Draft Regulations laid before Parliament under paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No.

EXITING THE EUROPEAN UNION

CIVIL AVIATION

The Aviation Statistics (Amendment etc.) (EU Exit) Regulations 2019

Made - - - -

Laid before Parliament *2019*

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**a**) (in relation to Parts 1 and 2 of these Regulations) and by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**b**) (in relation to Parts 1 and 3 of these Regulations).

The Secretary of State is a Minister designated(**c**) for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to air transport.

In accordance with paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Aviation Statistics (Amendment etc.) (EU Exit) Regulations 2019.

(2) Parts 1 and 2 come into force on 27th March 2019.

(3) Part 3 comes into force on exit day.

(**a**) 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a), and by the European Union (Amendment) Act 2008 (c. 7), section 3 and Part 1 of the Schedule.
(**b**) 2018 c. 16.
(**c**) S.I. 1993/2661, to which there are amendments not relevant to these Regulations.

PART 2

Collection of statistical data by the CAA

Interpretation and exercise of functions

2.—(1) In this Part—

"the CAA" means the Civil Aviation Authority;

"notice of variation" has the meaning given in regulation 5(2);

"Official Record" means a document of that name that is published on the website of the CAA;

"penalty notice" has the meaning given in regulation 6(2)(a);

"penalty proposal notice" has the meaning given in regulation 4(1);

"respondent" has the same meaning as in the Statistical Returns Regulation;

"review notice" has the meaning given in regulation 7(5)(a);

"Statistical Returns Regulation" means Regulation (EC) No 437/2003 of the European Parliament and of the Council of 27 February 2003 on statistical returns in respect of the carriage of passengers, freight and mail by air(**a**).

(2) The functions given to the CAA in this Part may be exercised on behalf of the CAA only by an employee or a member of the CAA.

Notices to provide information

3.—(1) The CAA must collect statistical data for the purposes of the Statistical Returns Regulation.

(2) For the purposes of Article 4(2) of the Statistical Returns Regulation, the CAA may serve a notice requiring a respondent to supply information.

(3) The notice—

(a) may require the information to be supplied periodically;

(b) must—

(i) specify the form and manner in which the respondent must supply the information,

(ii) if the CAA requires it to be supplied periodically, specify how frequently the information must be provided, and

(iii) prescribe the time limit within which the information must be supplied.

Failure to provide information

4.—(1) The CAA may serve a notice (a "penalty proposal notice") on a respondent which has breached Article 4(2) of the Statistical Returns Regulation by failing to comply with a notice served under regulation 3.

(2) A penalty proposal notice must—

(a) specify the act or omission which the CAA considers constitutes the breach;

(b) state that the CAA proposes to impose a civil penalty;

(c) state the amount of the proposed penalty;

(d) state that the respondent may serve representations on the CAA disputing the alleged breach, or otherwise objecting to the imposition of or amount of the proposed penalty,

(**a**) OJ No L 66, 11.3.2003, p1, as last amended by Council Regulation (EU) No 517/2013 of 13 May 2013 (OJ No L 158, 10.6.2013, p1).

within a period of 21 days beginning with the day after the day on which the penalty proposal notice is served;

(e) include an explanation of the manner and form in which any representations must be served.

Representations and variation of proposed penalty

5.—(1) If, within a period of 21 days beginning with the day after the day on which a penalty proposal notice is served on a respondent, that respondent serves representations on the CAA in accordance with the penalty proposal notice, the CAA must consider those representations and decide whether to vary the amount of the proposed penalty under paragraph (2), to withdraw the proposed penalty under paragraph (5), or to impose the proposed penalty under regulation 6(1).

(2) If, following representations made by a respondent in accordance with regulation 4(2) or paragraph (3), it appears to the CAA appropriate to vary the amount of the proposed penalty, the CAA must serve on the respondent a notice about the proposed variation (a "notice of variation").

(3) A notice of variation must—

(a) refer to the penalty proposal notice and any previous notice of variation containing the proposal that is being varied;

(b) state the new proposed amount of the penalty;

(c) state that the respondent may serve representations on the CAA objecting to the new proposed amount of the penalty within a period of 21 days beginning with the day after the day on which the notice of variation is served;

(d) include an explanation of the manner and form in which any representations must be served.

(4) If, within a period of 21 days beginning with the day after the day on which a notice of variation is served on a respondent, that respondent serves representations on the CAA in accordance with the notice of variation, the CAA must consider those representations and decide whether to vary the amount of the proposed penalty under paragraph (2), to withdraw the proposed penalty under paragraph (5), or to impose the proposed penalty under regulation 6(1).

(5) If the CAA, having served a penalty proposal notice, decides not to impose any penalty, it must withdraw the notice by informing the respondent in writing.

