EXPLANATORY MEMORANDUM TO

THE AIR TRAFFIC MANAGEMENT (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport ("the Department") and is laid before Parliament by Command.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument uses powers under the European Union (Withdrawal) Act 2018 ("the Withdrawal Act") to revoke retained EU legislation relating to the EU's performance and charging scheme for Air Navigation Services (ANS) that has been adopted in the intervening period since the Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/459) ("the ATM EU Exit Regulations 2019") were made.

2.2 Additionally, the instrument makes amendments to Commission Implementing Regulation (EU) 2017/373 to the extent that it is fully applicable as of 2nd January 2020 and to Commission Implementing Regulation (EU) 2019/123 which is in force and applicable as of 1st January 2020.

2.3 The instrument also makes amendments to the ATM EU Exit Regulations 2019 in respect of Commission Implementing Regulation (EU) 2017/373 to the extent that it is fully applicable as of 2nd January 2020.

2.4 This will ensure the continuity of a functioning regulatory framework for the UK's Air Traffic Management (ATM) system and the delivery of ANS within it after the transition period.

Explanations

What did any relevant EU law do before exit day?

2.5 The EU's Single European Sky (SES) legislation supports the EU initiative to enhance air traffic safety standards, contribute to the sustainable development of the ATM system, and improve the efficiency of ANS within the European ATM system. The SES legislation sets out a regulatory framework to deliver these ambitions as well as a programme to research, develop and deploy new operating concepts and technology, known as the SES ATM Research (SESAR) programme. The UK has actively contributed to the development of the SES and has implemented this legislation.

2.6 Commission Implementing Regulation (EU) 2019/317 sets out a performance and charging scheme for ANS for the period from 1st January 2020 to 31st December 2024 (Reference Period 3). A reference period is a period covering three to five years for which the costs for air navigation services are anticipated for that period in order to set the level of charges to airspace users. It also repeals Commission Implementing Regulations (EU) 390/2013 and 391/2013 which set out the previous iteration of the

EU's performance and charging scheme. Although repealed, these 2013 regulations continue to apply in relation to the second reference period (2014-2019).

2.7 Commission Implementing Decision (EU) 2019/903 establishes the EU performance targets for the performance and charging scheme to be met by Air Navigation Service Providers (ANSPs) for Reference Period 3 for air traffic management purposes.

2.8 Commission Implementing Regulation (EU) 2017/373 sets out requirements for the safe delivery of ANS and their oversight and is fully applicable as of 2nd January 2020. The ATM EU Exit Regulations 2019 made amendments to ensure the parts of this regulation that were applicable before January 2020 would be legally operable in the UK.

2.9 Commission Implementing Regulation (EU) 2019/123 sets out the rules for the implementation of ATM network functions for the persons providing those functions and the entities overseeing those providers.

Why is it being changed?

2.10 The EU performance and charging scheme is a top-down scheme with numerous roles for the European Commission and its Performance Review Body, based on EU-level performance targets. The UK already has a functioning regulatory system for the performance and economic regulation of its ANS set out in Chapter IV of Part I of the Transport Act 2000 (TA 2000) which had been kept as it was not inconsistent with the EU scheme and gave national powers to enforce it. Retaining the SES performance and economic regulation provisions alongside the TA 2000 provisions would be likely to cause confusion and require considerable cross-referencing between the two regimes. Also in relation to charging, when the UK leaves the EU it will still have obligations under the Eurocontrol Multilateral Agreement on Route Charges 2006[1] which has international treaty status and sets out obligations for Eurocontrol contracting States in respect of the setting and promulgation of Route Charges.

2.11 The ATM EU Exit Regulations 2019 revoke the SES performance and charging regulations (Commission Implementing Regulations (EU) 390/2013 and 391/2013) that were in force at the time they were made in February 2019. Since then those original performance and charging scheme regulations (Commission Implementing Regulations (EU) 390/2013 and 391/2013) have been revoked and replaced with Commission Implementing Regulation (EU) 2019/317, the EU's new performance and charging scheme regulation.

