

EXPLANATORY MEMORANDUM TO
THE AIRPORTS SLOT ALLOCATION (AMENDMENT) (EU EXIT)
REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Act.

2. Purpose of the instrument

- 2.1 This instrument uses powers in the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) in order to address failures in retained EU law, relating to the allocation of slots at airports in the European Economic Area, to operate effectively and to correct other deficiencies in that retained law arising as a result of the UK’s exit from the European Union (the “EU”).

Explanations

What did any relevant EU law do before exit day?

- 2.2 Airport slots are the right to use a bundle of airport facilities (runway, stands, terminals) for landing or take-off of an air service at a specific date and time. Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports (“Regulation 95/93”), provides for the fair allocation of slots to air carriers at congested airports (where there is insufficient infrastructure to meet demand – see sub-paragraph 7.1), based on transparent and non-discriminatory processes. Amongst other things, it provides for when an airport is to be subject to slot coordination, the procedures for coordination, the process of slot allocation, the mobility of slots, enforcement of slot rules, and an oversight role for the European Commission, including power to take action to remedy discriminatory behaviour by a third country towards Community air carriers in relation to the allocation and use of slots at that country’s airports. The Airports Slot Allocation Regulations 2006 (“the 2006 Regulations”) implement Regulation 95/93 in the UK. Annex 13 to the EEA Agreement (transport) makes provision in relation to the application of Regulation 95/93 to EEA states.

Why is it being changed?

- 2.3 This instrument uses powers under the Withdrawal Act to make the necessary changes to the 2006 Regulations, Regulation 95/93 and Annex 13 to the EEA Agreement to ensure that retained EU law functions correctly after the UK has left the EU. These changes are necessary because once the UK leaves the EU: references to the European Union and Member States, as well as other related terms, will no longer include the UK; the UK will no longer be subject to the EU legal system; and, the European Commission’s functions under EU legislation on airport slots will not apply in relation to UK airports or UK air carriers.

What will it now do?

- 2.4 The system relating to slot allocation at UK airports will remain unchanged, as none of the changes made by this instrument affect the substance of the slot allocation rules. The corrections made through this instrument, which in particular remove the role of the EU Commission and limit the retained rules to UK airports, are set out in sub-paragraphs 7.3 to 7.14.

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.
- 3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 24 of the Withdrawal Act) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State, Baroness Sugg, has made the following statement regarding Human Rights:

“In my view the provisions of the Airports Slot Allocation (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is made in exercise of powers in section 8 of, and paragraph 21 of Schedule 7 to, the Withdrawal Act.
- 6.2 The Withdrawal Act makes provision for repealing the European Communities Act 1972 and will retain certain EU law, as it stands at the moment of exit, in UK law. It provides for the creation of a new body of domestic legislation by bringing the texts of directly applicable EU legislation into domestic legislation, as well as saving EU-derived domestic legislation which was made to implement the UK’s obligations as a member of the EU.
- 6.3 The Act also contains temporary power to make secondary legislation to enable Ministers and the devolved administrations to deal with deficiencies in retained EU law, to ensure that the United Kingdom’s legal system continues to function properly outside the EU.
- 6.4 Regulation 95/93 provides for the allocation of slots to air carriers at congested airports based on neutral, transparent and non-discriminatory rules. The 2006 regulations implement Regulation 95/93 in the UK and Annex 13 to the EEA Agreement applies that Regulation, with adaptation, for the purposes of that

Agreement. This instrument makes the necessary changes to the retained version of Regulation 95/93, the retained Annex 13 to the EEA Agreement and the 2006 Regulations to ensure that they continue to function properly once the UK has left the EU.

7. Policy background

What is being done and why?

