

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Sixth Delegated Legislation Committee

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

*Wednesday 9 January 2019*

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**The Committee consisted of the following Members:**

*Chair:* GERAINT DAVIES

† Afolami, Bim (*Hitchin and Harpenden*) (Con)  
 † Brereton, Jack (*Stoke-on-Trent South*) (Con)  
 † Donelan, Michelle (*Chippenham*) (Con)  
 Eagle, Ms Angela (*Wallasey*) (Lab)  
 † Foxcroft, Vicky (*Lewisham, Deptford*) (Lab)  
 † George, Ruth (*High Peak*) (Lab)  
 † Gibson, Patricia (*North Ayrshire and Arran*) (SNP)  
 † Kawczynski, Daniel (*Shrewsbury and Atcham*)  
 (Con)  
 † Keegan, Gillian (*Chichester*) (Con)  
 Kendall, Liz (*Leicester West*) (Lab)

† Kinnock, Stephen (*Aberavon*) (Lab)  
 Nandy, Lisa (*Wigan*) (Lab)  
 † Norman, Jesse (*Minister of State, Department for  
 Transport*)  
 † Pursglove, Tom (*Corby*) (Con)  
 † Trevelyan, Anne-Marie (*Berwick-upon-Tweed*) (Con)  
 † Turner, Karl (*Kingston upon Hull East*) (Lab)  
 † Vickers, Martin (*Cleethorpes*) (Con)

Anwen Rees, *Committee Clerk*

† **attended the Committee**

## Sixth Delegated Legislation Committee

Wednesday 9 January 2019

[GERAINT DAVIES *in the Chair*]

### Draft Air Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulation 2018

2.30 pm

**The Minister of State, Department for Transport (Jesse Norman):** I beg to move,

That the Committee has considered the draft Air Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulation 2018.

It is a pleasure to serve under your chairmanship, Mr Davies. The draft regulations will be made under the powers conferred by the European Union (Withdrawal) Act 2018 and will be needed if the UK leaves the European Union in March without a deal. Following the UK's decision in the 2016 referendum to leave the EU, the Government have been working hard to develop a positive future relationship with the EU. The Department for Transport has undertaken significant work on the withdrawal negotiations and to prepare for the full range of potential outcomes from the negotiations.

The best outcome is for the UK to leave with a deal and, as hon. Members will be aware, a draft withdrawal agreement is being considered. Delivering the deal negotiated with the European Union remains the Government's priority, but as a responsible Government we are under an obligation to make all reasonable plans to prepare for a no-deal scenario. To that end, officials have conducted especially intensive work to ensure that there continues to be a well functioning legislative and regulatory regime for aviation and consumer protection. We set out in the technical notices published in September how that would work, and the instrument before the Committee provides the means to deliver some of those outcomes.

The draft instrument corrects three EU regulations that provide an important consumer protection regime for passengers travelling by air. It also makes some changes to the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012, which were recently amended to implement elements of the package travel directive. The three EU regulations are: first, regulation 261/2004, which establishes the rights of passengers, including their right to compensation and assistance, if they are denied boarding against their will or if their flight is cancelled or delayed; secondly, regulation 1107/2006, which establishes the rights of disabled passengers and those with reduced mobility to use air transport, as well as their right in law to receive free-of-charge assistance; and thirdly, regulation 2027/97, which harmonises the obligations of Community air carriers regarding their liability for injury to passengers and damage to baggage, in line with the provisions of the 1999 Montreal convention.

The package travel directive provides for consumer protection in relation to package holidays and other linked travel arrangements. It is primarily implemented

in the UK by the Package Travel and Linked Travel Arrangement Regulations 2018. Corrections to those regulations, so that they continue to work after exit day, have already been made through the Package Travel and Linked Travel Arrangement (Amendment) (EU Exit) Regulations 2018—quite a mouthful, but important in law.

