retained Regulation apply, this instrument also extends Articles 3, 4 and 10 of the Regulation to passengers departing from an airport situated in another country to an airport in the UK, if the flight is being operated by an EU carrier or a UK carrier and to an airport in an EU Member State if the flight is being operated by a UK carrier.

7.10 This instrument also makes technical changes to the retained Regulation 1107/2006, for instance substituting references to "international, Community and national law" to "international law and the law of England and Wales, Scotland and Northern Ireland".

7.11 Regulation 2027/97: Council Regulation 2027/97 (as amended by Regulation 889/2002) implements and supplements provisions in the 1999 Montreal Convention relating to air carrier liability in connection with death or bodily injury of passengers as well as destruction, loss or damage to baggage and damage occasioned by delay. The substantive requirements in Regulation 2027/97 remain unchanged. This instrument makes the changes needed for the legislation to continue to function correctly when the UK has left the EU. For example substituting references to "Community air carrier" with "UK air carrier". EU carriers like other non-UK carriers will be required to comply with the domestic provisions implementing the 1999 Montreal Convention in the UK. EU Regulation 785/2004 on insurance requirements for air carriers and aircraft operators implements elements of the 1999 Montreal Convention in relation to insurance. The corrections needed for the retained version of Regulation 785/2004 to continue to function once the UK has left the EU are being made through the Civil Aviation (Insurance) (Amendment) (EU Exit) Regulations 2018.

7.12 Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012: The Package Travel Directive provides for mutual recognition of insolvency regimes between Member States. The mutual recognition elements of the Package Travel Directive were implemented in the UK in the 2012 ATOL Regulations. The ATOL scheme protects consumers who have booked holidays with a travel business holding an ATOL, in the event that the business ceases trading.

7.13 The 2012 ATOL Regulations exempt EEA established businesses and their UK agents from the requirement in UK law to hold an ATOL, on the basis that consumers will be

protected by equivalent schemes in the Member State in which the business is established. This instrument removes the mutual recognition elements in the 2012 ATOL Regulations as in a no-deal scenario, EU Member States would not be required to recognise the UK's insolvency protection scheme. This is in line with the approach in the Government's technical notice which sets out how consumers' rights would be protected if the UK leaves the EU with no deal, available here: https://www.gov.uk/government/publications/consumer-rights-if-theres-no-brexit-deal--2.

7.14 Consequential changes: Regulations 2, 3 and 4 of this instrument make consequential changes to the Carriage by Air Act 1961, the Air Carrier Liability Regulations 2004 and the Carriage by Air Acts (Application of Provisions) Order 2004 to be consistent with the changes made by this instrument. For instance, section 1(2) of the Carriage by Air Act 1961 which exempts carriers regulated under Regulation 2027/97 from the UK's wider domestic implementation of the 1999 Montreal Convention is amended so that the exemption, in line with the amended Regulation, only applies to UK carriers.

7.15 Transferred matters for Northern Ireland: The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where the Government wants devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. Civil aviation (other than in relation to aerodromes) is a reserved matter for Northern Ireland, however consumer protection in relation to services and aerodromes are transferred matters for Northern Ireland. The EU legislation amended by this SI is considered to fall within civil aviation, and any domestic secondary legislation made to implement it therefore applies to the whole of the UK, although there is a separate complaints body designated under the Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2014 in respect of complaints under Regulation 1107/2006 relating to an airport in Northern Ireland or a flight departing from an airport in Northern Ireland.

7.16 This SI primarily concerns matters which are reserved for Northern Ireland, but as it also amends legislation which concerns transferred matters for Northern Ireland, it has been drafted in close consultation with the Northern Ireland departments.

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. The instrument is also made under paragraph 21 of Schedule 7 of the European Union (Withdrawal) Act 2018 in particular to make consequential amendments to domestic legislation to reflect the changes made to Council Regulation 2027/97. 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.

8.2 Alongside the EU (Withdrawal) Act 2018 powers, the instrument is also being made under section 71 of the Civil Aviation Act 1982 which contains the domestic powers underpinning the ATOL scheme to make changes to the ATOL scheme in light of the UK's withdrawal from the EU and section 2(2) of the European Communities Act

1972, to provide for extra-territorial application of offences for breach of Regulation 261/2004.

9. Consolidation

9.1 There are no plans to consolidate the legislation covered by this instrument.

10. Consultation outcome

10.1 Department for Transport Ministers and officials have regular engagement with the aviation industry, travel industry and consumer representatives. Through specific meetings and workshops on EU Exit, and at long-established stakeholder forums, a number of issues related to the UK's withdrawal from the EU have been addressed. This includes plans for making secondary legislation to ensure that the statute book continues to function irrespective of the outcome of negotiations. There was support amongst stakeholders for continuity in terms of the rights of air passengers after Exit day, and for ensuring that consumers continue to be adequately protected in the event of a travel business ceasing trading. The Department also works closely with the CAA on all aviation matters, including preparing for EU Exit, and has consulted the CAA on this instrument in line with the statutory duty to consult the CAA in respect of changes to the ATOL scheme.