Imposition of penalty

6.—(1) The CAA may impose a penalty on a respondent provided that—

(a) the CAA has served a penalty proposal notice on that respondent;

(b) the amount of the penalty is the amount of which the CAA gave notice in the penalty proposal notice (in cases where there was no variation) or (if applicable) the most recent notice of variation;

(c) at least 21 days have elapsed since service of the penalty proposal notice (in cases where there was no variation) or (if applicable) the most recent notice of variation;

(d) the CAA has considered any representations that the respondent served on it;

(e) the CAA considers that the respondent is in breach of Article 4(2) of the Statistical Returns Regulation.

(2) As soon as possible after imposing a penalty under paragraph (1) the CAA must—

(a) serve a notice on the respondent on which the penalty is imposed (a "penalty notice"), and

(b) publish the penalty notice in its Official Record.

(3) A penalty notice must—

(a) state that the CAA has imposed the penalty,

(b) state the amount of the penalty,

(c) specify the act or omission which the CAA has determined constitutes a breach of Article 4(2) of the Statistical Returns Regulation, and

(d) specify that the penalty is to be paid within 30 days beginning with the day after the day on which the penalty notice is served.

Review of penalties

7.—(1) If the decision to impose a penalty under regulation 6 is made by a CAA employee, then the CAA must, in the penalty notice, inform the respondent of the right to serve a request that the decision be retaken by CAA members on behalf of the CAA.

(2) Any request that the decision be retaken must be made by the respondent in writing within 14 days beginning with the day after the date of receipt of the penalty notice.

(3) Where a request is served—

(a) the penalty notice has no further effect;

(b) the decision as to whether or not to impose a penalty in the circumstances of the case must be retaken by at least two CAA members who were not involved in the original decision taken by the CAA employee.

(4) Before retaking a decision the CAA members must consider any representations by the respondent requesting the decision to be retaken, served on the CAA within 21 days beginning with the day after the date of receipt of the penalty notice or such additional period as the CAA members may determine.

(5) Where CAA members retake a decision under this regulation, the CAA members must—

(a) serve a notice (a "review notice") setting out the retaken decision and a statement of their reasons on the respondent, and

(b) publish the retaken decision and the statement of reasons in the CAA's Official Record.

(6) If the decision is to impose a penalty then the review notice must specify that the penalty is to be paid within 30 days beginning with the day after the day on which the review notice is served.

Further provision about penalties

8.—(1) The amount of a penalty imposed on a respondent under regulation 6 or 7 must be such amount as the CAA determines to be—

(a) appropriate, and

(b) proportionate to the breach for which it is imposed.

(2) The maximum amount of the penalty that may be imposed on a respondent in respect of any breach is £5,000.

(3) Paragraphs (4) and (5) apply if all or part of a penalty is not paid within the period specified in the penalty notice or review notice.

(4) The CAA may enforce the unpaid balance of the penalty as a judgment debt due to the CAA from the respondent.

(5) Any sums received by the CAA by way of a penalty under these Regulations must be paid into the Consolidated Fund.

Service of documents

9.—(1) Anything served on a person under these Regulations must be in writing and may be served by—

(a) delivering it to the person,

(b) leaving it at the person's proper address,

(c) posting it to the person, or

(d) (subject to the conditions in paragraph (3)) electronic communication.

(2) For the purposes of paragraph (1)—

(a) where the person is a body corporate the document may be served on the secretary of that body;

(b) the proper address of any person is, in the case of a body corporate, the registered or principal office of that body or, in any other case, the last known address of the person.

(3) The conditions referred to in paragraph (1)(d) are that—

(a) the person on whom the notice or document is served ("the recipient") has stated a willingness to receive that notice or document, or notices or documents generally, by means of an electronic communication,

(b) the statement has not been withdrawn, and

(c) the notice or document is transmitted to an electronic address specified by the recipient in the statement.

(4) A statement under paragraph (3)(a) may be withdrawn by serving a notice on the person to whom the statement was made.

(5) For the purposes of paragraph (3)—

(a) "electronic address" includes any number or address used for the purposes of receiving electronic communications;

(b) "electronic communication" means a communication transmitted (whether from one person to another, from one device to another, or from a person to a device or vice versa)—

(i) by means of an electronic communications network, or

(ii) by other means but while in an electronic form.

(6) Anything served by electronic communication is served when it is received.

PART 3

Amendment etc. of retained direct EU legislation

Interpretation

10. In this Part—

"the Implementing Regulation" means Commission Regulation (EC) No 1358/2003 of 31 July 2003 implementing Regulation (EC) No 437/2003 of the European Parliament and of the Council on statistical returns in respect of the carriage of passengers, freight and mail by air and amending Annexes I and II thereto;

"the Statistical Returns Regulation" means Regulation (EC) No 437/2003 of the European Parliament and of the Council of 27 February 2003 on statistical returns in respect of the carriage of passengers, freight and mail by air.

Amendment of the Statistical Returns Regulation (Council Regulation (EC) No 437/2003)

11.—(1) The Statistical Returns Regulation is amended as follows.

(2) In Article 1 (objective)—

(a) for "Member States", substitute "The CAA";

(b) for "Community airports", substitute "commercial airports in the United Kingdom".

(3) Omit Article 2 (Gibraltar).

