

## EXPLANATORY MEMORANDUM TO

### THE CIVIL AVIATION (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. 687

#### 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 purpose of this instrument is to make minor technical changes to ensure that UK legislation on aviation continues to function effectively after the UK has left the EU; this includes making minor corrections to two previous EU Exit instruments. It also makes minor corrections to retained direct EU legislation on wet leasing of aircraft (i.e. leasing of the aircraft along with crew, maintenance and insurance, rather than just leasing the aircraft itself) to take account of amendments to EU legislation which have come into force since the Operation of Air Services (Amendment etc.) (EU Exit) Regulations 2018 (“the Operation of Air Services Regulations”) were made. It also corrects EU legislation on aviation safety; specifically it ensures that the retained Annex XIII to the EEA Agreement functions correctly after exit day, as regards wet leasing and aviation safety, revokes an EU regulation on the prioritisation of ramp inspections which will not be required after exit day and ensures that software requirements for the Airborne Collision Avoidance System (ACAS II) function correctly.

##### What did any relevant EU law do before exit day?

- 2.2 Regulation (EC) No 351/2008 sets out criteria for the prioritisation of ramp inspections on aircraft using Community airports.
- 2.3 Regulation (EC) No 1008/2008 sets out the legal framework for operating air services within the EU. In particular, Article 13 sets out the framework for the leasing of aircraft. Amendments to Article 13 came into force on 3<sup>rd</sup> February 2019.
- 2.4 Regulation (EC) No 80/2009 establishes a Code of Conduct for businesses using computerised reservation systems (“CRS”). 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.
- 2.5 Regulation (EU) No 1332/2011 sets out common requirements for airspace usage and operating procedures for airborne collision avoidance.
- 2.6 Annex XIII to the Agreement on the European Economic Area (EEA Agreement) sets out the EU legislation on transport which is extended to EEA States by virtue of the EEA Agreement.

Why is it being changed?

- 2.7 This instrument makes only minor corrections to ensure that the EU Regulations listed above and Annex XIII to the EEA Agreement, which will be retained in UK law on exit day through the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”), continue to function correctly.

What will it now do?

- 2.8 The substantive requirements under the EU Regulations will not be changed by this instrument. The corrections this instrument makes are set out in detail below in paragraphs 7.1 – 7.9.

**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 25<sup>th</sup> February 2019, as required by the European Union (Withdrawal) Act 2018. On 12<sup>th</sup> March 2019, this instrument was recommended for the negative procedure by the Sifting Committees.
- 3.2 In its 38th Report of Session 2017-19 the Joint Committee on Statutory Instruments drew attention to a drafting error in regulation 8 of the Computer Reservation Systems (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1080) (“the CRS Regulations”). The CRS Regulations amended the retained EU Regulation No 80/2009 to change an outdated reference to the Data Protection Directive to a reference to the General Data Protection Regulation, but failed to amend the Article number. This instrument amends the CRS Regulations to correct that error.
- 3.3 The CRS Regulations also failed to omit the provision in the retained EU Regulation which provides for it to be binding and directly applicable in EU Member States. This instrument amends the CRS Regulations in order to omit that wording from the retained Regulation. Regulation 4(2) makes a minor numbering change to reflect the insertion of this new provision.
- 3.4 In addition, subsequent to the making of the Operation of Air Services Regulations (S.I. 2018/1392), the department identified two errors in those Regulations.
- 3.5 The Operation of Air Services Regulations amended Annex XIII to the EEA Agreement by omitting paragraph 64a in its entirety. The paragraph should have been amended, rather than omitted, and this instrument amends the Operation of Air Services Regulations to rectify the error.
- 3.6 The Operation of Air Services Regulations also amended the Operation of Air Services in the Community Regulations 2009 (S.I. 2009/41) by substituting the words “air carrier” with “qualifying air carrier”. The words which should have been substituted were “community air carrier” with “qualifying air carrier”. This instrument corrects that error.
- 3.7 This instrument will be issued free of charge to known recipients of the CRS Regulations and the Operation of Air Services Regulations.
- 3.8 This instrument, made under the negative resolution procedure, is required to come into force on, and for some limited purposes immediately before, exit day. Based on the definition of “Exit day” in the Withdrawal Act, for the reasons set out below and on an exceptional basis, it will not be possible to comply with the customary 21

calendar days between the date the instrument is laid in Parliament and its commencement. The reasons for this are as follows:

