EXPLANATORY MEMORANDUM TO

THE AIRPORTS SLOT ALLOCATION (ALLEVIATION OF USAGE REQUIREMENTS ETC.) REGULATIONS 2025

2025 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of His Majesty.

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

2. Declaration

2.1 Mike Kane MP, Parliamentary Under Secretary of State at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

2.2 Erin Cowburn, Deputy Director for Airports Policy in the Aviation, Maritime and Security Group at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Tim May at the Department for Transport telephone: 07920710991 or email: slotconsultation@dft.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends Council Regulation (EEC) No 95/93 of 18th January 1993 on common rules for the allocation of slots at United Kingdom airports ("Regulation 95/93").

4.2 Slot allocation is only regulated at "coordinated airports" where the capacity of the airport is unable to meet the demand for slots at that airport. Rules apply to the maintenance of existing slots and to the allocation of any new or unused slots. In the UK, the coordinated airports are the main London airports (City, Gatwick, Heathrow, Luton and Stansted), Birmingham, Bristol, Leeds Bradford and Manchester. Slot allocation is undertaken by an independent slot coordinator, Airport Coordination Limited ("ACL").

4.3 The instrument amends the definition of a new entrant and provides additional reasons for allowing alleviation from slot usage rules.

4.4 An airport 'slot', which is defined in Article 2 of Regulation 95/93, is a permission to use all necessary airport infrastructure to operate an aircraft at a specified date and time for take-off or landing. This provides for the allocation of slots to air carriers at congested airports based on neutral, transparent and non-discriminatory criteria.

4.5 Articles 8(2) and 10(2) of regulation 95/93 set out the 80:20 rule and provide that where an air carrier has used a series of slots at least 80% of the time in the preceding equivalent scheduling period (either summer or winter), it is entitled to the same series of slots in the upcoming equivalent scheduling period. Article 14(6) provides for slot coordinator to withdraw slots from an air carrier if the carrier cannot achieve the required percentage usage rate.

4.6 Article 10(4) makes provision for cases where carriers can demonstrate that it is justifiable not to have used slots. In these cases, carriers are not required to comply with the 80:20 rule for that series of slots (referred to in this memorandum as "slot alleviation"). Article 10(4) has previously been amended to provide slot alleviation due to the occurrence of COVID- 19.

4.7 An 'air carrier' is defined in Regulation 95/93 as an air transport undertaking holding a valid operating licence or equivalent at the latest on 31 January for the following summer season or on 31 August for the following winter season. For the purposes of Articles 4, 8, 8a and 10, of Regulation 95/93 the definition of air carrier also includes business aviation operators, when they operate according to a schedule. For the purposes of Articles 7 and 14 of Regulation 95/93 the definition of air carrier also includes all civil aircraft operators.

4.8 The definition of air carrier also ensures that all civil aircraft operators are subject to the requirement in Article 7 of regulation 95/93 to submit such relevant information to the coordinator as requested by it. The definition of air carrier also ensures that all civil aircraft operators, when operating slots, are subject to the coordinator's enforcement measures under Article 14 of Regulation 95/93.

4.9 New entrant air carriers are defined in article 2(b) of Regulation 95/93. A new entrant carrier is one requesting:

- as part of a series of slots, a slot at an airport on any day, where if the request were granted the air carrier would hold fewer than five slots at the airport on that day; or
- a series of slots for a non-stop scheduled service on a day between two UK airports or a UK and an EEA airport (where there are no more than two air carriers operating the same service on that day) and if successful in its request the air carrier would have fewer than five slots to operate the service on that day; or
- a series of slots to operate a non - stop scheduled passenger service between an airport and a regional airport (where no other air carrier operates a direct scheduled service on the same route) and if successful in its request the air carrier would hold fewer than five slots at that airport on that day for the service.

4.10 The instrument changes these references in the definition of new entrant from holding fewer than five slots to fewer than seven. The amendment is designed to allow air carriers with a small presence at an airport the opportunity to benefit from greater priority when it comes to the allocation of airport slots from the slot pool. (See further paragraph 5.2 below.)

