Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No.

EXITING THE EUROPEAN UNION

CIVIL AVIATION

COMPETITION

The Air Services (Competition) (Amendment) (EU Exit) Regulations 2019

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018(**a**).

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Air Services (Competition) (Amendment) (EU Exit) Regulations 2019 and they come into force on exit day.

PART 2

Amendment of retained direct EU legislation

Amendment of Regulation (EC) No 868/2004

2.—(1) Regulation (EC) No 868/2004 of the European Parliament and of the Council of 21 April 2004 concerning protection against subsidisation and unfair pricing practices causing injury

(**a**) 2018 c. 16.

to Community air carriers in the supply of air services from countries not members of the European Community is amended as follows.

(2) In Article 1 (objective)—

(a) in paragraph 1—

(i) for "not members of the European Community", substitute "other than the United Kingdom"; and

(ii) for "Community", in the second place where it occurs, substitute "United Kingdom";

(b) in paragraph 2, for "Member States" to the end, substitute "the United Kingdom and countries other than the United Kingdom.";

(c) in paragraph 3, for "Community" to the end, substitute "United Kingdom and countries other than the United Kingdom.".

(3) In Article 2 (principles)—

(a) in paragraph 1, for "non-Community", substitute "non-United Kingdom";

(b) in paragraph 2—

(i) for "non-Community", substitute "non-United Kingdom";

(ii) for "Community", in both remaining places where it occurs, substitute "United Kingdom".

(4) In Article 3 (definitions)—

(a) for "Community", in each place where it occurs, substitute "United Kingdom";

(b) in paragraph (c), for "a Member State", substitute "the United Kingdom";

(c) at the end of paragraph (d), insert ";";

(d) after paragraph (d), insert—

"(e) "the CAA" means "the Civil Aviation Authority";

(f) "Official Record" means a document of that name published on the website of the CAA.".

(5) In Article 4 (subsidisation), in paragraph 1(a), for "not a member of the European Community", substitute "other than the United Kingdom".

(6) In Article 5 (unfair pricing practices)—

(a) in paragraph 1—

(i) after "from the", for "Community", substitute "United Kingdom";

(ii) for "non-Community", substitute "non-United Kingdom";

(iii) after "competing", for "Community", substitute "United Kingdom";

(b) in paragraph 2(e), for "non-Community", substitute "non-United Kingdom";

(c) in paragraph 3—

(i) for "The Commission", substitute "The CAA";

(ii) omit the final sentence.

(7) In Article 6 (determination of injury), for "Community", in each place where it occurs, substitute "United Kingdom".

(8) In Article 7 (initiation of proceedings)—

(a) in paragraph 1—

(i) for "Community", substitute "United Kingdom";

(ii) for "Commission's", substitute "CAA's";

(b) for paragraph 2, substitute—

"2. When it is apparent that there is sufficient evidence to initiate a proceeding, the CAA shall initiate the proceeding within 45 days of the lodging of the complaint and shall

publish a notice in its Official Record. Where the issue in question is being discussed within the framework of a bilateral agreement by the United Kingdom government, this 45-day deadline shall, at the request of the Secretary of State, be extended for up to 30 days. Any additional extension to the deadline shall be decided upon by the CAA.

Where insufficient evidence has been presented, the CAA shall inform the complainant within 45 days of the date on which the complaint was lodged.";

(c) in paragraph 3, for "the Commission", substitute "the CAA";

(d) in paragraph 4, for "The Commission", substitute "The CAA";

(e) in paragraph 5—

(i) for "The Commission", the first time it occurs, substitute "The CAA";

(ii) for "the third-country government", substitute "the government of the other country";

(iii) omit from "Where appropriate" to the end.

(9) In Article 8 (the investigation), in paragraph 1—

(a) for "the Commission", substitute "the CAA";

(b) for "non-Community", substitute "non-United Kingdom";

(c) for "third country government", substitute "government of the other country";

(d) after "which is in the", for "Community", substitute "United Kingdom".

(10) In Article 9 (redressive measures), for "non-Community", substitute "non-United Kingdom".

(11) In Article 10 (provisional measures)—

(a) in paragraph 1—

(i) for "non-Community", substitute "non-United Kingdom";

(ii) for "Community", in both remaining places where it occurs, substitute "United Kingdom";

(b) in paragraph 2—

(i) omit "Provisional measures may be taken in accordance with the procedure referred to in Article 15(2).";

(ii) for "Those", substitute "Provisional".

