EXPLANATORY MEMORANDUM TO

THE AIRPORTS SLOT ALLOCATION (ALLEVIATION OF USAGE REQUIREMENTS) (NO. 2) REGULATIONS 2021

2021 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 Her Majesty.

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

2. Purpose of the instrument

2.1 This instrument amends the 80:20 airport slot usage rule to cover the slot scheduling season which runs from 31st October 2021 until 26th March 2022 (sometimes referred to as the "Winter 2021" season), as a result of the persistent reduction in air traffic resulting from the impact of the COVID-19 pandemic.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 If approved by Parliament, it is intended to make this instrument in time for it to come into force on 30th October 2021. It is not desirable to allow a longer period before coming into force of the instrument because of the need to ensure that, if possible, the new rules are in force before the start of the Winter 2021 season on 31st October. The instrument provides alleviation from the usual regulatory requirement to operate airport slots 80% of the time, and airlines and airports have been made aware of its contents in advance (see section 11 below). It would not have been possible to lay the draft instrument before Parliament earlier because of the need to obtain data about the reduction in the level of air traffic and the likelihood that this will persist in the Winter 2021 season (in order to comply with statutory requirements for making the instrument), and the need to consult the industry about the appropriate response to that reduction (see section 10 below).

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 Not applicable.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales and Scotland.

4.2 The territorial application of this instrument is England and Wales and Scotland.

4.3 Aerodromes are a devolved matter in relation to Northern Ireland and, as there are currently no slot coordinated airports there, the Northern Ireland Executive has agreed that it is not necessary for this instrument to extend to, or apply in relation to, Northern Ireland.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Airports Slot Allocation (Alleviation of Usage Requirements) (No. 2) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 An airport 'slot' is a permission to use all necessary airport infrastructure to operate an aircraft at a specified date and time for take-off or landing. Allocation of airport slots is governed by Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at United Kingdom airports ("Regulation 95/93"). This provides for the allocation of slots to air carriers at congested airports based on neutral, transparent and non-discriminatory rules. Articles 8(2) and 10(2) set out the '80:20 rule' that, provided an airline has used its slots at least 80% of the time in the preceding season (either winter or summer), it is entitled to those slots in the upcoming equivalent season.

6.2 Because of the reduction in passenger demand during the COVID-19 pandemic, the 80:20 rule was waived by EU legislation for the Summer 2020 slot scheduling season (see Regulation (EU) 2020/459 of the European Parliament and of the Council of 30 March 2020) and for the Winter 2020/21 season (see Delegated Regulation (EU) 2020/1477 of 14 October 2020). Following transfer of the Commission's powers in this regard to the Secretary of State (see the Airports Slot Allocation (Amendment) (EU Exit) Regulations 2021, S.I. 2021/100), a similar waiver was put in place by the Secretary of State for the Summer 2021 season (see the Airports Slot Allocation (Alleviation of Usage Requirements) Regulations 2021, S.I. 2021/185).

6.3 These powers were, however, time limited, and they were therefore replaced by section 12 of the Air Traffic Management and Unmanned Aircraft Act 2021 (c. 12). Section 12 inserted into Regulation 95/93 a new Article 10aa, which provides a wider range of powers to provide alleviation from the 80:20 rule for specified periods, if the Secretary of State considers there to be a reduction in the level of air traffic, compared to the corresponding period in a relevant previous year, which is likely to persist.

6.4 The procedure for making such regulations is set out in Article 13, which was substituted by the Airports Slot Allocation (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/276) and amended by section 12 of the 2021 Act. Regulations made under the new Article 10aa are therefore subject to affirmative resolution procedure.

6.5 The present instrument is made under the powers contained in Article 10aa, coupled with the supplementary powers in Article 13 paragraph 3.

7. Policy background

What is being done and why?

7.1 Airport slots have significant competitive, operational, and financial value to the airlines which hold them. Under ordinary circumstances, the 80:20 rule helps to encourage efficient use of scarce airport capacity whilst allowing airlines a degree of flexibility in their operations. However, the COVID-19 pandemic has had a significant impact on aviation passenger demand which has warranted a waiver of the 80:20 slot usage rule since March 2020, currently running until 30th October 2021.

7.2 As of July 2021, UK flight traffic remains below a third of what it was in the corresponding week prior to the pandemic. Demand forecasts for the Winter 2021 slot scheduling season, running from 31st October 2021 to 26th March 2022, indicate that air traffic demand will remain substantially below pre-COVID-19 levels throughout the season. It is therefore considered necessary to provide further relief and amend the 80:20 rule, to cover the Winter 2021 season. This is intended to protect the financial health of airlines and the resilience of the sector; to discourage inefficient slot use by mitigating the risk that empty or near-empty 'ghost flights' will be operated in order to retain airlines' historic rights to their slots, and the negative impact such flights would have on the environment; and to protect future connectivity.