4.11 Secondly, this instrument also amends Article 10(4) of Regulation 95/93 to provide air carriers with slot alleviation where there is an epidemic or pandemic or other outbreak of disease in the future. Under ordinary circumstances, the 80:20 rule helps encourage efficient use of airport capacity whilst allowing air carriers a degree of flexibility in their operations. However, the COVID-19 pandemic had a significant

impact on aviation passenger demand, in response to which slot alleviation was granted from March 2020 until March 2024. Alleviation was granted for the Summer 2020 and Winter 2020 scheduling periods by the EU. For the Summer 2021 scheduling period alleviation was granted through the Airports Slot Allocation (Alleviation of Usage Requirements) Regulations 2021 (SI 2021/185). Thereafter alleviation was granted through regulations using temporary powers granted by the Air Traffic Management and Unmanned Aircraft Act 2021 (c.12) ("ATMUA 2021").

Where does the legislation extend to, and apply?

4.12 Except as mentioned in paragraph 4.13 the extent of this instrument (that is the jurisdictions which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.13 Regulation 1, regulation 2(1), (2) and (3)(b)(ii) of the instrument extend to England and Wales, Scotland and Northern Ireland. Regulations 2(3)(a) and (b)(i) and regulation 3 of the instrument extend to England and Wales and Scotland only.

4.14 The territorial application of this instrument (that is where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland in respect of regulation 1, regulation 2(1), (2) and 3(b)(ii) and England and Wales and Scotland in respect of regulation 2(3)(a) and b(i) and regulation 3.

4.15 Aerodromes (and therefore slots) are a transferred matter in relation to Northern Ireland. The Northern Ireland Executive has however agreed that the UK Parliament can legislate to extend and apply the relevant provisions to Northern Ireland.

5. Policy Context

What is being done and why?

5.1 Regulation 95/93 is being amended through the instrument to change the definition of a new entrant carrier, and also to include a provision which will enable carriers to obtain slot alleviation in circumstances where there are government imposed measures relating to a pandemic, epidemic or other outbreak of disease, provided that certain conditions are met. (see 5.5 below)

5.2 The change in definition of new entrant is being introduced as it is considered that the current definition could; (a) restrict them from being able to obtain enough slots for the number of daily rotations necessary to make a route commercially viable; and (b) reduce their ability to spread fixed costs across more flights leaving them with a higher cost base making it difficult to compete with existing carriers. New entrant carriers are also able to take advantage of the priority given to new entrants on the allocation of slots from the slot pool to an airport. (Article 10(6) of Council Regulation 95/93 provides that 50% of slots shall first be allocated to new entrants unless requests by new entrants are less than 50%.) The revised definition of new entrant also brings the UK's legislation in line with the Worldwide Airport Slot Guidelines ("WASG"). The WASG provides the air transport industry worldwide with a single set of standards for the management of airport slots at coordinated airports.

5.3 The legislation will also build upon previous regulations which provided carriers with slot alleviation during the COVID -19 pandemic by introducing a permanent provision for carriers to obtain slot alleviation where there are government-imposed measures relating to a pandemic, epidemic or other outbreak of disease, provided certain conditions are fulfilled (see 5.5 below)

5.4 Given the disruption to the aviation sector caused by COVID-19 and the fact that: (a) there are no existing provisions to provide for slot alleviation should a future pandemic arise and (b) the powers to provide for slot alleviation in respect of COVID-19 were temporary (see further paragraph 6.4 below) it was decided to introduce a permanent provision so that slot alleviation would be available in the case of a future pandemic, epidemic or other outbreak of disease. (It is noted that the EU has introduced an analogous provision providing alleviation where there is "*any major epidemiological situation").*

5.5 Under the new proposed provision slot alleviation will be available where there are government imposed measures relating to a pandemic, epidemic or other outbreak of disease and where the restrictions in place meet all of the following criteria:

