

2019 No. 1224

EXITING THE EUROPEAN UNION

CIVIL AVIATION

COMPETITION

**The Air Services (Competition) (Amendment and Revocation)
(EU Exit) Regulations 2019**

Approved by both Houses of Parliament

Made - - - - at 9.55 a.m. on 5th September 2019

Laid before Parliament at 3.00 p.m. on 5th September 2019

Coming into force in accordance with regulation 1(2)

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018^(a).

The Secretary of State is of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft of the instrument being laid before, and approved by a resolution of, each House of Parliament.

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Air Services (Competition) (Amendment and Revocation) (EU Exit) Regulations 2019.

(2) These Regulations come into force on exit day.

PART 2

Revocation of subordinate legislation

Revocation of Regulations

2. The Air Services (Competition) (Amendment) (EU Exit) Regulations 2019^(a) are revoked.

PART 3

Amendment of retained direct EU legislation

Amendment of Regulation (EU) 2019/712

3.—(1) Regulation (EU) 2019/712 of the European Parliament and of the Council of 17 April 2019 on safeguarding competition in air transport, and repealing Regulation (EC) No 868/2004 is amended as follows.

- (2) In Article 1 (subject matter)—
 - (a) in paragraph 1—
 - (i) for “Commission”, substitute “CAA”;
 - (ii) after “redressive measures”, insert “by the Secretary of State”;
 - (iii) for “Union”, in both places where it occurs, substitute “United Kingdom”;
 - (b) in paragraph 2, for “Article 20 of Directive 96/67/EC”, substitute “regulation 19 of the Airports (Groundhandling) Regulations 1997^(b)”.
- (3) In Article 2 (definitions)—
 - (a) in point (1), after “Council”, insert “of 24 September 2008 on common rules for the operation of air services in the United Kingdom”;
 - (b) omit point (4);
 - (c) in point (10)—
 - (i) for “Union”, substitute “United Kingdom”;
 - (ii) for “a Member State”, substitute “the CAA”;
 - (d) in point (11), for “Union”, substitute “United Kingdom”;
 - (e) at the end of point (11), insert—

“;

 - (12) ‘the CAA’ means the Civil Aviation Authority;
 - (13) ‘Official Record’ means a document of that name published on the website of the CAA;
 - (14) ‘third country’ means a country other than the United Kingdom”.
- (4) In Article 3 (Union interest)—
 - (a) in the title of the Article and in each place where it occurs in the body of the Article, for “Union”, substitute “United Kingdom”;
 - (b) for “Commission”, in each place where it occurs, substitute “Secretary of State”;
 - (c) in paragraph 2, for “it”, in the first place where it occurs, substitute “the Secretary of State”;
 - (d) omit paragraph 5.

(a) S.I. 2019/309.

(b) S.I. 1997/2389, amended by S.I. 2004/1256, 2018/1088; there are other amending instruments but none is relevant.

- (5) In Article 4 (initiation of proceedings)—
- (a) for “Union”, in each place where it occurs, substitute “United Kingdom”;
 - (b) in paragraph 1—
 - (i) omit the words “a Member State.”;
 - (ii) for “Commission’s”, substitute “CAA’s”;
 - (c) in paragraph 2—
 - (i) for “Commission”, substitute “CAA”;
 - (ii) for “all Member States”, substitute “the Secretary of State”;
 - (d) in paragraph 3, for “Commission”, in both places where it occurs, substitute “CAA”;
 - (e) in paragraph 4, for “Commission”, substitute “CAA”;
 - (f) in paragraph 5—
 - (i) for “Commission”, substitute “CAA”;
 - (ii) for “all Member States”, substitute “the Secretary of State”;
 - (iii) omit the final sentence;
 - (g) in paragraph 6, for “Commission”, in both places where it occurs, substitute “CAA”;
 - (h) in paragraph 7, for “Commission”, substitute “CAA”;
 - (i) in paragraph 8—
 - (i) for “Commission” in each place where it occurs, substitute “CAA”;
 - (ii) in point (a), for “Member States and the European Parliament”, substitute “Secretary of State”;
 - (iii) in point (b), for “the Official Journal of the European Union”, substitute “its Official Record”;
 - (iv) in point (c), at the beginning, insert “request the Secretary of State to”;
 - (v) in point (d), omit “and the Committee provided for under Article 16”.
- (6) In Article 5 (the investigation)—
- (a) for “Union”, in each place where it occurs, substitute “United Kingdom”;
 - (b) in paragraph 1, for “Commission”, substitute “CAA”;
 - (c) in paragraph 3—
 - (i) for “Commission”, substitute “CAA”;
 - (ii) for “, of a Member State or a group of Member States”, substitute “of the United Kingdom”;
 - (d) in paragraph 4, for “Commission”, substitute “CAA”;
 - (e) for paragraph 7, substitute—

“7. If the CAA requires information in the course of its investigation which it is unable to access or receive, the CAA may request the support of the Secretary of State in accessing this information. The CAA may request the Secretary of State to contribute to relevant verification and analyses.”;
 - (f) in paragraph 8, for “Commission”, substitute “CAA”;
 - (g) in paragraph 10—
 - (i) omit “, the Member States”;
 - (ii) for “Commission”, in the first place where it occurs, substitute “CAA or the Secretary of State”;
 - (iii) for “Commission”, in both remaining places where it occurs, substitute “CAA”;
 - (iv) for “administrations of the Union and of the Member States concerned”, substitute “Secretary of State”.

