

EXPLANATORY MEMORANDUM TO

THE AVIATION SECURITY (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 798

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport (“the Department”) 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 This instrument is made under the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”), as amended, to address failures of retained EU law relating to aviation security in the United Kingdom to operate effectively. It amends the Aviation Security (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/547) (“the 2019 Regulations”) to make corrections in light of Commission Implementing Regulation (EU) 2020/111 which has come into force during the transition period. The corrections are made to ensure that the retained legislation functions correctly as a part of United Kingdom law and in turn ensures continuity in the standards of aviation security.

Explanations

What did any relevant EU law do before exit day?

- 2.2 Commission Regulation (EC) 300/2008 sets out common basic standards for aviation security and provides for more detailed measures to be laid out to supplement those standards. Commission Implementing Regulation (EU) 2015/1998 (“the 2015 Regulation”) lays down those detailed measures and sets out requirements that apply to airports, air carriers and entities which have access to secure areas at airports. It governs matters such as screening of passengers and cargo, access control and vetting of staff who have access to secure areas at airports.

Why is it being changed?

- 2.3 The 2015 Regulation will be retained by virtue of the Withdrawal Act. The 2019 Regulations made changes necessary to remove deficiencies in the retained EU legislation as it stood in March 2019. This instrument amends the 2019 Regulations to correct deficiencies that have arisen because of subsequent EU amendments to the 2015 Regulation. The changes this instrument makes are minor and technical and ensure that the law continues to operate effectively after the transition period.

What will it now do?

- 2.4 This instrument keeps the effect of the regulatory framework the same in practice. It does so by ensuring that the retained legislation functions correctly as a part of United Kingdom law. The effect and practical application of the retained legislation is intended to remain substantially unchanged. The deficiencies which this instrument is intended to remove are described in section 7, below.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The instrument was laid in draft for sifting by the Sifting Committees on 2 July. It was considered by the House of Commons European Statutory Instrument Committee on 14 July and the House of Lords Secondary Legislation Scrutiny Committee on 16 July. The Sifting Committees both agreed that the instrument should proceed by way of 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.

5. European Convention on Human Rights

- 5.1 The Secretary of State for Transport, Grant Shapps MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Aviation Security (Amendment) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 These Regulations are made in exercise of the powers in section 8(1) of the Withdrawal Act to remove deficiencies in retained EU law and so ensure that legislation is operable in the United Kingdom. For this purpose, these Regulations specifically address deficiencies falling within section 8(2)(a), (d) and (g) of the Withdrawal Act.
- 6.2 The Withdrawal Act makes provision for repealing the European Communities Act 1972 and will, as amended by the European Union (Withdrawal Agreement) Act 2020, preserve EU law, as it stands at the end of the transition period, 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 law, as well as saving EU-derived domestic legislation which was made to implement the United Kingdom’s obligations as a member of the EU.
- 6.3 The Withdrawal Act also contains a temporary power to make secondary legislation to enable Ministers and the devolved administrations to correct legislation that would no longer operate appropriately at the end of the transition period.
- 6.4 The 2019 Regulations made appropriate changes to the retained version of the 2015 Regulation (as well as to other related EU instruments and the Aviation Security Act 1982) and do not come into force until the end of the transition period. Since that instrument was made, there have been further amendments to the relevant EU

legislation. Those amendments have come into force during the transition period and require corrective action. These Regulations perform that function.

7. Policy background

What is being done and why?

- 7.1 This instrument amends the 2019 Regulations in order to correct further deficiencies in retained EU law. The 2015 Regulation has been amended by Commission Implementing Regulation (EU) 2020/111 which, among other things, introduced a new EU system of certification for aviation security screening equipment.
- 7.2 Regulation 128 of the 2019 Regulations revokes Commission Implementing Decision C(2015) 8005 of 16 November 2015 (“the 2015 Decision”). Regulation 125 of those Regulations is now amended to:
- Amend a paragraph reference to ensure an omission of a reference to the 2015 decision is correct in light of the changes introduced by Regulation 2020/111;
 - omit two additional technical attachments, added by Regulation 2020/111, which refer to the 2015 Decision; and
 - remove redundant references to a new EU screening equipment certification process and replace them with a reference to UK equipment approval requirements.

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. 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 legislation in this subject area.

10. Consultation outcome

- 10.1 Department for Transport Ministers and officials have regular engagement with the aviation industry, travel industry and consumer representatives on the broad EU Exit strategy. Through specific meetings and workshops on EU Exit, and at long-established stakeholder forums, a number of issues related to the United Kingdom’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 consulted with members of the National Aviation Security Committee Executive Committee and the Cargo Issues Working Group. These groups include representatives of air carriers, airports, cargo operators and others as well as representative trade associations. The Department also works closely with the CAA on all aviation matters, including preparing for EU Exit.

11. Guidance

11.1 The Department considers that no guidance is required.

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 A full impact assessment has not been prepared for this instrument because it makes only minor changes to correct deficiencies in retained EU law and its impact on businesses and the public sector is limited.

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 regulatory burdens on small businesses, as we expect this to be minimal.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that it will take place as a part of the ordinary course of the Department's oversight of the legislative framework governing aviation security. This instrument does not make any substantive changes to the aviation security requirements applying to air carriers, airport operators and other entities which have access to secure areas of airports.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Ian Knowles at the Department for Transport Telephone 07850 205328 or email: ian.knowles@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sandra Dewhurst or Sarah Francis at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under Secretary of State for Transport, Rachel Maclean MP 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) 2018 Act

1. Sifting statement(s)

- 1.1. The Parliamentary Under Secretary of State for Transport, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Aviation Security (Amendment) (EU Exit) Regulations 2020 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 this instrument addresses only technical deficiencies that have arisen from withdrawal.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State for Transport, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Aviation Security (Amendment) (EU Exit) Regulations 2020 do no more than is appropriate.”

- 2.2 This is the case because the instrument retains the existing criteria for the regulation and monitoring of aviation security and makes only those changes necessary or appropriate to preserve the legal status quo and to ensure that the United Kingdom continues to apply sufficient standards.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State for Transport, 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.”

- 3.2 These are to ensure the legislative framework in the United Kingdom for aviation security continues to operate smoothly by correcting deficiencies and inoperabilities that arise as a result of the UK’s withdrawal from the EU.

4. Equalities

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

“The Aviation Security (Amendment) (EU Exit) Regulations 2020 do 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 for Transport, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the Aviation Security (Amendment) (EU Exit) Regulations 2020, I, Rachel Maclean, 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.