EXPLANATORY MEMORANDUM TO

THE PACKAGE TRAVEL AND LINKED TRAVEL ARRANGEMENTS (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. XXXX

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Act.

2. Purpose of the instrument

Explanations

What did any relevant EU law do before exit day?

2.1 The Package Travel and Linked Travel Arrangements Regulations 2018 (S.I. 2018/634) ("the 2018 Regulations") implement the EU Package Travel Directive (2015/2302) ("the Directive"). The 2018 Regulations protect consumers buying package holidays or linked travel arrangements (LTAs) and impose obligations on the organisers of package holidays ("organisers") and traders which facilitate LTAs ("traders"): the degree of protection is greater in the case of packages. Those protections include the provision of information to travellers, so that travellers have clear information about their package holiday or LTA and their statutory rights, as well as a requirement that organisers put in place adequate insolvency protection to cover, in the event of the organiser's or trader's insolvency, the refund of payments made by or on behalf of passengers and, if necessary, their repatriation.

2.2 The following are of particular relevance to this instrument:

a) Insolvency protection

Before exit day, under mutual recognition requirements in Article 18 of the Directive, Member States must recognise the insolvency protection put in place by organisers / traders under the law of the Member State in which they are established.

Accordingly, under regulations 19 and 26 of the 2018 Regulations, organisers / traders established in other EU Member States are exempt from having to comply with the UK insolvency rules (the UK rules require organisers / traders to have ATOL protection[1] or have in place insurance cover, a bond or a trust fund). In return, UK organisers / traders benefit from the equivalent recognition and exemption in other Member States.

b) Central Contact Point

The Directive requires Member States to establish central contact points, the main purpose of which is to facilitate administrative cooperation between Member States in relation to insolvency protection and, in particular, the exchange of information concerning national insolvency requirements.

[1] The ATOL scheme provides protection to consumers that have booked an ATOL protected flight or holiday involving a flight, from the potential insolvency of their travel provider. In the rare event of a failure, the scheme ensures consumers can complete their holiday, or receive a refund if they are yet to travel.

Accordingly, regulation 19(11) of the 2018 Regulations appoints the Civil Aviation Authority (CAA) as the lead UK central contact point.

c) Obligations on retailers

The Directive and 2018 Regulations place obligations on organisers of packages (the trader which combines the relevant travel services creating the package holiday) as opposed to the retailer (agent) which might sell the package. However, implementing article 20 of the Directive, regulation 27 of the 2018 Regulations requires that where a UK-established retailer sells a package holiday combined by an organiser established outside the EEA the retailer is subject to the obligations in Part 4 (performance of the package) and Part 5 (insolvency protection) of the 2018 Regulations unless the retailer provides evidence that the organiser complies with those Parts.

Why is it being changed?

2.3 The 2018 Regulations are being changed to make them to work effectively, for the protection of travellers, after exit. In particular the changes are made because, on EU exit, the UK, as it ceases to be a Member State to which the Directive applies, will no longer benefit from the mutual recognition provisions of the Directive. In consequence, the remaining Member States will no longer be required to recognise the insolvency protection put in place under the 2018 Regulations by UK organisers / traders (requiring them to comply, potentially, with multiple regulatory regimes) and it is also unclear whether the insolvency protection put in place by organisers / traders established in the remaining EU states will continue to protect UK travellers. As a result, the Department does not consider it appropriate to continue to recognise the insolvency protection put in place by traders established in remaining Member States.

What will it now do?

2.4 The principal changes are:

a) Insolvency protection

The instrument removes the exemption for organisers / traders established in Member States, so that, if they sell or offer for sale package holidays or LTAs in the UK, or direct such activities at the UK, they will be required to comply with the UK insolvency protection rules – on the same basis as UK organisers / traders and indeed traders established elsewhere in the world.

b) Central contact point

Regulation 19(11) of the 2018 Regulations is revoked so that the CAA will cease to be designated as the central contact point. This does not affect the CAA's other statutory functions in relation to package travel, as an enforcer under Part 8 of the Enterprise Act 2002 and Schedule 5 (investigatory powers) to the Consumer Rights Act 2015.

c) *Obligations on retailers*

The instrument extends regulation 27 so that, where they sell a package combined by a non-UK established organiser (as opposed to a non-EEA established organiser as at present), UK-established retailers are required to comply with Parts 4 and 5 of the 2018 Regulations unless the UK-established retailer provides evidence that the organiser complies with those Parts.

