

EU PASSENGER RIGHTS AFTER BREXIT – WHERE DO WE GO FROM HERE?

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Overview

EU - UK Passenger Rights ongoing

- *What are they?*
 - *How does the system work?*
- *Are they special?*
 - *Australia and Singapore as common law parameters*
- *Will they change?*
 - *Effects of UK' ification?*
- *Outlook*



**A)
What are they and how do they
work?**



I. Current EU Framework



EU Transport Policy

10 Passenger Rights

1. *Non-discrimination*
2. *Access & assistance for disabled passengers & PRMs*
3. *Information*
4. *Choice to cancel trips due to disruption*
5. *Rerouting or rebooking*
6. *Assistance in event of long delay*
7. *Compensation*
8. *Carrier Liability*
9. *Easy complaint handling*
10. *Effective enforcement of rights*



Implementation - Overview

“Passenger Rights” Instruments

- *International Instruments for carrier liability*
 - *Air: Warsaw and Montreal Conventions*
 - *Sea: Athens Conv.*
 - *Rail: COTIF- CIV*
 - *Road: CVR*
- *European Instruments*
 - *EU Impl. of updates to International Instruments – Montreal and Athens – EC/EU Regs*
 - *EU Passenger Rights Regulations for all modes +DPRM*
 - *EU Package Travel Directive*
 - *EU Consumer Law*



Specific Passenger Rights Regs

- (a) Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of **flights**...; with DPRM Reg 1107/2006;
- (b) Regulation (EC) No 1371/2007 of the European Parliament and of the Council on **rail** passengers' rights and obligations;
- (c) Regulation (EU) No 1177/2010 of the European Parliament and of the Council concerning the rights of passengers when travelling by **sea and inland waterway** and ...; and
- (d) Regulation (EU) No 181/2011 of the European Parliament and of the Council concerning the rights of passengers in **bus and coach transport** and
- (e) **Multimodal considered**