(7) In Article 6 (suspension)—

- (a) in paragraph 1—
 - (i) for “Commission”, in the first place where it occurs, substitute “CAA”;
 - (ii) after “may suspend the investigation if”, insert “, after consultation between the CAA and the Secretary of State, the Secretary of State is of the view that”;
 - (iii) for “Union”, in both places where it occurs, substitute “United Kingdom”;
 - (iv) omit the sentence beginning “The Commission shall notify the Member States”;
 - (v) in the sentence beginning “The Commission may resume”, for “Commission”, substitute “CAA”;
- (b) in paragraph 2—
 - (i) for “Commission”, in both places where it occurs, substitute “CAA”;
 - (ii) for “all the Member States concerned referred to in point 4(b) of Article 2 have”, substitute “the Secretary of State has”;
 - (iii) for “their”, substitute “the Secretary of State’s”;
 - (iv) for “they have”, substitute “the United Kingdom has”;
 - (v) omit from “and” after point (a) to the end of point (b);
- (c) in paragraph 3—
 - (i) for “Commission”, in each place where it occurs, substitute “CAA”;
 - (ii) in point (a), for “the Member States concerned referred to in point (4)(b) of Article 2 have”, substitute “the Secretary of State has”;
 - (iii) in point (b), for “the Member States concerned referred to in point (4)(b) of Article 2 notify”, substitute “the Secretary of State notifies”;
 - (iv) in point (c), for “all the Member States concerned ask”, substitute “the Secretary of State asks”;
 - (v) in point (d), omit “by the Member States concerned”;
 - (vi) in point (e)—
 - (aa) omit “by the Member States concerned referred to in point (4)(b) of Article 2”;
 - (bb) for “a Member State concerned”, substitute “the Secretary of State”.

(8) In Article 7 (cooperation with the Member States in respect of proceedings relevant to cases falling under Chapter III)—

- (a) in the title of the Article, for “Member States”, substitute “Secretary of State”;
- (b) for “Member State concerned”, in each place where it occurs, substitute “Secretary of State”;
- (c) for “Commission”, in each place where it occurs, substitute “CAA”.

(9) In Article 8 (confidentiality)—

- (a) for “Commission”, in each place where it occurs, substitute “CAA”;
- (b) in paragraph 4—
 - (i) for “Member States”, in each place where it occurs, substitute “Secretary of State”;
 - (ii) for “authorities of the Union”, substitute “CAA”;
- (c) in paragraph 6, for “Union authorities”, in both places where it occurs, substitute “CAA or Secretary of State”;
- (d) in paragraph 7, for “Member States”, substitute “The CAA and Secretary of State”.

(10) In Article 9 (basis of findings in case of non-cooperation), for “Commission”, substitute “CAA”.

(11) In Article 10 (disclosure)—

- (a) in paragraph 1—
 - (i) for “Commission”, substitute “CAA”;
 - (ii) for “Member States”, substitute “Secretary of State”;
 - (iii) for “Union”, substitute “United Kingdom”;
 - (iv) for “adopt”, substitute “recommend”;
 - (v) omit from “, no later than” to the end;
 - (b) in paragraph 2, for “Commission”, in both places where it occurs, substitute “CAA or the Secretary of State”;
 - (c) in paragraph 3, for “by the Commission in each case”, substitute “in each case by the CAA or the Secretary of State, as the case may be”.
- (12) In Article 11 (duration of proceedings and suspension)—
- (a) for “Union”, in each place where it occurs, substitute “United Kingdom”;
 - (b) for “Commission”, in both places where it occurs, substitute “CAA”.
- (13) In Article 12 (determination of injury or threat of injury)—
- (a) for “Union”, in each place where it occurs, substitute “United Kingdom”;
 - (b) in paragraph 4, for “Commission”, substitute “CAA”.
- (14) In Article 13 (termination without redressive measures)—
- (a) in paragraph 1—
 - (i) for “Commission”, in both places where it occurs, substitute “CAA”;
 - (ii) for “redressive measures being”, substitute “recommending that redressive measures be”;
 - (b) in paragraph 2—
 - (i) for “Commission”, in the first two places where it occurs, substitute “CAA”;
 - (ii) for “adopt implementing acts, terminating”, substitute “terminate”;
 - (iii) for “adopting”, in the first place where it occurs, substitute “recommending”;
 - (iv) for “Union”, in each place where it occurs, substitute “United Kingdom”;
 - (v) in point (b), for “the Commission”, substitute “after consultation between the CAA and the Secretary of State, the Secretary of State”;
 - (vi) omit the final sentence;
 - (c) in paragraph 3, for “Official Journal of the European Union”, substitute “CAA’s Official Record”.
- (15) In Article 14 (redressive measures)—
- (a) in paragraph 1—
 - (i) for “Commission shall adopt implementing acts, laying down”, substitute “CAA must recommend to the Secretary of State the adoption of”;
 - (ii) for “Union”, substitute “United Kingdom”;
 - (iii) after “air carriers concerned.” insert “The Secretary of State may by regulations adopt redressive measures, in response to such a practice.”;
 - (iv) omit the final two sentences;
 - (b) in paragraph 2—
 - (i) for “Commission may, adopt implementing acts, laying down”, substitute “CAA must recommend to the Secretary of State the adoption of”;
 - (ii) for “Union”, substitute “United Kingdom”;
 - (iii) for “These redressive measures” to the end, substitute—

