

EXPLANATORY MEMORANDUM TO
THE AIRPORTS (GROUNDHANDLING) (AMENDMENT) (EU EXIT)
REGULATIONS 2018

2018 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 Committees on the UK's exit from the European Union.

2. Purpose of the instrument

- 2.1 This instrument uses powers in the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) to correct deficiencies in the Airports (Groundhandling) Regulations 1997 (“the 1997 Regulations”) – which implemented Directive 96/67/EC on access to the groundhandling market at Community airports – arising as a result of the UK's exit from the European Union.
- 2.2 Explanations

What did any relevant EU law do before exit day?

Directive 96/67/EC on access to the groundhandling market at Community airports sets out principles which aim to eliminate restrictions on freedom to provide groundhandling services within the EU, balancing this against safety, security and capacity constraints. It seeks to open-up access to the groundhandling market and, amongst other things: requires any invitation to tender to be published in the Official Journal of the European Union; gives the EU Commission an approval role for determinations by national aviation authorities granting exemptions from the rules at particular airports; and, provides powers for EU Member States to take action where third countries do not provide reciprocal access to their airports to EU suppliers of groundhandling services. The 1997 Regulations implemented the Directive in the UK.

Why is it being changed?

This instrument uses powers under the Withdrawal Act to make the necessary changes to the 1997 Regulations to ensure that the law functions correctly after the UK has left the EU. These changes are necessary because it will no longer be appropriate for the operators of UK airports to publish an invitation to tender in the Official Journal of the European Union, for the EU Commission to have an approval role, or for the UK to take action against third countries where reciprocal access to their airports is not provided to suppliers of groundhandling services who are not from the UK.

What will it now do?

The policy content of the 1997 Regulations remains unchanged. The corrections made through this instrument are set out in paragraphs 7.3 – 7.7.

3. Matters of special interest to Parliament

Matters of special interest to the Committees on the UK's exit from the European Union

- 3.1 This instrument is being laid for sifting under the European Union (Withdrawal) Act 2018. A statement regarding the use of legislative powers in the European Union (Withdrawal) Act 2018 is contained in Part 2 of the Annex to this memorandum.

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument is made in exercise of powers in section 8 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 European Union (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 will not preserve EU directives. Changes made under section 8 of the Withdrawal Act will therefore be made to the relevant legislation which implements a directive in the UK.
- 6.5 Directive 96/67/EC on access to the groundhandling market at Community airports sets out principles which aim to eliminate restrictions on freedom to provide groundhandling services within the EU, balancing this against safety, security and capacity constraints. The 1997 Regulations implemented the Directive in the UK and this instrument makes the necessary changes to those Regulations to ensure they continue to function properly once the UK has left the EU.
- 6.6 This instrument applies to "Aerodromes" which 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 less than one year away, 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.

7. Policy background

What is being done and why?

- 7.1 Groundhandling refers to the range of services provided at airports which enable flights to take place. Directive 96/67/EC sets out in its Annex a full list of services which fall within the Directive's definition of groundhandling. The relevant services include, for example: baggage handling, fuelling and defueling, removal of snow and ice and de-icing of an aircraft. The purpose of the Directive is to facilitate an open and competitive market for groundhandling services at airports in the EU. It was driven by a desire to prevent restrictive practices in some Member States, for instance monopoly providers and providers being the same company as the airport operator. The Directive sets out a number of principles to facilitate an open and competitive market for groundhandling services at airports in the EU.
- 7.2 This instrument uses powers in section 8 of, and paragraph 21 of Schedule 7 to, the Withdrawal Act to make corrections to the 1997 Regulations. The Withdrawal Act limits these corrections to what is appropriate to ensure that the legislation will function correctly once the UK has left the EU. The corrections made to the 1997 Regulations are set out in paragraphs 7.3 to 7.7.
- 7.3 Regulation 10(10) of the 1997 Regulations refers to conditions set out in Article 6(2) and (3) of the Directive. To make these conditions clearer and more accessible, this instrument re-states the conditions in Article 6(2) and (3) into the 1997 Regulations as a new paragraph (11) of regulation 10.
- 7.4 This instrument removes the requirement for the Civil Aviation Authority (CAA) to notify the European Commission of any determination it makes under paragraphs (1) or (2) of regulation 11, to reserve self-handling to a limited number of airport users where space and capacity constraints at an airport mean that it is not possible for self-handling to take place to the extent provided for in the Directive. This is because, in relation to the UK, the Commission will no longer have the oversight role provided for in paragraphs (11) and (12) of regulation 11 once the UK has left the EU (paragraphs (11) and (12) are therefore omitted). Part 2 of Schedule 2 to the 1997 Regulations sets out the process for appealing a determination made by the CAA under the 1997 Regulations. This procedure is not altered by this instrument, therefore a means of overseeing determinations by the CAA is retained.
- 7.5 In regulation 12(5) of the 1997 Regulations, instead of requiring publication of an invitation to tender for selecting groundhandling services in the Official Journal of the European Communities (OJEU), publication will be required in the Official Record of

the CAA. Once the UK has left the EU, the OJEU will no longer be the appropriate publication for an invitation to tender in relation to groundhandling services at a UK airport. The Official Record of the CAA is a publication on its website at: www.caa.co.uk.