2.12 The EU performance targets established in Commission Implementing Decision (EU) 2019/903 for the performance and charging scheme for Reference Period 3 will no longer be relevant to the UK after the transition period.

2.13 This instrument revokes the EU Commission's Implementing Regulation (EU) 201/317 and the Implementing Decision (EU) 2019/903. In doing so, it repeats for the new performance and charging scheme what the EU ATM Exit Regulations did by revoking the original EU regulations for the SES performance and charging schemes thus ensuring a consistent approach.

2.14 In addition, since the ATM EU Exit Regulations 2019 were made in February 2019 Commission Implementing Regulation (EU) 2017/373 has become fully applicable. The ATM EU Exit Regulations 2019 amended Commission Implementing Regulation

[1] https://www.eurocontrol.int/publication/multilateral-agreement-relating-route-charges

(EU) 2017/373 to reflect its limited applicability. However, the EU Regulation in its entirety is in force as of 2nd January 2020. This instrument therefore corrects the previous instrument to reflect this.

2.15 This instrument also amends Commission Implementing Regulation (EU) 2019/123, which entered into force on 1st January 2020 and was therefore not included within the ATM EU Exit Regulations 2019 made in February 2019.

What will it now do?

2.16 Revoking Commission Implementing Regulation (EU) 2019/317 and Commission Implementing Decision (EU) 2019/903 will ensure there is a consistent approach to performance and charging for air navigation services in domestic law. After leaving the EU, the UK will revert to the system of economic regulation for ANS as set out in Chapter IV of Part I of the TA 2000. This is consistent with the approach taken in the ATM EU Exit Regulations 2019 in respect of the EU's original performance and charging scheme regulations (Commission Implementing Regulations (EU) 390/2013 and 391/2013). The amendments to 2017/373 and 2019/123 address areas of legal inoperability by removing roles of EU bodies, functions that cannot be performed by the UK after exit, and provisions where there is already satisfactory UK legislation. This will ensure that efficient and safe ANS, as well as the effective regulation of the UK ATM system continues in the UK in a form that is interoperable with the EU's system after the transition period.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is made in exercise of the power in section 8(1) (dealing with deficiencies arising from withdrawal) of the Withdrawal Act.

3.2 This instrument is required to ensure that the UK has a functioning statute book and will come into force at the end of the transition period.

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.

3.4 The powers under which this instrument is made cover the entire United Kingdom (see section 24 of the Withdrawal Act), and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the UK.

4.2 The territorial application of this instrument is the UK.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Transport, Rachel Maclean MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is made in exercise of the power in section 8(1) (dealing with deficiencies arising from withdrawal) of the Withdrawal Act 2018.

6.2 The Withdrawal Act makes provision for repealing the European Communities Act 1972 and will preserve EU law, as it stands at the moment of EU exit, 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.

6.3 The Withdrawal Act also contains a temporary power to enable Ministers and the devolved administrations to make secondary legislation to amend retained EU legislation that would no longer operate appropriately once the UK has left the EU, so that the domestic legal system continues to function correctly outside the EU.

6.4 It is necessary to ensure that SES legislation in UK law is in an operable form in order to ensure that the UK's ATM arrangements remain interoperable with the rest of Europe, as well as to ensure an effective regulatory framework for the UK ATM system and certainty for industry.

7. Policy background

What is being done and why?

7.1 The instrument revokes Commission Implementing Regulation (EU) 2019/317. That EU Regulation revised performance and charging scheme regulation for air traffic management under the SES programme, came into force and was applicable on 17th March 2019. Consequently, it was not practicable to include provisions for it in the EU ATM Exit Regulations 2019 which were made in anticipation of the UK's planned exit from the EU on 29th March 2019. The ATM EU Exit Regulations 2019 revoked the EU's original performance and charging scheme regulations in favour of a domestic scheme for the same purpose. The instrument revokes the EU's revised version of those regulations.

