

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Fourteenth Delegated Legislation Committee

DRAFT AVIATION SECURITY (AMENDMENT  
ETC.) (EU EXIT) REGULATIONS 2019

*Thursday 28 February 2019*

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**Monday 4 March 2019**

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**The Committee consisted of the following Members:**

*Chair:* SIR EDWARD LEIGH

Bryant, Chris ( <i>Rhondda</i> ) (Lab)	† Norman, Jesse ( <i>Minister of State, Department for Transport</i> )
† Cowan, Ronnie ( <i>Inverclyde</i> ) (SNP)	Rashid, Faisal ( <i>Warrington South</i> ) (Lab)
† Donelan, Michelle ( <i>Chippenham</i> ) (Con)	† Scully, Paul ( <i>Sutton and Cheam</i> ) (Con)
† Fabricant, Michael ( <i>Lichfield</i> ) (Con)	† Sheerman, Mr Barry ( <i>Huddersfield</i> ) (Lab/Co-op)
† Foxcroft, Vicky ( <i>Lewisham, Deptford</i> ) (Lab)	† Trevelyan, Anne-Marie ( <i>Berwick-upon-Tweed</i> ) (Con)
† George, Ruth ( <i>High Peak</i> ) (Lab)	† Turner, Karl ( <i>Kingston upon Hull East</i> ) (Lab)
† Graham, Richard ( <i>Gloucester</i> ) (Con)	Twigg, Derek ( <i>Halton</i> ) (Lab)
† Hands, Greg ( <i>Chelsea and Fulham</i> ) (Con)	Kevin Candy, <i>Committee Clerk</i>
† Heapey, James ( <i>Wells</i> ) (Con)	† <b>attended the Committee</b>
† Henderson, Gordon ( <i>Sittingbourne and Sheppey</i> ) (Con)	

# Fourteenth Delegated Legislation Committee

Thursday 28 February 2019

[SIR EDWARD LEIGH *in the Chair*]

## Draft Aviation Security (Amendment etc.) (EU Exit) Regulations 2019

11.30 am

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

That the Committee has considered the draft Aviation Security (Amendment etc.) (EU Exit) Regulations 2019.

It is a pleasure to serve under your chairmanship, Sir Edward. 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. As the Committee will be aware, delivering the deal negotiated with the EU remains the Government's top priority, but of course we must make all reasonable plans to prepare for a no-deal scenario.

The draft instrument corrects seven EU instruments and makes minor changes to the Aviation Security Act 1982. The regulations contain the framework for providing security to passengers and for cargo travelling by air. They cover matters such as airport security, passenger and baggage screening, cargo screening, training and recruitment, and technical equipment standards. I will summarise the corrections that the draft instrument makes to the regulations.

Regulation 300/2008 establishes the framework for the aviation security regime within the European Union and sets out the common basic standards. The draft instrument makes changes to the scope of the retained regulation to reflect the fact that the UK will no longer be part of the EU after exit day; it does so by limiting its scope to the United Kingdom and by removing provisions that will no longer apply to the United Kingdom. The amendments also replace legislative powers exercisable by the Commission or member states with regulation-making powers exercisable by the Secretary of State, maintaining equivalent levels of scrutiny. In essence, the security screening requirements for all direct passenger flights to and from the UK will remain as they are today. That is the important thing.

Regulation 272/2009 covers screening and other matters. The types of permissible screening methods remain unchanged. References to Commission legislative procedures will be replaced by reference to domestic legislative procedures. Provisions relating to criteria for EU recognition of the equivalence of third countries' security measures with EU aviation standards are deleted, because the concept of equivalence with the baseline standards contained in the retained EU regulations does not make sense in a UK-only context, where we apply additional measures over and above that baseline.

Regulation 1254/2009, the third regulation covered by the instrument, sets out criteria for allowing alternative, less burdensome security requirements to apply to airports or to demarcated parts of airports that deal only with flights, particularly non-commercial flights. As an example, such flights might involve light aircraft with a maximum

take-off weight of less than 15,000 kg, law enforcement flights, flights for medical services, emergency or rescue services, and certain private or business aircraft flights. The draft instrument makes no changes to those criteria.

Regulation 2015/1998 makes detailed provision for the practical implementation of the measures contained in regulation 300/2008. The provisions cover access to airport security areas, airport planning, aircraft search, and passenger and baggage screening. It also covers matters such as cargo and rail security, security of supplies available in airport shops and on board aircraft, as well as recruitment and staff vetting procedures, training requirements and specifications of security equipment. All those elements are essential to aviation security. The instrument retains the provisions, subject to the necessary amendments to remove specific references to the EU.