- 7.6 Regulation 19 of the 1997 Regulations sets out provisions for reciprocity if a third country does not grant suppliers of groundhandling services and self-handling airport users from the UK, another EU Member State or Switzerland treatment comparable to the treatment the third country's suppliers of groundhandling services receive in the UK, another Member State or Switzerland. In such circumstances, the Secretary of State can decide to wholly or partially suspend the obligations arising from these Regulations in respect of the groundhandling suppliers and airport users of that third country. By regulation 7 of this instrument, references to "other Member States or Switzerland" in paragraphs (1) and (3) will be removed to reflect that in a non-negotiated EU exit, the UK would not have reciprocal arrangements in relation to groundhandling at airports in those countries. After exiting the EU, the UK will not differentiate between EU Member States and other third countries under this regulation. Regulation 19(2) requires the Secretary of State to inform the European Commission of any withdrawal or suspension made under paragraph (1). Paragraph (2) is omitted to reflect that once the UK has left the EU, there will no longer be an obligation for the UK to communicate this type of decision to the European Commission.
- 7.7 Schedule 1 to the 1997 Regulations sets out the procedure for the CAA to make determinations under regulations 9, 10, 11, 14 and 15 of those Regulations, being determinations on limiting self-handling at an airport, determinations on limiting the number of suppliers to third parties of certain airside services at airports, determinations on limiting the number of suppliers of groundhandling services at an airport because of space or capacity constraints, and determinations on reserving the management of centralised infrastructure at airports, for example baggage sorting, de-icing, water purification, and fuel distribution systems. In Schedule 1, paragraph 19 applies to determinations which are amended or revoked pursuant to regulation 11(12). Since this instrument revokes regulation 11(12), paragraph 19 is also revoked as it will no longer be applicable.

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. 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 current plans to consolidate.

10. Consultation outcome

- 10.1 The CAA has been consulted throughout the preparation of this statutory instrument and the aviation industry has been informed of the Department's intentions to lay

statutory instruments using powers in the Withdrawal Act to fix deficiencies in retained EU legislation. Consultation took the form of regular meetings with representatives of air carriers, airports and others as well as representative trade associations both individually on a bilateral basis and in group settings at stakeholder workshops. Workshops at official level took place in February and September 2017 and in July 2018, and at Ministerial level in February 2017. Department for Transport representatives have regularly updated the sector at long established stakeholder forums for the general and business aviation sector and with the aerospace sector.

11. Guidance

- 11.1 No guidance is necessary

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 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.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is: this legislation does not make any substantive changes to the policy on the provision of groundhandling services. Monitoring of the policy content of the Groundhandling Regulations 1997 as amended by this instrument will take place 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 Ian Elston at the Department for Transport Telephone: 0760010070 or email: ian.elston@dft.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Michael Clark, Deputy Director for Technology and International Aviation 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/ESIC
Appropriateness	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 made a political commitment to include these statements alongside all EUWA SIs	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 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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		powers in Schedule 2 to create a criminal offence	
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. Sifting statement(s)

1.1 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:

1.2 “In my view the Airports (Groundhandling) (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”. This is the case because: this legislation does not fall within the categories for which use of the affirmative procedure is required under the Withdrawal Act, i.e. establish a new public authority, transfer an EU function to a newly created public authority, transfer an EU legislative function to a UK body, relate to fees, create or widen the scope of a criminal offence, create or amend a power to legislate.

2. Appropriateness statement

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:

2.2 “In my view the Airports (Groundhandling) (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate”. This is the case because: the changes this instrument makes to the 1997 Regulations are minor and do no more than is strictly necessary to ensure that the Regulations function correctly once the UK has left the EU. The specific changes are set out in the ‘Policy Background’ section in paragraphs 7.3 to 7.7.

3. Good reasons

3.1 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:

3.2 “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”. These are:

- (a) ensuring that the legislation governing access to the groundhandling market at UK airports continues to function correctly once the UK has left the EU.
- (b) ensuring that there is clarity for airport operators and providers of groundhandling services which legislation will apply once the UK has left the EU, and which requirements they are expected to meet.

4. Equalities

4.1 The Parliamentary Under Secretary of State, Baroness Sugg, has made the following statement(s), “The 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.”.

4.2 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:

4.3 “In relation to the 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.”.

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

6. Criminal offences

6.1 There are no criminal offences created by this instrument.

7. Legislative sub-delegation

7.1 This instrument does not sub-delegate any powers to make legislation.

8. Urgency

8.1 The scrutiny procedure for urgency set out in paragraphs 5, 6 or 19 of Schedule 7 to the European Union (Withdrawal) Act 2018 does not apply to this instrument. Accordingly, no statement is required.