EXPLANATORY MEMORANDUM TO

THE AIRPORTS SLOT ALLOCATION (ALLEVIATION OF USAGE REQUIREMENTS) (NO. 2) REGULATIONS 2022

2022 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 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") to provide additional alleviation from airport slot usage rules for the remainder of the Summer 2022 slot scheduling season. This is to ensure that airlines are able to make appropriate planned changes to schedules to cope with staff shortages which are affecting air travel while the industry recovers from the impact of the COVID-19 pandemic, and thereby to reduce the risk of delays and last-minute cancellations or other disruption for passengers.

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 as soon as possible for it to come into force the day after it is made. It is not desirable to allow a longer period before coming into force of the instrument because of the need to ensure that the new rules are in force as soon as possible during the current slot scheduling season to provide certainty for airlines and airports. Airlines and airports have been made aware of its contents in advance (see section 10 below). It would not have been possible to lay the draft instrument before Parliament earlier because it is being made urgently in response to recent disruption at airports.

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 agreed that it was not necessary for the powers in section 12 of the Air Traffic Management and Unmanned Aircraft Act 2021 (c. 12) 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 2022 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. Article 14(6) provides for the slot coordinator to withdraw slots from an air carrier if the carrier cannot achieve the required percentage usage rate.

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) ("the 2021 Act"). 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 Regulations were made under the new Article 10aa for the Winter 2021 season (see the Airports Slot Allocation (Alleviation of Usage Requirements) (No.2) Regulations 2021, S.I. 2021/1200), and for the present Summer 2022 season (see the Airports Slot Allocation (Alleviation of Usage Requirements) Regulations 2022, S.I. 2022/368). The present instrument is similarly made under the powers contained in Article 10aa, coupled with the supplementary powers in Article 13 paragraph 3. It provides further alleviation, for the remainder of the Summer 2022 slot scheduling season, in addition to that set out in S.I. 2022/368.

7. Policy background

What is being done and why?

7.1 Airport slots can 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 alleviation of the '80:20' slot usage rule since March 2020.

7.2 UK flight traffic held steady at around 60% of corresponding 2019 levels over the Christmas and New Year period 2021. While there was a decline in future flight bookings during December 2021, these rebounded to some extent following the removal in early 2022 of most of the travel restrictions introduced in the UK. The Department expected the level of air traffic to remain reduced in Summer 2022, compared to the corresponding period in 2019, before the pandemic. In response to this, the Airports Slot Allocation (Alleviation of Usage Requirements) Regulations 2022, S.I. 2022/368, put in place alleviation for the Summer 2022 season. This was 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' would 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. As set out in the Explanatory Memorandum to S.I. 2022/368, this alleviation took two forms. First, the required percentage usage rate was reduced from 80% to 70%, a figure selected to strike an appropriate balance between supporting airline financial health, protecting connectivity, and minimising environmental impacts and other potential adverse impacts on new entry and competition between airlines. Second, 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, was 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.

7.3 The expectation that air traffic would remain below 2019 levels has proved correct. As of June 2022, UK flight traffic is running at approximately 80% of the level operated during the corresponding period in 2019. Whilst there has been some recovery since last year, the persistent impact of the COVID-19 pandemic has meant that airports, airlines and those who provide services such as ground handling, have struggled to recruit sufficient staff to enable the operation of a reliable service and schedule for passengers. This is in part due to company restructuring which took place as a result of the COVID-19 pandemic, and in part due to wider challenges with the UK labour market. This has led to significant disruption at UK airports including short notice cancellation of flights and delays.

7.4 Over the May 2022 half-term week and Jubilee weekend the Civil Aviation Authority (CAA) estimated that about 2-4% of total flights were cancelled within a week of departure, compared to a normal rate of about 1%. Just over 200,000 consumers were impacted by short notice cancellations. In the first week of June, approximately 2.3 million passengers were affected by delayed flights – approximately 43% of passengers arriving at or departing from UK airports.

