

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Seventh Delegated Legislation Committee

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

Wednesday 19 December 2018

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Sunday 23 December 2018

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The Committee consisted of the following Members:

Chair: MR NIGEL EVANS

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| † Bradley, Ben (<i>Mansfield</i>) (Con) | † Norman, Jesse (<i>Minister of State, Department for Transport</i>) |
| † Docherty-Hughes, Martin (<i>West Dunbartonshire</i>) (SNP) | † Quince, Will (<i>Colchester</i>) (Con) |
| † Donelan, Michelle (<i>Chippenham</i>) (Con) | † Thomson, Ross (<i>Aberdeen South</i>) (Con) |
| † Foxcroft, Vicky (<i>Lewisham, Deptford</i>) (Lab) | † Turner, Karl (<i>Kingston upon Hull East</i>) (Lab) |
| † Gaffney, Hugh (<i>Coatbridge, Chryston and Bellshill</i>) (Lab) | † Twist, Liz (<i>Blaydon</i>) (Lab) |
| † George, Ruth (<i>High Peak</i>) (Lab) | † Watling, Giles (<i>Clacton</i>) (Con) |
| † Heald, Sir Oliver (<i>North East Hertfordshire</i>) (Con) | † West, Catherine (<i>Hornsey and Wood Green</i>) (Lab) |
| † Heapey, James (<i>Wells</i>) (Con) | Medha Bhasin, Yohanna Sallberg, <i>Committee Clerks</i> |
| † McMorris, Anna (<i>Cardiff North</i>) (Lab) | |
| † Mills, Nigel (<i>Amber Valley</i>) (Con) | † attended the Committee |

Seventh Delegated Legislation Committee

Wednesday 19 December 2018

[MR NIGEL EVANS *in the Chair*]

Draft Aviation Safety (Amendment etc.) (EU Exit) Regulations 2019

2.30 pm

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

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

It is a delight to serve under your chairmanship, Mr Evans. I wish you, Committee members and the Clerks a very happy Christmas.

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 next March. Following the UK's decision to leave the EU after the referendum in 2016, the Government have been working hard to develop a positive future relationship with the EU. The Department for Transport has undertaken a significant amount of work with respect to the withdrawal negotiations themselves, and to prepare for the full range of potential outcomes from the negotiations. As Committee members will be aware, the best outcome will be for the UK to leave with a deal, and hon. Members will know that a draft withdrawal agreement is being considered. We remain confident that that agreement will enter into force at the end of March next year.

However, we must, of course, also make all reasonable plans to prepare for a no-deal scenario. To that extent, we have conducted particularly intensive work to ensure that there continues to be a well-functioning legislative and regulatory regime for aviation. We set out how this will work in the technical notices published in September, and the draft instrument will provide the means to deliver some of those outcomes.

The draft instrument corrects five principal EU regulations relating to aviation safety, together with several Commission implementing regulations made under them. As Committee members will understand, and as you will appreciate, Mr Evans, these are rather technical matters, but it is important to be clear about them. The most important of the regulations is EU regulation 2018/1139, more commonly known as the EASA—European Aviation Safety Agency—basic regulation, which establishes a comprehensive regulatory framework for aviation safety in the EU. In particular, it provides for the continued establishment of EASA and the adoption by the European Commission of implementing regulations on aviation safety. These implementing regulations also ensure that EU member states can meet their obligations under the wider convention on international civil aviation, known as the Chicago convention.

There are 13 implementing regulations dealing with different aspects of aviation safety that will be corrected by the draft instrument. These cover the design, construction, maintenance and operation of aircraft;

the licensing of flight crew, maintenance engineers and air traffic controllers; the provision of air traffic management and air navigation services; and the design and operation of aerodromes.

The other principal regulations are: regulation 3922/91 on technical harmonisation, which has largely been replaced by the EASA basic regulation, although the flight and duty time limitations established under the regulations still apply to the crews of aeroplanes undertaking air taxi, emergency medical service and single-pilot commercial air transport operations; regulation 2111/2005, which establishes the list of air operators banned from operating to the EU on safety grounds; regulation 996/2010, which sets requirements for the investigation of air accidents and incidents; and regulation 376/2014, which establishes requirements for civil aviation occurrence reporting.

