

EXPLANATORY MEMORANDUM TO
THE AIRPORTS SLOT ALLOCATION (AMENDMENT) (EU EXIT)
REGULATIONS 2021

2021 No. [XXXX]

1. Introduction

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

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 United Kingdom, 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 An airport ‘slot’ is a permission to use all necessary airport infrastructure to operate an aircraft at a specified date and time for take-off or landing. Airport slot allocation is currently governed by Regulation (EEC) No 95/93 on common rules for the allocation of slots at United Kingdom airports, as amended (“Regulation 95/93”).
- 2.3 A fundamental tenet of slot administration is the “80:20”, or “use-it-or-lose-it” rule. This mandates that, provided an airline has used its slots at least 80% of the time in the preceding season (either winter or summer), it is entitled to those slots in the upcoming equivalent season (“the 80:20 rule”).
- 2.4 In March 2020, in response to the ongoing impacts of the COVID-19 outbreak on the aviation industry, Regulation 95/93 was amended to waive the 80:20 rule for the Summer 2020 season. This involved instructing airport coordinators, when determining whether airlines are entitled to maintain their slots for the upcoming season under the 80:20 rule, to consider slots as having been operated, whether or not they were actually used. The EU Commission was also given a power to extend the period of this waiver of the 80:20 rule, where the reduction in air traffic continued to persist as a result of the impact of the COVID-19 outbreak. In October 2020 the EU Commission extended the waiver to cover the Winter 2020/21 season, which will run until 27th March 2021.

Why is it being changed?

- 2.5 Regulation 95/93 will become retained EU law after the end of the implementation period and will be amended at that time by the Airports Slot Allocation (Amendment) (EU Exit) Regulations 2019 (“S.I. 2019/276”), to correct failures in it to operate effectively. Following the making of S.I. 2019/276, Regulation 95/93 has been amended by Regulation (EU) 2020/459 and Commission Delegated Regulation (EU) 2020/1477. As a result of those amendments by EU instruments, it is necessary to make further amendments to Regulation 95/93 to ensure it will operate effectively when it becomes retained EU law.

- 2.6 If the reduction in air traffic caused by the COVID-19 pandemic continues, a further extension of the period for which the waiver of the 80:20 rule applies may be appropriate. To enable this to happen, it is necessary to amend Article 10a(4) of Regulation 95/93 to transfer the power for extending this period after the end of the implementation period from the EU Commission to the Secretary of State. This instrument will make this change. Such change would be of significant domestic policy benefit, providing flexibility to deal with the impacts of the COVID-19 pandemic on slot-coordinated airports.

What will it now do?

- 2.7 Under ordinary circumstances the 80:20 rule helps to encourage efficient use of scarce airport capacity whilst allowing airlines a degree of flexibility in their operations. Slots have significant competitive, operational and financial value to the airlines who hold them. Without the power to extend the waiver, if the current scenario – where the impact of the COVID-19 pandemic has resulted in a continued decline of passenger numbers and forward bookings – continued this could pose very challenging commercial decisions for airlines on whether to bear the costs of operating near-empty aircraft, or risk losing their slots. The amendments to Regulation 95/93 made by this instrument will enable the Secretary of State to consider a further extension to the period of the existing slot waiver, if evidence shows this is warranted.

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.
- 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 by the Act.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales and Scotland.
- 4.2 The territorial application of this instrument is England and Wales and Scotland.
- 4.3 Aerodromes are a devolved matter in relation to Northern Ireland and, as there are currently no slot coordinated airports there and the power to waive the 80:20 rule is only exercisable until 2nd April 2021, the Northern Ireland Executive have agreed that it is not necessary for this instrument to extend to, or apply in relation to, Northern Ireland.

5. European Convention on Human Rights

- 5.1 The Parliamentary Secretary of State, Rachel Maclean MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Airports Slot Allocation (Amendment) (EU Exit) Regulations 2021 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 end of the implementation period, 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 Withdrawal 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. S.I. 2019/276 contains corrections to Regulation 95/93 to ensure that it will continue to function properly after the end of the implementation period and this instrument makes further corrections to deal with other deficiencies which have arisen following amendments to Regulation 95/93, by Regulation (EU) 2020/459 and Commission Delegated Regulation (EU) 2020/1477.

7. Policy background

What is being done and why?

- 7.1 With the uncertainties caused by the COVID-19 pandemic, an amendment to Regulation 95/93 is necessary to transfer the power for granting alleviation of the "80:20" rule from the EU Commission to the Secretary of State.
- 7.2 The COVID-19 pandemic has had a significant impact on aviation passenger demand which has warranted an alleviation of the "80:20" slot usage rule since March 2020, currently running until 27th March 2021. UK Government officials are continuing to monitor this impact and assess the case for alleviation beyond March 2021, for the summer 2021 season. Pending evidence, it is possible that further alleviation will be warranted in which case the legal powers would need to be in place to take this action.
- 7.3 The instrument extends to, and applies in relation to airports located in, England and Wales and Scotland. It does not extend to, or apply in, Northern Ireland. Airports are "aerodromes" and so are a transferred matter for Northern Ireland under paragraph 4 of Schedule 3 to the Northern Ireland Act 1998 and there are currently no slot coordinated airports there.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the powers in section 8 of the European Union (Withdrawal) Act 2018 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 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 the end of the implementation period, and at long-established stakeholder forums, a number of issues related to the end of the implementation period 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.

10.2 Officials continue to informally consult with key airlines, IATA, slot coordinated airports in the United Kingdom, and the United Kingdom's independent slot coordinator, Airport Coordination Limited on slots policy. Industry have been forthcoming with the Department on the impact of the COVID-19 outbreak on their businesses. A formal consultation would not have been possible in the short timescales available.

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 of itself 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 will take place in the course of normal departmental business.

14.2 As this instrument is made under the Withdrawal Act, no review clause is required.

15. Contact

15.1 Kelly Dunlea at the Department for Transport Telephone: 07977 436536 or email: kelly.dunlea@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Lydia Strawson, Deputy Director for Airport Policy, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rachel Maclean MP, 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 14, 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 15, 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, Rachel Maclean MP, 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 2021 do no more than is appropriate.”.

- 1.2 This is the case because the instrument only corrects those deficiencies and makes those amendments necessary to ensure that the legislation functions correctly after the end of the implementation period. It leaves technical requirements unchanged and only makes changes to the regulatory framework for civil aviation which are necessary for the legislation to operate effectively (such as conferring functions of EU bodies on domestic bodies).

2. Good reasons

- 2.1 The Parliamentary Under Secretary of State, Rachel Maclean MP, 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 airports slots in the UK continues to function correctly after the end of the implementation period;
- (b) ensuring that there is clarity for airport operators and air carriers which legislation will apply after the end of the implementation period, and what the rules on slot allocation at UK airports will be.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State, Rachel Maclean MP, has made the following statement:

“The draft 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, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Rachel Maclean MP, 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.