EXPLANATORY MEMORANDUM TO

THE CIVIL AVIATION (INSURANCE) (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 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 Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations are being made in order to address further deficiencies arising as a result of the United Kingdom's exit from the European Union ("EU"), in 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 Article 126 of the Withdrawal Agreement provides for a transition period following the UK's exit from the EU, during which EU law will continue to be applicable to and in the United Kingdom. Regulation (EC) 785/2004 will be retained in United Kingdom law at the end of the transition period by operation of the Act. These Regulations address further deficiencies in Regulation (EC) 785/2004 as a result of amendments made to it by Regulation (EU) 2019/1243, to ensure that the law continues to operate effectively after the end of the transition period.

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 paragraph 7.1 to 7.3.

3. Matters of special interest to Parliament

Matters of special interest to the Committees on the UK's exit from the European Union

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.

5. European Convention on Human Rights

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

"In my view the provisions of the Civil Aviation (Insurance) (Amendment) (EU Exit) Regulations 2020 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 (as amended by the European Union (Withdrawal Agreement) Act 2020) makes provision for repealing the European Communities Act 1972 and will preserve EU law, as it stands at the end of the transition period, 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 powers to make secondary legislation to enable Ministers and the devolved administrations to make secondary legislation to correct legislation that no longer operates appropriately after EU exit and the end of the transition period, so that the domestic legal system continues to function correctly after the end of that period.

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. The Civil Aviation (Insurance) (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1363) ("the 2018 Regulations") amend this Regulation to fix deficiencies arising out of EU exit. (As a result of paragraph 1(1) of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020, the 2018 Regulations will now come into force on IP completion day rather than on exit day.) Since the 2018 Regulations were made, Regulation (EU) 2019/1243 has amended Regulation (EC) 785/2004 to replace the powers for the Commission to make delegated Acts adjusting the prescribed minimum insurance requirements. These Regulations amend the 2018 Regulations so that they include fixes for the deficiencies in these replacement powers.

7. Policy background

What is being done and why?

7.1 Articles 6 and 7 of Regulation (EC) 785/2004 set out minimum levels of insurance in respect of liability for passengers, baggage, cargo and third parties. Articles 6(5) and 7(2) read with Article 9 confer powers on the Commission to adjust these minimum levels where amendments to the international treaties make this necessary. The 2018

Regulations include amendments to fix the deficiencies in these provisions by instead conferring these powers on the Secretary of State. However, since the 2018 Regulations were made, Regulation (EU) 2019/1243 has amended Regulation (EC) 785/2004 to substitute new versions of Articles 6(5) and 7(2) and insert a new Article 8a, replacing the original Commission powers with new versions more closely aligned to the legal framework established by the Treaty of Lisbon. The 2018 Regulations therefore need to be amended so that they include fixes for the deficiencies in these new provisions. These Regulations fix the deficiencies in the new versions of Articles 6(5) and 7(2) by taking the same approach used in the 2018 Regulations for the previous versions of these powers – the Commission powers are replaced with powers for the Secretary of State to amend the minimum insurance requirements by regulations.

7.2 New Article 8a inserted by Regulation (EU) 2019/1243 includes provision for the European Parliament or the Council to object to continuation of the delegated powers at five-year intervals and/or to revoke them at any time. It is considered that these provisions have no practical application in relation to the UK or are otherwise redundant and/or concern arrangements involving EU entities which are no longer appropriate. These Regulations therefore amend the 2018 Regulations to insert a provision revoking Article 8a.

7.3 Article 9A of Regulation (EC) 785/2004, which is inserted by the 2018 Regulations, provides that the exercise of the Secretary of State's powers is subject to the affirmative resolution procedure.

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 plans for consolidation.

10. Consultation outcome

10.1 The Civil Aviation Authority has been consulted about this statutory instrument. They understood the reasons for it and agreed with the approach taken. The devolved administrations and the aviation industry have been informed of the Department's intention to lay this statutory instrument before Parliament.

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 the costs and benefits to business are expected to fall below £5m net in any one year. This is because the SI 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 businesses is limited to minor familiarisation costs.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that 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 (EC) 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 Hannah Nicoll at the Department for Transport (Telephone: 07785696843 or email: hannah.nicoll@dft.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Mike Alcock, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rachel Maclean MP, 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 14, 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 15, 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) Act 2018

1. Appropriateness statement

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

"In my view the Civil Aviation (Insurance) (Amendment) (EU Exit) Regulations 2020 do no more than is appropriate."

1.2 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 following the end of the transition period. As set out in the 'Policy Background' section above, where these Regulations make provision for the Secretary of State to make Regulations under Articles 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, Rachel Maclean MP, 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 the provisions in this instrument, and I have concluded they are a reasonable course of action."

2.2 These are:

- Ensuring that the insurance requirements for air carriers and aircraft operators continue to be clear after the end of the transition period by ensuring that the legislation functions correctly; and
- Ensuring that where Regulation (EC) 785/2004 allows flexibility for Member States to set minimum levels of insurance, the United Kingdom continues to benefit from this flexibility.

3. Equalities

3.1 The Parliamentary Under Secretary of State, Rachel Maclean MP, has made the following statement(s):

"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."

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

"In relation to the draft instrument, I, Rachel Maclean, 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.