EXPLANATORY MEMORANDUM TO

THE AVIATION STATISTICS (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. 646

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 partially implements Regulation (EC) No 437/2003 ("the Statistical Returns Regulation"). The Statistical Returns Regulation contains an obligation on respondents (commercial airport operators) to provide their Member State with specified statistical data about aviation. Part 2 of this instrument creates a mechanism to enforce this obligation (see section 6.1 below for details). Part 3 remedies deficiencies that, as a result of the UK's exit from the European Union ("the EU"), arise in retained EU Regulations about aviation statistics.

Explanations

What did any relevant EU law do before exit day?

2.2 The Statistical Returns Regulation required airport operators to provide statistical data to EU Member States and required Member States to collect the data from airports and to transmit statistical returns to Eurostat (the European Commission's statistical body). Commission Regulation (EC) No 1358/2003 ("the Implementing Regulation") contained a list of airports to which the Statistical Returns Regulation applied.

Why is it being changed?

2.3 If there is no agreement with the EU providing for the UK to send statistical data to it after exit, it will no longer be appropriate to transmit data to Eurostat (which is in any case an obligation on Member States), so the Statistical Returns Regulation will also be amended to remove this duty. The Implementing Regulation is being amended to remove the list of EU airports because that will not be relevant after EU exit. The power to collect statistical data and the obligation on respondents to provide that data are to be retained. In order to achieve this the Statistical Returns Regulation must be amended, because it gives the data collection power to the Member States and the UK will no longer be a Member State.

What will it now do?

2.4 The amended Statistical Returns Regulation will oblige respondents to provide statistical data to the Civil Aviation Authority ("CAA"), and will oblige the CAA to collect that data and (if the Secretary of State so directs) send it to the Secretary of State.

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 on 25 January 2019. The Commons Sifting Committee (the European Statutory Instrument Committee) agreed with the government that this instrument should follow the negative procedure. However, the Lords Sifting Committee (the Secondary Legislation Scrutiny Committee ("the SLSC")) recommended at its meeting on 5 February 2019 that the instrument be upgraded to the affirmative procedure.

3.2 The SLSC considered that, as the instrument introduces a new civil penalty, the House may wish to have the opportunity to debate the instrument. The Minister accepted this recommendation.

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 The territorial application of this instrument includes Scotland and Northern Ireland.

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 The Parliamentary Under Secretary of State for Transport, Baroness Sugg, has made the following statement regarding Human Rights:

"In my view the provisions of the Aviation Statistics (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is made in exercise of powers in section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 ("the Withdrawal Act") and section 2(2) of the European Communities Act 1972 ("the ECA"). The Withdrawal Act makes provision for repealing the ECA and will preserve EU law, as it stands immediately before exit day, 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. The Withdrawal Act also contains a 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.

6.2 This instrument has two substantive parts, Parts 2 and 3, which are made under different parent Acts. (Part 1 is procedural and is made under powers in both of the Acts.)

6.3 The Statistical Returns Regulation contains an obligation on respondents to provide their Member State with certain statistical data, which the Member State must transmit to Eurostat. At present, the CAA collects this data for the UK and sends it to Eurostat. Part 2 of this instrument (made under the ECA) creates a mechanism to

enforce the obligation on respondents, because there is currently no penalty if a respondent does not comply. EU law requires that Member States enforce EU obligations in an effective, dissuasive and proportionate way, and thus the Government needs to create some way to enforce the obligation on respondents. Part 2 allows the CAA to serve notices on respondents to provide statistical data and, if the respondent fails to comply, allows the CAA to impose a civil penalty of up to £5,000. (The CAA is constituted under section 2 of the Civil Aviation Act 1982.)

6.4 Part 3 of this instrument (made under the Withdrawal Act) remedies deficiencies that, as a result of the UK's exit from the EU, arise in retained EU Regulations about aviation statistics. The existing Statistical Returns Regulation requires respondents to provide statistical data to EU Member States and requires Member States to collect the data about airports and to transmit statistical returns to Eurostat. The Implementing Regulation contains a list of airports to which the Statistical Returns Regulation applies.

7. Policy background

What is being done and why?

7.1 Statistics relating to air transport form but one small part of transport data currently collected and compiled by Eurostat. It is standard practice for such collections to have associated European legal acts.

7.2 The Statistical Returns Regulation requires Member States to submit statistical data relating to commercial air transport to Eurostat and also requires airports to provide information to the Member State. The data concerned primarily comprises statistics on the carriage of passengers and freight by air for each individual flight. This allows the number of passengers and amount of freight between UK airports and any other airport to be derived, which can be added together to give the total volumes of passengers and freight using UK airports. The gathering of such data and publication of derived figures are activities that are crucial for Government, the public and the sector itself to be able to monitor performance.

7.3 The data collection power provided for aviation is an important tool for accessing data from airports due to the competitive and commercially sensitive nature of the aviation sector. Part 3 is being made in order to retain this power for the CAA and to make necessary corrections to ensure that the legislation functions correctly.

