EXPLANATORY MEMORANDUM TO

THE AIRPORTS (NOISE-RELATED OPERATING RESTRICTIONS) (SCOTLAND) REGULATIONS

2019 No. 409 (S. 1)

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.

2. Purpose of the instrument

2.1 This statutory instrument ensures the UK Government fulfils its obligation under Regulation (EU) No 598/2014 ("the 2014 Regulation"), in relation to Scotland, to designate a competent authority. The 2014 Regulation itself establishes the rules and procedures on the introduction of noise-related operating restrictions at airports within a "Balanced Approach" to noise management, a practice promoted by the International Civil Aviation Organisation.

2.2 The instrument provides for Scottish Ministers to be the competent authority for ensuring application of the Balanced Approach and compliance with the procedure for adopting operating restrictions, and for monitoring compliance with any restrictions that are imposed.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 Scotland.

4.2 The territorial application of this instrument is Scotland.

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 implements, in relation to Scotland, the obligation to appoint a competent authority under Regulation (EU) No 598/2014 "on the establishment of rules and procedures with regard to the introduction of noise-related operating

restrictions at Union airports within a Balanced Approach and repealing Directive 2002/30/EC".

6.2 Under the 2014 Regulation, which came into effect on 13th June 2016, the UK Government is required to appoint one or more competent authorities to ensure that the correct rules and procedures are followed when noise-related operating restrictions are being considered at airports with more than 50,000 civil aircraft movements per year.

6.3 The UK Government has already appointed competent authorities for the purpose of the 2014 Regulation for England and Wales, through the Airports (Noise-related Operating Restrictions) (England and Wales) Regulations 2018, which came into force in July 2018. There are no airports in Northern Ireland that currently fall within scope of the 2014 Regulation, and in any event the matter is devolved in relation to Northern Ireland.

6.4 This instrument has been brought forward by the UK Government because this is a reserved matter in relation to Scotland.

6.5 The instrument provides for Scottish Ministers to be the competent authority for ensuring application of the Balanced Approach and compliance with the procedure for adopting operating restrictions, and for monitoring compliance with any restrictions that are imposed.

6.6 The instrument will revoke, and together with the 2014 Regulation will replace, in relation to Scotland, the Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003 (S.I. 2003/1742). That instrument implemented EU Directive 2002/30/EC on the introduction of noise-related operating restrictions at Community airports (which was revoked by the 2014 Regulation).

6.7 There have been no specific undertakings given in previous debates, parliamentary questions, or committee appearances on this particular topic.

6.8 The instrument does not pave the way for future instruments.

7. Policy background

What is being done and why?

7.1 The UK is required to appoint one or more competent authorities to ensure that the rules as set out in the 2014 Regulation are followed when the introduction of operating restrictions is being considered at major airports. The competent authority would be required, amongst other things, to ensure that the "Balanced Approach", as promoted by the International Civil Aviation Organisation, is applied, and noise problems are addressed in the most cost-effective way. In this instrument, the Secretary of State appoints a competent authority in relation to Scotland.

7.2 The Balanced Approach consists of identifying noise problems at a specific airport and giving consideration to various measures that could be available to reduce noise. There are four principal elements to the Balanced Approach, namely, the reduction of noise at source, land-use planning and management, noise abatement operational procedures, and operating restrictions. The role of the competent authority is to ensure that the Balanced Approach is applied when operating restrictions are considered or implemented, that any operating restrictions are cost effective, that proper

consultation has taken place, and that they are only adopted after consideration of other measures to address the noise problem.

7.3 This instrument provides for Scottish Ministers to be the competent authority in relation to Scotland in all circumstances for the purpose of ensuring the Balanced Approach is followed and monitoring compliance with any operating restrictions that are adopted. In practice, there will be two primary avenues that are likely to lead to Scottish Ministers being required to undertake the duties of a competent authority. The first is when an application is brought under the Town and Country Planning (Scotland) Act 1997 ("TCPA") and the second is when operating restrictions are considered or proposed to be imposed outside the planning process. The latter would include operating restrictions considered by an airport as part of their Noise Action Plan ("NAP")[1].

