

EXPLANATORY MEMORANDUM TO

THE AVIATION SAFETY (AMENDMENT ETC.) (EU EXIT) (NO. 2) REGULATIONS 2019

2019 No. 1098

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The instrument uses powers in the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) to correct deficiencies in EU-derived aviation safety legislation arising as a result of the withdrawal of the United Kingdom from the European Union (“EU”). This will ensure that the legal framework on aviation safety continues to function correctly after exit day.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The relevant EU law provides for a comprehensive system of aviation safety in the EU. The Basic Regulation (Regulation 2018/1139, which repealed and replaced Regulation 216/2008), established the European Union Aviation Safety Agency (“EASA”), provided powers to the European Commission (“the Commission”) to give effect to requirements in the Convention on International Civil Aviation (“the Chicago Convention”), and made further provision on the establishment of a comprehensive aviation safety regulatory system in the EU. In particular the Commission was given the power to adopt and amend Regulations containing technical requirements, and to amend technical detail in the Basic Regulation which is contained primarily in its Annexes. Implementing Regulations adopted by the Commission are subject to qualified majority voting by the Member States.
- 2.3 Under the Basic Regulation, EASA is responsible for preparing proposals for new and amended technical requirements. These form the basis of the technical Implementing Regulations. The Commission has adopted numerous technical Implementing Regulations dealing with different aspects of aviation safety regulation including:
 - (a) the design, construction, maintenance and operation of aircraft;
 - (b) the licensing of flight crew, maintenance engineers and air traffic controllers;
 - (c) the provision of air traffic management and air navigation services;
 - (d) the design and operation of aerodromes.These technical Regulations were adopted mainly by consensus.
- 2.4 Under EU law, certification and oversight responsibilities are split between EASA and the competent authorities of the Member States. EASA has responsibility for aircraft,

engines and propellers (collectively referred to as “products”) which are intended for use as or as part of EU registered aircraft; for the component “parts” of such products; and for organisations responsible for the design of such products and parts. EASA also has responsibility for the oversight of organisations based in countries outside the EU where those organisations are providing services within the scope of the Basic Regulation, for example maintaining products or parts intended for use as or as part of EU registered aircraft. All other certification and oversight activities (including certification and oversight of production organisations) are the responsibility of the Member State in which the individual or organisation is based. The Civil Aviation Authority (“CAA”) undertakes these tasks in the UK.

2.5 The EU Regulations applicable on or before 29th March 2019 are corrected by the Aviation Safety (Amendment etc.) (EU Exit) Regulations 2019 (S.I. No 2019/645). Since 29th March 2019 a further five EU implementing Regulations have become applicable, and corrections relating to these are made by this instrument. The five new EU implementing Regulations relate to:

- (a) the privileges of trainees for a light aircraft pilot licence (LAPL)
- (b) the operation of balloons and sailplanes (gliders)
- (c) the use of electronic flight bags.

They are as follows:

- (i) Commission Implementing Regulation 2019/430 (aircrew), which amends Commission Regulation No 1178/2011 (aircrew);
- (ii) Commission Regulation 2018/394 (balloons), which amends Commission Regulation 956/2012 (air operations);
- (iii) Commission Implementing Regulation (EU) 2018/1975 (sailplanes and electronic flight bags), which amends Commission Regulation 956/2012 (air operations);
- (iv) Commission Regulation (EU) 2018/395 (operation of balloons);
- (v) Commission Implementing Regulation 2018/1976 (operation of sailplanes).

Why is it being changed?

2.6 The instrument uses powers in the Withdrawal Act to make changes to retained aviation safety legislation to ensure that the law functions effectively after the UK has left the EU. These changes are necessary because the legislation has functioned on the basis of the UK being part of the EASA/EU system and having certain obligations as an EU Member State. If, from exit day, the UK is no longer part of the EASA system, there needs to be provision in the UK’s legal framework for aviation safety for UK bodies to carry out the regulatory activities previously carried out by EASA.

What will it now do?

2.7 From exit day, aviation safety legislation will work in a self-contained way within the UK, independent of the EASA system, with the CAA as the UK-wide regulator. The CAA already undertakes the majority of certification and oversight tasks required by retained EU legislation. The CAA has contingency plans in place to ensure that it will be able to discharge the responsibilities taken on from EASA. The UK will continue to have the same technical requirements and standards as the EASA system on exit day, as none of the changes made by this instrument affects the substance of the

technical requirements and standards established by retained EU legislation. Further detail on the corrections made by this instrument are set out in section 7 of this memorandum.