Provisions under the directive relating to insolvency protection are implemented in part through the air travel organisers' licensing scheme. The directive provides for the mutual recognition among European economic area member states of insolvency protection regimes. The draft regulations make changes to the ATOL regime to reflect the fact that that mutual recognition will no longer apply to the UK after exit day in a no-deal scenario. The draft regulations correct the retained EU regulations I have listed and the 2012 ATOL regulations to ensure that the statute book continues to function correctly after exit day and air passengers can continue to benefit from the rights and protections set out in EU legislation.

On regulation 261/2004, the substantive rights of passengers to assistance, rebooking and compensation in the event that they are denied boarding or are subject to long delays or cancellations remain the same. The EU regulation sets out that those rights apply to passengers travelling on a flight departing from any airport in the EU, and flights departing from an airport in a third country to an airport in the EU if the carrier is an EU carrier. The draft regulations change the scope of the retained regulation to reflect the fact that the UK will no longer be part of the EU after exit day. The retained regulation will apply to all flights departing from an airport in the UK and flights departing from an airport in another country if the carrier is a UK carrier. To ensure full continuity on the routes in relation to which passengers can benefit from the rights and protections set out in the regulation, the retained regulation will also apply to flights into the EU from countries other than the UK if they are operated by a UK carrier, and will also apply to flights from third countries to the UK if they are operated by an EU carrier.

Other changes that the instrument makes reflect the fact that the UK will no longer be part of the EU, including converting compensation amounts set out in euros in the EU regulation into pounds sterling. Finally, the instrument ensures that the Civil Aviation Authority is able to enforce the retained regulation fully and effectively by ensuring that provisions relating to complaints and the domestic provisions setting out criminal offences for persistent breaches by air carriers of provisions in the EU apply to the same routes and air carriers as in the retained EU regulation itself.

In relation to regulation 1107/2006, the rights that disabled passengers and persons with reduced mobility are able to benefit from when travelling by air also remain unchanged. Those rights include the right to assistance at airports without additional charge and the right to assistance by air carriers without additional charge. Once again, the draft regulations ensure full continuity for consumers by making certain that the retained regulation 1107/2006 will apply after exit day to passengers using or intending to use commercial passenger air services on departure from, transit through, or arrival at UK airports. Certain provisions will also

continue to apply to flights departing from a third-country airport to the UK if the flight is operated by a UK air carrier. In the same way as regulation 261/2004, these provisions will also apply to flights into the EU from countries other than the UK if the flight is being operated by a UK carrier, and flights from third countries to the UK if the flight is being operated by an EU carrier.

These provisions set out that air carriers and tour operators cannot refuse travel to passengers on the grounds of disability or reduced mobility; that if it is not possible for an air carrier, agent or tour operator to accommodate a passenger with a disability or with reduced mobility on the grounds of safety or the size of the aircraft or its doors, the passenger should be reimbursed or offered re-routing; and finally that air carriers are required to provide assistance without additional charge—for example, allowing assistance dogs in the cabin of the aircraft and arranging seating suitable to meet the needs of the individual.

The third EU regulation covered by the draft regulations is regulation 2027/97, which sets out provisions relating to the liability of air carriers for injury or death of passengers, as well as for damage to or loss of baggage. Most of the provisions of that regulation implement elements of the 1999 Montreal convention, and the changes that the draft instrument makes to retained regulation are limited to those needed to reflect the fact that the UK will no longer be an EU member state after exit day—for example, substituting references to “Community air carrier” with references to “UK air carrier”. The instrument also makes a small number of consequential changes to existing domestic legislation to reflect those changes. Further elements of the 1999 Montreal convention relating to insurance were implemented by EU regulation 785/2004 and the statutory instrument making the necessary corrections to those regulations has already been debated and approved by this House.

Finally, the draft regulations change the 2012 ATOL regulation to require businesses established in the EU or EEA and their agents who wish to sell into the UK to hold an air travel organisers’ licence. That ensures that consumers who have purchased a package including an element of air travel continue to be protected in the event that mutual recognition of insolvency protection regimes between the UK and EU or EEA member states ceases if there is a no-deal exit from the EU. The instrument also removes the requirement for UK companies selling in EU or EEA member states to hold an ATOL. That reflects the fact that without mutual recognition, those companies would already be required to comply with the insolvency protection regime of the member state in which they are selling and would otherwise be required to hold duplicate protection.