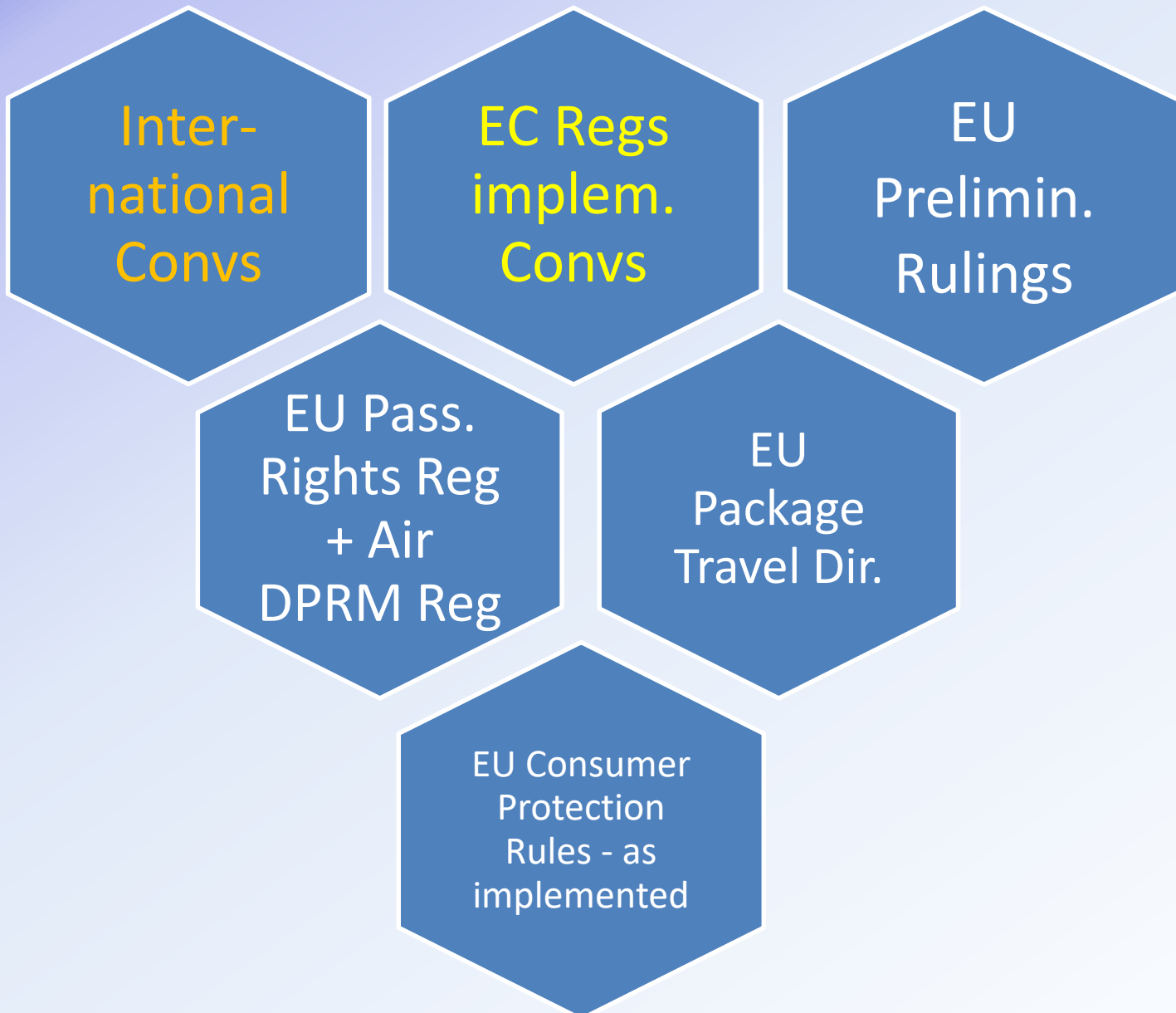
Implementation

Resulting Rights and their Enforcement

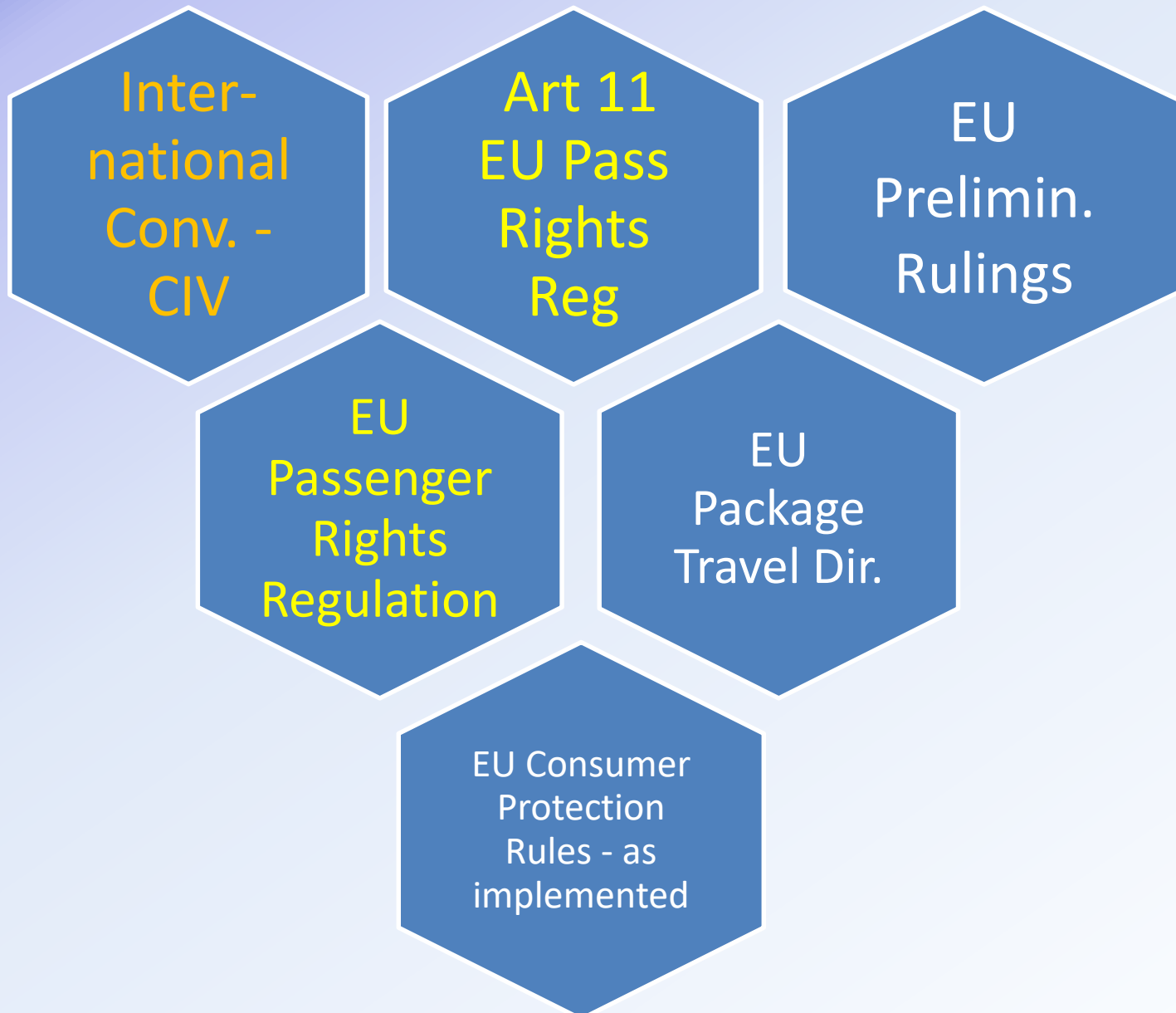
- **Carrier Liability**
 - Claims for personal injury, death or loss or damage to luggage
 - Direct claims against carrier
- **General Passenger Rights**
 - Rights to care & compensation for cancellation, denied boarding and long delay
 - Direct claims against carrier for compensation
 - Claims according to consumer protection laws in parallel
- **Disabled Persons and PRM**
 - Rights to information, assistance and non-discrimination Provisions supporting
 - Role of National Enforcement Body:
 - duty to control
 - Issue fines
 - No direct claims for damages
- Supported by Industry ADR procedures