7.5 In order to help industry stabilise the situation and develop a reliable schedule for the peak of the summer season, these Regulations make one change in relation to slots

allocated for the remainder of the Summer 2022 scheduling period, from 9th July until 29th October 2022, which will therefore affect reallocation of the same slots for the equivalent period from 26th March 2023 to 30th October 2023. It provides that, for the purpose of assessing whether the 70% slot usage ratio has been met (and therefore to enable the airline to retain their historic rights for the subsequent season), and for the purposes of slot withdrawal under Article 14(6), airlines will be treated as having operated these slots if they handed them back to the coordinator during a short handback period from 25th June to 8th July 2022 and at least 14 days before the date of the slots. This will be capped at 30% of an airline's slots at a particular airport over the remainder of the season (9th July to 29th October inclusive). Airlines will also be required to notify passengers of the cancellation of each flight, at least 14 days before the date of the flight.

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 The 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 addressing delays and short notice cancellations at UK airports for the remainder of the Summer 2022 scheduling season.

10.2 The Department for Transport also carried out a targeted industry consultation to seek views on this proposed measure. In view of the urgency of this, the consultation ran from 17th June to 20th June 2022. The consultation sought views on two potential options for the remainder of the season: (1) a change of the kind outlined above, to enable airlines to hand back a proportion of slots; and/or (2) a potential addition to the list of circumstances where they can claim "Justified Non-Use" of slots, to include cancellation of flights as a result of shortages of staff.

10.3 The Department for Transport received 53 responses to the consultation from air carriers, airports, and trade and representative bodies. Whilst the consultation was necessarily very short in duration, many responses were detailed and expressed appreciation for the speed with which the Department had addressed the issues. 72% of responses supported both options, with a majority expressing a preference for the first. Whilst many supported a 50% limit on slot handbacks, a number of respondents pointed out that a lower limit should be adequate, and having considered these responses carefully, the Department for Transport and Ministers have decided to set the limit at 30%. Most respondents who supported the first option favoured a period of 14 rather than 7 days for the handback window, in order to ensure careful consideration by airlines before making decisions on which slots to hand back, and this feedback has also been accepted in the final instrument.

10.4 The consultation indicated a wide range of different interpretations for the second option, which could have provided a range of different outcomes. Many responses in favour of extending Justified Non-Use also indicated the importance of a clear

definition to give certainty, but disagreed on exactly what that definition should be. Several suggestions of alternative text were provided but there was little consensus as to the best approach. Moreover, many responses indicated that the primary purpose of Justified Non-Use should be to give flexibility for airlines to make short notice cancellations where staff shortages meant they were unable to operate a flight. Because the primary purpose of this intervention is to facilitate advance planning for a robust and reliable flight schedule over the summer, and to discourage last-minute cancellations, on balance the Department for Transport and Ministers concluded that their objectives could be best achieved by the first option alone, and this is therefore the option which is being taken forward in this instrument.

11. Guidance

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

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. In the absence of government intervention to provide this additional temporary relief for Summer 2022, there is a risk that airlines would continue to schedule flights they are unlikely to be able to operate, leading to short notice cancellations and delays at UK airports. This would ultimately damage consumer confidence and risk airlines losing existing slot rights, if the level of cancellations prevents airlines meeting the 70% slot usage ratio, undermining their financial viability and threatening connectivity.

12.2 The main benefits of this relief are therefore expected to be that airlines will be able to reset their schedules for the peak of the summer season, making it more likely that they will be able to operate services reliably and avoid high levels of short notice cancellations. Short notice cancellations impose additional costs to passengers, relative to the costs incurred when flights are cancelled in advance, including wasted time and financial cost in travelling to the airport, the higher cost of making short notice, alternative travel arrangements and additional stress.

12.3 The main costs of this relief are expected to be that airlines are likely to cancel some flights although these proposals encourage airlines to do so in advance, in a more managed way. The result is that some passengers will be affected, but they will have more time available to make alternative arrangements. 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) although they may benefit from greater planning certainty and notice of changes to flights.

12.4 Air passengers are expected to benefit from a more certain schedule of flights over the summer and lower likelihood of short notice cancellations or delays.

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

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

12.7 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 additional alleviation of a regulatory requirement (the 80:20 slot usage rule) as a result of the COVID-19 pandemic for part of a single scheduling season, 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 The regulation 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 Interventions 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.