

**EXPLANATORY MEMORANDUM TO THE
CIVIL AVIATION (INSURANCE) REGULATIONS**

2005 No. 1089

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The purpose of this instrument is to make provision necessary following the adoption of EU Regulation 785/2004, which imposes on air carriers and other aircraft operators minimum insurance obligations in respect of liability for passengers, baggage, cargo and third parties. It identifies the competent enforcement authorities (principally, the Civil Aviation Authority), creates sanctions for non-compliance with the provisions of the Regulation, including a number of criminal offences, and specifies the minimum level of passenger insurance for light aircraft.

3. Matters of special interest to the Joint Committee on Statutory Instruments/Select Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators comes into force on 30 April 2005.

4.2 Using powers provided by section 2(2) of the 1972 European Communities Act, these Regulations discharge the obligations placed on the UK to ensure that air carriers and aircraft operators comply with the Regulation and provide sanctions for infringement of the Regulation that are effective, proportionate and dissuasive.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 Although UK commercial air carriers have for many years been required to provide the CAA annually with evidence of adequate insurance, Regulation (EC) 785/2004 places an obligation of insurance upon non-public transport aircraft operators in the UK for the first time. In order to ensure compliance with the Regulation aircraft operators will normally be required to submit

evidence of adequate insurance when they register an aircraft for the first time or upon a change in ownership. The CAA will also carry out random inspections to check for evidence of adequate insurance.

- 7.2 The Regulations provide for the CAA to act as the competent UK authority in discharging the obligations placed on the UK by the EC Regulation in relation to operators of aircraft registered in UK or elsewhere in the Community and aircraft which are exempt from registration requirements. They also allow the CAA to act on behalf of the Secretary of State in relation to aircraft registered in a non-EC country but operating to, from or within the UK.
- 7.3 The Regulations authorise the CAA to require air carriers and aircraft operators to provide evidence of adequate third party, cargo, baggage and passenger insurance. In relation to UK-registered aircraft, failure to provide this information will result in de-registration of the aircraft concerned, which means that the right to fly is withdrawn. Failure to provide evidence of adequate insurance will also lead to suspension or cancellation of the operating licence in the case of UK air carriers, and will lead to suspension or cancellation of the permit from the Secretary of State in the case of commercial aircraft registered in a non-EU country.
- 7.4 The CAA is also given power to prevent the take-off of an aircraft if it is not satisfied that the aircraft is adequately insured.
- 7.5 To allow aircraft to remain on the UK register that are not currently being flown, provision is made in the Regulations for air carriers and aircraft operators to make a declaration to the CAA that the aircraft will not be flown unless they have first provided the CAA with evidence of adequate insurance.
- 7.6 Although the CAA will be able to withdraw the right to fly in respect of inadequately insured aircraft, criminal penalties are also introduced to provide dissuasive and proportionate sanctions in respect of those who fail to provide insurance details when requested and those who are found to have already flown aircraft without adequate insurance. In respect of the former, the penalty on conviction is a fine of up to maximum of £1000, and in the case of the latter the penalty is on summary conviction a fine of up to £5000 and on conviction on indictment a fine and/or up to two years in prison.
- 7.7 The EU Regulation allows Member States to set a lower level of passenger insurance in respect of non-commercial operations by aircraft with a Maximum Take Off Weight of 2700 kg or less. Following consultation and in order to minimise the impact of the Regulation on private aviation activities, the UK has opted to invoke this derogation and set the minimum requirement at 100 000 Special Drawing Rights per passenger.

8. Impact

- 8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

Peter Smith at the Department for Transport, telephone number 020 7944 5893 or e-mail peter.smith@dft.gsi.gov.uk, can answer any queries regarding the instrument.

DEPARTMENT FOR TRANSPORT
FINAL REGULATORY IMPACT ASSESSMENT

1.0 Title of Proposal

Draft Civil Aviation (Insurance) Regulations 2005.

