- ***Q1: Has the Regulation had any impact on the insurance policy of air carriers? Do air carriers just comply with the minimum insurance requirements or do air carriers carry insurance above the minimum insurance requirements?***

UK response to Question 1

Article 7 of Council Regulation (EC) 2407/92 requires Operating Licence holders (Air Carriers) to hold appropriate insurance cover in order to meet their liabilities in the event of an accident; prior to the introduction of the Regulation[1] Member States set minimum levels of insurance cover on a national basis. There was evidence in the UK, particularly in relation to aircraft of less than 10 tonnes MTOM and/or less than 20 seats, that this led to cost variations and therefore competitive distortions between Operating Licence holders licensed by different Member States. This issue was beneficially addressed by the harmonisation of insurance minima across the Community and was in general strongly supported by the UK airline industry. The majority of Operating Licence holders have always taken their potential liabilities seriously and purchased insurance well in excess of any minimums set down by the Civil Aviation Authority (the UK National Enforcement Body). The introduction of the Regulation therefore has had little to no impact on UK air carriers.

The monitoring by UK CAA indicates that the majority of Type A and Type B licence holders hold insurance cover significantly in excess of the minima required by the Regulation.

Operating Licence Type	Number of UK Licence Holders	% Of Licence Holders with cover in excess of the minima
Type A	40	90%
Type B[2]	106	86%

- ***Q2: What has been the economic impact of the Regulation on general aviation operators?***

UK response to Question 2

Before the introduction of the Regulation the CAA advised general aviation operators (aircraft operators) to hold appropriate insurance cover as a matter of prudence, but there was no mandatory requirement for operators to hold insurance. Consequently we have no direct empirical evidence against which to evaluate the economic impact that the introduction of the Regulation had on this sector in the UK. However, during 2005/06 the CAA undertook a strategic review of general aviation in the UK (published in July 2006[3]). This comprehensive review did not indicate that the cost or provision of insurance was an issue for such operators. Anecdotal evidence indicates that the economic impact over the sector as a whole has been minimal; the majority of general aviation operators either already held appropriate cover or only required minor increases to the level of cover held. The insurance market is highly competitive and we are advised that the introduction of the Regulation's requirements increased the "customer base", broadening the liability "pool" with a consequential effect on premiums.

- ***Q3: Does the insurance market provide reasonable cover for historic aircraft, taking into account the limited usage and relative low risk of third-party damage caused by such aircraft? What could be a more appropriate and proportional insurance requirement for historic aircraft?***

[1] All references to the Regulation mean CR (EC) 785/2004
[2] Operators of aircraft less than 20 seats
[3] http://www.caa.co.uk/docs/224/strateg%20review%202006a.pdf

UK response to Question 3

In the UK's view the insurance market does provide reasonable cover for historic aircraft. There is a strong historic and vintage aircraft movement in the UK, operating factory-produced historic or classic aircraft from aviation history; military and civil, propeller and jet. There are some 500 historic aircraft on the UK register [4] out of a total of around 20,000. Whilst the UK had one operator of a large historic ex-military aircraft who experienced significant difficulties in arranging adequate insurance cover when the Regulation was first introduced, this was due to the cost of the premium and not due to market failure. However, a market-based solution was subsequently found in this instance.

The UK believes insurance brokers and underwriters are in the best position to evaluate the risk of any proposal. The insurance market has again recently demonstrated its ability to provide flexible solutions by providing insurance cover, fully meeting the requirements of the Regulation, in the example of a restored Vulcan bomber. With an MTOM of 79,379 kg this is currently the largest ex-military aircraft on the UK register. Many ex-military aircraft are of course much lighter e.g. the Tiger Moth which is commonly used in the civil arena. Whilst it is recognised that the Regulation did not overtly consider "historic" aircraft in its original deliberations, it was recognised that any aircraft, whether new or old, has the same impact on third parties if it is involved in an accident, particularly away from an airfield.

- ***Q4: Is there still a need for the requirement for aircraft operators to have insurance cover for damage to third parties due to risks of war or terrorism in respect of non-commercial operations?***
- ***Q5: Is there a need to introduce specific rules for the insurance requirements for damage caused by unlawful interference while the aircraft is still at the airport in order to allow insurers better control over possible liability exposure?***

UK response to Question 4

The UK strongly believes there is still a need. This aspect of the Regulation was considered in the aftermath of the attack on the World Trade Centre on 11 September 2001 and the circumstances of that event. The UK does not consider that the reasons for including this requirement have changed since then.

