EXPLANATORY MEMORANDUM TO

THE EUROPEAN UNION (FUTURE RELATIONSHIP) ACT 2020 (COMMENCEMENT NO. 3) REGULATIONS 2023

2023 No. 1174 (C. 78)

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The purpose of the European Union (Future Relationship) Act 2020 (Commencement No. 3) Regulations 2023 is to commence paragraph 14 of Schedule 2 to the 2020 Act implementing regulation 13B in place of regulation 13AA in the Passenger Name Record Data and Miscellaneous Regulations 2018 (S.I. 2018/598), ("the 2018 Regulations").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is not subject to parliamentary procedure, no statement is required.

6. Legislative Context

6.1 Regulation 13AA in the 2018 Regulations relates to an interim period when the UK has up to three years to apply a manual risk assessment and deletion process (where data is treated as if it had been deleted) while the necessary technical adjustments to the UK's systems for processing data are made to undertake this function automatically.

6.2 The interim period provided by Article 552(11) of the Trade and Cooperation Agreement (TCA) ends on 31st December 2023. This is the deadline to implement Regulation 13B in the 2018 Regulations when the interim period expires.

7. Policy background

What is being done and why?

7.1 These Regulations ensure the UK can fulfil its obligations in relation to EU PNR data under the TCA and commence Regulation 13B in the 2018 Regulations in place of Regulation 13AA. This needs to come into force no later than 31st December 2023.

7.2 Regulation 13B relates to the automated risk assessment and deletion process which the UK must have in place by the end of the interim period on 31st December 2023.

7.3 By not proceeding with this Order, the UK would be in breach of its obligations under the TCA relating to the processing of EU PNR data. This would risk disrupting the transfer of EU PNR data from aircraft operators to the Government with adverse impact on capabilities to prevent, detect, investigate and prosecute terrorism and serious crime.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act.

8.2 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it completes the implementation of the UK's obligations under the TCA regarding the processing of EU PNR data as reflected in the 2018 Regulations.

9. Consolidation

9.1 This instrument does not consolidate any legislation; it relates to a specific and procedural change required by the European Union (Future Relationship) Act 2020.

10. Consultation outcome

10.1 No consultation has been undertaken. This instrument relates to a procedural change which has already been legislated for within the European Union (Future Relationship) Act 2020.

11. Guidance

11.1 There is no requirement to provide any updated guidance.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because there is no material impact on how PNR data will be used for the purposes of countering terrorism and serious crime.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 As this instrument is made under the European Union (Future Relationship) Act 2020, no review clause is required.

15. Contact

15.1 Simon Watkin of the Passenger Policy and Border Transformation Unit at the Home Office (simon.watkin@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Nigel Farminer, Deputy Director for the Passenger Policy and Border Transformation Unit at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister for Immigration, the Rt. Hon Robert Jenrick, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.