7.4 In relation to applications under the TCPA, in order to fulfil their responsibilities as competent authority, the Scottish Ministers will call in any and all planning applications from airport operators that might necessitate the imposition of noise-related operating restrictions.[2] As regards NAPs, the Scottish Ministers already have an oversight function under the NAP process, so their designation as competent authority is unlikely to lead to a significant change in process in this regard. Scottish Ministers have powers to require information to be provided to them under existing legislation.

7.5 There are currently two airports in Scotland that meet the criteria under the 2014 Regulation, namely Edinburgh and Glasgow Airports. Other airports will come within the scope of the 2014 Regulation if their civil aircraft movements in a calendar year (averaged out over a three year period) exceed 50,000.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union and does not trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 This instrument does not amend any other instrument and consolidation is therefore not an issue.

10. Consultation outcome

10.1 This instrument has been prepared in consultation with the Scottish Government. The Scottish Government conducted a focussed consultation in January and February 2019 involving the main stakeholders on proposals that would have provided for the local planning authority to be the competent authority for applications brought under the TCPA, with Scottish Ministers as the competent authority for "called-in" planning applications, and planning appeals.

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[1] Under the EU Noise Directive 2002/49/EU, as implemented by the Environmental Noise (Scotland) Regulations 2006 (S.S.I. 2006/465), airports with more than 50,000 civilian aircraft movements per year are required to give the public information about the level of noise in the surrounding environment, and to assess and manage environmental noise. This includes a requirement to produce an annual noise map and five-yearly noise action plans.

[2] Under the TCPA, the Scottish Ministers have the power to "call in" planning applications for their own determination rather than letting the local authority decide.

10.2 Responses from local planning authorities raised strong objections to the proposals. They expressed concerns that, due to permitted development rights in existence at Scotland's airports which mean that a planning application is only necessary in very limited circumstances, they are not able to adequately determine on developments at airports within their territory. As a result, they would not be able to consider operating restrictions, and were concerned that designating them as a competent authority could create false expectations of powers they may not be able to use. The local planning authorities also had some concerns over funding.

10.3 Communities responding to the proposals tended not to comment on the specifics for who the competent authority should be, but on the scope of those who would be consulted when noise operating restrictions are being considered. There was significant concern over the airspace change process and how this could impact on community noise, with the view expressed that operating restrictions should be considered alongside airspace changes. The common view espoused was that community groups representing communities which could potentially be impacted by noise but which are situated outside the boundary of the relevant planning authority should be included in consultations.

10.4 Taking full account of responses to the consultation, it has been decided that Scottish Ministers should be the competent authority in all instances. The Scottish Government will respond to consultees shortly.

11. Guidance

11.1 The UK Government is not producing any specific guidance on this instrument. However, guidance on the 2014 Regulation and the process for deciding on operating restrictions will be published on the Scottish Government's website in due course.

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 the impacts to business will be minimal and limited to relevant airports familiarising themselves with who the competent authority is.

13. Regulating small business

13.1 This instrument does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 As the net impacts on business are less than £5m equivalent annual net direct cost to business, a post implementation review is not proposed. The Regulations therefore do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Parliamentary Under Secretary of State for Transport, Baroness Sugg, has made the following statement:

"Having had regard to sections 28 to 32 of the Small Business Enterprise and Employment Act 2015 and the Statutory Review Guidance for Departments published under section 31(3) of that Act, I have decided that it is not appropriate to make provision for review in this instrument because it would be disproportionate taking into account the economic impact of the regulatory provision on the qualifying

activity. This is because of the limited size of the economic impact, which is only familiarisation costs for major airports."

15. Contact

15.1 Jonathan Friel, Senior Policy Advisor at the Department for Transport, Tel: 07469 441 832 or email: jonathan.friel@dft.gov.uk can answer any queries regarding the instrument.

15.2 Sarah Bishop, Deputy Director for the Aviation Policy Directorate 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.