EXPLANATORY MEMORANDUM TO

THE AIR TRAFFIC MANAGEMENT (AMENDMENT ETC.) (EU EXIT) (NO. 2) REGULATIONS 2020

2020 No.784

1. Introduction

1.1 This explanatory memorandum has been prepared by Department for Transport and is laid before Parliament by Command.

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

2. Purpose of the instrument

2.1 This instrument amends legislation in the field of Air Traffic Management (ATM) arising from the implementation of Commission Implementing Regulation (EU) 2020/587 and clarifies the commencement provisions for the Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/694).

2.2 Regulation (EU) 2020/587 amends Commission Implementing Regulation (EU) No 1206/2011 (requirements on aircraft identification for surveillance for the single European sky) and Commission Implementing Regulation (EU) No 1207/2011 (requirements for the performance and interoperability of surveillance for the single European sky). Both regulations make requirements for the equipage and use of surveillance equipment by aircraft and air navigation service providers.

2.3 The Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/459) amended Implementing Regulations (EU) No 1206/2011 and No 1207/2011 as they stood in 2019. This SI amends the Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2019 to include operability fixes for the updates to those Implementing Regulations.

Explanations

What did any relevant EU law do before exit day?

2.4 The EU's Single European Sky (SES) legislation supports the EU initiative to enhance air traffic safety standards, contribute to the sustainable development of the ATM system, and improve the efficiency of Air Navigation Services (ANS) within the European ATM system. The SES legislation sets out a regulatory framework to deliver these ambitions as well as a programme to research, develop and deploy new operating concepts and technology, known as the SES ATM Research (SESAR) programme. The UK has actively contributed to the development of the SES and has implemented this legislation.

2.5 Commission Implementing Regulation (EU) 2020/587 establishes requirements for aircraft and air navigation service providers to equip and use surveillance equipment to operate in the European ATM system. In particular it sets out which aircraft need to equip with transponders to meet international requirements and transmit standard information which can be picked up and interpreted by surveillance radar systems used by air navigation service providers. The regulation amends the existing EU

regulations to take account of additional time needed for some aircraft operators to comply.

Why is it being changed?

2.6 Commission Implementing Regulation (EU) 2020/587, which enters into force and applies from 20th May 2020, was not included within the Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2020, which were laid in March 2020.

2.7 This instrument incorporates into the Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2019 the amendments needed to ensure the EU regulation remains legally operable in the UK after the end of the transition period. Amendments are needed principally to ensure the retained legislation refers to UK airspace rather than EU airspace.

What will it now do?

2.8 This instrument will ensure the retained EU legislation applies appropriately within the UK airspace. No changes are being made to the technical content on requirements for aircraft operators or air navigation service providers.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 This instrument is made in exercise of the power in section 8(1) (dealing with deficiencies arising from withdrawal) of the Withdrawal Act.

3.2 This instrument is required to ensure that the UK has a functioning statute book and will come into force at the end of the transition period.

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)

3.3 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 UK.

4.2 The territorial application of this instrument is the UK.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Transport, Rachel Maclean MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Air Traffic Management (Amendment etc.) (EU Exit) (No. 2) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is made in exercise of the power in section 8(1) (dealing with deficiencies arising from withdrawal) of the Withdrawal Act 2018.

6.2 The Withdrawal Act makes provision for repealing the European Communities Act 1972 and will 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 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 Withdrawal Act also contains a temporary power to enable Ministers and the devolved administrations to make secondary legislation to amend retained EU legislation that would no longer operate appropriately once the UK has left the EU, so that the domestic legal system continues to function correctly outside the EU.

6.4 It is necessary to ensure that SES legislation in UK law is in an operable form in order to ensure that the UK's ATM arrangements remain interoperable with the rest of Europe, as well as to ensure an effective regulatory framework for the UK ATM system and certainty for industry.

7. Policy background

What is being done and why?

7.1 Retained EU legislation addressing requirements for aircraft and air navigation service providers is being amended to ensure it only applies appropriately within UK airspace. This is being done as UK law cannot make requirements for operators outside UK territorial limits.

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 the legislation covered by this instrument.

10. Consultation outcome

10.1 The Department's Ministers and officials have regular engagement with the aviation industry, ANSPs and airspace users. The relevant stakeholders, the Civil Aviation Authority (CAA) and NATS (formerly known as National Air Traffic Services) have been consulted on this instrument. There was support amongst stakeholders for continuity in terms of the regulatory framework for ATM after the UK leaves the EU. The Department also works closely with the CAA on all aviation matters, including preparing for EU Exit.

11. Guidance

11.1 The Department is not producing any specific guidance on the amendments provided for in this instrument.

11.2 The UK is compliant with or is working towards compliance with the SES legislation so there should be no unexpected actions for industry and stakeholders arising from the scope of this instrument. The Department has actively engaged with the CAA to ensure its views have been reflected in this instrument throughout the drafting process, and taken account of other representations from operational stakeholders including NATS.

12. Impact

12.1 The impact on business, charities or voluntary bodies is limited to minor familiarisation costs as this instrument makes no changes to the policy intent of the EU's SES regulations.

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. As this instrument is not making any changes to technical requirements, the main costs arising from the instrument relate to the need for industry to familiarise themselves with the regulatory regime.

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.

13.3 The basis for the final decision on what action to take to assist small businesses is that the impact on business, charities or voluntary bodies in respect of the changes to the retained SES Regulations are limited to minor familiarisation costs.

14. Monitoring & review

14.1 As the instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Elie Howe at the Department for Transport (Telephone: 07779 554719 or email: Elie.Howe@dft.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Ian Elston, Deputy Director for Aviation Policy, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rachel Maclean MP, 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 14, 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 15, 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, Rachel Maclean MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Air Traffic Management (Amendment etc.) (EU Exit) (No. 2) 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 the amendments being made are no more than those necessary to maintain the operability of retained EU law after the end of the transition period, are minor, and are consistent with the amendments made in the Air Traffic Management (Amendments etc.) (EU Exit) Regulations 2019. No new offences or public bodies are being established as a consequence of this instrument.

2. Appropriateness statement

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

"In my view the Air Traffic Management (Amendment etc.) (EU Exit) (No. 2) Regulations 2020 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, revoking EU 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, 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 This will ensure the continuity of a functioning regulatory framework for the ATM system after the UK leaves the EU.

4. Equalities

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

"In relation to the instrument, I, Parliamentary Under Secretary of State, Rachel Maclean MP 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.