7.2 The instrument revokes Commission Implementing Decision (EU) 2019/903 which establishes the EU performance targets for the revised performance and charging scheme to be met by ANSPs for Reference Period 3. Those EU targets will no longer be relevant to the UK after the transition period and operates a domestic scheme for the same purpose.

7.3 The instrument amends Commission Implementing Regulation (EU) 2017/373 which sets out requirements for the safe delivery of ANS and their oversight. At the time the ATM EU Exit Regulations 2019 were made, this EU implementing regulation was partially applicable to the extent that it made provisions in respect of data service providers and the European Aviation Safety Agency. The instrument makes further amendments to reflect the full applicability of the EU implementing regulation from 2nd January 2020.

7.4 The instrument amends Commission Implementing Regulation (EU) 2019/123, which entered into force on 20th February 2019 and becomes applicable on 1st January 2020, and was therefore not included within the ATM EU Exit Regulations 2019 made in February 2019. This EU Regulation sets out the rules for the implementation

of ATM network functions for the persons providing those functions, and the entities overseeing those providers.

7.5 The instrument revokes several provisions in the ATM EU Exit Regulations 2019 to reflect the repeal of Regulation (EC) No 482/2008 and Implementing Regulations (EU) No 1034/2011 and (EU) No 1035/2011 by Commission Implementing Regulation (EU) 2017/373, the repeal of Commission Regulation (EU) No 677/2011 by Commission Implementing Regulation (EU) 2019/123, and the full applicability of Commission Implementing Regulation (EU) 2017/373 from 2nd January 2020.

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(1) of the Withdrawal Act 2018 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.

9. Consolidation

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

10. Consultation outcome

10.1 The Department's Ministers and officials have regular engagement with the aviation industry, ANSPs and airspace users. The relevant stakeholders, the Civil Aviation Authority (CAA) and NATS (formerly known as National Air Traffic Services) have been consulted on this instrument. There was support amongst stakeholders for continuity in terms of the regulatory framework for ATM after the UK leaves the EU. The Department also works closely with the CAA on all aviation matters, including preparing for EU Exit.

11. Guidance

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

11.2 The UK is compliant with or is working towards compliance with the SES legislation so there should be no unexpected actions for industry and stakeholders arising from the scope of this instrument. The Department has actively engaged with the CAA to ensure its views have been reflected in this instrument throughout the drafting process, and taken account of other representations from operational stakeholders including NATS.

12. Impact

12.1 The impact on business, charities or voluntary bodies is limited to minor familiarisation costs as this instrument makes no changes to the policy intent of the EU's SES regulations.

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 costs and benefits to business are minor. As this instrument is not making any changes to

technical requirements, the main costs arising from the instrument relate to the need for industry to familiarise themselves with the regulatory regime.

13. Regulating small business

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

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 the impact on business, charities or voluntary bodies in respect of the changes to the retained SES Regulations are limited to minor familiarisation costs.

14. Monitoring & review

14.1 As the instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Elie Howe at the Department for Transport (Telephone: 07779 554719 or email: Elie.Howe@dft.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Ian Elston, Deputy Director for Aviation Policy, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rachel Maclean MP, 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 14, 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 15, 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, Rachel Maclean MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2020 do no more than is appropriate."

1.2 This is the case because the purpose of this instrument is simply to ensure that the legislation functions correctly once the UK has left the EU. The changes this instrument makes, revoking EU legislation, are minor and do no more than is strictly necessary to ensure that the legislation functions correctly once the UK has left the EU.

2. Good reasons

2.1 The Parliamentary Under Secretary of State, Rachel Maclean MP 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 This will ensure the continuity of a functioning regulatory framework for the ATM system after the UK leaves the EU.

3. Equalities

3.1 The Parliamentary Under Secretary of State, Rachel Maclean MP 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."

3.2 The Parliamentary Under Secretary of State, Rachel Maclean MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Parliamentary Under Secretary of State, Rachel Maclean MP 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.