EXPLANATORY MEMORANDUM TO

THE AVIATION NOISE (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 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 Act.

2. Purpose of the instrument

2.1 This instrument uses powers under the European Union (Withdrawal) Act 2018 ("the Withdrawal Act") to make the necessary changes to the Aeroplane Noise Regulations 1999 ("the Noise Regulations"), the Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008 ("the Environmental Standards Order"), the Airports (Noise-related Operating Restrictions) (England and Wales) Regulations 2018 ("the Operating Restrictions Regulations") and Regulation (EU) No 598/2014 ("Regulation 598"), to correct deficiencies arising as a result of the UK leaving the European Union ("the EU"). These changes ensure that the legal framework relating to aviation noise continues to function correctly after the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

2.2 This instrument amends the following EU-derived domestic legislation and retained directly applicable EU Regulation:

- The Noise Regulations were made to implement in UK law EU obligations relating to noise certification requirements in relation to propeller driven and civil subsonic jet aeroplanes (the requirements were found in Directive 80/51/EEC on the limitation of noise emissions from subsonic aircraft, Directive 89/629/EEC on the limitation of noise emissions from civil subsonic jet aeroplanes, and Directive 92/14/EEC on the limitation of the operation of aeroplanes covered by Part II, Chapter 2, Volume 1 of Annex 16 to the Convention on International Civil Aviation, second edition (1988));
- The Operating Restrictions Regulations were made to appoint competent authorities for England and Wales for the purposes of Regulation 598; and
- Regulation 598 establishes the rules and procedures with regard to the introduction of operating restrictions at Union airports based on a balanced approach to noise management, which is an agreed International Civil Aviation Organisation ("ICAO") principle since 2001.

2.3 This instrument also amends the Environmental Standards Order, which sets out the environmental standards relating to noise and emissions of specific UK registered aircraft which are not subject to the Basic European Union Aviation Safety Regulation (Regulation (EU) 2018/1139) and regulation by the European Union Aviation Safety Agency ("EASA").

Why is it being changed?

2.4 This instrument uses powers in the Withdrawal Act to make changes to domestic EU-derived legislation, the Environmental Standards Order, and a retained EU Regulation to ensure that the law functions correctly after the UK has left the EU. Broadly, the changes are required to remove redundant references to EU entities and concepts such as replacing references to "Member State" or "EEA State" with "United Kingdom", to align with changes made in the Aviation Safety (Amendment etc.) (EU Exit) Regulations 2019 which make provision for retained aviation safety legislation to function in the UK independently of the EASA system, and to ensure UK bodies rather than EU bodies are responsible for functions exercised under Regulation 598.

What will it now do?

2.5 The legal framework relating to aviation noise will operate in a self-contained way within the UK, but will keep the same requirements for UK registered aircraft and continue to follow international standards laid down by ICAO.

2.6 The Noise Regulations are being amended so that: in the UK the same noise certification requirements apply to aeroplanes registered in an EU Member State, an EEA State, Gibraltar or Switzerland as apply to other foreign registered aeroplanes; and, so that the prohibitions on use of UK registered aeroplanes without the relevant noise certification only extend to use of those aeroplanes in the UK rather than in the EU/EEA. The Noise Regulations will no longer make specific provision applying to Gibraltar, which will instead be subject to its own rules on noise certification.

2.7 The changes to the Environmental Standards Order amend the terminology used in that Order so it is aligned with changes made to aviation safety legislation on EU exit.

2.8 The amendment to the Operating Restrictions Regulations reflects an amendment to the title to Regulation 598 made by this instrument.

2.9 The amendments to Regulation 598 provide for obligations conferred on member States under the Regulation to be conferred instead directly on the Secretary of State and, where appropriate in accordance with the devolved settlements, on the Northern Ireland Department for Infrastructure or the Scottish Ministers.

2.10 They also remove an obligation on competent authorities to inform the Commission and other member States when operating restrictions are planned to be imposed, and instead provide for a UK based "relevant authority" to be notified in place of the Commission.

2.11 The Commission's power to adopt delegated acts providing for technical updates to the Regulation to take account of changes to relevant international rules is conferred instead as a power for the Secretary of State to make secondary legislation subject to the negative procedure.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 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 United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom and, for the purposes of the Environmental Standards Order, applies to aircraft registered in the United Kingdom and certain specified persons wherever they may be (as explained in paragraph 4.3)

4.3 In so far as this instrument amends the Environmental Standards Order it has extra-territorial effect to the same extent as that Order (as provided for in article 30 of that Order). The application of that Order includes: aircraft registered in the United Kingdom wherever they may be; in so far as the Order regulates the conduct of the commander of such an aircraft, wherever that commander may be; and, in so far as the Order regulates the conduct of Commonwealth citizens, British protected persons and citizens of the Republic of Ireland in relation to any such aircraft, wherever such a person may be.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State, Baroness Sugg, has made the following statement regarding Human Rights:

"In my view the provisions of the Aviation Noise (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.".