11. Guidance

11.1 The Department for Transport is not producing any specific guidance on the amendments provided for in this instrument.

12. Impact

12.1 The impact on business, charities or voluntary bodies in respect of the changes to the retained Regulations 261/2004, 1106/2006 and 2027/97 are limited to minor familiarisation costs. If mutual recognition under the Package Travel Directive ceases after Exit day, this could mean that ATOL protection is not recognised within the EEA as meeting the requirements for insolvency protection in relation to sale of travel packages. This would be a wider impact of a no-deal scenario, as opposed to an effect of changes made by this instrument.

The effect of changes provided for in this instrument on UK-established business is that they will not be required to hold an ATOL in respect of sales in the EEA after Exit day, however they would be required to comply with any legislation on insolvency protection in that Member State. In respect of sales in the UK, the requirement for UK-established businesses to hold an ATOL remains unchanged. The effect of the changes provided for in this instrument on businesses based in the EEA is that they will be required to hold an ATOL if they wish to sell package travel in the UK after Exit day. This is not currently required. In addition to familiarisation costs, there are some costs involved in obtaining an ATOL. Depending on the type of ATOL required, these costs can include an application fee, ATOL bond and administration costs to ensure that the criteria for the ATOL are met. This instrument makes no changes to the cost of applying for ATOL or to the application process. A full breakdown of application fees and criteria for each type of ATOL is available on the CAA's website using the following link: https://www.caa.co.uk/ATOL-protection/Trade/About-ATOL/Choosing-the-right-ATOL/Overview-of-ATOL-licences/.

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 the arrangements provided for in this instrument mean that the same businesses previously within the scope of EU air passenger rights legislation will fall within the scope of UK legislation. In relation to passenger rights, there are no substantive changes to the requirements they are expected to meet, therefore the impact is limited to minor familiarisation costs. This instrument does not make any changes to the costs involved in obtaining an ATOL and therefore will not have an impact on existing ATOL holders beyond familiarisation costs. As set out above in paragraph 12.1, businesses in the EEA wishing to sell package travel in the UK after Exit day will be required to hold an ATOL.

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 Regulations 261/2004, 1107/2006 and 2027/97 are limited to minor familiarisation costs. Types of ATOL are already differentiated on the basis of the type of business protected.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is for it to be monitored in the course of normal departmental business.

14.2 This instrument amends provision in the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 and the Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005 which is already subject to review by virtue of existing provision in regulation 2 and regulation 6 of those Regulations respectively. The Secretary of State is required to review the operation and effect of those Regulations as amended by this instrument and publish a report at intervals not exceeding five years. The report of the latest Post Implementation Review in relation to ATOL was dated 26th January 2017 and can be found at the following link: http://www.legislation.gov.uk/uksi/2012/1017/resources. The first review of the Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005 is due be published by 4th August 2021.

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

15. Contact

15.1 Jonne Olkinuora at the Department for Transport Telephone: 0734205632 or email: Jonne.Olkinuora@dft.gov.uk, or Rosanna Thomson Telephone: 07773073594 or email Rosanna.thomson@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sacha Hatteea, 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 7	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 the use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Air Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate".

1.2 This is the case because: the changes this instrument makes to retained EU legislation on air passenger rights are limited to those necessary to ensure that the legislation functions correctly once the UK has left the EU and to ensure that consumers who are protected prior to Exit day continue to be protected after the UK has left the EU.

2. Good reasons

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

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

2.2 These are:

Ensuring that the legislation on air passenger rights continues to function correctly once the UK has left the EU

Ensuring that there is clarity for air carriers, airports and consumers as to which legislation will apply once the UK has left the EU, and which requirements they are expected to meet

Ensuring that consumers who are protected prior to Exit day continue to be protected once the UK has left the EU

3. Equalities

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

"The 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."

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

"In relation to the 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.

5. Criminal offences

5.1 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:

"In my view there are good reasons for widening the scope of criminal offences in this instrument."

5.2 These are:

The amendments made by this instrument to the retained version of Regulation 261/2004 mean that flights operated by United Kingdom air carriers from countries outside the United Kingdom to airports in European Union Member States remain within the scope of the retained Regulation. Similarly, this instrument provides that flights operated by Community carriers or UK carriers from countries outside the United Kingdom to airports in the United Kingdom remain within the scope of the retained Regulation.

In order to provide for enforcement of the Regulation on these routes, this instrument extends the scope of the Civil Aviation Authority's (CAA) enforcement function under Article 16 so that the CAA is responsible for the enforcement of the retained Regulation as a whole, rather than being limited to routes from airports in the United Kingdom and from third countries to such airports.

The Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005 contain criminal offences for breaching requirements in Articles 4 to 6, 10, 11 or 14 of Regulation 261/2004. This instrument amends the 2005 Regulations so that the scope of the criminal offences is the same as the scope of the retained Regulation 261/2004, and the same as the scope of the CAA's enforcement function.