(4) In Article 3 (data collection characteristics)—

(a) in paragraphs 1 and 2, for "Each Member State", substitute "The CAA";

(b) in paragraph 2, in the first subparagraph—

(i) for "Community", substitute "commercial";

(ii) for "its territory", substitute "the United Kingdom";

(c) in paragraph 2, omit the second subparagraph;

(d) in paragraph 3—

(i) for "Member States", substitute "the CAA";

(ii) for "transmit", substitute "collect";

(e) omit paragraphs 4 and 5.

(5) In Article 4 (collection of data), in paragraph 2, for "Member States" substitute "the CAA".

(6) Omit Articles 5 and 6.

(7) In Article 7 (transmission of results)—

(a) for paragraph 1, substitute—

"1. The CAA must transmit to the Secretary of State whatever data collected under this Regulation the Secretary of State directs it to provide, in the form directed.";

(b) omit paragraphs 2 and 3.

(8) Omit Articles 8 to 11 (dissemination, reports, implementing arrangements, committee procedure).

(9) After Article 12 (entry into force), omit the sentence beginning "This Regulation shall be binding".

(10) In Annex 1—

(a) in the first heading, omit "FOR DATA TRANSMISSION TO EUROSTAT";

(b) under the heading "CODES", in paragraph 4 (airline information),

(i) at the beginning insert—

"'1UK' for airlines licensed in the United Kingdom,";

(ii) in the second line, after "not licensed in the European Union", insert "or the United Kingdom".

(11) In Annex 2, in paragraph 1—

(a) in subparagraph 1—

(i) in the heading, for "Community" substitute "Commercial";

(ii) for "a Member State subject to the provisions of the treaty" substitute "the United Kingdom";

(b) in subparagraph 3, omit the second sentence;

(c) after subparagraph 9, insert—

"9A. The CAA (Articles 1, 3, 4 and 7)

The Civil Aviation Authority.".

Saving provision

12. The omission of Article 10 (implementing measures) of the Statistical Returns Regulation (by regulation 11(8)) does not revoke the amendments that Article 4 of the Implementing Regulation made to Annexes 1 and 2 to the Statistical Returns Regulation.

Amendment of Commission Regulation (EC) No 1358/2003

13.—(1) The Implementing Regulation is amended as follows.

(2) For Article 1, substitute—

"For the purposes of Article 3 of Regulation (EC) No 437/2003, Annex 1 to this Regulation has effect."

(3) Omit Articles 2 and 3.

(4) After Article 5, omit the sentence beginning "This Regulation shall be binding".

(5) In Annex 1—

(a) in the heading, omit ", LISTS OF COMMUNITY AIRPORTS AND DEROGATIONS";

(b) in Section 1 (Airport categories and reference periods taken into account)—

(i) in the first paragraph, for "Community", substitute "commercial";

(ii) in the third indented paragraph (beginning "category 2"), omit from "but may" until "2005,";

(iii) in the fourth indented paragraph (beginning "category 3"), omit from "but may" until the end of the sentence;

(c) omit Section 2 (Permitted derogations) and Section 3 (List of Community airports covered and derogations).

(6) Omit Annex 2.

Signed by authority of the Secretary of State for Transport

Name
Parliamentary Under Secretary of State
Date Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are (with the exception of Part 2) made in exercise of the power in section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) ("the 2018 Act") in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (b) and (g) of that Act) arising from the withdrawal of the United Kingdom from the European Union.

Part 2 of these Regulations is made under the power in section 2(2) of the European Communities Act 1972 (c. 68). It makes provision for civil enforcement of the obligation to provide statistical data imposed on respondents by Regulation (EC) No 437/2003 (OJ No L 66, 11.3.2003, p1, as last amended by Council Regulation (EU) No 517/2013 of 13 May 2013 (OJ No L 158, 10.6.2013, p1))("the Statistical Returns Regulation"). Parts 1 and 2 will come into force on 27 March 2019, before the United Kingdom leaves the European Union.

Part 3 amends retained direct EU legislation in the field of aviation to ensure that the Civil Aviation Authority ("CAA") can continue to collect aviation statistics from airports and to remove the obligation to send those statistics to the European Commission's statistical body (replacing it with an obligation on the CAA to send those statistics to the Secretary of State). It amends the Statistical Returns Regulation and Commission Regulation (EC) No 1358/2003 (OJ L 194, 1.8.2003, p9, as last amended by Commission Regulation (EU) No 519/2013 of 21 February 2013 (OJ L 158, 10.6.2013, p74)). This Part will come into force on exit day (which the 2018 Act defines).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

An Explanatory Memorandum is available alongside this instrument on the UK legislation website at www.legislation.gov.uk.

Part 2 requires that notices imposing a penalty be published in the CAA's Official Record. The Official Record is on the CAA's website (www.caa.co.uk), and copies of notices may be downloaded from there. A paper copy of a notice may be requested by writing to the CAA at CAA House, 45-59 Kingsway, London, WC2B 6TE.

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