7.4 Enforcement mechanism: During the preparation of this instrument a review of the Statistical Returns Regulation highlighted that a mechanism for enforcing the requirement for respondents to provide data was required in order to meet the UK's responsibilities as a Member State. Part 2 of this instrument therefore provides a mechanism whereby the CAA can enforce the obligation on airport operators to provide it with the statistical data mandated by the statistical returns Regulation. In some places the instrument specifies that the CAA must publish in its Official Record a notice in relation to imposing or reviewing a penalty.

7.5 Corrections to retained EU legislation: Part 3 of this instrument fixes deficiencies in retained EU law.

7.6 References to "Member State" will no longer be appropriate once the UK has left the EU, so this instrument replaces references to Member States with references to the CAA. The CAA in practice already collects the data in question in the UK.

7.7 If there is no agreement with the EU providing for the UK to send statistical data to it after exit, it will no longer be appropriate to transmit data to Eurostat (which is in any case an obligation on Member States), so the Statistical Returns Regulation is also being amended to remove this duty. The amended Statistical Returns Regulation will oblige respondents to provide statistical data to the CAA, and will oblige the CAA to collect that data and (if the Secretary of State so directs) send it to the Secretary of State. The same respondents will be required to provide the same statistical data under the amended Statistical Returns Regulation as that required under that Regulation before exit day.

7.8 The Implementing Regulation is being amended to remove the list of EU airports it contains, as the retained Implementing Regulation only applies in the UK.

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 Withdrawal Act 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.

8.2 Alongside the Withdrawal Act powers the instrument is also being made under section 2(2) of the ECA.

9. Consolidation

9.1 This instrument does not amend any existing domestic legislation so no consolidation is planned.

10. Consultation outcome

10.1 Department for Transport Ministers and officials have regular engagement with the aviation industry. Through specific meetings and workshops on EU Exit, and at long-established stakeholder forums, a number of issues related to the UK's withdrawal from the EU have been addressed. This includes plans for making secondary legislation to ensure that the statute book continues to function irrespective of the outcome of negotiations. The Department also works closely with the CAA on all aviation matters, including preparing for EU Exit, and has had frequent communication with the CAA on this instrument in respect of changes to the collection of aviation statistics.

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, charities or voluntary bodies is low. The only impact on business will be on airport operators. Since they already provide statistical data, the only impact on them is the new possibility of a civil penalty of up to £5,000 if they do not provide the required data. In practice airports are likely to continue to provide data as they have done in the past. There is no impact on 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 impact on business is expected to be low for the reasons given at section 12.1.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The Statistical Returns Regulation exempts airports with "only occasional commercial traffic", which the Implementing Regulation defines as 15,000 or fewer passenger units per annum (a "passenger unit" is one passenger or 100kg of freight). This minimises the impact of the requirements on small businesses (employing up to 50 people).

14. Monitoring & review

14.1 Section 28 of the Small Business, Enterprise and Employment Act 2015 applies only to Part 2 of this instrument.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, 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 Guidance under s.31 of that Act, I have decided that it is not appropriate to make provision for review of this instrument because it would be disproportionate to do so taking into account the economic impact of the regulations. The impacts of the enforcement regime created in Part 2 are not expected to be significant; the obligation to provide statistical data already exists; and the penalty is of a similar level to penalties for non-compliance in similar legislation."

14.3 As Part 3 of this instrument is made under the Withdrawal Act, no review clause is required for Part 3.

15. Contact

15.1 John Wilkins at the Department for Transport, Telephone: 07799 408237 or email: John.Wilkins@dft.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Jonathan Saks, Deputy Director for Aviation and Maritime Analysis 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. Appropriateness statement

1.1 The Parliamentary Under Secretary of State for Transport, Baroness Sugg, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Aviation Statistics (Amendment etc.) (EU Exit) Regulations 2019 does no more than is appropriate."

1.2 This is the case because the effects are appropriate for the following reasons. Part 3 remedies deficiencies in European Union Regulations about aviation statistics. Regulation (EC) No 437/2003 requires airport operators to provide statistical data to EU Member States and requires Member States to collect the data from airports and to transmit statistical returns to Eurostat (the Commission's statistical body). The amended Regulation (EC) No 437/2003 will oblige operators to provide statistical data to the CAA, and will oblige the CAA to collect that data and send it to the Secretary of State if the Secretary of State so directs. Commission Regulation (EC) No 1358/2003 contains a list of airports to which Regulation (EC) No 437/2003 applies. It is appropriate to amend Regulation (EC) No 1358/2003 to remove the list of EU airports it contains, because that list will not be relevant after EU exit.

2. Good reasons

2.1 The Parliamentary Under Secretary of State for Transport, Baroness Sugg, 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."

2.2 These are to maintain the power to collect statistical data from airport operators and to remove redundant provisions in retained EU legislation.

3. Equalities

3.1 The Parliamentary Under Secretary of State for Transport, Baroness Sugg, has made the following statement:

"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."

3.2 The Parliamentary Under Secretary of State for Transport, Baroness Sugg, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"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."

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.