

EXPLANATORY MEMORANDUM TO
THE AVIATION STATISTICS REGULATIONS 2023
2023 No. 1074

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument consolidates multiple pieces of retained EU law (“REUL”) relating to the collection of aviation statistics by the Civil Aviation Authority (CAA) into a single piece of equivalent but simplified domestic legislation. The purpose of the instrument is to remove legally unnecessary and outdated provisions and to create a shorter set of clearer and more accessible regulations which better reflect UK domestic practice in this area. The regulations do not make substantive changes to the policy approach.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The negative procedure was considered appropriate for this instrument because it does not change the underlying policy approach. It consolidates and simplifies the legislation, providing greater clarity and improving accessibility, but maintains the existing policy intent and implementation.
- 3.2 This instrument was laid for sifting on 19th July 2023. At meetings on 5th and 12th September respectively, the Secondary Legislation Scrutiny Committee (SLSC) and the European Statutory Instruments Committee (ESIC) agreed with the government that this instrument should follow the negative procedure. The Minister has considered the decision of the Sifting Committees and has approved and signed the instrument.
- 3.3 This instrument exercises powers provided for in sections 11(1) and 20(1)(b) of the Retained EU Law (Revocation and Reform) Act 2023 (“the REUL Act”).

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

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 collection of aviation statistics is currently governed by a combination of domestic legislation - the Civil Aviation Act 1982 and the Civil Aviation Act 2012 - and legislation retained under the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”). The changes implemented by this instrument relate to legislation considered to be retained EU law under definitions set out in the Withdrawal Act.
- 6.2 There are four pieces of retained EU law which relate to the collection of Aviation Statistics:
- Regulation (EC) No 437/2003 of the European Parliament and of the Council of 27th February 2003 on statistical returns in respect of the carriage of passengers, freight and mail by air.
 - Commission Regulation (EC) No 1358/2003 of 31st July 2003 implementing Regulation (EC) No 437/2003, amending Annexes I and II thereto, and detailing the airports within scope of these regulations.
 - The Aviation Statistics (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 646/2019) which provide a mechanism for the civil enforcement of the obligation to provide statistical data imposed on respondents by Regulation (EC) No 437/2003, and which amended the two retained EU Regulations so that they could operate post EU Exit.
 - A Ministerial Direction pursuant to Article 7 of Regulation (EC) No 437/2003 directing the CAA to share statistical data with the Department for Transport.
- 6.3 The status of these pieces of retained EU law is determined by the Withdrawal Act:
- Regulation (EC) No 437/2003 and Commission Regulation (EC) No 1358/2003 are both pieces of retained direct EU legislation which became part of domestic law due to the operation of section 3 of the Withdrawal Act.
 - The Aviation Statistics (Amendment etc.) (EU Exit) Regulations 2019 are EU-derived domestic legislation partially preserved under section 2 of the Withdrawal Act.
 - The Ministerial Direction is also retained direct EU legislation. Section 20(1) of the Withdrawal Act explicitly defines retained direct EU law as “including any instruments made under it on or after IP completion day”. IP completion day is defined in the Withdrawal Act as “31 December 2020 at 11.00 p.m.” and it marked the end of the 11-month implementation period following the UK's withdrawal from the EU. As the Ministerial Direction was made under Regulation (EC) No 437/2003 after 31st December 2020, it meets the definition.
- 6.4 This instrument is made in exercise of powers in sections 11(1) and 20(1)(b) of the REUL Act. The REUL Act makes provision for the modification, restatement, replacement or updating of retained EU law. This instrument consolidates the first three instruments listed in section 6.2 above into a single piece of equivalent but simplified domestic legislation. The fourth instrument will be revoked by a further Ministerial Direction immediately before this instrument comes into force.
- 6.5 Section 11(1) of the REUL Act provides the power to restate any secondary retained EU law. The definition of secondary retained EU law as defined by section 11(2) includes any retained EU law that is not primary legislation. None of the four instruments are primary legislation.

- 6.6 Section 13(3) states that this power is appropriately used when making changes which resolve ambiguity and facilitate improvement in the clarity and accessibility of the law (including by omitting anything which is legally unnecessary). This instrument consolidates and simplifies secondary retained EU law to improve the clarity and accessibility of the legislation whilst maintaining the existing policy approach.
- 6.7 Section 20(1)(b) states that “a power to make regulations under this Act” also includes the power to make “supplementary, incidental, consequential, transitional, transitory or saving provision”. As a consequence of restating the first three instruments listed in section 6.2, it is no longer necessary to retain the instruments themselves. The power under section 20(1)(b) is therefore used to revoke these three instruments along with two other REUL instruments which made amendments to Regulation (EC) No 437/2003 and Commission Regulation (EC) No 1358/2003.

7. Policy background

What is being done and why?

- 7.1 Information on the carriage of passengers, freight and mail by air collected from airports by the CAA is used for various purposes, such as the publication of statistics and the calculation of variable charges for airports and airlines. The information also underpins much of the Department for Transport’s aviation analysis and forecasting.
- 7.2 The existing information collection powers (see section 6) provide a balance between collecting information necessary for the functioning of Government and not overburdening airports providing the information. The processes by which airports provide information to the CAA have existed for many years and are sufficient to meet current needs.
- 7.3 However, the retained EU law information collection powers are spread across multiple legislative instruments and include superfluous and legally unnecessary detail. Some of the language used lacks clarity, and the drafting style and structure is not tailored to a UK domestic context. The REUL Act provides the opportunity to rectify this, to remove unnecessary legislation from the statute book, and to replace the retained EU law with a single equivalent but condensed and simplified domestic instrument.
- 7.4 The purpose of this instrument is to simplify the legislation by removing superfluous regulations and clarifying the scope of the information which is collected. The new domestic provision maintains the substance and policy approach of the retained EU law, but simplifies the language and structure of the legislation used, aiding interpretation. Detail previously spread across multiple annexes has been condensed into a single clearer schedule. The terminology and language used in this schedule has been updated to more closely reflect terminology used in existing CAA information collection exercises, but no information is being requested from airports that is not already being provided. The language used is in line with best drafting practice for schedules in SIs.
- 7.5 The provision also simplifies the process of information transmission between the CAA and the Department for Transport. It removes the obligation placed on the CAA by Article 7, paragraph 1 of Regulation (EC) No 437/2003 to provide information to the Secretary of State for Transport if issued with a Ministerial Direction. This obligation is being removed because there is an existing domestic provision under section 17 of the Civil Aviation Act 1982 which facilitates the transmission of this

