EXPLANATORY MEMORANDUM TO

THE AIRPORTS SLOT ALLOCATION (ALLEVIATION OF USAGE REQUIREMENTS) REGULATIONS 2021

2021 No. 185

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 instrument extends the current waiver of the 80:20 airport slot usage rule to cover the Summer 2021 slot scheduling season, as a result of the persistent reduction in air traffic resulting from the impact of the COVID-19 pandemic.

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 England and Wales and Scotland.

4.2 The territorial application of this instrument is England and Wales and Scotland.

4.3 Aerodromes are a devolved matter in relation to Northern Ireland and, as there are currently no slot coordinated airports there and the power to waive the 80:20 rule is only exercisable until 2nd April 2021, the Northern Ireland Executive has agreed that it is not necessary for this instrument to extend to, or apply in relation to, Northern Ireland.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Airports Slot Allocation (Alleviation of Usage Requirements) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 An airport 'slot' is a permission to use all necessary airport infrastructure to operate an aircraft at a specified date and time for take-off or landing. Allocation of airport slots is governed by Council Regulation (EEC) No 95/93 of 18 January 1993 on common

rules for the allocation of slots at United Kingdom airports ("Regulation 95/93"). This provides for the allocation of slots to air carriers at congested airports based on neutral, transparent and non-discriminatory rules. Articles 8(2) and 10(2) set out the '80:20 rule' that, provided an airline has used its slots at least 80% of the time in the preceding season (either winter or summer), it is entitled to those slots in the upcoming equivalent season.

6.2 Because of the reduction in passenger demand during the COVID-19 pandemic, Regulation (EU) 2020/459 of the European Parliament and of the Council of 30 March 2020 inserted a new Article 10a which waived the 80:20 rule for the Summer 2020 season and conferred power on the European Commission until 2nd April 2021 to make tertiary legislation amending the period of the waiver if there was a persistent reduction in the level of air traffic as a result of the impact of the COVID-19 pandemic. In Delegated Regulation (EU) 2020/1477 of 14 October 2020 the Commission exercised this power to extend the waiver to cover the Winter 2020/21 season.

6.3 The Airports Slot Allocation (Amendment) (EU Exit) Regulations 2021 (S.I. 2021/100) transferred the Commission's power to the Secretary of State, as a power to make regulations. The procedure for making such regulations is set out in Article 13, which was substituted by the Airports Slot Allocation (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/276). This instrument uses those powers to extend the current waiver of the 80:20 slot usage rule to the Summer 2021 season.

7. Policy background

What is being done and why?

7.1 Airport slots have significant competitive, operational, and financial value to the airlines which hold them. Under ordinary circumstances, the 80:20 rule helps to encourage efficient use of scarce airport capacity whilst allowing airlines a degree of flexibility in their operations. However, the COVID-19 pandemic has had a significant impact on aviation passenger demand which has warranted a waiver of the '80:20' slot usage rule since March 2020, currently running until 27th March 2021.

7.2 As of February 2021, UK flight traffic remains below a third of what it was in the corresponding week in 2020. Demand forecasts for the Summer 2021 slot scheduling season, running from 28th March to 30th October 2021, indicate that air traffic demand will remain substantially below pre-COVID levels throughout the season. It is therefore considered necessary to further extend the period for which the waiver of the 80:20 rule applies, to cover the Summer 2021 season. This is intended to protect the financial health of airlines and the resilience of the sector; to discourage inefficient slot use by mitigating the risk that empty or near-empty 'ghost flights' will be operated in order to retain airlines' historic rights to their slots, and the negative impact such flights would have on the environment; and to protect future connectivity.

7.3 Without this extension of the waiver, airlines would have to take challenging commercial decisions on whether to bear the costs of operating near-empty aircraft or risk losing their slots.

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.

9. Consolidation

9.1 There are no current plans to consolidate the legislation covered by this instrument.

10. Consultation outcome

10.1 The Department for Transport Ministers and officials have regular engagement with the aviation industry, travel industry and consumer representatives. Through this engagement, officials have collated industry responses as to the possible approaches to alleviation of the 80:20 slot usage rule in the Summer 2021 slot scheduling season.