2.5 Aside from those changes, the instrument makes various other changes mainly to deal with references to EU legislation.

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 This instrument extends throughout the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, has made the following statement regarding Human Rights:

"In my view the provisions of The Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 As noted in paragraph 2.1 of this Memorandum, the 2018 Regulations transpose Directive (EU) 2015/2302 and came into force on 1 July 2018. The 2018 Regulations replaced the Package Travel, Package Holidays and Package Tours Regulations 1992 (S.I. 1992/3288).

6.2 This instrument is made in exercise of the powers under section 8(1) of the European Union (Withdrawal) Act 2018 to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union in relation to the deficiencies in sections 8(2)(a), (c) and (g).

7. Policy background

What is being done and why?

7.1 This SI amends PTR 2018 in the following areas:

a) Insolvency protection

The policy justification for the revocation of the exemption of EU-established organisers / traders from the insolvency protection requirements of the 2018 Regulations is, as explained in paragraph 2.3 above, because it is not considered appropriate for the UK to continue to recognise the insolvency protection put in place by those organisers / traders when it is unlikely that UK-established traders will continue to benefit from that recognition in remaining EU Member States. Continuing that exemption would unfairly minimise barriers to trade for EU businesses trading into the UK with no guarantee that UK-established organisers / traders can continue to enjoy the same benefit in trading into EU Member States. It is also important to ensure that UK travellers are adequately protected in the case of insolvency of an EU-established organiser / trader.

b) *Central contact point:*

The role of a central contact point serves no purpose once the mutual recognition requirements of the Directive cease to apply to the UK.

c) *Obligation on Retailers:*

The application of regulation 27 is extended to ensure adequate protection of travellers: in particular, once the Directive ceases to apply to the UK it is important that UK retailers selling packages combined by an EU-established organiser can ensure that there is adequate insolvency protection in place to protect travellers – whether the retailer provides that protection itself or is satisfied, on the basis of evidence, that the organiser has adequate protection in place. This may place additional obligations on UK retailers although the Department considers that these will be negligible in practice (see section 12).

7.2 This instrument applies to consumer protection which is a transferred matter for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. The Department has been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

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 As this instrument makes (apart from the changes in section 2.4 of this Memorandum) only minor changes to the 2018 Regulations and aims to maintain existing protections so far as possible, no consultation was needed.

11. Guidance

11.1 No guidance is necessary as the aim of the instrument is to continue the measures set out in the 2018 Regulations as far as possible after EU Exit.

12. Impact

12.1 The impact on business, charities or voluntary bodies considered as a result of this Statutory Instrument will stem from becoming familiar with the changes in law and updating existing contracts with EEA organisers.

12.2 The amendment to regulation 27 could present an additional cost to a proportion of UK retailers which sell packages organised by EEA traders if they are unable to ensure the organiser has taken out appropriate insolvency cover. Since EEA organisers directing business into the UK are required to hold protection by UK law we expect the amendment to regulation 27 to affect an insignificant number of UK retailers.

12.3 There is no significant impact on the public sector.

12.4 A full impact assessment has not been prepared in this instance and instead a *De Minimis* assessment has been carried out since it has been estimated that the associated impacts on businesses and the public sector will be negligible.

13. Regulating small business

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

13.2 No steps have been taken to minimise the impact of the requirements on small businesses (employing up to 50 people), as no new requirements are being introduced. The purpose of the instrument is simply to retain existing requirements where possible and ensure they are operable after EU exit.

14. Monitoring & review

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

15. Contact

15.1 Abimbola Nathan at the Department for Business, Energy and Industrial Strategy. Telephone: 020 7215 0798 / Abimbola.nathan@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sarah Mackintosh, Deputy Director for EU Consumer Policy, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kelly Tolhurst, Minister for Small Business, Consumers and Corporate Responsibility, at the Department for Business, Energy and Industrial Strategy 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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	
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 Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

In my view the Package Travel and Linked Travel Arrangements (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate".

1.2 This is the case because the changes made by this instrument are limited to changes considered appropriate to deal with the deficiencies outlined in Section 2.1 of this Explanatory Memorandum and do not bring about a wider policy change or impose any new liabilities or obligations on any relevant persons.

2. Good reasons

2.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, 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 that this instrument addresses failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU, and does not change current policy with regards to package travel. The policy rationale for the changes are set out in paragraph 7.1 of this Explanatory Memorandum.

3. Equalities

3.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, 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 Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Kelly Tolhurst, 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.