2.0 Purpose and Intended Effect of Measure

2.1 Objective

Ensuring compliance with EU Regulation 785/2004 on insurance requirements for air carriers and aircraft operators.

2.2 Background

Regulation 785/2004 of the European Parliament and of the Council on insurance requirements for air carriers and aircraft operators was adopted to ensure that people and property owners on the ground damaged by an aircraft, passengers within aircraft, and consignors of baggage and mail have guaranteed access to reasonable levels of compensation by virtue of statutory minimum levels of insurance.

The Regulation comes into force on 30 April 2005. Minimum passenger and third party insurance requirements will apply directly to all air carriers and aircraft operators that fly in UK airspace. The Regulation also places an obligation on Member States to ensure the requirements of the Regulation are met and appropriate sanctions for non-compliance are established. In particular, the Regulation requires Member States to prevent the take-off of aircraft that are not adequately insured. The Civil Aviation Authority (CAA) is the Competent Authority in the UK. The new insurance requirements will have minimal impact on commercial aviation but will impose on non-commercial operators a new obligation to be insured.

Air Carriers

Air carriers are defined in the Regulation as air transport undertakings with a valid operating licence: in other words, commercial airlines.

UK registered air carriers, holding an operating licence in accordance with Council Regulation 2407/92, already have to satisfy the CAA that they are adequately insured. Although the licensing process provides the CAA with the power to suspend or revoke an operating licence, the Authority has no immediate power to detain an aircraft if it is not satisfied that the requirements are met.

Non-UK Air Carriers

Non-EU air carriers are required to provide evidence of adequate passenger and third party insurance as a condition of the permit needed to operate services to and from the UK. EU air carriers are permitted to operate freely to and from the UK: there is a presumption that the Member State in which that carrier is registered will ensure it is adequately insured in compliance with Regulation 2407/92.

Aircraft Operators

An aircraft operator is defined in the Regulation as a person or entity, not being an air carrier, who has continual effective disposal of the use or operation of an aircraft: in other words, those who fly aircraft for non-commercial purposes.

In relation to aircraft operators there is at present no statutory insurance requirement in the UK and, consequently, there is no administrative structure to facilitate deposit of evidence of insurance. The UK does not at present check whether operators of non-UK registered aircraft are adequately insured. The Regulation will impose a statutory obligation on aircraft operators to meet minimum insurance requirements for passenger, baggage and third party liabilities.

Overflying Aircraft

Overflying aircraft by non Community air carriers or aircraft registered outside of the Community, which do not involve a landing or take off from any Member State, may be required to provide evidence of compliance.

3.0 Risk assessment

3.1 The main risk of not adopting legislation ensuring compliance is that the UK would be at risk of infraction proceedings by the European Commission.

3.2 It would also mean the CAA would not have powers directly to detain inadequately insured aircraft, or have enforcement sanctions in place for non-compliance with the Regulation.

3.3 There is also the risk that aircraft may operate without insurance, but since the vast majority of aircraft operating to, from and within the UK are in fact insured, the risk of uninsured losses is low.

4.0 Options

When the Regulation comes into force on 30 April 2005, the UK will be legally obliged to ensure air carriers and aircraft operators that fly in UK airspace

comply with the stipulated minimum levels of insurance and to put in place effective, proportionate and dissuasive sanctions for non-compliance. In addition to existing arrangements for the suspension and revocation of licences, the Regulations will provide the CAA with the power to issue a direction not to fly.

UK registered air carriers holding an operating licence in accordance with Regulation 2407/92 have an existing mandatory requirement to satisfy the CAA of adequate third party, passenger and baggage insurance. Regulation 785/2004 will therefore have little or no effect on air carriers since the levels of insurance set out in the Regulation are generally lower than those secured by air carriers for reasons of corporate governance.

The Regulation will have a significant effect on aircraft operators, who for the first time will be obliged to deposit evidence of adequate passenger and third party insurance with the CAA when required.

In addition to the do-nothing option, there are three options available for consideration in ensuring compliance with the Regulation.

