**EXPLANATORY MEMORANDUM TO**

**THE AIRPORTS SLOT ALLOCATION (ALLEVIATION OF USAGE REQUIREMENTS) 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 the 80:20 airport slot usage rule to cover the slot scheduling season which runs from 27th March 2022 until 29th October 2022 (sometimes referred to as the "Summer 2022" 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 26th March 2022. 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 Summer 2022 season on 27th March. 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 Summer 2022 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).

## 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) 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.

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 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). The present instrument is similarly 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 26th March 2022.

7.2 UK flight traffic has held steady at around 60% of corresponding 2019 levels over the Christmas and New Year period. While there was a decline in future flight bookings during December 2021, these are expected to rebound following the removal of most of the travel restrictions introduced in the UK due to the Omicron variant. We continue to expect the level of air traffic to remain reduced in Summer 2022, compared to the corresponding period in 2019, before the pandemic. It is therefore considered necessary to provide some further relief and amend the 80:20 rule for the Summer 2022 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 two changes in relation to slots allocated for the Summer 2022 season, which will affect reallocation of the same slots for the equivalent period from March to October 2023 (also known as "Summer 2023").

7.4 First, the required percentage usage rate is reduced from 80% to 70% (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 30%). 70% has been selected as the appropriate percentage because, when combined with the other alleviation measure set out below, it strikes 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.

7.5 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, 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 four of the following conditions must 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, 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) Finally, the measures 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 period is intended as a "buffer" to give air carriers sufficient 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.

7.6 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 views as to the possible approaches to alleviation of the 80:20 slot usage rule in the Summer 2022 slot scheduling season.

10.2 The Department for Transport also carried out a targeted industry consultation with airports, air carriers and industry bodies to seek views on a proposed package of relief measures, which ran from 15th November to 13th December 2021.

10.3 The Department for Transport received 48 responses to the consultation from air carriers, airports, and trade and representative bodies. Almost all respondents agreed 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. Respondents supported a variety of different measures. A 60% minimum usage ratio was supported by a larger number of airlines while most airports preferred 70%. A small number of airports and airlines supported a lower minimum usage ratio such as 50% and a small number of airports and airlines supported a return to 80%. There was support for widening the definition of justified non-utilisation of slots, by removing the exclusion that applied during Winter 2021 for restrictions that could not be reasonably foreseen in time to hand back the full slot series. In addition, the Department sought views on whether the ability to hand back full series of slots that was included in alleviation for Winter 2021 should be retained. A range of views were given for and against retaining this measure and on the impact it had during the Winter 2021 season.

## 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 Summer 2022 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 Summer 2022 season, for similar reasons.

12.2 In the absence of government intervention to provide temporary relief for Summer 2022, 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 Summer 2023 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 the lower utilisation requirement 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 A full 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 In accordance with section 28(3) of the Small Business, Enterprise and Employment Act 2015 (c. 26), this instrument does not include a statutory review clause as it makes provision which is to cease to have effect before the end of the period of 5 years beginning with the commencement date.

## 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.