**Mr Barry Sheerman (Huddersfield) (Lab/Co-op):** I beg the Minister's forgiveness for coming in slightly late; I was asking a question in the House. Can he reassure me that the regulations will simply move across to the UK so that we will have all the protections that we have under EU regulations?

**Jesse Norman:** Yes, I can confirm that, in line with the European Union (Withdrawal) Act, the purpose of the instrument is precisely to lift and shift regulations so that there is no substantive change between the position before we left the EU and the position afterwards. If I may, I will continue my speech.

**Mr Sheerman:** Will the Minister allow me to pursue him a little further on that? Some of us are becoming foot soldiers in the SI regiment and turn up here regularly to do our duty by scrutinising these SIs. Can he assure me that the Government are treating them all the same? Is this SI the same as all the others? Sometimes, when they are about something I care about and am really concerned about—I chair the Parliamentary Advisory Council on Transport Safety—I wonder whether they are a real opportunity to improve the regulations rather than just to take them as they are. Is there no scope for improvement?

**Jesse Norman:** Let me say two things. First, as the hon. Gentleman will be aware, this is a very complex area and the draft regulations cover a wide range of subjects, including—I have listed some of them—airport security areas, planning, aircraft search, passenger baggage screening and many others. Secondly, we are not in a position to—indeed, we have made an undertaking to Parliament that we will not—change the substantive provisions, even where improvements are possible for policy reasons that are widely accepted across Parliament. That is because this is a lift-and-shift exercise. It should remain open to Parliament to scrutinise, through the normal mechanisms, any further legislation that changes Government policy.

**Michael Fabricant (Lichfield) (Con):** Surely the whole point of Brexit is that Parliament will be free to make changes to and improve legislation in due course, once we are out of the European Union. Until we are out of the European Union, we are rather bound by Brussels diktat.

**Jesse Norman:** That is one way of putting it. I would say this: the European Union (Withdrawal) Act 2018 and this process with SIs establish a baseline against which a future autonomous British Government can make decisions.

**Mr Sheerman:** Will the Minister give way?

**Jesse Norman:** No, let me finish my point. In many cases, the standards we choose will be higher—potentially significantly higher, as in some respects they are in the areas of airport security and aircraft security—than the EU regulations have been hitherto.

**Mr Sheerman:** I appreciate the Minister allowing my interventions. He and I work on many things together very harmoniously. May I say to him that those European diktats have kept my constituents and his safe for very many years? When we went into the European Union, many things, including baggage handling—preventing people getting illicit substances on planes, perhaps even including things that could destroy an aeroplane—were very casual indeed. We have a security system that has kept us safe for a very long time. Is that in danger? SIs about sharing data and information have been introduced in parallel with this SI. Those two things go together. Will the Minister assure the Committee that they will not be endangered at all?

**Jesse Norman:** We are wandering somewhat away from the SI before this Committee, but I am thoroughly enjoying what might be referred to as Thursday morning theatrics from both sides of the Committee. As the hon. Gentleman knows, the Civil Aviation Authority has for many years been a trend setter, a path setter and a standards setter across the EU. Much of the benefit of the European Aviation Safety Agency has come from its taking those standards and promulgating them more widely. There has been genuine benefit on both sides. We have benefited from the promulgation of CAA standards across Europe, and we have benefited from the scrutiny and feedback that those standards have received from EU countries, and vice versa.

**Richard Graham (Gloucester) (Con):** Will the Minister give way?

**Jesse Norman:** I will take one more intervention before proceeding, from my beloved and hon. Friend the Member for Gloucester.

**Richard Graham:** As a former airline manager, I take some interest in these issues. The Minister is absolutely right that the CAA has been an important global figure in setting standards; in fact, its staff are seconded to EASA at the moment, and I believe that that will continue. Page 3 of the explanatory memorandum refers to deficiencies in regulation 300/2008 and goes on to explain, helpfully, that substantive changes are needed to address inoperabilities on incoming air cargo because we will not be part of the ACC3 secure cargo regime. That is clarified later by the statement that “UK-ACC3, RA3, or KC3 designations will be issued to all carriers”.

In simple terms, can the Minister confirm that the objective is to ensure that we do not create any barriers to international trade, and that carriers that bring cargo into the UK will be able to do so exactly as before, without any barriers?

**Jesse Norman:** As I said, as far as possible we are aiming to replicate the existing arrangements. With his laser-like eye for detail, my hon. Friend identifies an important area. The regime will have to change a little as a result of Brexit, as I will set out.

One key area of regulation 2015/1998 is the EU inbound cargo regime. The EU operates a regime known as ACC3, which stands for air cargo or mail carrier operating into the European Union from a third-country airport. That is precisely the area targeted by my hon. Friend. In essence, it is a requirement for air carriers carrying cargo into the EU from a non-EU country to hold security designations that confirm that they are screening cargo to the required standards and that a secure supply chain exists from the origin of the cargo to its point of entry into the EU.