4.1 Option 1: Not adopting UK enforcement legislation

The Government could choose not to introduce enforcement legislation to ensure compliance with the Regulation and rely on the fact that the Regulation has direct application to air carriers and aircraft operators. However, failure to introduce sanctions and to provide the CAA with powers to detain aircraft for non-compliance with the Regulation would be a clear breach of EU law and expose the UK to the risk of infraction proceedings. It is important to note that regardless of the establishment of domestic enforcement legislation, the Council Regulation will have direct effect in the UK and could be used as the basis for civil action for damages by passengers or third parties.

4.2 Option 2: Random checks

There would be no requirement for aircraft operators to deposit evidence of adequate insurance with the CAA on a routine basis, but the UK would rely on random checks of aircraft to ensure that air carriers and aircraft operators are adequately insured. Legal advice is that reliance on random checks for aircraft operators might not be adequate compliance with the Regulation, exposing the UK to the risk of infraction proceedings.

4.3 Option 3: Deposit of insurance by aircraft operators on registration plus random checks

The CAA presently requires aircraft operators to submit certain documentation when aircraft are first registered or when there is a change in ownership. This process could easily and simply be extended to include evidence of compliance with the Regulation. Failure to provide evidence of adequate insurance would lead to de-registration of the aircraft. This option would

comply with the UK's obligation to establish appropriate sanctions applicable to infringement of the provisions of the Council Regulation.

4.4 Option 4: Annual deposit of insurance by aircraft operators plus random checks.

The CAA would require aircraft operators to deposit evidence of adequate insurance annually.

5.0 Benefits

Under existing legislation, UK air carriers are obliged to provide the CAA annually with evidence of adequate insurance, and since this arrangement is not set to change, adoption of the draft Regulations will have no impact on or benefit to air carriers.

The establishment of a new administrative system obliging aircraft operators to provide the CAA with evidence of valid insurance will require those who do not currently insure their aircraft to obtain the necessary cover.

Carrying out of random checks by the CAA on UK and foreign registered aircraft may lead to the grounding of aircraft that are found not to have adequate insurance.

5.1 Quantifying and Valuing the Benefits

- **Economic**

In relation to air carriers, no economic benefits were identified. The Department did not receive any response to the consultation from UK air carriers because passenger and third party insurance is already a mandatory requirement in obtaining an operating licence.

In relation to aircraft operators, it is not possible to quantify the extent of any benefits because there is no evidence indicating that aircraft are currently being operated without insurance. However, for those aircraft operators who do not hold passenger and third party insurance, complying with the Regulation will have a financial impact.

Options and Benefits

	Option	Benefits
1.	Do nothing	No new benefits identified.
2.	Random checks only	CAA may find uninsured aircraft. Difficult to quantify benefit since there is no evidence of unmet claims following an accident.
3.	Check details at registration plus random checks	May result in uninsured aircraft operators obtaining insurance. Difficult to quantify benefit since there is no evidence of unmet claims following an accident. The CAA will have power to carry out enforcement action. This option will ensure full compliance with the Regulation.
4.	Check details annually plus random checks	May result in uninsured aircraft operators obtaining insurance. Difficult to quantify benefit since there is no evidence of unmet claims following an accident. As with option two and three, the CAA will have the power to carry out enforcement action.

- **Environmental**

Complying with the Regulation will not have an environmental impact.

- **Social**

Complying with the Regulation will not have a social impact.

6.0 Compliance Costs for Business

6.1 Business Sectors Affected

Air carriers licensed by the CAA in accordance with EU Regulation 2407/92.

(The non-commercial sector of the aviation industry will be affected but, by definition, these are private operators and not businesses.)

6.2. Compliance Cost for a Typical Business.

- **Economic**

Since air carriers already provide the CAA with evidence of adequate insurance, there will be no compliance costs other than the marginal cost of aircraft inspections, paid for via the CAA's cost recovery system. In relation to aircraft operators the costs associated with the options identified above are as follows:

6.3 Option 1: Not implementing the Regulation.

No compliance costs on business. In the absence of an effective enforcement regime, some aircraft operators may choose to accept what may be a very small risk of detection. This would effectively undermine the Council Regulation and its' purpose.