- 3.9 Regulations 4 and 5 must be brought into force immediately before Exit day because they amend the Operation of Air Services Regulations and the CRS Regulations as set which come into force on Exit day, as set out in paragraphs 3.2 – 3.6.
- 3.10 This is particularly important in relation to regulation 5(2), which corrects an issue in the Operation of Air Services (Amendment etc.) (EU Exit) Regulations 2018. Those Regulations currently revoke paragraph 64a of Annex XIII to the EEA Agreement in its entirety. If those Regulations are not amended before they come into force on Exit day, that revocation will take effect, and it will not then be possible to make further corrections to paragraph 64a because it will no longer exist in UK law. The correction in regulation 5(2) means that UK carriers will be able to continue to wet lease aircraft from EU and EEA carriers under the same conditions as they currently do, as intended under the Operation of Air Services Regulations.
- 3.11 In the case of regulation 4, delaying commencement to allow the full 21 days would also run counter to the undertaking which we have given to the Joint Committee on Statutory Instruments to ensure that the omissions in the Computer Reservation Systems (Amendment) (EU Exit) Regulations 2018 should be made as soon as practicable.
- 3.12 A number of alternative options were considered. One is to bring regulations 4 and 5 into force immediately before Exit day and allow the remaining provisions to come into force a full 21 days after laying. However this would still not allow 21 days for regulations 4 and 5. The only way to do so would be to reframe those provisions as amendments to the underlying EU legislation rather than to the existing statutory instruments, but this would involve a significant change to the instrument and require it to be laid a second time for sifting, which would impose an undesirable call on Parliamentary time. This approach would also not work for regulation 5(2), as explained in paragraph 3.10. Moreover, these options would all create additional confusion and complexity for users of the legislation, who are expecting all the corrections to EU legislation on aviation to come into force on Exit day, and are planning on that basis.

*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)*

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

“In my view the provisions of the Civil Aviation (Amendment etc.) (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 This instrument makes amendments to legislation in the field of civil aviation and, in particular, provisions relating to the disclosure of information obtained by the CAA in the performance of its statutory functions, common rules for operation of air services and use of personal data in computerised reservation systems. Part 2 amends primary legislation, in particular the Airports Act 1986 and the Civil Aviation Act 2012. Part 3 amends subordinate legislation, namely the Computer Reservation Systems Regulations and the Operation of Air Services Regulations. Part 4 amends retained direct EU legislation. Regulation 6 corrects Annex XIII to the EEA Agreement. Regulation 7 revokes Commission Regulation (EC) No 351/2008 on prioritisation of ramp inspections, as that Regulation will not be required after exit day. Regulation 8 makes corrections to Commission Regulation (EU) No 1332/2011 on airborne collision avoidance systems.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Amendments to Primary Legislation: This instrument makes the following minor amendments to references to EU legislation and bodies in the following primary legislation:
- 7.2 Section 74(2) of the Airports Act 1986 sets out obligations to disclose information under certain circumstances, including where it is "in pursuance of any EU obligation". Section 72(1) of the Civil Aviation Act 2012 and paragraph 5(b) of Schedule 6 to the Civil Aviation Act 2012 contain similar references. These are amended by this instrument to refer instead to a "retained EU obligation", reflecting the obligations which will be retained in UK law on exit day through the Withdrawal Act and in accordance with the definition of "retained EU obligation" inserted into the Interpretation Act 1978 by the Withdrawal Act.
- 7.3 Paragraph 5(c) of Schedule 6 to the Civil Aviation Act 2012 refers to the disclosure of information "for the purpose of facilitating the performance of a function of the European Commission in respect of European Union law about competition". This sub-paragraph is omitted as it will cease to have effect in respect of UK functions after exit day.
- 7.4 Amendments to Subordinate Legislation: As explained in section 3 above, this instrument makes minor corrections to the CRS Regulations and the Operation of Air

Services Regulations. One additional provision is also being added into the Operation of Air Services Regulations to correct an additional provision which has only recently been inserted into the underlying retained direct EU legislation, which concerns wet leasing of aircraft.