The draft instrument will correct deficiencies in the retained EU regulations that I have listed. It will also correct domestic legislation made to implement aspects of those regulations. These changes should ensure that the statute book continues to function correctly after exit day. Many of the corrections are to make clear that the retained legislation applies only to the UK. For instance, references to

“the territory to which the Treaties apply”

are replaced with “the United Kingdom”. References to “the competent authority” are replaced with references to “the CAA”. Other amendments relate to the relationship between member states. For example, requirements on mutual recognition are deleted, as are requirements for co-operation and the sharing of information.

The draft instrument will also reassign functions that currently fall to EU bodies. The majority of regulatory functions required under the EU regulations are currently undertaken by the competent authorities of the member states. Those include licensing pilots, air traffic controllers and maintenance engineers, certifying the airworthiness of individual aircraft, certifying airports and airport operators, approving production, maintenance and flight training organisations, and approving air traffic management and air navigation service providers.

However, EASA is responsible for a number of functions, which include preparing proposals for new technical requirements and for amendments to existing technical requirements; approving organisations that design aircraft and aircraft engines, and certifying the design of aircraft and engine types; approving organisations based in third countries—for example, flight training and aircraft maintenance organisations; and functions relating to the management and oversight of the aviation safety regulatory system, which include managing the mechanisms for the exchange of information and auditing the application of technical requirements by a member state's competent authorities.

The Civil Aviation Authority will take on those functions, with the exception of those relating to the management of the EU safety regulatory system. While design certification has formally sat with EASA since 2008, it is not a capability that the CAA has totally relinquished, and we are confident that it will be able both to meet the needs of industry and to fulfil the UK's international obligations as the state of design. The CAA is implementing contingency plans to ensure that it will be able to undertake the new functions effectively from exit day. In all, the CAA will need to take on around 59 new staff.

The European Commission also has a number of functions under the EU regulations. Most notably, it has the power to adopt regulations, to adopt or amend technical requirements, and to make limited, specified amendments to the principal EU regulations. Those functions will be assigned to the Secretary of State. The power to amend the retained principal EU regulations is very limited, and is designed to ensure that the regulatory system can adapt to technical developments and changes to the international standards adopted by the International Civil Aviation Organisation. Those powers mainly relate to the annexes to the regulations.

Most notably, the Secretary of State will have the power to amend the essential requirements contained in the annexes to the EASA basic regulation by making regulations subject to the negative resolution procedure. The essential requirements are the high-level safety objectives, which are implemented through the technical requirements. Amendments can be made only where it is necessary to reflect technical, operational or scientific developments or evidence in the relevant technical field to the extent necessary to achieve the objectives of the EASA basic regulation. In addition, the draft instrument revokes four implementing regulations that set out internal procedures for EASA, as they will not be relevant to the UK after EU exit.

Finally, I should stress that none of the amendments changes any of the technical requirements established by the retained EU regulations. All certificates, licences and approvals issued by EASA or EU/European economic area states prior to exit day will remain valid in the UK by virtue of the withdrawal Act if valid in the UK immediately before exit day. The draft instrument provides that such certificates shall be treated as if they were issued by the CAA. With the exception of certificates relating to aircraft design, the instrument also limits the validity of such certificates to two years after exit day, after which CAA-issued certificates will be required.

Sir Oliver Heald (North East Hertfordshire) (Con): I do not want to detain the Committee for long. I have a question on the amendment of regulation 2111/2005, on the banned operator list. At the moment, the banning of an air carrier is based on information from right across the EU, so if an air carrier has performed badly in eastern Europe, it could well be banned. Will we in the UK have access to that sort of information when deciding who should be banned in Britain, or will it be a less full process?

Jesse Norman: It is a fair question. As my right hon. and learned Friend will be aware, we are discussing a context in which we do not have a deal with the EU, so this is a contingency that is not covered by the main case. Even in this contingency, however, there is every reason to think that the very extensive information sharing that exists would continue, even if only informally, for a period until the necessary protocols could be retained. He will know that the CAA was itself one of the progenitors of EASA, and there are extremely close working relationships between the two sides.

The restriction I have described is necessary, as the CAA needs to issue the safety certificates to have full oversight of aviation safety in the UK, in accordance with our obligations under the Chicago convention. We are working to achieve a positive deal with the EU, but

this instrument is an essential element of our contingency planning for a no-deal exit; it will enter into force on exit day only under those circumstances. The instrument will ensure, in the event of a no-deal EU exit, that the UK's aviation safety regulatory regime continues to work effectively and the aviation industry has clarity about the regulatory framework in which it would operate. I commend this instrument to the Committee.