6.4 Option 2: Random checks only.

Costs incurred will relate directly to the number of checks carried out by the CAA. Administrative costs in relation to UK-registered aircraft would be absorbed within the registration fee.

In relation to non-EU air carriers the CAA would add checking of insurance details to ramp checks carried out on behalf of DfT, with a small marginal cost increase of approximately £50 per inspection. Assuming 200 checks per year, this would amount to about £10 000.

In relation to non-EU aircraft operators, DfT would pay for the random checks carried out by the CAA. The CAA estimates that each check will cost £250 and, assuming 100 aircraft are checked annually, the total cost will be in the order of £25 000.

6.5 Option 3: Check details at registration plus random checks.

As option 2 but including checking at registration. The cost of registration for aircraft below 15 000 kg would need to increase by £10 to include a check of insurance details. For heavier aircraft the CAA would charge an extra £20 per registration.

There are currently 17 000 aircraft below 15 000 kg on the UK register. Assuming aircraft change hands every 3 years, the annual cost will be approximately £56 000. There are less than 1000 aircraft above 15 000 kg on the UK register. Assuming aircraft change hands every 3 years, the annual cost will be approximately £7000. Random checks as above.

The CAA is obliged by law to recover the administrative costs of UK aviation industry regulation from those who are regulated. It is therefore not possible for the CAA to waive the cost of checking insurance details.

Gliders are not presently registered with the CAA, however the majority of glider operators are members of the British Gliding Association (BGA). The Association requires members to take out insurance upon application for membership. The Air Navigation Order is to be amended to require gliders to be registered. Until such time, the CAA plans to monitor compliance of the Regulation via the BGA. The costs attributable to this activity are small.

6.6 Option 4: Check details annually plus random checks

The cost of registration for aircraft below would need to increase by £25 to include an annual check of insurance details. There are currently some 18 000 aircraft on the UK register. The total cost of compliance would therefore be £450 000, plus the cost of random checks.

Options

	Option	Costs
1.	Do nothing	None.
2.	Random checks only	£35k
3.	Check details at registration plus random checks	£98k
4.	Check details annually plus random checks	£485k

- **Environmental Cost**

There are no environmental costs arising from compliance with the Regulations.

- **Social Cost**

There are no social costs arising from compliance with the Regulations.

7. Issues of Equity and Fairness

Aircraft operators, for whom the introduction of statutory minimum levels of insurance will produce few if any benefits and impose additional costs, might argue that application of the Regulation is unfair. Whilst the Government is not in a position to avoid the application of the requirements of the Regulation to aircraft operators, it does have an obligation to minimise the impact of ensuring compliance with the Regulation. It is intended that the proposed enforcement measures should impact air carriers and aircraft operators equally. However, in response to the consultation a number of private individuals expressed concern that the proposed sanctions for air carriers may not provide sufficient incentive to comply with the Regulation, and that the sanctions are disproportionate when considering the damage a smaller private aircraft may cause in comparison to that of a commercial aircraft. Others felt that the sanctions were excessive when compared to those in place in relation to mandatory third party cover for motorists.

There were also concerns that if the aviation insurance market removed cover for certain categories of third party war risk, airlines would automatically be in breach of the Regulation. It is important to note however, that the issue of war risk cover is on-going, but does not prevent or deter application of the Regulation.

- **Race Equality Impact**

This policy has been evaluated for a Race Equality impact and no impact on race was found.

8. Consultation with small business: the Small Firms' Impact Test

Small airlines are, as with larger air carriers, required to hold an operating licence in accordance with Council Regulation 2407/92. Although application of Regulation 785/2004 may have an impact on them; the UK enforcement legislation will have no impact, as they merely serve to establish sanctions for non-compliance with the Council Regulation.

