

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT AIRPORTS SLOT ALLOCATION
(AMENDMENT) (EU EXIT) REGULATIONS 2019

Monday 28 January 2019

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Friday 1 February 2019

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The Committee consisted of the following Members:

Chair: SIR DAVID AMESS

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| † Clarke, Mr Simon (<i>Middlesbrough South and East Cleveland</i>) (Con) | † Norman, Jesse (<i>Minister of State, Department for Transport</i>) |
| † Donelan, Michelle (<i>Chippenham</i>) (Con) | Reeves, Ellie (<i>Lewisham West and Penge</i>) (Lab) |
| † Farrelly, Paul (<i>Newcastle-under-Lyme</i>) (Lab) | † Slaughter, Andy (<i>Hammersmith</i>) (Lab) |
| † Foxcroft, Vicky (<i>Lewisham, Deptford</i>) (Lab) | † Spelman, Dame Caroline (<i>Meriden</i>) (Con) |
| George, Ruth (<i>High Peak</i>) (Lab) | † Tomlinson, Michael (<i>Mid Dorset and North Poole</i>) (Con) |
| † Gibson, Patricia (<i>North Ayrshire and Arran</i>) (SNP) | † Turner, Karl (<i>Kingston upon Hull East</i>) (Lab) |
| † Heappey, James (<i>Wells</i>) (Con) | † Vickers, Martin (<i>Cleethorpes</i>) (Con) |
| † Henderson, Gordon (<i>Sittingbourne and Sheppey</i>) (Con) | Bradley Albrow, <i>Committee Clerk</i> |
| † Kawczynski, Daniel (<i>Shrewsbury and Atcham</i>) (Con) | † attended the Committee |
| † Mearns, Ian (<i>Gateshead</i>) (Lab) | |

Second Delegated Legislation Committee

Monday 28 January 2019

[SIR DAVID AMESS *in the Chair*]

Draft Airports Slot Allocation (Amendment) (EU Exit) Regulations 2019

4.30 pm

The Minister of State, Department for Transport (Jesse Norman): I beg to move,

That the Committee has considered the draft Airports Slot Allocation (Amendment) (EU Exit) Regulations 2019.

It is a great pleasure to serve under your chairmanship, Sir David.

The draft instrument will be made under the powers conferred by the European Union (Withdrawal) Act 2018 and will be needed if the UK leaves the European Union without a deal in March. As with several other statutory instruments, it is a small and technical, but important, piece of legislation. As hon. Members are aware, the Government remain committed to leaving the EU with a deal that has been approved by Parliament. On 21 January, the Prime Minister set out her plans to deliver that deal. Although the Government strongly believe that leaving with a deal is the best outcome for the UK and the EU, it is our duty to make reasonable preparations for all scenarios, including by ensuring that there is a functioning statute book, irrespective of the outcome of the negotiations.

The instrument is an important part of those preparations and ensures that there will continue to be a well-functioning legislative and regulatory regime for aviation, including for the allocation of slots at congested airports. “Airport slots” refer to an air service’s right to use a bundle of facilities at airports—for example, runways, stands and terminals—for landing or take off at particular dates and times.

At congested airports where the demand for slots exceeds the available infrastructure, EU regulation 95/93 sets out the process for available slots to be allocated fairly and transparently. It sets out the conditions that must be met for the airport to be considered as having its schedules facilitated or subject to slot co-ordination. Factors that should be taken into account when designating an airport as slot co-ordinated include:

“When air carriers representing more than a half of the operations at an airport...or the airport authority consider that capacity is insufficient for actual or planned operations...or...when new entrants encounter serious problems in securing slots”.

The EU regulation specifies that any decision that an airport should be subject to slot co-ordination should be taken following thorough capacity analysis and consultation with airport users, including air carriers, airport authorities, air traffic control authorities and passengers’ organisations. The airports in the UK currently designated as fully co-ordinated are Birmingham, London City, Gatwick, Heathrow, Luton, Manchester and Stansted. Bristol airport is partially co-ordinated for the summer season.

The EU regulation also sets out that slots should be allocated in a neutral, non-discriminatory and transparent manner by an independent slot co-ordinator appointed

by the relevant member state. Airport Coordination Ltd, the UK-appointed slot co-ordinator for UK airports, has performed that function for some time.

Under the EU regulation, slots can be allocated on the basis that the air carrier in question has held the slot in the previous season and has demonstrated that it used the slot for at least 80% of that season. Any remaining unused slots are returned to what is known as the “slot pool”, alongside any newly available slots. Some 50% of slots in the slot pool are available to new entrants. The regulation also makes provision for member states to reserve certain slots for essential domestic services, such as public service obligations.