Responsibility for administering the system, and for granting designations, is currently shared between member states. If the UK leaves the EU without a deal, it will no longer be part of that system, but it is critical that we maintain our inbound cargo security protections. The effect of the draft instrument is to retain the requirement that carriers must hold a security designation in order to fly cargo into the UK from third countries, and to apply that in a UK-only context.

The new system of UK ACC3 designations will be managed by the Civil Aviation Authority and the Department for Transport. To ensure a seamless transition on exit day, new UK designations will be issued to all carriers flying into the UK that currently hold EU designations. On expiry, carriers and screening entities will need to apply directly to the UK for new designations, which will be granted using largely the same criteria as in the existing system, to minimise any additional burden on industry.

Regulation 2019/103 makes amendments to regulation 2015/1998 that are already incorporated. It also contains measures that apply only after exit day, and are therefore not retained. The only provision in the regulation that is retained relates solely to the date on which the un-retained measures apply. As such, the provision is by itself meaningless, and the draft instrument therefore revokes it.

Regulation 72/2010 covers the requirements for Commission inspections of EU airports and national authorities that will no longer be applicable. The draft instrument revokes that regulation. The draft instrument also amends the Aviation Security Act 1982 to remove references relating to Commission inspections and Commission inspectors.

Finally, Commission decision C (2015) 8005 is a restricted, confidential instrument that provides additional but security-sensitive details on the aviation security requirements contained in the regulations. For example, it sets the technical standards for aviation security equipment, such as the materials and quantities, and details the methods and percentages of various screening requirements. The decision will form part of retained EU law; however, because it is security-sensitive and not published before exit day, it is not required to be published on or after exit day.

As an unpublished instrument, before and after exit, the decision cannot be scrutinised as the subject matter of legislation by Parliament. As such, the draft instrument cannot make any amendments to it. As the decision contains defects if it is not amended, the draft instrument revokes the decision. However, in order to retain the important aviation security rules contained in the decision, the requirements previously contained in it will be made the subject of a direction, which will be given by the Secretary of State under powers contained in the 1982 Act.

[*Jesse Norman*]

The direction will form part of the single consolidated direction that sets out our domestic aviation security requirements that apply on top of EU legislation. The content of the new direction will be disseminated to the same UK entities as those that currently see the EU decision.

**Mr Sheerman:** On the revocation item, has the Minister heard that the United Nations organisation that looks after the technology of air worldwide, the International Civil Aviation Organization, is very concerned about that part of it? Has he had a conversation with ICAO and with the CAA on that point?

**Jesse Norman:** I can confirm that my officials have regular and continuing conversations with both the ICAO and the CAA, and they have considered the correct approach in some depth. However, if the hon. Gentleman or the ICAO, through a different channel, want to write to express further concerns, they are welcome to do so.

The draft instrument ensures that in the event of a no-deal exit from the EU, there will be a legislative framework for aviation security that will continue to keep passengers, aviation infrastructure and cargo safe and secure. I commend the instrument to the Committee.

11.45 am

**Karl Turner** (Kingston upon Hull East) (Lab): It is a pleasure to serve under your chairmanship, Sir Edward. I do not intend to detain the Committee long.

As we have heard, the instrument relates to aviation security. Among other things, it corrects deficiencies in the existing regulations and makes some corrections, which the Minister has explained, to the Aviation Security Act 1982, which it amends to remove all provisions relating to Commission inspections. The Commission currently carries out regular inspections of member states' airports and appropriate authorities, identifying deficiencies in the security regime, occasionally making recommendations for improvement, and, I understand, in extreme cases imposing sanctions where it is deemed necessary. After we leave the European Union, the inspections will not be carried out in the current form. The Secretary of State and the CAA will have authority to continue to carry out the very important inspections of airports to ensure compliance with aviation security.

The instrument also makes amendments to the retained version of regulation 300/2008, the framework regulation that sets out minimum security requirements applying at EU airports. The amendment limits its scope to the UK, removes provisions that will no longer apply to the UK, and replaces legislative powers exercisable by the Commission or member states with regulatory powers exercisable by the Secretary of State. For all of the reasons that the Minister has outlined, the instrument is entirely sensible and we support it.

11.47 am

**Mr Sheerman:** I will make only some brief remarks. This piece of delegated legislation—this statutory instrument—worries me a great deal because we are talking about the most sensitive area of security. We have only to look back at the ghastly tragedy of the twin towers in the United States to know what can happen.