“The Secretary of State may by regulations adopt redressive measures, in response to such a practice. Such regulations must provide that the redressive measures are not to apply until the Secretary of State has directed that they are to apply. The Secretary of State must only make such a direction if the CAA has determined that the threat of injury has developed into actual injury.”;

- (c) in paragraph 3—
 - (i) for “Union”, in the first place where it occurs, substitute “United Kingdom”;
 - (ii) for “Union law”, substitute “the law of any part of the United Kingdom”;
- (d) in paragraph 4, for “Union”, substitute “United Kingdom”;
- (e) in paragraph 5, for “a Member State”, substitute “the United Kingdom”;
- (f) in paragraph 6, for “Union or the Member States concerned”, substitute “United Kingdom”;
- (g) in paragraph 7—
 - (i) after “The decision”, insert “by the CAA”;
 - (ii) for “the adoption of”, substitute “a recommendation to the Secretary of State to adopt”;
 - (iii) for “Official Journal of the European Union”, substitute “CAA’s Official Record”.

(16) In Article 15 (review of redressive measures)—

- (a) in paragraph 1—
 - (i) for “Commission”, substitute “CAA”;
 - (ii) for “European Parliament and to the Council”, substitute “Secretary of State”;
- (b) in paragraph 2—
 - (i) for “Commission”, substitute “CAA”;
 - (ii) for “Member States concerned”, substitute “Secretary of State”;
- (c) in paragraph 3, for “Commission”, substitute “CAA”;
- (d) for paragraph 4, substitute—

“4. The CAA must make recommendations to the Secretary of State as to whether the redressive measures adopted under Article 14 should be revoked, amended or maintained, as appropriate.”.

(17) For Article 16 (committee procedure), substitute—

“Regulations

1. Regulations made by the Secretary of State under this Regulation are to be made by statutory instrument.

2. Regulations made under this Regulation may—

- (a) make consequential, supplementary, incidental, transitional, transitory or saving provision;
- (b) make different provision for different cases or descriptions of case or for different purposes.

3. A statutory instrument containing regulations under this Regulation may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”.

(18) Omit Article 17 (report and information).

(19) After Article 19 (entry into force), omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

Signed by authority of the Secretary of State for Transport

Chris Heaton-Harris
Minister of State
Department for Transport

At 9.55 a.m. on 5th September 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (b), (d) and (g)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations revoke the Air Services (Competition) (Amendment) (EU Exit) Regulations 2019, S.I. 2019/309. Those Regulations made amendments to Regulation (EC) No 868/2004, which has since been repealed.

These Regulations amend Regulation (EU) 2019/712 on safeguarding competition in air transport, which will be retained as part of the UK's domestic law after the UK's withdrawal from the EU. The EU Regulation permits the European Commission to adopt measures in response to anti-competitive practices by non-European Union countries which adversely impact Union air carriers. The amendments made by these Regulations reflect the UK's position upon exit from the EU. They permit the Civil Aviation Authority ("CAA") to initiate proceedings, where there is sufficient evidence of anti-competitive practices by countries other than the United Kingdom which adversely impact on the United Kingdom's air services industry. Where the CAA initiates proceedings, notification must be placed in its Official Record, available on its website at <https://www.caa.co.uk/home/>. A hard copy of the notice may be obtained by writing to the Department for Transport at Great Minster House, 33 Horseferry Road, Westminster, London SW1P 4DR. Where the CAA makes a recommendation to the Secretary of State following its investigation, the Secretary of State may then adopt measures in response. Such measures will be imposed by making regulations.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

An Explanatory Memorandum is published alongside the instrument on www.legislation.gov.uk.

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