Under the EU regulation, it is possible for slots to be exchanged between air carriers or for a carrier to transfer a slot to a different route or type of service, with the exception of slots allocated to new entrants, which may not transfer or exchange slots for the first two seasons. Finally, the regulation contains provisions for reciprocity to ensure that Community carriers that request slots in non-EU countries are treated fairly.

The draft instrument makes minor changes to ensure that, once the UK has left the EU, retained EU regulation 95/93 continues to function correctly alongside the domestic Airports Slot Allocation Regulations 2006, which were made to implement the EU regulation. Most of the changes that the instrument makes are to ensure that the scope of the retained regulation is correct—for example, by amending article 1 to reflect the fact that the retained regulation will apply only to airports in the United Kingdom after exit day; by removing references to “community law” and EU treaties; and by removing or amending references to “member states”, which will no longer include the UK after exit day.

The EU regulation confers certain functions on member states, such as designating the airport as having its schedules facilitated or co-ordinated, and appointing a schedules facilitator or airport co-ordinator. These functions were conferred on the Secretary of State by domestic implementing regulations in 2006. This instrument corrects the EU regulation, so that when it is retained in UK law on exit day, these functions will be conferred on the Secretary of State in line with the implementing regulations. Other roles for EU institutions, such as the European Commission’s role in carrying out investigations, are removed or replaced.

The instrument also makes corrections to some of the definitions contained in the EU regulation, for instance substituting the definition of a Community air carrier with a definition of a UK air carrier. The EU regulation defined “new entrant” for the purposes of allocating slots from a slot pool as air carriers requesting slots for scheduled services between two Community airports, where at most two other carriers operate that route. This instrument amends that definition to allow for continuity, so that the regulation retained in UK law captures both air carriers requesting slots for passenger services between two UK airports and carriers requesting slots for services between a UK airport and an airport in a European economic area state.

The EU regulation provides that a proportion of slots can be reserved for public service obligations—PSOs. The SI amends the definition of a PSO in line with the corrections already made to provisions in EU law on PSOs through the Operation of Air Services (Amendment etc.) (EU Exit) Regulations 2018. This means that instead

of being open to Community air carriers, qualifying air carriers will be eligible to operate PSOs in the UK. This will include UK air carriers and carriers from other countries that have cabotage rights in the UK—that is, the right to fly between two points in the UK. As is currently the case, any PSO can only be limited to one carrier by the Secretary of State after a tendering process has been followed. This change has no effect on the PSO routes already operating in the UK, which I know will be of interest to Members.

On reciprocity, this instrument amends the provisions in the EU regulation so that instead of ensuring that Community carriers requesting slots in non-EU countries are treated fairly, the provisions ensure that UK carriers requesting slots in countries other than the UK are treated fairly with respect to the allocation of slots at that country's airports. The instrument therefore sets out that it is the Secretary of State, rather than the European Commission, who may wholly or partially suspend the operation of the retained regulation 95/93 in relation to air carriers from a non-UK country. The EU regulation currently provides for that action to be taken through a regulation and this instrument transfers that function to the Secretary of State, who could carry it out through regulations following the normal negative resolution procedure.

Finally, this instrument makes some minor changes to the 2006 implementing regulations, for instance removing the requirement for co-ordination committees at airports to invite the European Commission to meetings. It also makes a change to annex 13 to the European economic area agreement, which requires parties to the agreement to inform the European Commission about serious difficulties encountered by UK air carriers in obtaining airport slots in third countries. This provision will not apply to the UK after exit day when it is no longer a party to the EEA agreement, and so will be removed by this instrument as it is redundant.

We are continuing to work to achieve a positive future relationship with the EU and a deal that has the support of the House, but we are also continuing to ensure that the UK's legal framework for aviation and the allocation of airport slots remains operable in a no-deal scenario. I commend this instrument to the Committee.

4.38 pm

Karl Turner (Kingston upon Hull East) (Lab): It is always an absolute pleasure and privilege to serve under your chairmanship, Sir David.

We are supportive of the instrument, so I will keep my remarks brief. As the Minister alluded to, the regulations we are discussing are among the many aspects of EU law that will fall into UK law under the Government's European Union (Withdrawal) Act. The principal changes in the instrument remove references to or the roles of the EU, the European Court of Justice and other bodies in relation to airport slot allocation. The instrument will ensure that UK carriers, which will no longer be Community carriers when we leave the EU, continue to operate under the same conditions and to have the same access as before. It transfers all the current rules of the slot allocation system into UK law, and binds us to international conventions, such as the International Air Transport Association's world slot guidance.