(12) In Article 11 (termination without measures)—

(a) in paragraph 1—

(i) for "a Member State's air service agreement with the third country", substitute "an air service agreement between the United Kingdom and the other country";

(ii) for "Commission", substitute "CAA";

(iii) for "Community", substitute "United Kingdom";

(b) in paragraph 2, omit "in accordance with the procedure referred to in Article 15(2)".

(13) In Article 12 (definitive measures)—

(a) in paragraph 1—

(i) for "Community", substitute "United Kingdom";

(ii) after "in accordance with Article 16,", insert "the CAA shall recommend to the Secretary of State that";

(iii) after "measure", omit "shall";

(iv) omit "in accordance with the procedure referred to in Article 15(3)";

(b) in paragraph 2—

(i) for "non-Community", substitute "non-United Kingdom";

(ii) for "Community industry", substitute "United Kingdom industry";

(c) in paragraph 3—

(i) for "non-Community", in both places where it occurs, substitute "non-United Kingdom";

(ii) for "Community", in both remaining places where it occurs, substitute "United Kingdom";

(d) in paragraph 4, for "non-Community", in both places where it occurs, substitute "non-United Kingdom";

(e) omit paragraph 5.

(14) In Article 13 (undertakings)—

(a) in paragraph 1, after "terminated", insert "by the CAA";

(b) for "non-Community", in each place where it occurs, substitute "non-United Kingdom";

(c) omit paragraph 2.

(15) In Article 14 (reviews)—

(a) in paragraph 1—

(i) for "the Commission", substitute "the CAA";

(ii) for "a Member State", substitute "the Secretary of State";

(iii) for "non-Community", substitute "non-United Kingdom";

(iv) for "by Community", substitute "by United Kingdom";

(b) in paragraph 2—

(i) for the first sentence, substitute "Reviews under paragraph 1 shall be initiated by the CAA.";

(ii) for "Community", substitute "United Kingdom";

(iii) for the final sentence, substitute "Where warranted by reviews, the CAA shall make a recommendation to the Secretary of State as to whether the measures should be repealed, amended or maintained.".

(16) Omit Article 15 (committee procedure).

(17) In Article 16 (Community interest), in the title of the Article and in both places where it occurs in the body of the Article, for "Community", substitute "United Kingdom".

(18) In Article 17 (general provisions)—

(a) in paragraph 1—

(i) for "shall be imposed by Regulation, and enforced by Member States in the form, at the level specified and according to the other criteria laid down in the Regulation imposing such measures", substitute "may, following a recommendation of the CAA under Article 12, be imposed by regulations made by the Secretary of State, and may be enforced in accordance with the regulations";

(ii) for "the Regulation shall define", substitute "the regulations shall define";

(b) for paragraph 2 substitute—

"2. Regulations under this Regulation may—

(a) make consequential, supplementary, incidental, transitional, transitory or saving provision;

(b) make different provision for different cases or descriptions of case or for different purposes.

3. Regulations under this Regulation are to be made by statutory instrument.

4. A statutory instrument containing regulations under this Regulation may not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament.".

(19) After Article 18 (entry into force), omit the words "This Regulation shall be binding in its entirety and directly applicable in all Member States.".

Signed by authority of the Secretary of State for Transport

Name
Parliamentary Under Secretary of State
Date Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the European Union.

These Regulations make amendments to retained direct EU legislation in the field of air services, relating to the ability to take measures to address anti-competitive practices by countries other than the United Kingdom.

The legislation amended is Regulation (EC) No 868/2004, which will be retained as part of the UK's domestic law after the UK's withdrawal from the European Union. The EC Regulation permits the European Commission to adopt measures in response to anti-competitive practices by non-European Union countries which adversely impact Community air carriers. The amendments made by these Regulations reflect the United Kingdom's position upon exit from the European Union. They permit the Civil Aviation Authority ("the CAA") to initiate proceedings, where there is sufficient evidence of anti-competitive practices by countries other than the United Kingdom which adversely impact on the United Kingdom's air services industry. Where the CAA initiates proceedings, notification must be placed in its Official Record, available on its website at https://www.caa.co.uk/home/. A hard copy of the notice may be obtained by writing to the Department for Transport at Great Minster House, 33 Horseferry Road, Westminster, London SW1P 4DR. Where the CAA makes a recommendation to the Secretary of State following its investigation, the Secretary of State will then be permitted to adopt measures in response. Such measures will be imposed by making regulations.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

An Explanatory Memorandum is published alongside the instrument on www.legislation.gov.uk.

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