- They must be imposed at either end of the route in question;
- They must take one of the forms listed in the provision, namely: flight bans or border closures; quarantine or self-isolation requirements; requirements to test negative for the disease in question before undertaking air travel or before entry into the territory of the country concerned; official government advice against all but essential travel; the total closure of or severe restrictions on the availability of airports, or essential ground handling services or other businesses essential to support aviation; severe restrictions on the number of passengers permitted on flights or in airports; severe or total closure of accommodation, surface travel or other essential tourist services; or significant restrictions on onward travel which is booked along with the flight as part of a package. It is noted that one of the measures includes significant restrictions on onward travel booked along with a connecting flight as part of a package, for example, where travel is sold as part of a flight and coach package or a flight and cruise package. In this case the close connection between the flight and onward travel means that any significant restrictions on onward travel are covered, even if these do not reach the severe threshold which has been set in the case of closure of accommodation or surface travel more generally;
- They must severely reduce demand for passenger travel on the route or the viability of the route itself. This requirement is necessary since otherwise air carriers could justify not using slots where passenger demand is undiminished;
- They must have been in effect at the date the slots were due to be operated, up to three weeks before that date (this three-week buffer period is intended to give air carriers time to resume services when travel restrictions are lifted) or earlier where the government imposing the measures made an official announcement relating to their duration which made it reasonable to expect that they would remain in effect until that date and the air carrier made the slots available to the coordinator for reallocation.

5.6 In order to qualify for alleviation in the case of a future pandemic it will have to demonstrated that the measures affect a significant number of passengers or crew on the route and also whether the measures in question are severe.

5.7 It will be relatively straightforward in several instances to determine that a significant number of passengers or crew will be impacted. This will be the case, for example where there are flight bans or border closures, where there is official advice against all but essential travel (meaning it is highly likely that considerably less people will travel); or where airports are closed.

5.8 There are other instances where in practice it is highly likely that a significant number of passengers and crew will be impacted. For example, if there was a requirement to

quarantine in an hotel for seven days this is more likely to have a greater impact than measures requiring passengers to isolate for 48 hours.

5.9 In the context of the regulations it is considered that significant means something that is real as opposed to negligible, insignificant or trifling.

5.10 The term "severe" is aimed at capturing something that is considered impactful and has a higher bar than significant. One example would be where government imposes unforeseeable pandemic related restrictions that have a major impact on travel. In contrast severe would not cover such things as the wearing of face masks. As the bar is set high it is likely to be able to be demonstrated that the severe threshold has been reached.

5.11 Examples of what is what is severe (in terms of severe restrictions on passengers on flights) could include where due to strict social distancing measures the number of seats that cannot be utilised makes the flight uneconomic to operate. In terms of the severe restrictions in respect of airports there is likely to be severe restrictions where, for example, an airport with two terminals is operating with one completely closed and the second has insufficient space to accommodate flights from the closed terminal.

5.12 However, assessing what is severe or assessing whether a significant number of passengers or crew are affected in any particular case involves an element of judgment and discretion for the slot coordinator taking an holistic view and assessing the measures in place on the ground.

5.13 There are also savings and transitional provisions. (See further paragraphs 6.7 and 6.8 below).

What was the previous policy, how is this different?

5.14 New entrants have been defined in Article 2 of Regulation 95/93 in terms of the number of slots they hold at an airport. Currently an air carrier is a new entrant if it has fewer than five slots at an airport. Under this instrument a new entrant is defined as a carrier which holds fewer than seven slots at an airport. The change in approach is designed to enhance the presence of new entrant carriers at slot coordinated airports (see paragraph 5.2 above).

5.15 As indicated at paragraphs 6.4 below temporary powers (expiring in 2024) were available under ATMUA 2021 to provide for slot alleviation as a result of COVID-19. This instrument introduces a wider change to Regulation 95/93 enabling slot alleviation to be available on a permanent basis for future pandemics, epidemics, or other outbreak of disease. The criteria which need to be satisfied before slot alleviation can be granted (set out at paragraph 5.5 above) are virtually identical to the conditions that applied in order to obtain slot alleviation due to the impact of COVID-19. This is because these provisions are well known and easily understood by the industry.