6. Legislative Context

6.1 This instrument is made in exercise of powers in sections 8 and 23 of, and paragraph 21 of Schedule 7 to, the Withdrawal Act.

6.2 The Withdrawal Act makes provision for repealing the European Communities Act 1972 and will retain certain EU law, as it stands at the moment of exit, in UK law. It provides for 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 Act also contains temporary power to make secondary legislation to enable Ministers and the devolved administrations to deal with deficiencies in retained EU law, to ensure that the United Kingdom's legal system continues to function properly outside the EU.

6.4 The Withdrawal Act does not preserve EU directives. Changes made under section 8 of the Withdrawal Act are therefore made to the relevant legislation which implements an EU directive in the UK.

7. Policy background

What is being done and why?

7.1 The Noise Regulations implement in UK law EU obligations relating to noise certification requirements for certain aeroplanes. The regulations require certain propeller driven and jet aeroplanes to be noise certificated to standards at least equal to standards set by ICAO. The regulations do provide for exemptions from these requirements, in relation to temporary use in individual cases and for aircraft of historic interest.

7.2 The amendments to the Noise Regulations remove provision requiring the Civil Aviation Authority ("CAA") to recognise as valid noise certificates granted by competent authorities of EU and EEA member States. This will mean that EU/EEA registered aeroplanes will be treated the same under the regulations as other aeroplanes registered outside the UK. However, all foreign registered aeroplanes are able to rely on noise certificates granted by the competent authority of the State where they are registered provided there is evidence that the aeroplane is compliant with standards that are at least as stringent as those that would be applied to UK registered aircraft.

7.3 The amendments also reduce the scope of the prohibition on operation of UK registered aircraft without a relevant noise certificate, confining this to the UK. Operation of such aircraft within the EU after the UK exits the EU will be governed by EU law.

7.4 The Environmental Standards Order sets out the environmental standards relating to noise and emissions of specific aircraft which are not subject to Regulation (EU) 2018/1139, more commonly known as the Basic Regulation. The Basic Regulation established EASA, sets out essential requirements for environmental protection and provides for the making of implementing rules in support of those essential requirements.

7.5 The amendments to the Environmental Standards Order will omit references to "EASA", and "non-EASA" and replace these with references to "Part 21" and "non-Part 21". Part 21 is the name given to Annex 1 to the Commission Regulation 748/2012 on initial airworthiness, which contains the requirement under which aircraft subject to retained legislation are certified. This change in terminology reflects that from exit day aviation safety legislation in the UK will operate independently of the EASA system. It also ensures the instrument remains aligned with other domestic legislation that is being amended to support the UK's departure from the EU.

7.6 Regulation 598 requires member states to appoint a competent authority to ensure that the rules as set out in the Regulation are followed when the introduction of operating restrictions is being considered at major airports. The competent authority would be required, amongst other things, to ensure that the "balanced approach" to noise management, as promoted by ICAO, is applied, and noise problems are addressed in the most cost effective way.

7.7 The balanced approach consists of identifying noise problems at a specific airport and giving consideration to various measures that could be available to reduce noise. There are four principal elements to the balanced approach, namely, the reduction of noise at source, land-use planning and management, noise abatement operational

procedures, and operating restrictions. The role of the competent authority is to ensure that the balanced approach is applied when operating restrictions (which limit access to or reduce the operational capacity of an airport) are considered or implemented, that cost effectiveness is considered, that proper consultation has taken place, and that they are only adopted after consideration of other measures to address the noise problem.

7.8 The amendments to the retained Regulation 598 will remove reference to the EU Commission and Member States, including removing obligations under the Regulation for the competent authority to give them notice before the introduction of operating restrictions. The instruments instead provides for a "relevant authority" to be notified in place of the Commission, and provides that the relevant authority will be the Secretary of State in relation to England and Wales, the Northern Ireland Department for Infrastructure in relation to Northern Ireland and Scottish Ministers in relation to Scotland.

7.9 The instrument also provides for the Secretary of State (instead of the European commission) to make regulations, subject to the negative procedure, concerning technical updates to noise certificate standards and certification procedures, and technical updates to methodology and indicators set out in the Annex to the Regulation. The instrument also amends references to an existing EU Directive on environmental noise, replacing those references with ones to the relevant domestic implementation regulations, ensuring the overall legal framework remains consistent.