- 7.1 Regulation 95/93 sets out common rules for the allocation of slots at congested EU airports, where there is an imbalance between the demand for adequate airport infrastructure and the availability of such infrastructure. It provides for a Member State to be able to designate a congested airport as coordinated and for the allocation of slots for take-off or landing by air carriers at such airports to be based on transparent and non-discriminatory processes. At the point of laying this instrument, the following airports in the UK were designated as coordinated: Birmingham, Bristol (partial coordination for summer season), London City, Gatwick, Heathrow, Luton, Manchester and Stansted.
- 7.2 This instrument uses powers in section 8 of, and paragraph 21 of Schedule 7 to, the Withdrawal Act to make corrections to Regulation 95/93, Annex 13 to the EEA Agreement and the 2006 Regulations. The Withdrawal Act limits these corrections to what is appropriate to ensure that the legislation will function correctly once the UK has left the EU.
- 7.3 Corrections to the Airports Slot Allocation Regulations 2006. The minor corrections to the 2006 Regulations being made are: to amend regulation 2(1) to include this instrument in the list of instruments that amend Regulation 95/93; to amend regulation 8(2) to replace a reference to European Union slot rules to rules within Europe; to amend regulation 11(1) to remove the requirement for a coordination committee at an airport to invite the European Commission to meetings; and, to amend regulation 13 to reflect the removal of the European Commission's power to require the UK to take action in response to discriminatory behaviour by a third country in relation to slot allocation at that country's airports to EU air carriers (this requirement is replaced with a discretion for the Secretary of State to take such action).
- 7.4 Corrections to Annex 13 to the EEA Agreement. The change being made to Annex 13 to the EEA Agreement (transport), so far as retained by section 3(2)(b) of the Withdrawal Act, is to omit paragraph 64b of that Annex. Paragraph 64b applied Regulation 95/93 for the purposes of the EEA Agreement and adapted it to provide for the Contracting Parties to the EEA Agreement to inform each other about serious difficulties encountered by their air carriers in third countries. As the United Kingdom will no longer be a party to the EEA Agreement and will not be required to inform the European Commission under Article 12 of Regulation 95/93 about serious difficulties encountered by UK air carriers in third countries, paragraph 64b is no longer relevant.
- 7.5 Corrections to retained Regulation 95/93. The changes made to retained Regulation 95/93 being made are:
 - 7.6 To amend the title and Article 1 of Regulation 95/93 to limit its scope to airports in the United Kingdom.
 - 7.7 To amend definitions in Article 2 to reflect the fact that references to Community airports and Community air carriers will no longer include the UK and UK air carriers

once the UK has left the EU. Similarly, amendments are made to Articles 3, 4, 5, 6, 11 and 14 of Regulation 95/93: to change or omit references to Member States, which on exit day will no longer include the UK; and, to omit requirements which have been imposed on Member States and which have been implemented in the UK by the 2006 Regulations. Instead, functions in relation to designating an airport as schedules facilitated or coordinated, appointing a schedules facilitator or airport coordinator, setting up a coordination committee, ensuring coordination parameters are determined and enforcement of slot rules, will be conferred directly on the Secretary of State, the airport coordinator, or the managing body of the airport. The role of the Commission in relation to the coordination of airports and references to Community law are also removed or replaced as these will no longer be relevant on exit day.

- 7.8 Article 8 of the retained Regulation 95/93 sets out the process of slot allocation. This instrument amends the process so that the slot coordinator is not required to take into account ‘Community-wide’ guidelines’, but continues to be required to take into account additional rules and guidelines established by the air transport industry worldwide, regional-level guidelines for Europe which could be set by non-EU organisations, for example the International Air Transport Association (IATA), the International Civil Aviation Organisation (ICAO) or the European Civil Aviation Conference (ECAC), and local guidelines for the airport in question. The requirements for such rules and guidelines to comply with Community law and to communicate the rules taken into account to the Commission are also amended, as those requirements will no longer apply to the UK once it has left the EU.
- 7.9 References to Community law, rules of the Treaty and EU competition rules are omitted from Article 8b, relating to the exclusion of compensation claims in respect of the restriction or elimination of a series of slots, as these rules will no longer apply to the UK once it has left the EU.
- 7.10 Article 9 provides that Member States may reserve slots at coordinated airports for Public Service Obligation (PSO) operations. The reference to ‘a Member State’ will be replaced with a reference to the Secretary of State. If the slots are not used, no invitation to tender for the PSO route is issued, or no other carriers are interested in operating the route, the options remain to reserve the slots for another route subject to a PSO or return the slots to the slot pool. Instead of any invitation to tender to operate a PSO route being open to Community air carriers only, this will be open to all air carriers with traffic rights to operate services within the UK.
- 7.11 A number of amendments are being made to Article 10, which relates to the establishment of a pool of unallocated slots and for the allocation of slots from such ‘slot pool’. These are being made because references to Community airports and Community air carriers will no longer include UK airports and UK air carriers from exit day, as well as to remove functions of the European Commission in relation to slot pools established at UK airports.
- 7.12 Article 12 is amended so that if, with respect to the allocation of slots at its airports, a country other than the UK does not grant UK air carriers de facto national treatment or treatment comparable to that granted by the retained Regulation 95/93 to air carriers from that country, the Secretary of State, rather than the European Commission, may wholly or partially suspend the operation of the retained Regulation 95/93 in relation to air carriers from that country. The same applies if the other country grants carriers from third countries more favourable treatment than UK air carriers. Instead of following EU Committee procedure set out in Article 13, which