6. Legislative and Legal Context

How has the law changed?

6.1 Under section 3 of the European Union (Withdrawal) Act 2018, Regulation 95/93 was retained in the domestic law of the United Kingdom. Such law is now called assimilated law.

6.2 After EU Exit, time-limited powers to provide for slot alleviation due to COVID -19 were introduced through ATMUA 2021. Section 12 of ATMUA 2021 inserted a new Article 10aa into Regulation 95/93. This provided a greater range of powers to amend Regulation 95/93 for specified periods, if the Secretary of State considered that as a result of COVID-19 there was a reduction in the level of air traffic, compared to the corresponding period in a relevant previous year, which is likely to persist.

6.3 Regulations were made under Article 10aa for the Winter 2021 season (SI 2021/1200), the Summer 2022 season (SI 2022/368 and 2022/822), the Winter 2022 season (SI 2022/1107, the Summer 2023 season (SI 2023/325) and the Winter 2023 season (SI 2023/1133).

6.4 The powers to provide slot alleviation in respect of COVID-19 are time-limited. Article 10aa(3) of Regulation 95/93 provides that the power to make regulations may not be exercised: (a) after 24 August 2024, or in respect of a period after the winter season following 24 August 2024. (That is the powers cannot be exercised to make regulations beyond the winter season for 2024, which runs from 27 October 2024 until 29 March 2025.) The instrument will introduce a new provision and amend Article 10(4) by putting in place a permanent provision to provide for slot alleviation in the case of pandemics, epidemics or other outbreak of disease.

6.5 The instrument is made in exercise of powers in sections 14(1) and 14(2) and 14(3) and section 20(1)(b) of the Retained EU Law (Revocation and Reform) Act 2023 ("the REUL Act") (c.28). These powers give the UK Government and the devolved authorities the ability to revoke and to replace any secondary direct assimilated law.

6.6 The powers are also being used to omit provisions which are no longer required. Article 10.2 (a) of Regulation 95/93 is being omitted. This provision contained a general waiver from the requirement to meet the 80:20 rule in respect of a series of slots provided they were handed back to the coordinator by 7th September 2021. As this provision related to the Winter 2021 scheduling period it is no longer required. Article 10(4)(e), (f) and (g) are also being omitted. These provisions granted slot alleviation for carriers provided certain conditions were met in respect of slots operated in the Winter 2021, Summer 2022, Winter 2022, Summer 2023 and Winter 2023 scheduling periods.

6.7 Section 20(1)(b) of the REUL Act provides that "a power to make regulations under this Act" also includes a power to make supplementary, incidental, consequential, transitional, transitory or savings provisions. This general power enables changes to be made to legislation where the new legislation being introduced has "knock on" effects which in turn need to be addressed.

6.8 This provision has been utilised to save article 10(4)(g) in the form it was in immediately prior to the commencement of this instrument. Article 10(4)(g) in its original form provided air carriers with slot alleviation as a result of COVID -19 where certain conditions were met. Regulation 3 of the draft instrument provides that the substitution of article10(4)(g) has no effect as regards the allocation of slots for the scheduling periods running from the date these regulations come into force until 29 March 2025. An air carrier's record of utilisation of its slots in one scheduling period has a knock-on effect on the slots it is allocated for the next equivalent scheduling period. To the extent that slot alleviation has been granted under Article 10(4)(g) in its original form, the provision needs to be preserved to ensure that carriers are able to take advantage of the slot alleviation which was obtained for the next equivalent scheduling season.

Why was this approach taken to change the law?

6.9 The REUL Act provides an effective route for implementing these changes in the timeliest manner.

7. Consultation

Summary of consultation outcome and methodology

7.1 DfT carried out a consultation (22 May 2023 to 30 June 2023) on permanent changes to Regulation 95/93 using REUL Act powers. The consultation covered: (a) updating the definition of new entrant in the regulation; (b) introducing a permanent change to Article 10(4) to provide for alleviation from the requirement to operate slots where there is a future pandemic or other health crisis; and (c) providing for alleviation where there is a temporary reduction of capacity at an airport such that air carriers are unable to utilise their slots for a period of time.

