EXPLANATORY MEMORANDUM TO

THE AIRPORT CHARGES (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. 1081

1. Introduction

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

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

2. Purpose of the instrument

2.1 This instrument uses powers under the European Union (Withdrawal) Act 2018 ("the Withdrawal Act") to make the necessary changes to the Airport Charges Regulations 2011 ("the 2011 Regulations") which arise as a result of the UK leaving the European Union (the "EU"). It also uses section 2(2) of the European Communities Act 1972 ("the ECA") to update references to EU Regulations on Air Traffic Management which have been replaced, and to make a correction to regulation 33(1)(b) of the 2011 Regulations. Further details are set out in the explanations in paragraphs 2.2 - 2.4.

Explanations

What did any relevant EU law do before exit day?

2.2 Directive 2009/12/EC of the European Parliament and of the Council of 11th March 2009 on airport charges ("the Directive") introduced a common framework regulating the essential features of airport charges, levied by the operators of major airports (with more than 5 million annual passenger movements) on airlines, and the way those charges are set. The Directive requires Member States to publish a list of the airports on their territory to which the Directive applies, based on data from the EU Commission (Eurostat). The 2011 Regulations implemented the Directive in the UK and this instrument makes the necessary changes to those Regulations.

Why is it being changed?

2.3 This instrument uses powers under the Withdrawal Act to make the necessary changes to the 2011 Regulations to ensure that the law functions correctly after the UK has left the EU. These changes are necessary because it will no longer be appropriate for the Civil Aviation Authority to assess whether an airport is subject to these rules on airport charges by reference to data from the EU Commission (Eurostat). This instrument also uses section 2(2) of the ECA to update references to EU Regulations on Air Traffic Management which have been replaced, and to correct a drafting error in regulation 33(1)(b) of the 2011 Regulations.

What will it now do?

2.4 The policy content of the 2011 Regulations remains unchanged. The corrections made through this instrument are set out in paragraphs 7.1 – 7.6.

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 under the EU (Withdrawal) Act 2018 on 19th July 2018. It was recommended for the negative procedure by the Sifting Committees. On 5th September 2018, this instrument was recommended for the negative procedure by the Committees on the UK's Exit from the European Union.

3.2 In its 35th Report of Session 2010-12 the Joint Committee on Statutory Instruments drew attention to a drafting error in regulation 33(1)(b) of the 2011 Regulations. This instrument addresses the point by making it clear that a notice can be served by leaving it at a person's proper address.

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 United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

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 This instrument is made in exercise of powers in section 8 of the Withdrawal Act and section 2(2) of the ECA.

6.2 The Withdrawal Act makes provision for repealing the ECA and will preserve EU law, as it stands at the moment of exit, 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 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 UK's legal system continues to function properly outside the EU.

6.4 The Withdrawal Act does not preserve EU directives. Changes made under section 8 of the Withdrawal Act are therefore made to the relevant legislation which implements an EU directive in the UK.

6.5 The Directive introduced common principles to ensure transparency and consultation in the levying of charges by the operators of major airports on airlines. The 2011 Regulations implemented the Directive in the UK and this instrument makes the necessary changes to those Regulations. The 2011 Regulations apply to airports in the United Kingdom with more than 5 million annual passenger movements.

6.6 Section 2(2) of the ECA allows Ministers to make Regulations for the purposes of implementing EU obligations of the United Kingdom. This power is being used to revise regulation 33(1)(b) of the 2011 Regulations and to update references to EU Regulations on Air Traffic Management which have been replaced.

7. Policy background

What is being done and why?

7.1 The changes to the 2011 Regulations which are made using section 8 of the Withdrawal Act are:

7.2 Removing regulation 6(4) which requires the Civil Aviation Authority (CAA) to consider whether it requires any additional information from an airport operator if there is an inconsistency between the information provided under regulation 5 and the most recent relevant figures provided by Eurostat. Eurostat is the statistical office of the European Union. Once the UK has left the EU, Eurostat may not continue to produce figures on airports in the UK and it would not be appropriate to require the CAA to consider information produced by Eurostat.

