

EXPLANATORY MEMORANDUM TO
THE COMPUTER RESERVATION SYSTEMS (AMENDMENT) (EU EXIT)
REGULATIONS 2018

2018 No. 1080

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument is being made using powers in the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) in order to address failures of retained EU law, specifically Regulation (EC) No 80/2009 on a Code of Conduct for computerised reservation systems (“the Regulation”), arising from the withdrawal of the United Kingdom from the European Union.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The Regulation establishes a Code of Conduct for businesses using the computerised reservation systems (“CRS”). The CRS are computer based systems for airlines to display their flight fares, mostly for use by travel agents to see all available fares to sell to the consumer. The Regulation is intended to ensure displays on the CRS of available flights and fares are unbiased, with no CRS displaying one airline’s fares in a preferential way or discriminating against an airline.

Why is it being changed?

- 2.3 This instrument makes the necessary changes to the Regulation to ensure that the law functions correctly after the UK has left the EU. The changes ensure that UK bodies rather than EU bodies will be responsible for enforcing the Regulation.

What will it now do?

- 2.4 A UK body (the Civil Aviation Authority or “CAA”) rather than the European Commission will be the regulator, and a Court in the United Kingdom rather than a European Court will deal with any appeal against the regulator’s decisions. Aside from this, the policy content of the Regulation remains unchanged. The corrections made to the Regulation by this instrument are set out in paragraphs 7.1 – 7.6.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument was laid for sifting on 19 July 2018. It was recommended for the negative procedure by the Sifting committees.

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Withdrawal Act makes provision for repealing the European Communities Act 1972 and will retain certain European Union (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. The Act also contains temporary powers 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.
- 6.2 EU legislation is written in a way that is applicable to all the Member States and has EU bodies responsible for certain functions meaning that some amendments to the text of the legislation is required, to ensure the retained legislation works as UK legislation once the UK leaves the EU.
- 6.3 The amendments are, for example, changing the term "Community" to "United Kingdom" and "third country" into "other country", as the legislation will only apply to the UK and the UK will not, for the purposes of this legislation, distinguish between EU and non-EU countries. Furthermore, the instrument will transfer the monitoring and enforcement functions set out in the legislation from the European Commission to the CAA. The High Court will hear appeals against the CAA's decisions relating to imposition of fines; this appeal function currently rests with the Court of Justice of the European Union.

7. Policy background

What is being done and why?

- 7.1 The Regulation establishes a Code of Conduct for businesses using computerised reservation systems ("CRS"). The CRS are computer based systems for airlines to display their flight fares, mostly for use by travel agents to see all available fares to sell to the consumer. The Regulation is intended to ensure displays on the CRS of available flights and fares are unbiased, with no CRS displaying one airline's fares in a preferential way or discriminating against an airline.

- 7.2 The European Commission has never conducted an investigation under the Regulation nor utilised the Commission's powers under the Regulation. The situation where an airline as the owner and main operator of a CRS would deliberately prejudice flight ticket fares has not materialised. The major airlines have divested themselves of ownership of the CRS removing control of the CRS from those with a direct incentive to manipulate the operation of the CRS. Currently there are three main CRS providers in the world, one of which is based in the EU; none are established in the UK.
- 7.3 The Government has stated that all European legislation that is in place will be retained in UK law on the UK's exit from the European Union. This will provide certainty and clarity to businesses and consumers.
- 7.4 The amendments made by this instrument do not amount to a change in policy and it does not make substantial changes. It fixes only deficiencies that arise from the European legislation and wording so that the retained legislation works as UK law. Some terms need to be changed, a new data protection Regulation is mentioned and sums that are mentioned in Euros are changed to Sterling.
- 7.5 The monitoring and enforcement body for the Regulation is the European Commission, which has the power to levy fines in case of breach of the Regulation. These functions will be transferred to the CAA, which is the most suitable body to take on these functions.
- 7.6 Under the Regulation the Court of Justice of the European Union is the route for appeals against fines imposed by the European Commission. This function will be transferred to High Court, which is the appropriate body in view of the nature of the decisions and sums involved.

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(1) 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 being made under paragraph 21 of Schedule 7 to that Act (which includes the power to modify retained EU law and to make supplementary, incidental or consequential provision). 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 plans for consolidation.

10. Consultation outcome

- 10.1 The CAA has been consulted throughout the preparation of this statutory instrument and the aviation industry has been informed of the department's intentions to lay statutory instruments using powers in the Withdrawal Act to fix deficiencies in retained EU legislation. Consultation took the form of regular meetings with representatives of air carriers, airports and others as well as representative trade associations both individually on a bilateral basis and in group settings at stakeholder workshops. Workshops at official level took place in February and September 2017 and in July 2018, and at Ministerial level in February 2017. Department for Transport

representatives have regularly updated the sector at long established stakeholder forums for the general and business aviation sector and with the aerospace sector.

11. Guidance

- 11.1 As this legislation does not change the way the Regulation functions, no guidance has been produced.

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 no, or no significant, impact on business or the voluntary sector is foreseen.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are currently undertaken by small businesses.
- 13.2 The effect of this instrument is to maintain the status quo, therefore no specific action to minimise the impact on small business is required.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is: this legislation does not make any substantive changes to the code of conduct for computer reservation systems. Monitoring of the policy content of the Regulation will take place in the course of normal departmental business.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Sharon Goodsell at the Department for Transport Telephone: 0782855198 or email: Sharon.goodsell@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Michael Clark, 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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
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. Sifting statement(s)

- 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:
- 1.2 “In my view the Computer Reservation Systems (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.
- 1.3 This is the case because: this instrument does not fall within the categories for which use of the affirmative procedure is required under the Withdrawal Act, i.e. establish a new public authority, transfer an EU function to a newly created public authority, transfer an EU legislative function to a UK body, relate to fees, create or widen the scope of a criminal offence, create or amend a power to legislate.

2. Appropriateness statement

- 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:
- 2.2 “In my view the Computer Reservation Systems (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate”.
- 2.3 This is the case because: the changes this instrument makes to the Regulation are minor and do no more than is strictly necessary to ensure that the Regulation functions correctly once the UK has left the EU. The specific changes are set out in the ‘Policy Background’ section in paragraphs 7.1 – 7.6.

3. Good reasons

- 3.1 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:
- 3.2 “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.
- 3.3 These are:
 - (a) ensuring that the legislation setting out a code of conduct for computer reservation systems continues to function correctly once the UK has left the EU;
 - (b) ensuring that there is clarity for users and providers of computer reservation systems which legislation will apply once the UK has left the EU, and which requirements they are expected to meet.

4. Equalities

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

4.2 “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.”

4.3 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:

4.4 “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.”

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

6. Criminal offences

6.1 There are no criminal offences created by this instrument.

7. Legislative sub-delegation

7.1 This instrument does not sub-delegate any powers to make legislation.

8. Urgency

8.1 The scrutiny procedure for urgency set out in paragraphs 5, 6 or 20 of Schedule 7 to the European Union (Withdrawal) Act 2018 does not apply to this instrument. Accordingly, no statement is required.