Example Sea and Air - EU



Example rail - EU



Example road – bus & coach - EU

NO International
Conv.

EU Passenger
Rights Reg. incl.
damages prov.

EU
Package
Travel Dir.

EU Consumer
Protection
Rules - as
implemented

EU
Prelimin.
Rulings

II. First EU Implementation via Air Regime



Air Passenger Law

Relevant Int and EU Instruments:

1. Montreal Convention for International Carriage by Air 1999
2. **Liability:** EC Regulation 2027/97 of October 9, 1997 on **air carrier liability** in respect of the carriage of passengers and their baggage by air, as amended by EC Regulation No 889/2002;
3. **Passenger Rights:** Regulation (EC) No 261/2004 on compensation and assistance to passengers in the event of **denied boarding and of cancellation or long delay** of flights
4. **DPRMs:** EC Regulation 1107/2006 concerning **rights of disabled persons and persons with reduced mobility** when travelling by air



Passenger Rights in Air Carriage

Montreal Convention on Carriage by Air 1999

1. Rules on damages for

- Death or personal injury of passengers
 - 2-tier system – core liability irrespective of fault up to 113.100 SDR = (on 5.6.19) 123.000 GBP
 - Carrier can avoid higher claims if not at fault
- Damages for delay/person – max 4.694 SDR = 5119 GBP
- Checked luggage, incl. delay – max 1.131 SDR = 1230 GBP
- Beware – exclusivity of liability regime

2. Provisions on enforcement of rights

- Notice periods(beware - extinction of rights) and time bar!
- Jurisdiction

EC Reg 1107/2006 conc. rights DPRM/air:

- Rights to assistance, non-discrimination,
- Compensation of mobility equipm.
- Offences and fines by NEB



EC Passenger Rights Regulation 261/2004

Coverage:

1. Denied boarding (Art 4)
2. Cancellation (Art 5)
3. Delay (Art 6) – no provision of compensation; but ECJ – *Sturgeon & Nelson* (3 hours)
4. Obligations to inform (Art 14)

Remedies:

- Right to compensation (Art 7)
- Right to reimbursement or re-routing (Art 8)
- Right to care (Art 9)

DPRM – separate Reg for air; not for other modes



Preliminary Rulings

CJEU able to give guidance:

1. On EU instruments
2. On international instruments insofar as incorporated with in EU – EU acquis
3. Examples air law:
 - Interaction of MC - Pass Rights Reg: Case *C-344/04 IATA & ELFAA*
 - Meaning of „Passenger“ art 17 MC: Case *C-6/14 Wucher Helicopter v Fridolin Santer*
 - Interpretation of Pass Rights Reg; *inter alia* on:
 - “Denied boarding” and “cancellation”
 - Compensation for long delay
 - Time of arrival of aircraft; connected flights and arrival time
 - “Extraordinary circumstances”



III. EU Rail Regime



EU Rail Passenger Law

Relevant Int and EU Instruments:

1. COTIF - CIV

2. Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations

- **Carriage liability**: Art 11 refers to COTIF-CIV:
 - Liability for death or personal injury to the passenger
 - Damage to their luggage, vehicles and delay thereof
- **DPRM provision** – accessibility and assistance
- **Passenger Rights** – cancellation, delay and assistance – reimbursement and rerouting, compensation for delay; advance payment for pers. injury
- **Exemptions to domestic services and services perf. outside EU**
- **Issues**:
 - (Too) long lead in times
 - CJEU case law (C509/11) on extraordinary circs causes problems
 - EU Commission proposal for amendment/recast of 27.9.2017