7.2 There were a total of 47 responses to the consultation which included responses from airports, air carriers and the slot coordinator.

7.3 The majority of respondents (83%) indicated overall support for updating the definition of new entrant. However, some respondents felt that the suggested change to fewer than seven slots was too small to have a tangible effect on competition and wanted a higher threshold. After consideration it has been decided to bring forward the change to the definition of a new entrant.

7.4 There was also strong support for amending Article 10(4) of Regulation 95/93 to cover pandemics and other health crisis with the majority of respondents (93%) agreeing with the proposed change. This included air carriers, airports, and industry bodies. Only one air carrier was completely against the proposed permanent change, arguing that the COVID-19 had demonstrated that pandemics could be managed on a case-by-case basis. The government has decided to bring forward amendments to Article 10(4) to provide for slot alleviation where there are government imposed measures covering pandemics epidemics and other outbreaks of disease, provided certain conditions are met.

7.5 With regard to amending Article 10(4) to provide for slot alleviation where there is a temporary reduction in capacity at an airport where air carriers are unable to utilise their slots for a period of time, 77% of respondents were in favour. However, respondents who were in favour of the provision caveated their response highlighting the need for further detail on the provision and consultation in order to enable potential impacts to be fully appraised. There was a clear dividing line between airports and air carriers and the respondents in favour of the provision were almost entirely made up of air carriers. All bar one of the London slot coordinated airports were against the change as was the Airport Operators Association ("AOA") which represents over 50 airports.

7.6 Given the potential for material impacts on airport and air carrier operations and that further consultation had been requested by respondents, it was decided to consider this matter further at a future point.

8. Applicable Guidance

8.1 The Department for Transport is not producing any specific guidance on the amendments provided for in this instrument. The Department has written to consultees notifying them of the results of the consultation in relation to new entrants and in

replacing article 10(4)(g) to provide for slot alleviation upon the occurrence of pandemics, epidemics, or other occurrence of disease.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities, and voluntary bodies

9.2 The impact on business from the changes to provide air carriers with a permanent basis to obtain slot alleviation where there is a future pandemic, epidemic or other outbreak of disease is likely to be positive, with benefits likely to exceed the costs. The main benefits of relief are that it will mitigate the risk that air carriers with existing slot holdings would have to fly loss-making flights in order to preserve those rights. This should help avoid air carriers incurring unnecessary operator costs for flights with low passenger numbers and the negative environmental impacts (including carbon emissions) associated with such flights. The main costs of relief are expected to be that air carriers seeking to accumulate new slot rights could find it more difficult to acquire historic rights to slots at congested airports, as incumbent air carriers are more likely to retain their existing historic rights. This could negatively impact new entrants and competition amongst air carriers. To the extent that the proposed relief results in air carriers operating fewer flights, affected airports may also suffer a loss in airport charge income (and commercial income).

9.3 The impact on business from changes to the new entrant rule are not easily quantifiable, but the benefits are likely to exceed the costs. The main benefit is that some air carriers who would not otherwise be able to obtain slots as new entrants would now find it easier to obtain slots as new entrants. This could increase the probability that air carriers who could not previously obtain enough slots for the number of daily rotations necessary to make a route commercially viable, could now obtain them. It could also help enable them to leverage the economies of scale necessary to compete more effectively with incumbent air carriers, by enabling them to spread fixed costs across more flights. The main costs are that some air carriers, that are eligible to apply for slots as new entrants under the current definition and would otherwise have obtained flights as new entrants, might not obtain such slots, due to their having to compete with requests from air carriers that hold five or six slots a day at a given airport. Alternatively, it may be that it is larger incumbents who lose the opportunity to gain new slots to air carriers holding five or six slots.