The majority of non-commercial/leisure operations are undertaken with small aircraft for which an element of war and allied perils cover is normally automatically included.

However, there has been a significant rise in the number of large private corporate or VIP aircraft that undertake such operations. It would be anomalous to require a commercial operator of, for example, a Boeing 767[5] to hold such cover, whereas the same aircraft type operated privately would not.

As the Commission is aware, there continue to be discussions in ICAO in relation to the modernisation of the 1952 Rome Convention on third party liability. We understand that the next step is for the ICAO legal committee to consider the latest draft of a convention on unlawful interference, but that any conclusions remain some way off.

[4] "Historic" for the purposes of the CAA's Strategic Review of General Aviation in the UK was broadly defined as pre-war. Many other post-war GA aircraft could be considered historic; for example in 2002 there were around 60 ex-military UK registered jets active.

[5] Roman Abramovich, the owner of Chelsea Football Club, owns many aircraft, which are operated on a private basis. One of which is a Boeing 767.

UK response to Question 5

Council Regulation 2407/92 and Regulation 785/2004 set out the existing provisions for air carriers. Likewise the Montreal Convention (Regulation 889/2002) sets out liability arrangements that flow from the carriage of passengers by air. Unlawful interference of an aircraft while on the ground and the liability that goes with it is no different than for air carriers buying hull-insurance to protect their asset. It is the UK view that this is not relevant for regulators or for National Enforcement Bodies to address.

- ***Q6: Do air carriers licensed in third countries and aircraft operators using aircraft registered outside the EU usually deposit an insurance certificate or do they provide other documentation? What kind of documentation other than a deposit of an insurance certificate is provided by air carriers and aircraft operators and accepted as evidence of compliance by Member States?***
- ***Q7: Would there be benefits of creating a universal EU insurance certificate for air carriers and aircraft operators?***

UK response to Question 6

In order to undertake commercial flights into the UK, third country air carriers are required to hold a permit granted by the Department for Transport. The grant of such a permit is dependent upon the provision by that carrier of evidence of insurance demonstrating compliance with the Regulation's minima.

Similarly, third country aircraft operators are required to provide the CAA with evidence of appropriate insurance cover upon request. There are a number of different circumstances in which this information may be required by the CAA. The CAA maintains a monitoring system, which includes unannounced "spot checks" of both air carriers and aircraft operators to ensure continued compliance.

Whilst there is no prescribed format that evidence of insurance must take, it is generally in the form of an insurance certificate or policy note issued by the insurance underwriter or broker.

UK response to Question 7

Given the complexity of monitoring insurance polices UK air carriers are currently requested to provide evidence of insurance using a common declaration certificate (example attached Appendix 1). To simplify the monitoring of aircraft operators, the CAA has encouraged and supported the Lloyds market in the development of a model insurance certificate for such operators. An example of such a certificate is also attached (Appendix 2). Whilst these certificates are commonly used it is not a mandatory requirement to do so and evidence of insurance may be provided in other ways.

The UK considers that whilst there could be benefits in principle in a common certificate for Community air carriers and operators this needs further detailed consideration before any proposal is brought forward. The UK would prefer that any common certificate should be offered as a guide rather than implemented by statute to preserve flexibility in the event of changing circumstances, and therefore meet the needs of the insurance market or air carriers and aircraft operators.

Third countries have to comply with Regulation 785 when using flying into EU locations or airspace. The UK would be interested to know if it is intended that third countries would be expected to comply with a common insurance certificate, and if so how this could be given effect.

- ***Q11: Which insurance requirements apply in Member States for the passenger liability in respect of non-commercial operations by aircraft with a MTOM of less than 2,700 kg? Do different insurance requirements in these cases cause problems for aircraft operators?***

UK response to Question 11

The UK exercised its option under Article 6(1) of the Regulation to permit non-commercial operators of aircraft of less than 2,700 kg to hold the lower level of passenger cover of 100,000 SDR's. The CAA is unaware of any instances within the UK where such different levels of passenger insurance required by aircraft operators have caused any difficulties. See also the **UK response to Question 2.**

- ***Q12: Have there been any problems with the application of Regulation 889/2002?***
- ***Q14: Is there a need to harmonise third-party liability rules for Community air carriers for risks linked to war and terrorist acts?***

UK response to Question 12

There have been no appreciable difficulties in implementing this Regulation within the UK.