II. Current UK Implementations



Example Sea - UK

Athens 2002
- MSA 1995,
s. 183, Sched
6

EC Athens
Regulation,
s.183 (2A)
MSA

Athens 1974 –
Domestic
carriage of Pass.
Order 1987

EU Sea
Passenger Rights
Reg with
MS(PR)Reg '13

*UK Package
Travel &
Linked Travel
Arrangements
Reg 2018*

CRA 2015
& UCTA
1977



UK Implementation

The issues:

1. Implementation choices
2. Use of exemption opportunities to ease in change:
3. Carriage by sea in stages:
 - a. international
 - b. domestic – staggered by ship size - completed by end 2018
4. Carriage by Rail
 - a. international
 - b. versus domestic transports – until Dec 2019 with renewal possibility to 2024
 - c. Consultation what to exempt (2014/15)
 - see DfT Summary of responses Nov 2015



B)
Are they special?



Alternatives - Other common law systems

- Australia
 - Convention liability regimes:
 - Air: Warsaw and Montreal Conventions
 - Sea: accession to Athens Conv. 2002 ??
 - **No special Passenger Rights Laws**
 - Australian Consumer Law (ACL)
 - consumer guarantees for services:
 - with due care & skill; fit for particular purpose; within reasonable time
 - Civil Liability Acts (poss. clashing with/reducing effectiveness of ACL)
- Singapore
 - Convention liability regimes:
 - Air: Warsaw and Montreal Conventions
 - Sea: “old” Athens Conv. 1974 – lower limits
 - **No special Passenger Rights Laws**
 - No specific Consumer Law remedies
 - Consumer Protection (Fair Trading) Act - n/a
 - Emphasis on Consumer Education



Consequences

- No explicit rights for care, cancellation and delay
- No specific enumerated obligations of non-discrimination of DPRMs
- Claims only under general law
 - Breach of duty more difficult to define
 - “Right” more difficult to enforce
- Less incentive on provider?
 - no direct monetary consequence
 - Practice of overbooking/“bumping off”
 - US air law example – suggests decrease of cancellations & delays once monetary sanction



C)
Will they change?



Government Advice

EU - UK Passenger Rights ongoing

The UK has provided guidance for passengers on 20 December 2018 in the following terms:

“Consumer rights for all passengers travelling to the EU from the UK - From 29 March 2019, if there is no EU Exit deal, your consumer rights in regards to travelling will remain **largely unchanged**. You will have the same rights under UK law in the event of denied boarding, cancellation or long delay of passenger air, rail, road or sea services. For EU registered passenger transport operators, EU law will continue to apply in respect of journeys to and from the EU.”

See <https://www.gov.uk/guidance/passenger-consumer-rights-when-travelling-to-the-eu-after-brexit> [last accessed 13.01.2019]



Government Advice

EU - UK Passenger Rights ongoing?

Amended guidance for passengers:

What may change for UK citizens travelling as passengers to the EU after the UK leaves the EU

UK citizens planning a trip to the EU and EEA before the UK leaves the EU do not need to take action. If the UK leaves the EU without a deal on 31 October 2019, **some things may change for passengers travelling to and within the EU and EEA.**

Air passenger rights

For air passengers on a flight **departing the UK**, the same passenger rights as apply today will continue to apply after the UK leaves the EU. For **EU registered airlines, EU law** will continue to apply in respect of flights to and from the EU.

See <https://www.gov.uk/guidance/passenger-travel-to-the-eu-by-air-rail-or-sea-after-brexit> [last accessed 05.06.2019]



The Task

Amendments - Opportunity and Challenge?

1. European Union (Withdrawal) Act 2018
2. Retained EU law and (Amendment) (EU Exit) Regulations
3. Consequences:
4. Shaping the future according to domestic values?
 - Lobbying by industry – air law example
 - Rail – mostly there, but effectiveness prompted – see voucher system for reimbursements
5. International nature of some issues requires cross-border responses
 - Aligning with future amendments to EU 261? - air law
 - Multimodal transport, integrated ticketing, payment and information system
 - Rail – through ticketing
6. Disconnect in key areas?