7.10 The changes made to Regulation 598 will not have a direct impact on communities that are overflown or the aviation industry, but will ensure the correct procedure is followed when operating restrictions are considered, or proposed to be imposed, at an airport, and this will include maintaining a requirement for interested parties to be consulted.

7.11 The change being made to the Operating Restrictions Regulations, which appoint competent authorities for England and Wales for the purposes of Regulation 598, is a consequential amendment reflecting a change to the title to that Regulation by this instrument.

7.12 In relation to all four of the instruments being amended, the amendments made ensure non-divergence with, and maintenance of, existing international standards and processes relating to aviation noise.

7.13 This instrument, in amending regulation 598, applies to the introduction of noise-related operating restrictions at airports. As airports are "aerodromes" they are a transferred matter for Northern Ireland under paragraph 4 of Schedule 3 to the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day approaching, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

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 of the European Union (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. The instrument is also made under the powers in section 23 of, and paragraph 21 of Schedule 7 to, the Withdrawal Act. 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 currently 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 specific meetings and workshops on EU Exit, and at long-established stakeholder forums, a number of issues related to the UK's withdrawal from the EU have been addressed. This includes plans for making secondary legislation to ensure that the statute book continues to function irrespective of the outcome of negotiations.

10.2 The Department has consulted the CAA on this instrument.

10.3 The Department has engaged with the devolved administrations and the Government of Gibraltar on this instrument and they are content with the Government's proposals.

11. Guidance

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

11.2 Where the CAA consider it appropriate to do so, the CAA will provide guidance in relation to noise standards and noise certification.

12. Impact

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

12.2 The impact on the public sector is an estimated cost of c. £192,000 per annum to the CAA for new staff to process the noise and performance information to be reported to them by aircraft operators.

12.3 An Impact Assessment has not been prepared for this instrument because it makes only minor changes to correct deficiencies in retained EU law and the impact on businesses and the public sector is limited to minor familiarisation costs and, in the case of the CAA, some additional staff costs as explained in paragraph 12.2.

13. Regulating small business

13.1 The legislation does apply to activities that are undertaken by small businesses manufacturing aircraft, but does not alter existing standards or processes.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is for it to be monitored in the course of normal departmental business.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Jonathan Friel, Senior Policy Advisor, at the Department for Transport. Telephone: 07469 441 832 or email: jonathan.friel@dft.gov.uk can be contacted with any queries regarding the instrument.

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

15.3 Baroness Sugg, 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	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

		made a political commitment to include these statements alongside all EUWA SIs	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 13, 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 16, 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, Baroness Sugg, has made the following statement regarding the use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Aviation Noise (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate.".

1.2 This is the case because this instrument only corrects deficiencies and failures in law that have arisen as a result of the UK leaving the EU. These changes are necessary to ensure that the legislation relating to aviation noise functions correctly after the UK has left the EU. It leaves technical requirements unchanged and only makes changes to the legislative and regulatory framework which are necessary for the legislation to operate effectively.

2. Good reasons

2.1 The Parliamentary Under Secretary of State, Baroness Sugg, 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 These are:

(a) ensuring that the legislation governing aviation noise in the UK continues to function correctly once the UK has left the EU;

(b) enabling the UK to continue to comply with its obligations under the Convention on International Civil Aviation (the Chicago Convention);

(c) maintaining the existing regulatory framework and technical requirements in relation to aviation noise, minimising disruption to industry and recreational flyers.

3. Equalities

3.1 The Parliamentary Under Secretary of State, Baroness Sugg, has made the following statement(s):

"The draft 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, Baroness Sugg, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Baroness Sugg, 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.

5. Criminal offences

5.1 The Parliamentary Under Secretary of State, Baroness Sugg, 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 widening the scope of criminal offences in this instrument."

5.2 These are:

The amendments made by this instrument to the retained version of the Aeroplane Noise Regulations 1999, mean that under regulation 11 of those Regulations certain civil subsonic jet aeroplanes (with a maximum take-off mass of less than 34,000 kilograms and no more than 19 passenger seats) registered in an EU Member State, EEA State, Gibraltar or Switzerland would be prevented from taking-off or landing in the United Kingdom without having an in-force noise certificate issued by the competent authority of the State of registry (treating such aeroplanes the same as aeroplanes from other non-UK countries). This is as a result of the United Kingdom leaving the European Union and European Economic Agreement and the ending of the Treaty obligation to grant a similar exemption to such aircraft as is given to United Kingdom registered aircraft. A person who contravenes regulation 11 will be liable on summary conviction to a fine not exceeding level 4 on the standard scale.