On a much more mundane level, we still do not know who flew drones over Gatwick Airport, destroying the holidays of many of our constituents. Perhaps it does not matter if one lives in Lichfield or if drones ruin someone's holiday.

**Michael Fabricant:** Will the hon. Gentleman give way?

**Mr Sheerman:** I will not give way to the hon. Gentleman. He is the one who pits the bogeyperson of Europe against a security system that has secured the safety and security of his constituents as well as mine and yours, Sir Edward, for many years. [*Interruption.*] I will give way.

**Michael Fabricant:** I am grateful for the hon. Gentleman's courtesy in giving way, given that he mentioned Lichfield. Many people from Lichfield travel abroad, probably more than in his constituency. I remind him that since the situation with the drones, the Department for Transport has deployed technology from the UK and Israel to identify drones, so action has been taken, and none of it had anything to do with the EU.

**The Chair:** Order. We are straying very wide of the mark. Mr Sheerman, you are a very experienced parliamentarian and I rely on you to bring experience and calm to the Committee. Please do not wind up Mr Fabricant.

**Mr Sheerman:** Sir Edward, I did not intend to wind anyone up; I wanted to emphasise that something going wrong with aviation security is a sensitive matter for all our constituents—such as when a plane falls out of the air or, heaven forbid, a terrorist puts a bomb on an aircraft. All of that has happened. It is an extremely vulnerable part of our everyday lives that we take for granted whenever we jump on a plane.

The international framework of regulation—not just that in Europe—has delivered aviation security. Certainly, the co-operation we have had across the European Union has done so. Right on our borders are countries whose aviation regulation is not what we would want it to be. We need look no further than Russia and its high rate of air accidents to see that some very dangerous countries in terms of regulation are just outside our borders.

That is why I am taking the draft instrument very seriously. I do not want a historian looking at how our Parliament handled our withdrawal from Europe to say that a Committee chaired by Sir Edward including good Members of Parliament did not scrutinise the legislation carefully enough, and that some months or years later something went dreadfully wrong because of the way we were co-operating across Europe on security. People are talking all the time about how we are withdrawing, in parallel, from other very sensitive arrangements for the sharing of security information about possible terrorists using air transport to commit their wicked deeds. It is a time of great sensitivity, and a time that causes me great concern.

I have an old-fashioned boyhood love of aviation. When I was younger, I wanted to know whether I could travel on any plane that was going out of service. I have been very lucky, as chair of the advisory council, to have flown several times on Concorde, for example. I am a bit of an aviation anorak, so I know a little about it.

I say to the Minister that I am not being theatrical. I know he got that from the Chancellor of the Exchequer, who says that I specialise in synthetic passion. The fact is that I do feel passionately about this issue.

I worry that with so many of these SIs, we all think, “Oh gosh, we started at 11.30. Look—it’s nearly 11.55. We’ve been here for almost 25 minutes. Shouldn’t we be getting on with the rest of our business?” I do not think that the scrutiny in this sort of Committee is good enough. That is why, when I come to such Committees, I intervene on the Minister and try to say something sensible. I still believe that we should give further consideration to such instruments.

I think this is the third such Committee that the Minister and I have been on together—I am sure that he will remember. It is awkward when Ministers get an awkward squad person on such a Committee, and I do not like intervening on him. He is a good Minister, and on road safety we work like a well-oiled team—I say that in a non-alcoholic sense. We have a lot in common in wanting to save our constituents from harm. That is the whole point of the regulation.

I will give the Committee a parallel—the hon. Member for Lichfield might agree on this. Until we went into the European Union, our rivers and seas were filthy and polluted. Our constituents swam through sewage. We do not want to go back to those days.

I can see you look a little tense, Sir Edward, so I will end my remarks by appealing to the Committee to think about what I have said, and to join me in asking for further consideration.

11.54 am

**Jesse Norman:** If there are no other interventions, I will close by asking colleagues on both sides of the Committee to ignore the remarks made by the hon. Member for Huddersfield about my being a good Minister—a threat to my reputation that I will frankly struggle to overcome. I wish him well in his continuing efforts to say positive and sensible things about airport and aviation security, and I commend the instrument to the Committee.

*Question put.*

*The Committee divided: Ayes 9, Noes 1.*

**Division No. 1]**

**AYES**

Donelan, Michelle  
Fabricant, Michael  
Graham, Richard  
Hands, rh Greg  
Heapey, James

Henderson, Gordon  
Norman, Jesse  
Scully, Paul  
Trevelyan, Anne-Marie

**NOES**

Sheerman, Mr Barry

*Question accordingly agreed to.*

*Resolved,*

That the Committee has considered the draft Aviation Security (Amendment etc.) (EU Exit) Regulations 2019.

11.56 am

*Committee rose.*

