EXPLANATORY MEMORANDUM TO

THE CIVIL AVIATION ACT 1982 (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. 1091

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 These Regulations make a small technical amendment to the definition of "enactment" in section 105(1) of the Civil Aviation Act 1982 ("the 1982 Act") to include retained direct EU legislation, which is preserved in domestic law by the European Union (Withdrawal) Act 2018 ("the 2018 Act"). This is consequential upon the fact that the 2018 Act creates this new category of legislation, and is necessary to ensure that the definition of "enactment" in the 1982 Act is consistent with the amendment made by the 2018 Act to the definition of "enactment" in the Interpretation Act 1978. The definition of "enactment" in the Interpretation Act 1978 does not apply in the 1982 Act because it has its own definition of "enactment".

Explanations

What did any relevant EU law do before exit day?

2.2 This instrument does not make any changes to retained EU law. However there are references to "enactment" throughout the 1982 Act which refer to primary and secondary legislation as well as certain Northern Ireland Acts and Measures. This instrument amends the definition of "enactment" for the purposes of the 1982 Act to include retained direct EU legislation in the definition of "enactment".

Why is it being changed?

2.3 The 2018 Act amends the Interpretation Act 1978 so that retained direct EU legislation is included in the definition of "enactment" which that Act applies generally across the statute book. However, the 1982 Act has its own definition of "enactment" which displaces that in the Interpretation Act. This instrument makes an equivalent change to the definition of "enactment" in the 1982 Act so that it is consistent with the amended definition in the Interpretation Act 1978. In the majority of cases this makes no practical difference because the references to enactments in the 1982 Act are limited to specific enactments or types of enactment which do not include retained direct EU legislation. However in a small number of cases it is desirable to ensure that "enactment" can include such legislation. These are explained more clearly in paragraphs 7.4 to 7.9 below.

What will it now do?

2.4 As a result of this instrument, references to "enactment" in the 1982 Act will be capable of covering retained direct EU legislation where appropriate, as would be the case in any other legislation covered where the general definition in the Interpretation Act 1978 applies.

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

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 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, Baroness Sugg, has made the following statement regarding Human Rights:

"In my view the provisions of the Civil Aviation Act 1982 (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 The 2018 Act makes provision for repealing the European Communities Act 1972 and will preserve EU law as it stands at the moment of exit but as part of domestic law. It creates a new body of domestic legislation by bringing the text of directly applicable EU legislation into domestic legislation; this is defined in section 20(1) as "retained direct EU legislation".

6.2 These Regulations are made in exercise of powers in section 23(1) and (2) of the 2018 Act, which enable Ministers to make appropriate amendments to legislation as a consequence of the 2018 Act. As the 2018 Act is creating a new category of enactment, it makes a consequential change to the definition of "enactment" in the Interpretation Act 1978; however as this does not extend to the 1982 Act, a further consequential change is needed in that Act.

7. Policy background

What is being done and why?

7.1 The Civil Aviation Authority ("the CAA") is the independent aviation regulator in the UK. The framework within which it operates is set out in the 1982 Act.

7.2 The 1982 Act uses the term "enactment" in various places but contains its own definition of that term in section 105(1) (general interpretation). This means that the definition of "enactment" in Schedule 1 to the Interpretation Act 1978 does not apply.

7.3 These Regulations therefore amend the definition in section 105(1) to ensure that it will include references to retained direct EU legislation, in the same way as the 2018 Act is amending the Interpretation Act 1978.

7.4 In the majority of cases this makes no practical difference because the references to enactments in the 1982 Act are limited to specific enactments or types of enactment which do not include retained direct EU legislation. However the change will be relevant to the following provisions of the 1982 Act.

7.5 Section 3 of the 1982 Act defines the functions of the CAA. This would in any event include functions conferred "by virtue of" instruments made under the 2018 Act. However by ensuring that "enactment" includes retained direct EU legislation, this instrument ensures greater clarity that any functions which may (as a result of other instruments amending retained direct EU legislation under the 2018 Act) be conferred on the CAA are subject to the general provisions of the 1982 Act about the CAA's functions. This includes provision about the objectives to be pursued in exercising the CAA's functions (see section 4) and the consultation requirements before charges can be imposed (see section 11).