will not be relevant to the UK once it has left the EU, the Secretary of State may exercise this power by regulations. The process for doing this is provided for in regulation 18 of this instrument and will follow the normal process for a negative resolution statutory instrument.

- 7.13 The requirement to inform the Commission of any serious difficulties encountered by UK air carriers in relation to slots at non-EU airports is removed as it will become redundant once the UK has left the EU.
- 7.14 The paragraph immediately following Article 15 provides that Regulation 95/93 is directly applicable in all Member States. The Withdrawal Act will provide for Regulation 95/93 to be retained in domestic law and so that paragraph is omitted as it will become redundant.
- 7.15 This instrument applies to the allocation of slots at airports. As airports are “aerodromes” they are a transferred matter for Northern Ireland under paragraph 4 of Schedule 3 to the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have 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 six months 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 Withdrawal Act 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. The instrument is also being made under paragraph 21 of Schedule 7 to the Withdrawal Act. 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 current plans to consolidate the legislation covered by this instrument.

10. Consultation outcome

- 10.1 The Department for Transport Ministers and officials have regular engagement with the aviation industry, travel industry and consumer representatives. Through specific meetings and workshops on EU Exit, and at long-established stakeholder forums, a number of issues related to the UK's withdrawal from the EU have been addressed. This includes plans for making secondary legislation to ensure that the statute book continues to function irrespective of the outcome of negotiations. There was support amongst stakeholders for continuity in terms of the rules applicable to the allocation

of airport slots. The Department also works closely with the Civil Aviation Authority on all aviation matters, including the preparation of this instrument.

11. Guidance

- 11.1 The Department for Transport is not producing any specific guidance on the amendments provided for in this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because it makes only minor changes to correct deficiencies in retained EU law and the impact on businesses and the public sector is limited to minor familiarisation costs.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses (small air carriers).
- 13.2 The impact on businesses is limited to minor familiarisation costs, therefore no specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is: this legislation does not make any substantive changes to the policy on the allocation of airport slots. Monitoring of the policy content of the retained version of Regulation 95/93 on common rules for the allocation of slots at Community airports, and the 2006 Regulations which implement it, will take place in the course of normal departmental business.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Ian Elston at the Department for Transport Telephone: 0760010070 or email: ian.elston@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Sacha Hattea, Deputy Director for Technology and International Aviation, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Sugg, Parliamentary Under Secretary of State at the Department for Transport, 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 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
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 Parliamentary Under Secretary of State, Baroness Sugg, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Airports Slot Allocation (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate.”.

- 1.2 This is the case because: the changes this instrument makes to Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports, Annex 13 to the EEA Agreement, as retained by the Withdrawal Act, and the Airports Slot Allocation Regulations 2006 are minor and do no more than is strictly necessary to ensure that the legislation functions correctly once the UK has left the EU. The specific changes are set out in the ‘Policy Background’ section in sub-paragraphs 7.3 to 7.14.

2. Good reasons

- 2.1 The Parliamentary Under Secretary of State, Baroness Sugg 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:

- (a) ensuring that the legislation governing the allocation of slots at congested airports in the UK continues to function correctly once the UK has left the EU;
- (b) ensuring that there is clarity for airport operators and air carriers which legislation will apply once the UK has left the EU, and what the rules on slot allocation at UK airports will be.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State, Baroness Sugg, has made the following statement:

“The 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 Parliamentary Under Secretary of State, Baroness Sugg, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Baroness Sugg, 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.