Air Law

House of Commons Briefing – Transport: passenger rights, compensation & complaints, SN3163, 8 Dec 2016, p4:

“There may be some pressure on a post-Brexit Government to overhaul this system. Responses to the Government’s 2013-14 Balance of Competences review reflected wide-spread concerns amongst the travel industry. Thomas Cook Group was of the view that rights to compensation had been stretched unfairly in the courts and that rulings by the ECJ on aviation passenger rights legislation had gone too far in favouring passengers. The Airport Operators’ Association (AOA) noted that obligations must be proportionate and not unduly prescriptive.

The UK will almost certainly develop its own system of passenger rights and compensation in the aviation sector post-Brexit but how similar these would be to current arrangements or how it would affect non-UK airlines or passengers is unknown.”

No longer available online! Replaced by May 2019:



Air Law

HoC Briefing – Brexit & Transport: Way Out, 8 Nov 2018

“There may be some pressure on a post-Brexit Government to overhaul this system... (as previously). Other airlines, such as easyJet, had more positive views.

However, in April 2018 the Government published its ‘next steps’ document for its long-term future aviation strategy. This stated that:

‘The government needs to ensure that consumers are protected when things go wrong. The current system of compensation for delay, cancellation and denied boarding provided by EU Regulation 216/2004 provides strong levels of consumer protection, and the UK will not fall below current standards of protection when we leave the EU, but the process by which compensation is accessed is often difficult for the consumer to navigate.’

This might mean that the UK and the EU systems could diverge in the future, if for example the EU27 were to weaken its consumer protection provisions after Brexit. This could introduce added complexity for UK travellers.”



D) Outlook

Amendments of EU retained legislation



The Future after Brexit

UK Amendments to the EU Regime

1. EU retained legislation, as amended - in effect a reduction in rights:
 - See Air Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulations 2019 (SI 2019/278)
 - See Package Travel and Linked Travel Arrangements (Amendment) (EU Exit) Regulations 2018
 - See Motor Vehicles (Compulsory Insurance) (Amendment etc.) (EU Exit) Regulations 2019/551
2. **Missing out** on current developments:
 - Multimodal developments
 - Rail regime
 - Air amendments
3. No incentive to complete adjustments where ongoing exemptions – rail
4. Role of Consumer Rights Organisations?

(Amendment) (EU Exit) Regs

Shrinking of the market

1. Scope provisions matter:
 - From Intra EU to Intra UK,
 - From EU airport to UK airport
 - From EU laws to UK laws
2. Resulting in impact on consumers and service providers:
 - Lack of recognition of insolvency protection: Package Travel and Linked Travel Arrangements (Amendment) (EU Exit) Regulations 2018, impacting on regs 19, 26(4) and 27
 - Abolition of the UK compensation body - See Motor Vehicles (Compulsory Insurance) (Amendment etc.) (EU Exit) Regulations 2019/551 – UK citizens must now claim abroad
 - Restricted scope and intentional gaps? See reg 5 of Air Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulations 2018 – no sanctions for offences where flights from the EEA?

Reg 5 of Air Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulations 2018

The Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005

- **Provision prior to Amendment:**

- **“Offences**

- **3.—(1) An operating air carrier who fails to comply with an obligation imposed on it by Article 4 to 6, 10, 11 or 14 shall be guilty of an offence.”**

- **After Amendment:**

- **“(1) An operating air carrier is guilty of an offence if, in the United Kingdom or elsewhere, it fails to comply with an obligation imposed on it by Article 4, 5, 6, 10, 11 or 14 in respect of a passenger whose flight is either from—**

- **(a) an airport in the United Kingdom, or**

- **(b) a country which is not an EEA state to such an airport.”.**



The Problems

Amendments

1. Enforcement of rights by passengers
2. Industry ADR schemes?
 - EU motivated; see Dir 2013/11/EU and Reg (EU) 524/2013
 - EU online Dispute Resolution platform no longer available to UK traders
3. Jurisdiction
 - Br I Regime no longer applicable
 - Revert to traditional rules of jurisdiction?
 - No enforcement rules
 - Some transport conventions have jur. rules – but not appl. to pass rights
 - Hague Convention on choice of court agreements (2005) or on recognition and enforcement of judgments (2019)?
 - Not applicable to carriage of passengers (or goods)
4. Applicable law
 - UK versus EU rights
 - CJEU rulings to remain persuasive ?
5. Problem of disconnect



Conclusion

- Lots of adjustment in the small print
- Creeping consequences and narrowing of market
- Scope for UK to set its goals
 - Will there be significant impact on industry?
 - Will UK passengers be better off? Will consumer protection values be effectively upheld?



THE END

Thank you very much for your attention!