7.3 These Regulations make three changes in relation to slots allocated for the scheduling period which runs from 31st October 2021 to 26th March 2022 (also known as the "Winter 2021" season), which will affect reallocation of the same slots for the equivalent period from October 2022 to March 2023 (also known as "Winter 2022").

7.4 First, the required percentage usage rate is reduced from 80% to 50% (and the allotted point during the series validity at which the slot coordinator can withdraw the remaining slots if no slots of that series have been used is correspondingly increased from 20% to 50%). 50% has been selected as the appropriate percentage because, when combined with other alleviation measures, it strikes an appropriate balance between supporting airline financial health, protecting connectivity, minimising environmental impacts and potential adverse impact on new entry and competition between airlines.

7.5 Second, a new paragraph 2a is added in Article 10 of the Regulation, enabling an air carrier to retain rights to a series of slots for the Winter 2022 season if it returned the complete slot series to the slot coordinator for reallocation on or before 7th September 2021. This option for unlimited "full series handback" gives airlines a flexible means by which they can adjust to anticipated lower demand, without losing the right to the slots the following year, and allow other carriers the opportunity to operate the slots on an ad hoc basis.

7.6 It applies to slots allocated for the Winter 2021 scheduling period which the air carrier also had the right to use during the Winter 2020 scheduling period (including slots which it had the right to operate as a result of a transfer or exchange, including a temporary lease, or as a result of the award of "remedy slots" following a competition law complaint) or which it received following a transfer or exchange which takes effect before 31st August 2021 pursuant to Article 8a (which again includes remedy slots). However, it does not apply to slots which are newly allocated to a carrier, for the Winter 2021 season. This is to prevent carriers from obtaining new slots for Winter 2021 with no intention of using them but purely to gain historic rights over them for future years. There is also an exception where the air carrier gives written notification or makes a public written statement, after the coming into force of the instrument, that it has permanently ceased to operate air services at the airport in question or will cease to do so before the start of the Winter 2022 season.

7.7 The date of 7th September 2021 for full series handback has been set by reference to the international slot scheduling calendar, and is seven days after the international slot handback deadline of 31st August (the date by which carriers must otherwise hand back slots they do not wish to use). Air carriers have been consulted about this proposal (see section 10 below) and given advance notification of the date that has been selected following that consultation (see section 11 below).

7.8 Third, the list of reasons on the basis of which non-utilisation of slots can be justified, which appears in Article 10(4) of the Regulation, is expanded to include certain government-imposed measures related to COVID-19 which severely reduce the viability of or demand for travel on the route in question. In order to benefit from this provision, all five of the following conditions must all be satisfied:

a. First, the measures must be imposed at either end of the route in question.

b. Second, the measures must take any one of the forms listed in the provision. These include flight bans or border closures, quarantine or self-isolation requirements (for example, in relation to the statutory regime currently in place in England in relation to international travel, this would include a country or territory in category 1 (the "green" list) being moved to category 2 ("amber") as this results in the imposition of self-isolation requirements, or a country or territory in category 1 ("green") or 2 ("amber") being moved to category 3 ("red") as this results in the imposition of a hotel quarantine requirement), official government advice against all but essential travel, and certain other measures such as severe or total closure of airports or hotels. In addition it covers significant restrictions on onward travel booked along with the flight as part of a package – for example where a flight is sold as part of a flight and cruise package, or a flight and coach travel. In this last instance, the close connection between the flight and the onward travel means that any significant restrictions on the onward travel are covered, even if those do not reach the "severe" threshold which has been set in the case of closure of accommodation or surface travel more generally.

c. Third, the measures must (for part or all of the period to which the slots relate) severely reduce demand for passenger travel on the route or the viability of the route itself. This requirement is necessary since otherwise airlines could justify not using slots where passenger demand is undiminished (for example this might be the case where quarantine or self-isolation measures are subject to exemption for vaccinated passengers). The provision for measures which severely reduce the viability of the route may be more relevant where the restrictions take the form of airport closures (which might not reduce passenger demand but might make the route unviable).

d. Fourth, it must be the case that the measures could not reasonably have been foreseen by the air carrier in time to take advantage of the opportunity to hand back the series of slots on or before 7th September 2021. This is to ensure that, wherever the restrictions are foreseeable, air carriers are incentivised to hand back full series of slots so that they can be reallocated to other airlines if possible.

e. Finally, the measures must have been in effect either at the date the slots were due to be operated, or a maximum of three weeks before that date. This three week period is intended as a "buffer" to give air carriers sufficient time to resume services when travel restrictions are lifted.