As I said at the outset, the instrument is necessary, although I understand that the Scottish National party's spokesperson, the hon. Member for North Ayrshire and Arran, may have some difficulties with it. If the matter is pressed to a Division, Her Majesty's loyal Opposition will abstain.

4.40 pm

Patricia Gibson (North Ayrshire and Arran) (SNP): The instrument uses powers under the withdrawal Act to ensure that the retained EU law functions correctly after the UK has left the EU. However, this Delegated Legislation Committee is a missed opportunity, as once again the UK Government have failed to provide key protections for Scottish airports and flight routes. Indeed, the SNP was unable to support the third runway at Heathrow because the Department for Transport was not able—or perhaps not willing—to specify the number of Scotland to London flights it would protect, beyond a vague commitment of around 100 extra per week under public service obligations. The Minister himself has spoken about the lack of a formal guarantee of public service obligations for the flights of greatest benefit to Scotland, and the hon. Member for Gordon (Colin Clark), a Tory MP, has pointed out that Heathrow's international success has undoubtedly squeezed out domestic routes.

I ask the Minister why, after two years of promising that an aviation agreement was imminent, the Secretary of State for Transport eventually admitted that talks have not even begun. I also ask whether the Minister has seen the latest briefing from the Airport Operators Association regarding its concerns about a no-deal Brexit, and whether he would care to comment on that briefing. The SNP recognises that a well-designed Heathrow expansion plan would provide significant benefits to Scotland's economy and connectivity. However, we cannot support anything that short-changes Scotland's passengers, its airports or its economy, as the lack of protection for Scotland's airports in this statutory instrument would.

4.41 pm

Jesse Norman: I am happy to respond to the concerns raised by the hon. Member for North Ayrshire and Arran. She has said that the instrument is a missed opportunity to support Scottish airports; unfortunately, that is a misreading of the secondary legislation. The only purpose to which the legislation can be put, under the European Union (Withdrawal) Act, is to transfer EU legislation—suitably corrected—into UK legislation. The question of whether to approve any future legislation that might affect those terms is a further decision for Parliament; all that can be done under this piece of law is to “lift and shift”, which is what this instrument does. In my remarks, I made it perfectly clear that nothing has been done through the instrument that could in any way affect the public service obligations from which Scotland benefits.

The hon. Lady raised the matter of discussions. The Department and the Government have always been engaged, ready and willing to have discussions about the terms of an air services agreement. The concern has not been on our side; the concern has been about what position the EU wishes to take. I am sure that the hon. Lady will be reassured that many of the moves that have

[*Jesse Norman*]

been made over the past few weeks have been positive ones, notably the declarations that there will be overflights over EU states, that there will be a 90-day period of visa-free access, and that security checks and other measures will not be replicated in the aftermath of Brexit.

The hon. Lady asked a question about the briefing from the Airport Operators Association. I am afraid that I have not seen that briefing, so I cannot comment on it, but I invite her to send it to me if she would like.

Patricia Gibson: The Minister has said that he has not read the briefing from the Airport Operators Association, but does he understand the very serious concerns about the prospect of a no-deal Brexit, for which we seem to be preparing today?

Jesse Norman: If I may say so, those concerns are no more than the concerns we within the Government have expressed about the need for a deal, and that is what we are pressing for. As we have said repeatedly, we support a deal and are pressing for one. We invite the hon. Lady's party to support a deal, which it has so far failed to do. The fact that the deal is being impeded in part by the votes of her own party casts her comments in an ironic light. However, that has not been the problem; the problem has been on the other side of the equation.

The hon. Lady raised the issue of whether Scotland is being short-changed by this legislation. In fact, the exact opposite is true: the interests of Scots are being fully protected within the legislation, and we would expect them to remain so.

I am happy to answer questions, as I have done so far. This is an important and small, but technical, piece of legislation that we need in order to continue to prepare for Brexit, and I commend it to the House.

Question put.

The Committee divided: Ayes 9, Noes 1.

Division No. 1]

AYES

Clarke, Mr Simon
Donelan, Michelle
Heapey, James
Henderson, Gordon
Kawczynski, Daniel

Norman, Jesse
Spelman, rh Dame Caroline
Tomlinson, Michael
Vickers, Martin

NOES

Gibson, Patricia

Question accordingly agreed to.

4.46 pm

Committee rose.