- 7.5 Corrections to Retained EU Legislation on wet leasing: Wet leasing refers to a commercial arrangement for a lessor to provide and operate an aircraft on behalf of the lessee, together with crew, maintenance and insurance, as opposed to a dry lease of just the aircraft itself. The conditions for leasing aircraft are set out in Article 13 of Regulation No 1008/2008. The corrections to ensure continuity for UK air carriers when wet leasing aircraft from within the EEA have already been made through the Operation of Air Services Regulations. However, since those Regulations were made, Article 13 has been amended by Regulation (EU) No 2019/2.
- 7.6 Wet leasing from outside the EEA is currently restricted to circumstances where carriers can demonstrate that there is an exceptional need, or that leasing is necessary to satisfy seasonal capacity needs or to overcome operational difficulties and a suitable aircraft is not available within the EEA. The amendment made by Regulation (EU) No 2019/2 provides that these restrictions will not apply if an international agreement on wet leasing signed by the EU provides otherwise, where that agreement is based on an Air Transport Agreement to which the EU is a party and which was signed before 1st January 2008. This was designed to allow the EU to implement the leasing provisions within the EU's Air Transport Agreement with the United States. The amended Article 13 will form part of retained EU law and so needs to be fixed so that it functions correctly in UK law. This instrument therefore amends Regulation No 1008/2008 so that after the UK has left the EU, the amendments made by Regulation 2019/2 referred to above would instead apply in relation to air services agreements signed by the United Kingdom prior to 1<sup>st</sup> January 2008. These corrections to the new provisions are being made by amendment to the 2018 Regulations, in order to consolidate the changes to the retained EU Regulation in one place.
- 7.7 Corrections to the Retained EEA Agreement: The aviation safety elements of Annex XIII to the retained EEA agreement will not be relevant after exit day to the UK after exit day. Therefore any references to aviation safety Regulations in Annex XIII of the retained EEA Agreement are deleted.
- 7.8 Corrections to Retained EU Legislation on Aviation Safety: This instrument makes minor, technical changes to ensure that EU Regulation No 1332/2011 which sets out requirements for all aircraft covered by Regulation (EU) No 2018/1139 ("the EASA Basic Regulation<sup>1</sup>, previously Regulation No 216/2008") to install the latest version of a piece of software – the airborne collision avoidance system (ACASII). This instrument ensures that the scope of the retained EU Regulation No 1132/2011 is correct, for example substituting references to "the territory to which the Treaties apply" with references to "the United Kingdom". Where the Regulation sets out obligations for "Member States", this instrument transfers those requirements to the Civil Aviation Authority ("CAA") after exit day, for instance the requirement to ensure that aeroplanes to which Regulation No 1332/2011 does not apply, e.g. those undertaking military, customs, police, search and rescue or firefighting activities nonetheless comply with the rules and procedures contained in the EASA Basic Regulation. The corrections needed so that the EASA Basic Regulation continues to

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<sup>1</sup> EASA refers to the European Aviation Safety Agency

function correctly after exit day are being made through the Aviation Safety (Amendment etc.) (EU Exit) Regulations 2019.

- 7.9 Revocations: Commission Regulation (EC) No 351/2008 regarding the prioritisation of ramp inspections on aircraft using Community airports is being revoked, as it will not be required after exit day.

## **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 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 the paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018. 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 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, 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 ensuring a functioning statute book after exit day. The Department also works closely with the CAA on all aviation matters, including the preparation of this instrument. Industry stakeholders are supportive of the Department's plans to ensure a functioning statute book after exit day.

## **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 to correct minor deficiencies in domestic legislation arising as a result of exiting the EU. 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.

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 policy. Monitoring of the policy content of the retained EU legislation and domestic legislation amended by this instrument 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 Rosanna Thomson at the Department for Transport Telephone: 07773073594 or email: Rosanna.thomson@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Gisela Carr, 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) Act 2018

#### 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:

“In my view the Civil Aviation (Amendment etc.) (EU Exit) 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 changes this instrument makes to EU legislation as retained by the Withdrawal Act are minor and do no more than is strictly necessary to ensure that the legislation functions correctly once the UK has left the EU. Similarly, the changes this instrument makes to domestic legislation are limited to correcting minor deficiencies arising as a result of exiting the EU. They are not expected to impose a cost on business or the public sector, or to have an effect on how the aviation industry operates.

#### 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:

“In my view the Civil Aviation (Amendment etc.) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 2.2 This is the case because: The purpose of this instrument is simply to ensure that the legislation functions correctly once the UK has left the EU. The changes this instrument makes both to EU legislation as retained by the Withdrawal Act and to domestic legislation are minor and do no more than is strictly necessary to ensure that the legislation functions correctly once the UK has left the EU.

#### 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:

“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 retained EU legislation on wet leasing, aviation safety and computer reservation systems continues to function correctly after the UK has left the EU; and
- (b) ensuring that there is clarity for airport operators, air carriers and the wider aviation industry as to which legislation will apply once the UK has left the EU.

#### **4. Equalities**

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

“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.”.

4.2 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.”.

#### **5. Explanations**

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