9.4 Air passengers, including business passengers, are expected to benefit from the change to alleviation rules through the proposed relief through the preservation of historic levels of connectivity once aviation demand fully recovers (existing route networks and connections have been incrementally developed over many years), but may suffer from the possible negative impact on competition from incumbents finding it easier to hold onto slots. Air passengers are expected to benefit from changes to the new entrant rule through potential improvements in prices, quality and quantity due to potentially increased competition and efficiency, though there may also be a small negative effect from reduced competition depending on the precise allocation of slots under the new rule.

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

9.6 There is no identified impact on micro businesses from either policy. There may be a very small impact on small business, such as the slot coordinator, through very minor increases in adjudication and/or familiarisation costs.

9.7 The impact on the public sector is not expected to be significant but there could be minor impacts on (a) publicly-owned airports and (b) taxation revenues as a result of the impact of the instrument on aviation activity in the UK and the indirect impact on activity elsewhere in the UK economy.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through the course of normal departmental business.

10.2 As this instrument is made under the relevant European Union Acts (as defined at 13.1) no review clause is required.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument is made in exercise of powers in sections 14(1), (2) and 14(3) and section 20(1)(b) of the REUL Act. Section 14(3) provides a power to revoke and make alternative provision. This is being used to omit Article 10(4)(g) of Regulation 95/93 and to insert a new Article 10(4)(h) which provides alleviation in circumstances where there is a pandemic, epidemic or other outbreak of disease. The original provision which is being revoked and replaced did not originally extend or apply to Northern Ireland and it is considered that in this instance extending and applying the new provision to Northern Ireland is going further than making provision to achieve the same or similar objectives (the power under section 14(2) of the REUL Act).

11.2 Section 14 of the RUEL Act also contains the caveat under section 14(5) of the Act, that no provision may be made "in relation to a particular subject area unless the relevant national authority considers the overall effect of the changes made by it under this section (including changes made previously) in relation to that subject area does not increase the regulatory burden." The Act defines "burden" as including a financial cost, an administrative inconvenience, an obstacle to trade or innovation, an obstacle to efficiency, productivity, or profitability. It is not considered that the overall effect of the changes made under section 14 of the 2023 Act increases the regulatory burden.

11.3 The relevant subject area in this context is airport slots. With regard to the provision on new entrants the object of that provision is to enhance the presence at an airport of air carriers currently with a small presence at that airport by enabling them to grow through giving them priority to slots from the pool. Defining a new entrant as an air carrier with fewer than seven as opposed to fewer than five slots at an airport reduces the barriers for smaller air carriers in obtaining more slots and as such reduces the regulatory burden. ACL the slot coordinator will be required to assess whether the air carrier in question will have the requisite number of slots to qualify for priority from the pool, though it is currently required to do this in any event, and this is not a new burden.

11.4 As regards the change to Article 10(4) to provide slot alleviation in the case of pandemics, epidemics, or other outbreaks of disease this is considered to reduce the regulatory burden as it removes from carriers a requirement to comply with the 80:20

rule in particular instances. The coordinator will be required to consider whether alleviation is available in any particular case by assessing whether the conditions for alleviation have been met. Whilst this increases the burden on the coordinator it is not considered particularly onerous and would only apply in very limited circumstances where an epidemic or pandemic were to occur again. The coordinator has had to consider virtually the same criteria in considering whether slot alleviation was available for air carriers during the COVID-19 pandemic.

11.5 The instrument also contains some transitional and savings provisions. These are referred to at paragraphs 6.7 and 6.8 above.

12. European Convention on Human Rights

12.1 The Parliamentary Under Secretary of State, Mike Kane MP has made the following statement regarding Human Rights:

"In my view the provisions of the Airport Slots Allocation (Alleviation of Usage Requirements etc) Regulations 2025 are compatible with the Convention rights.".

13. The Relevant European Union Acts

13.1 This instrument is made under sections 14(1), 14(2) and (3) of the Retained EU Law (Revocation and Reform) Act 2023 to revoke and replace assimilated law in relation to slots. It also uses the power in section 20(1)(b) of the Act to make transitional and savings provisions in respect of previous regulations which have granted slot alleviation as a result of COVID-19.