9. Competition Assessment

Adoption of Regulations to ensure compliance with Regulation 785/2004 will have no impact on competition. The Council Regulation applies equally to air carriers and aircraft operators.

10. Enforcement and Sanctions

The draft Regulations create a number of offences in relation to non-compliance with the provisions of Regulation 785/2004. These are intended to be effective, proportional and dissuasive.

The EU Regulation will be enforced by the Civil Aviation Authority with powers provided by the draft insurance Regulations. These powers include preventing the take-off of aircraft when the Authority is not satisfied that an aircraft is adequately insured.

The CAA will ensure air carriers and air operators in the UK are aware of their obligations under the EU Regulation. Checks in respect of UK-registered aircraft and gliders registered with the British Gliding Association will be carried out. If an aircraft operator is unable to produce evidence of insurance, the CAA will issue a "notice to produce" and refer the case to the Aircraft Registration Section. Where the CAA establishes that an aircraft operator is inadequately insured, it shall issue a "direction not to fly".

11. Monitoring and Review

With regards non-EU registered aircraft, the CAA will undertake random checks on behalf of the Department for Transport. If an air carrier is unable to produce evidence of insurance, the CAA will issue a “notice to produce” and refer the case to DfT for further action. In relation to EU-registered air carriers, if it is found that a carrier is inadequately insured, the CAA will issue a “direction not to fly”. A review of the implementation and enforcement of the UK Regulation by the CAA and DfT will take place 12 months after the Regulation comes into force.

12. Consultation

- Within government

Inter-departmental consultation was conducted on an informal basis at negotiation stage of the EU Regulation. Due to the minimal impact on other departments, it was not appropriate to conduct further consultation on the enforcement Regulations.

- Public Consultation

The Department conducted a public consultation exercise. Responses were received from industry representatives, private individuals, an airport operator and the CAA. The consultation period ran from 25 November 2004 to 25 February 2005, and was based on selecting an enforcement option from a list of options without diluting the level of protection offered by the Council Regulation.

Respondents were generally supportive of the Government's approach although a small number of individuals commented that the aviation industry was being singled out and that sanctions should be mirrored on sanctions for motoring.

13. Summary and Recommendation

Regulation 785/2004 places a clear obligation on the UK to ensure air carriers and aircraft operators comply with the provisions on minimum levels of insurance, to prevent aircraft taking off if the requirements are not met and to put in place appropriate sanctions for infringement of the Regulation.

Aircraft operators will be required by law to have minimum levels of passenger, baggage and third party insurance cover. It is mandatory that the Government puts in place a robust enforcement regime which will ensure compliance with the Regulation. The Government is aware that the Council Regulation will place a financial burden on a small number aircraft operators because it will place an obligation of insurance on those who do not already have passenger and third party insurance on a voluntary basis.

Summary of Benefits and Costs

	Option	Benefits	Costs
1.	Do nothing	No new benefits identified.	None
2.	Random checks only	CAA may find uninsured aircraft. Difficult to quantify benefit since there is no evidence of unmet claims following an accident.	£35K
3.	Check details at registration plus random checks	May result in uninsured aircraft operators obtaining insurance. Difficult to quantify benefit since there is no evidence of unmet claims following an accident. The CAA will have power to carry out enforcement action. This option will ensure full compliance of the Regulation	£98K
4.	Check details annually plus random checks	May result in uninsured aircraft operators obtaining insurance. Difficult to quantify benefit since there is no evidence of unmet claims following an accident. As with option two and three, the CAA will have the power to carry out enforcement action. This option ensures full compliance at a significantly higher cost to industry.	£485K

Option 3 of carrying out checks on first or subsequent registration plus random checks provides the least financial impact to the industry whilst ensuring the UK achieves the objectives of the Council Regulation.

14. Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed...Charlotte Atkins.....

Date.....2/4/05.....

CHARLOTTE ATKINS
MINISTER FOR AVIATION

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