7.3 The definition of "Eurostat" in regulation 3(1) is also removed as removing the reference to Eurostat in regulation 6(4) means that this definition is no longer required.

7.4 Further changes are being made using section 2(2) ECA.

7.5 This instrument amends regulation 3(2)(f) of the 2011 Regulations to update the reference to the EU legislation covering charges for air navigation services. Regulation 3(2)(f) excepted from the definition of "airport charges" charges for air navigation services determined in accordance with Chapter III of Commission Regulation (EC) No 1794/2006, as amended. That Commission Regulation was replaced by Commission Implementing Regulation (EU) No. 391/2013 of 3rd May 2013 laying down a common charging scheme for air navigation services.

7.6 The instrument also makes a correction to regulation 33(1)(b) of the 2011 Regulations, substituting "the operator's" for "that person's". This is to clarify that regulation 33(1)(b) refers to the address of any person on whom the CAA may serve notice or to whom the CAA may give notice under regulation 33(1).

7.7 This instrument applies to "Aerodromes" which are a transferred matter for Northern Ireland under paragraph 4 of Schedule 3 to the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

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 deficiencies in retained EU law 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.

8.2 Alongside the EU (Withdrawal) Act 2018 powers the instrument is also being made under section 2(2) of the European Communities Act 1972. This allows Ministers to make Regulations for the purposes of implementing EU obligations of the United Kingdom.

9. Consolidation

9.1 There are no current plans to consolidate.

10. Consultation outcome

10.1 The CAA has been consulted throughout the preparation of this statutory instrument and the aviation industry has been informed of the Department's intentions to lay statutory instruments using powers in the Withdrawal Act to fix deficiencies in retained EU legislation. Consultation took the form of regular meetings with representatives of air carriers, airports and others as well as representative trade associations both individually on a bilateral basis and in group settings at stakeholder workshops. Workshops at official level took place in February and September 2017 and in July 2018, and at Ministerial level in February 2017. Department for Transport representatives have regularly updated the sector at long established stakeholder forums for the general and business aviation sector and with the aerospace sector.

11. Guidance

11.1 No guidance is necessary.

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 one correction to a drafting error in regulation 33(1)(b) of the 2011 Regulations. 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 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 changes to the policy on the setting of airport charges. Monitoring of the policy

content of the Airport Charges Regulations 2011 as amended by this instrument will take place in the course of normal departmental business.

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

15. Contact

15.1 Ian Elston at the Department for Transport, Telephone: 0760010070 or email: ian.elston@dft.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Michael Clark, 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 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, Baroness Sugg, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

1.2 "In my view the Airport Charges (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)".

1.3 This is the case because: this instrument does not fall within the categories for which use of the affirmative procedure is required under the Withdrawal Act, i.e. establish a new public authority, transfer an EU function to a newly created public authority, transfer an EU legislative function to a UK body, relate to fees, create or widen the scope of a criminal offence, create or amend a power to legislate.

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:

2.2 "In my view the Airport Charges (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate".

2.3 This is the case because: the changes this instrument makes to the 2011 Regulations are very minor and do no more than is strictly necessary to ensure that the Regulations function correctly once the UK has left the EU. The specific changes are set out in the 'Policy Background' section in paragraphs 7.1 – 7.6.

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:

3.2 "In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

3.3 These are:

(a) ensuring that the legislation setting out how airport charges should be set at UK airports continues to function correctly once the UK has left the EU; and

(b) ensuring that there is clarity for airport operators and those required to pay airport charges which legislation will apply once the UK has left the EU, and which requirements they are expected to meet.

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:

4.3 "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.

6. Criminal offences

6.1 Not applicable.

7. Legislative sub-delegation

7.1 Not applicable.

8. Urgency

8.1 The scrutiny procedure for urgency set out in paragraphs 5, 6 or 19 of Schedule 7 to the European Union (Withdrawal) Act 2018 does not apply to this instrument. Accordingly, no statement is required.