10.2 The Department for Transport also carried out a targeted industry consultation to seek views on whether to attach conditions to the proposed extension of the 80:20 waiver, which ran from 30 December 2020 to 20 January 2021.

10.3 The Department for Transport received 58 responses to the consultation from air carriers, airports, and trade and representative bodies. Amongst all respondents there was consensus that some form of alleviation from the slot usage rule is needed to support the aviation industry in dealing with the impact of COVID-19.

10.4 Most respondents felt that legally enforceable conditions should be placed on a waiver for the Summer 2021 season. However, following a review of the powers available under existing legislation, it has been decided not to include additional legally binding conditions for the Summer 2021 season but to wait until wider powers are available through clause 12 (airport slot allocation) of the Air Traffic Management and Unmanned Aircraft Bill, currently before Parliament. These would enable conditions to be implemented in future scheduling seasons if further temporary relief is appropriate.

11. Guidance

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

12. Impact

12.1 The impact on business is not easily quantifiable, but in the Department's view the benefits are likely to significantly exceed the costs. Other countries and jurisdictions are also introducing measures to alleviate the slot usage rule for the Summer 2021 season, for similar reasons.

12.2 In the absence of government intervention to extend the waiver, there is a risk that airlines would lose existing slot rights, undermining their financial viability and threatening connectivity, or that they would operate loss-making and environmentally damaging empty or near-empty flights in order to meet the slot usage rule so as to retain the slots for the Summer 2022 season. When slot values are compared to the cost of operating flights, there is a strong incentive for airlines to operate the flights necessary to retain their historic rights, even with limited numbers of passengers, particularly at Heathrow and, to a lesser extent, Gatwick.

12.3 The main benefits of the waiver are therefore expected to be that airlines with existing slot holdings will not have to fly loss-making flights in order to preserve those rights, and that the negative environmental impacts (including carbon emissions) associated with airlines running empty or near-empty flights will be avoided.

12.4 The main costs of the waiver are expected to be that airlines seeking to accumulate new slot rights will find it more difficult to acquire historic rights to slots at congested airports, as incumbent airlines will retain their existing historic rights. This could negatively impact new entry and competition amongst airlines. To the extent that the waiver results in airlines operating fewer flights, affected airports may also suffer a loss in airport charge income (and perhaps commercial income).

12.5 Air passengers are expected to benefit from the waiver through the preservation of historic levels of connectivity once aviation demand recovers (existing route networks and connections having been incrementally developed over many years) but may suffer from the possible negative impact on competition from new entrants.

12.6 There is no, or no significant, impact on charities or voluntary bodies.

12.7 The impact on the public sector is expected to be a relatively minor impact on publicly-owned airports and on taxation revenues.

12.8 An Impact Assessment has not been prepared for this instrument because it makes provision which is to have effect for a period of less than 12 months.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses (small air carriers).

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, as the measure extends for a single scheduling season an existing waiver of a regulatory requirement (the 80:20 slot usage rule) as a result of the COVID-19 pandemic, no additional specific action is required at this stage. However the Department will continue to consult all sections of the industry, including small businesses, on the approach to be taken in future slot scheduling seasons. If any further alleviation is then required, it is anticipated that a wider and more flexible range of powers will be available through clause 12 (airport slot allocation) of the Air Traffic Management and Unmanned Aircraft Bill, currently before Parliament.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is: Monitoring of the policy content of the retained version of Regulation 95/93 on common rules for the allocation of slots at United Kingdom airports will take place in the course of normal departmental business.

14.2 The regulation does not include a statutory review clause as it makes provision which is to have effect for a period of less than 12 months.

15. Contact

15.1 Kelly Dunlea at the Department for Transport (Telephone: 07977 436536 or email: kelly.dunlea@dft.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Philip Haslam, Deputy Director in the Airports, Infrastructure & Commercial Directorate at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robert Courts MP, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.