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 18th June 2019. It was considered by both the European Statutory Instruments Committee and the Secondary Legislation Scrutiny Committee on 2nd July. The Sifting Committees both agreed that the instrument should proceed by way of the negative resolution procedure. The Minister has considered the decisions of the Sifting Committees and has approved and signed the instrument.

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, and it also has extra-territorial effect in certain circumstances (as explained in paragraph 4.3).
- 4.3 This instrument has extra-territorial effect outside the United Kingdom in certain situations. The extra-territorial effect is analogous to the way in which the EU versions of the Regulations that it corrects have extra-territorial effect outside the EU. In relation to these EU Regulations, this instrument also applies to (and amends those Regulations so as to apply to) all aircraft which are registered in the UK, or which are registered elsewhere but operated by an operator established in the UK, wherever they may be.

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 This instrument is made in exercise of powers in section 8(1) 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 preserve EU law, as it stands immediately before exit day, in UK law. It enables 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 power to make secondary legislation to enable Ministers and the devolved administrations to deal with deficiencies in retained EU law, to ensure the UK's legal system continues to function properly outside the EU.

7. Policy background

What is being done and why?

- 7.1 The instrument corrects retained EU aviation safety legislation in two main ways. Firstly, Part 2 amends corrections made to certain retained Commission Regulations in the Aviation Safety (Amendment etc.) (EU Exit) Regulations 2019; in the main these are necessitated by amendments made to the Commission Regulations which have become applicable since 29th March 2019 (there are also two small changes made in regulations 3 and 4 in order to reverse corrections made by the Aviation Safety (Amendment etc.) (EU Exit) Regulations 2019 to Regulation (EU) No. 376/2014 on occurrence reporting which are not needed). Secondly, Part 3 corrects two new Commission Regulations which have become applicable since 29th March 2019 and which do not affect any legislation corrected by the Aviation Safety (Amendment etc.) (EU Exit) Regulations 2019. In addition, Part 1 contains a citation and commencement provision.
- 7.2 Corrections made include:
- (a) assigning to the CAA the responsibilities and functions currently given to EASA; and
 - (b) replacing EU terminology (e.g. “Member States”) where this would not be appropriate after EU exit.

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, and paragraph 21 of Schedule 7 to, 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. 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 Currently there are no plans to consolidate the legislation covered by this instrument.

10. Consultation outcome

- 10.1 Department for Transport Ministers and officials have regular engagement with the aviation industry, aerospace 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. The Department also works closely with the CAA on all aviation matters, including preparing for EU exit. Stakeholders broadly favour retaining EU aviation safety legislation, which affords stability; and they support the transfer of relevant functions to the CAA.

11. Guidance

- 11.1 Where the CAA considers it appropriate to do so, the CAA will provide information on how it will discharge new responsibilities that it takes over from EASA, for example through publications on its website. 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 the costs and benefits to business are minor.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise the impact of the requirements on small businesses (employing up to 50 people).
- 13.3 The basis for the final decision on what action to take to assist small businesses is that the corrections made by this instrument are limited to what is needed to ensure that the regulatory regime on aviation safety continues to function effectively after exit day.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is for it to be monitored 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 At the Department for Transport, Duncan Nicholls, telephone: 07825 263 416 or email: duncan.nicholls@dft.gov.uk or Mike Alcock, telephone: 07824 857522 or email: mike.alcock@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Catherine Adams, Deputy Director for Aviation Strategy and Consumers at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Vere of Norbiton, 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) Act 2018

1. Sifting statement(s)

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

“In my view the Aviation Safety (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because the instrument only corrects deficiencies and failures in retained EU law that have arisen as a result of the UK leaving the EU and leaves the technical requirements unchanged. It does not create any criminal offences or the power to make regulations or raise fees.

2. Appropriateness statement

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

“In my view the Aviation Safety (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 does no more than is appropriate”.

- 2.2 This is the case because this instrument only corrects deficiencies and failures in law that have arisen as a result of the UK leaving the EU. These changes are necessary to ensure that the legislation relating to aviation safety functions correctly after the UK has left the EU. It leaves technical requirements unchanged and only makes changes to the legislative and regulatory framework which are necessary for the legislation to operate effectively.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State, Baroness Vere of Norbiton, 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”.

- 3.2 These are:

(a) ensuring that the legislation governing aviation safety in the UK continues to function effectively once the UK has left the EU;

(b) enabling the UK to continue to comply with its obligations under the Chicago Convention; and

(c) maintaining the existing regulatory framework and technical requirements for aviation safety, minimising disruption to industry and recreational flyers.

4. Equalities

4.1 The Parliamentary Under Secretary of State, Baroness Vere of Norbiton, 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.”

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

“In relation to the draft instrument, I, Baroness Vere of Norbiton, 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.