information. Removing the Article 7 obligation omits a legally unnecessary provision introduced during the EU Exit process and simplifies the process of information sharing. Further information is provided in section 7.7.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.6 The powers provided for under existing legislation require the CAA to collect information from airports over a certain threshold of passenger unit movements per annum. This information includes statistics on flight movements and the carriage of passengers, freight and mail by air. The gathering of such information and publication of aggregated statistics enables Government, the public and the aviation sector itself to monitor and scrutinise the performance of the industry.
- 7.7 Prior to EU Exit, as an EU member state, the UK was required to provide information collected from airports under Regulation (EC) No 437/2003 to the Statistical Office of the European Communities (Eurostat). This requirement was placed upon the UK by Article 7, paragraph 1 of these regulations. Upon EU Exit, the UK ceased to be an EU member state. Article 7, paragraph 1 was therefore amended by the Aviation Statistics (Amendment etc.) (EU Exit) Regulations 2019 to remove the requirement on the UK to transmit this information to Eurostat. In its place, a provision obliging the CAA to transmit this information to the Secretary of State for Transport, where directed, was introduced. This resulted in a Ministerial Direction being issued to the CAA. This provision was not legally necessary, however, because there is an existing domestic provision under section 17 of the Civil Aviation Act 1982 which facilitates the transmission of this information without requiring a Ministerial Direction.

Why is it being changed?

- 7.8 The changes being applied do not materially change the substance of the existing retained legislation, but consolidate and simplify it into a single domestic instrument. The simplified legislation is easier to interpret and removes superfluous regulations which were a legacy of EU membership.

What will it now do?

- 7.9 The new legislation will enable the CAA to continue to collect the same information from airports as previously, without restricting their existing ability to share this information with the Department for Transport.

8. European Union Withdrawal, Future Relationship and REUL

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.
- 8.2 This instrument does however relate to the reform of retained EU law under the powers in section 11(1) and section 20(1)(b) of the Retained EU Law (Revocation and Reform) Act 2023. The restatement powers in section 11(1) are used because the instrument maintains the existing policy intent and implementation (see section 7.3 for further information). The powers in section 20(1)(b) are used to revoke the retained EU law which is being restated, and related amending instruments. The Minister made the relevant sifting statement required by the REUL Act in the Annex to this Explanatory Memorandum prior to sift.

9. Consolidation

- 9.1 This instrument consolidates the first three instruments listed in section 6.2 of this memorandum into a single piece of domestic legislation.
- 9.2 A transitional provision has not been included in these Regulations as no notices have been served under regulations 3, 4, 6 and 7 of the Aviation Statistics (Amendment etc.) (EU Exit) Regulations 2019 and no penalties have been incurred.

10. Consultation outcome

- 10.1 Department for Transport Ministers and officials have regular engagement with the aviation industry. The Department also works closely with the CAA on all aviation matters, and has had frequent communication with the CAA regarding this instrument.
- 10.2 No formal external consultation has taken place, as this instrument replicates existing arrangements and no, or no significant, impact on businesses is expected.

11. Guidance

- 11.1 The Department for Transport is not producing any specific guidance on the Regulations 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 A full Impact Assessment has not been prepared for this instrument because the purpose of this exercise is to simplify existing legislation and ensure its continuation, but not to materially change its substance. It does not materially change the requirements on airports or the CAA, so the instrument is expected to have an annual net impact of zero, or close to zero.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. Some of the smaller airports within scope of this instrument employ fewer than 50 people so are considered to be small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses. This instrument maintains existing thresholds for information collection which differentiate based on airport size. Only airports handling 15,000 or more passenger units per annum (a “passenger unit” is one passenger or one hundred kilograms of freight and mail) can be required to provide information. The information collection requirements are less burdensome for airports handling between 15,000 and 150,000 passenger units per annum than those handling over 150,000 passenger units per annum. These thresholds minimise the impact of the requirements on small businesses and ensure that information collection is proportionate to the size of the airport. No additional mitigating action is proposed.

14. Monitoring & review

- 14.1 As this instrument is made under the Retained EU Law (Revocation and Reform) Act 2023, no review clause is required.

15. Contact

- 15.1 Andy Schofield at the Department for Transport, Telephone: 07814 068 508 or email: Andy.Schofield@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Jonathan Saks, Deputy Director for Aviation, Maritime and Borders Analysis 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

Statement required under the Retained EU Law (Revocation and Reform) Act 2023

1. Sifting statement

- 1.1 The Parliamentary Under Secretary of State (Aviation, Maritime and Security), Baroness Vere of Norbiton, has made the following statement regarding use of legislative powers in the Retained EU Law (Revocation and Reform) Act 2023 (“the REUL Act”):

“In my opinion the Aviation Statistics Regulations 2023 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

This is the case because this instrument does not change the underlying policy approach. It consolidates and simplifies the existing legislation, providing greater clarity and improving accessibility, but maintains the existing policy intent and implementation.