UK response to Question 14

Article 7 of the Regulation already prescribes that air carriers and aircraft operators must carry third party insurance in order to meet their liabilities in the event of an accident or terrorist incident. By virtue of the Regulation the UK considers that harmonised third-party liability rules are already in place.

- ***Q15: Is the Regulation still necessary to ensure a level playing field with third-country air carriers or would there be more effective alternatives, for example, in the context of Community aviation agreements with third countries?***

UK response to Question 15

The UK believes the Regulation is still necessary. It provides a clear and easily understood framework within which European Community and third country air carriers can operate, and ensures that a basic level of insurance is maintained by all when operating within the European Common Aviation Area.

Whilst it may be possible over time for the terms of the Regulation to be reflected within the context of Community Aviation Agreements this does not appear to be a more effective alternative to the Regulation. Some third countries may not set minimum levels of insurance or may set levels below those in the Regulation. The UK considers that, rather than being seen as an alternative, Community Aviation Agreements should be seen as an opportunity to enhance the effectiveness of the Regulation.

- ***Q16: Would the insurance market be able to provide insurance coverage to air carriers in order to refund passengers for the sums paid and to cover the costs of repatriating passengers if the carrier is not able to operate the flight because of insolvency or revocation of its operating licence?***
- ***Q17: Would additional insurance requirements be an appropriate instrument to protect passengers in such cases or are there other more effective and efficient means?***

UK response to Questions 16 and 17

The Regulation is about minimum insurance levels to passengers and third parties in the event of an accident. The UK is not persuaded that this is the right Regulation to consider expanding its scope to deal with insurance for the purposes of protecting passengers in the event of an airline's insolvency or loss of operating licence.

It is already a requirement of the Package Travel Directive (PTD) that tour operators must make provisions to protect passengers in the event of their insolvency - so those flying or planning to fly as part of a package holiday have had this protection for at least 10 years. DG SANCO is currently reviewing the PTD. One of the questions in its recent consultation document was whether the PTD's requirements for insolvency protection should be extended beyond package travel. We consider this to be the most appropriate place to consider whether insolvency insurance relating to air passengers should be extended to all airlines.

The introduction of the 785 Regulation has played a vital role in improving consumer protection within the Community, and has worked well. In practical terms, any amendments to the Regulation would require extensive consultation with aviation stakeholders followed by a lengthy adoption process. The UK would not want the principle intention of the Regulation to be skewed.

With the Regulation currently in its infancy, having only been adopted in 2005, the UK proposes that it remain in its existing form and not be extended. Nonetheless, the UK reserves the right to maintain its position in future discussions.

- ***Q18: Is there scope for simplification of the Regulation?***
- ***Q19: Is it still seen necessary to have harmonised insurance requirements for non-commercial aircraft operators? What would be the impact of exempting non-commercial aircraft operators from the scope of the Regulation?***

UK response to Question 18

The Regulation is largely straightforward to interpret and the UK has had no suggestions from industry that it requires simplification or is difficult to understand. Article 6 sets out the prescribed limits for passengers, baggage and cargo and Article 7 sets third party limits in table form based on MTOM. Given this clarity the CAA has been able to place on its website a calculator (http://www.caa.co.uk/docs/148/Insurance calculator 16 June 2006.xls) so that data can be added and the required minimum levels of insurance calculated automatically. This calculator is now used widely and the CAA has been commended for its simplicity. We are therefore of the view that the Regulation should remain as it is.

UK response to Question 19

The UK believes it would be a step backwards to exclude from the scope of the Regulation non-commercial operators. The provisions of Article 6(1), which allow for a lower amount of passenger cover to take account of light general aircraft, show the Regulation has sufficient flexibility to address issues of proportionality.

Please see also the **UK response to Question 4.** There are an increasing number of privately owned airliners[6] and large executive jets in use on a non-commercial basis. The loss of such an aircraft, especially over a built up area, could result in substantial liabilities. The UK does not believe that such aircraft or their operators should be exempt from the requirements of the Regulation.

[6] Roman Abramovich owns and operates privately a Boeing 767 aircraft MTOM 158,000 kg approx (Category 8)