We are continuing to work to achieve a positive future relationship with the EU, and this instrument is an essential element of our contingency planning for a no-deal exit. It ensures that in the event of no deal, the UK’s framework for consumer protection on air travel would continue to work effectively, and that the aviation industry and consumers alike have clarity about the regulatory framework that would be in place in the unlikely event of a no-deal scenario. I commend the draft regulations to the Committee.

2.39 pm

**Karl Turner** (Kingston upon Hull East) (Lab): It is always a pleasure to serve under your chairmanship, Mr Davies. As ever, I intend to be brief, but I hope that the Minister will answer the points I will raise.

As the Minister has just mentioned, the draft regulations are part of the many aspects of EU law falling into UK law under the Government’s EU withdrawal Act. We will obviously be supportive of them. The draft regulations focus on four areas of legislation: passenger rights, including compensation; rights of disabled passengers; liability for injury to passengers and damage to baggage; and insolvency protection regimes and ATOL.

Under the draft regulations, the Civil Aviation Authority will continue to enforce passenger rights legislation. Implementation will be extended to UK carriers operating flights from third countries to the UK, in line with the current scope of the CAA. That means that the CAA can enforce regulations in respect of routes operated by UK carriers from an airport in a third country to the territory of an EU member state, where this is currently enforced by other member states. Has the Minister considered extending the scope of the criminal offences in the draft instrument, so that the CAA is effectively then responsible for the enforcement of the retained regulation as a whole, rather than being limited to routes from airports in the UK and from third countries to such airports?

My understanding is that no deal 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. That is concerning. Will the Minister confirm whether that is the case? If it is, what contingency plans have the Government put in place as part of their no-deal planning? I look forward to the Minister answering those points. If he needs to do so in writing, I am happy for him to do that.

2.42 pm

**Patricia Gibson** (North Ayrshire and Arran) (SNP): I will be extremely brief, Mr Davies. These provisions are welcome because, as we all recognise, it is important to retain EU legislation on air passenger rights and to have continuity in terms of passenger rights that apply to air travel, and to know that consumers continue to be protected if there is no mutual recognition of insolvency protection regimes after exit day.

We all agree that this is very important. It is essential that we have clear assurances that in the event of a no-deal Brexit, all EU air safety standards will be unilaterally applied and that work will continue with the EU to ensure that adequate systems are in place, to fully protect passengers, and that current EU passengers’ rights and standards are locked into any future partnership. That will, at the very least, ease some concerns about deregulation in the event of hard Brexit.

I will end by saying to the Minister that each day, regrettably, the number of people requiring this protection reduces, as sterling hit a 20-month low last month and fewer and fewer of us can actually afford to travel, with the pound being worth less than it was before the confusion that we currently face.

2.43 pm

**Jesse Norman**: I am grateful to the two hon. Members who have spoken for expressing their parties’ support for the legislation and for the questions they have asked.

*[Jesse Norman]*

The hon. Member for Kingston upon Hull East asked whether there is any way to extend the scope of the associated criminal offences. It is an interesting suggestion and we will take it on board. He will be aware that in law, under the European Union (Withdrawal) Act 2018, we are not permitted to extend the scope—we are really about “lifting and shifting” EU law into UK law—but in the event of a no-deal Brexit or another managed agreement, there may well be scope to consider his suggestion and I am grateful to him for it.

The issue of ATOL protection not being recognised is a technical one, as the hon. Gentleman said, and I will write to him if need be, but part of the point of the

measure is that we should be able to enforce regulation where it is needed. There are only 13 EEA businesses requiring ATOL registration in the UK, so it is not an enormous issue in terms of the number of businesses involved, although some of them are large businesses. Of course, he will be aware that there are parallel protections under EU law for people who use EU services without regard to ATOL.

To the hon. Member for North Ayrshire and Arran, I say only that I note the point she made and that I am grateful for her support.

*Question put and agreed to.*

2.45 pm

*Committee rose.*