7.9 Without this temporary package of relief measures, airlines would have to take challenging commercial decisions on whether to bear the costs of operating near-empty aircraft or risk losing their slots.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

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

10. Consultation outcome

10.1 Department for Transport Ministers and officials have regular engagement with the aviation industry, travel industry and consumer representatives. Through this engagement, officials have collated industry responses as to the possible approaches to alleviation of the 80:20 slot usage rule in the Winter 2021 slot scheduling season.

10.2 The Department for Transport also carried out a targeted industry consultation to seek views on a proposed package of relief measures, which ran from 20th May to 21st June 2021.

10.3 The Department for Transport received 54 responses to the consultation from air carriers, airports, and trade and representative bodies. Amongst the majority of respondents there was consensus that some form of alleviation from the slot usage rule is needed to support the aviation industry in dealing with the impact of COVID-19, with few exceptions. A 50% usage ratio was by far the most popular percentage, supported by extending the provisions on justified non-utilisation of slots to cover unforeseeable government-imposed measures addressing the spread of COVID-19 such as travel restrictions or border closures, and giving air carriers the right to operate the equivalent slots the following year if they returned the full series for Winter 2021 on or before 7th September 2021.

11. Guidance

11.1 The Department for Transport is not producing any specific guidance on the amendments provided for in this instrument. We will write to consultees notifying them of the results of the consultation and final slot alleviation policy for the Winter 2021 season.

12. Impact

12.1 The impact on business is not easily quantifiable, but in the Department's view the benefits are likely to significantly exceed the costs. Other countries and jurisdictions are also introducing measures to alleviate the slot usage rule for the Winter 2021 season, for similar reasons.

12.2 In the absence of government intervention to provide temporary relief for Winter 2021, there is a risk that airlines would lose existing slot rights, undermining their financial viability and threatening connectivity, or that they would operate loss-making and environmentally damaging empty or near-empty flights in order to meet the 80% slot usage ratio so as to retain the slots for the Winter 2022 season. When slot values are compared to the cost of operating flights, there would, in the absence of alleviation, be a strong incentive for airlines to operate the flights necessary to retain their historic rights, even with limited numbers of passengers, particularly at Heathrow and, to a lesser extent, Gatwick. To retain their historic rights to the most valuable slots, airlines may also seek to consolidate their operations at Heathrow in

particular, with adverse consequences for other smaller airports from where they would otherwise operate.

12.3 The main benefits of relief are therefore expected to be that airlines with existing slot holdings will not have to fly loss-making flights 80% of the time in order to preserve those rights, and that the negative environmental impacts (including carbon emissions) associated with airlines running such flights will be avoided.

12.4 The main costs of relief are expected to be that airlines seeking to accumulate new slot rights will find it more difficult to acquire historic rights to slots at congested airports, as incumbent airlines will retain their existing historic rights, via full series returns and the lower utilisation requirement for retained slot series combined with expanded provisions on justified non-utilisation to cover measures related to COVID-19. This could negatively impact new entry and competition amongst airlines. To the extent that the proposed relief results in airlines operating fewer flights, affected airports may also suffer a loss in airport charge income (and perhaps commercial income).

12.5 Air passengers are expected to benefit from the proposed relief through the preservation of historic levels of connectivity once aviation demand recovers (existing route networks and connections having been incrementally developed over many years) but may suffer from the possible negative impact on competition from new entrants.

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

12.7 The impact on the public sector is expected to be a relatively minor impact on publicly-owned airports and on taxation revenues.

12.8 An Impact Assessment has not been prepared for this instrument because it makes provision which is to have effect for a period of less than 12 months.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses (small air carriers).

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, as the measure provides alleviation from a regulatory requirement (the 80:20 slot usage rule) for a single slot scheduling season as a result of the COVID-19 pandemic, no additional specific action is required at this stage. However, the Department will continue to consult all sections of the industry, including small businesses, on the approach to be taken in future slot scheduling seasons.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is: Monitoring of the policy content of the retained version of Regulation 95/93 on common rules for the allocation of slots at United Kingdom airports will take place in the course of normal departmental business.

14.2 This instrument does not include a statutory review clause as it makes provision which is to have effect for a period of less than 12 months.

15. Contact

15.1 Ben Stafford at the Department for Transport (Telephone: 07768 840356 or email: ben.stafford@dft.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Philip Haslam, Deputy Director in the Airports, Infrastructure & Commercial Directorate at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robert Courts MP, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.