7.6 Section 6 of the 1982 Act contains a provision for the Secretary of State to give directions to the CAA in the national interest. This is an emergency power and its use is limited to those purposes set out in section 6(2), for example in the interest of national security. Section 6(4) enables existing enactments – including primary legislation – to be set aside insofar as they conflict with the direction given under section 6. This would in any event include provisions of the 2018 Act which give EU legislation continued effect in domestic law. However by ensuring that "enactment" includes retained direct EU legislation, this instrument ensures greater clarity that provisions in retained direct EU legislation are included in the types of legislation which can be set aside if they conflict with a direction made by the Secretary of State under section 6.

7.7 Section 23(4)(f) of the 1982 Act ensures that information disclosure restrictions in section 23(1) do not prevent disclosure of information for the purposes of criminal proceedings under any enactment. This instrument ensures that this would apply equally if a criminal provision is contained in retained direct EU legislation. Such provisions should be treated equally regardless of the nature of the legislation which creates the offence.

7.8 Section 60 of the 1982 Act sets out powers to legislate by Order in Council. Section 60(1) reflects the possibility that there may be similar powers in other enactments. This instrument ensures that, if any such powers were to be conferred under retained direct EU legislation as amended under the 2018 Act, the wording of section 60 would remain in line with this.

7.9 Section 60(3)(m) enables Orders in Council to apply, modify or adapt enactments relating to customs and excise so as to apply to aviation and aerodromes. Schedule 8 to the 2018 Act already ensures that such powers will in future include powers to amend retained direct EU legislation. This instrument ensures that the reference to "enactment" in section 60(3)(m) remains in line with this.

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

8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union because it is being made under section 23(1) and (2) of the European Union (Withdrawal) Act 2018. The Minister has made any relevant statements in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There are no plans to consolidate the Civil Aviation Act 1982.

10. Consultation outcome

10.1 The CAA has been consulted informally throughout the preparation of this statutory instrument and the aviation industry has been informed of the Department's intentions to lay this statutory instrument using powers in the 2018 Act. The Department has 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 – at which issues related to the UK's withdrawal from the EU, including secondary legislation, have been addressed. Workshops at official level took place in February and September 2017 and in July 2018, and at Ministerial level in February 2017. Representatives of the Department 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 this instrument makes only a technical amendment to the Civil Aviation Act 1982 in consequence of the withdrawal of the United Kingdom from the European Union.

13. Regulating small business

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

13.2 As this is only a technical amendment with no significant impact, no mitigating actions are proposed.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is: this legislation makes a technical amendment to the Civil Aviation Act 1982 in consequence of the withdrawal of the United Kingdom from the European Union. Monitoring of the Civil Aviation Act 1982 takes place in the course of normal departmental business.

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

15. Contact

15.1 Andy Kirby at the Department for Transport Telephone: 07584157967 or email: andy.kirby@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	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 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 Civil Aviation Act 1982 (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 is made under section 23 of the 2018 Act and is therefore not subject to the categories for which use of the affirmative procedure is required 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. Parliament has not extended these categories to instruments made under section 23 of the 2018 Act. In any event this instrument does not fall within any of those categories. Although this instrument does make an amendment to primary legislation, including an indirect read-across to legislative power (see paragraph 7.9 above), it is only a technical and consequential amendment to ensure that the definition of "enactment" in the 1982 Act remains consistent with that in the Interpretation Act 1978 as amended by the 2018 Act. The amendment made by the 2018 Act would apply automatically but for the fact that the 1982 Act happens to contain its own definition. The amendment being made is fully consistent with the principle which underlies the 2018 Act amendment to the 1978 Act, namely that after exit day, retained direct EU legislation is to be treated as if it were domestic legislation (and retained direct principal EU legislation is to be treated as if it were domestic primary legislation).

1.4 Finally, as explained above, insofar as this instrument is relevant to particular provisions in the 1982 Act, the impact is to ensure clarity and consistency, and avoid potential mismatch between the 1982 Act and the 2018 Act, rather than to make any significant change of substance.

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 Civil Aviation Act 1982 (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate."

2.3 This is the case because: these Regulations make a technical amendment to the definition of "enactment" in the Civil Aviation Act 1982 to ensure that this definition is consistent with an equivalent amendment made by the 2018 Act to the Interpretation Act 1978. This change is consequential upon the fact that the 2018 Act creates this new category of legislation, and is necessary to ensure that the definition

of “enactment” in the 1982 Act is consistent with the amendment made by the 2018 Act to the definition of “enactment” in the Interpretation Act 1978.

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: these Regulations make a technical amendment to the definition of “enactment” in the Civil Aviation Act 1982 to ensure that this definition is consistent with an equivalent amendment made by the 2018 Act to the Interpretation Act 1978.

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.