2.40 pm

Karl Turner (Kingston upon Hull East) (Lab): It is always an absolute pleasure to see you in the Chair, Mr Evans. I will be relatively brief. As ever, I will be grateful if the Minister could address some brief points.

As the Minister intimated, aviation regulations are part of the many aspects of EU law that will fall into UK law under the Government's EU withdrawal Act. The draft regulations relate to the passing of EU Commission powers exercised by EASA to the Secretary of State for Transport, to be exercised by the Civil Aviation Authority. As he said, none of the changes will change the technical requirements and standards established by the original legislation.

Having consulted with many aviation stakeholders, the shadow Front-Bench team has received the message that the draft regulations are necessary. For that reason, the Opposition will not oppose them, but I wonder whether the Minister could answer a few points. Associate membership of EASA was something the Prime Minister set out in her Lancaster House speech, so can he explain why this seems to no longer be on the table? Does he believe that the UK will lose influence in terms of aviation safety regulations and rule making? That appears to be a real possibility.

Because of the ongoing chaos, the Government ramped up their no-deal planning rhetoric recently. However, we welcome today's news that the EU is to allow airlines to fly point to point between London and European cities—the most basic form of landing rights—and that aviation safety certificates are to be temporarily extended. Will the Minister tell us what steps are being taken to mitigate any potential problems for our aviation industry that a no-deal Brexit could cause?

We are now only 100 days away from Brexit. Will the Minister confirm how many more of these aviation regulations are required? Does he think that there is enough time between now and March to put on to the statute book all the regulations that might be required? The aviation sector has been asking for reassurance and clarity for two years. With only 100 days to go, it still seeks that clarification. It would be good if the Minister could give the industry some assurances today.

Before I finish, on behalf of the Opposition, I wish a very happy Christmas to you and your advisers, Mr Evans, to the civil servants and, indeed, to Government Back-Benchers.

2.43 pm

Martin Docherty-Hughes (West Dunbartonshire) (SNP): I wish a merry Christmas to you, Mr Evans, and to everyone else in the room. Briefly, and on top of what the hon. Member for Kingston upon Hull East said, the Scottish National party will not oppose the draft regulations. Anyone who opposes a move to maintain safety standards after no deal frankly undervalues their importance.

[*Martin Docherty-Hughes*]

While I might not agree with no deal, I think we all agree on the criticality of safety. Given that we are discussing the draft regulations on the day of the commemoration of Lockerbie, it is important that we recognise the many issues that the aviation industry faces.

Will the Minister give some clear assurances about how he will lock in the high standards that we already expect in civil aviation certification if no deal takes places? As we have heard, the CAA has been a major driver of those safety standards across the whole European Union, which we are still a member at the moment. Articles 60 and 61 of the UK-EU political declaration relate to aviation, with article 60 covering market access, investment and so on. Article 61 says:

“The Parties should make further arrangements to enable cooperation”.

Article 24, on regulatory aspects, states that the parties “will also explore the possibility of cooperation of United Kingdom authorities with Union agencies such as the European Medicines Agency (EMA), the European Chemicals Agency (ECHA), and the European Aviation Safety Agency (EASA).”

Specifically, as the CAA assumes these new rules and regulations outwith the European Union, if that is what is to progress, will the Minister give any consideration to strengthening its independence as a certifier of aviation safety, given that it is funded by the industry itself?

2.45 pm

Jesse Norman: I thank the hon. Members for Kingston upon Hull East and for West Dunbartonshire for their questions. I know it was a temporary slip of the tongue that the hon. Member for Kingston upon Hull East failed to wish a happy Christmas to those on the Government Front Bench, but I know, as an old friend, that he did so, and I am happy to take that in the spirit in which it was not intended. I thank both hon. Gentlemen for the support that the Labour and Scottish National parties are giving this important piece of implementing contingency legislation.

The hon. Member for Kingston upon Hull East raised the question of associate membership of EASA. I remind him that we are making plans against a contingency; there are continuing conversations between the UK and the EU on the relationship with EASA, and we are hopeful that those will be satisfactorily concluded. It is important to say that nothing has specifically changed from that point of view.

Will the UK lose influence? I think that is unlikely; the form of our direct relationship to EASA itself may change, but the UK remains a very large international and national market for aviation services and a leader in aviation technologies, so I expect its influence to remain very substantial.

The hon. Gentleman welcomed the news that has come today from the EU about basic landing rights, and he is right to do so. It reinforces the picture that he, I and other colleagues have discussed in previous Committee meetings about the generally positive trajectory of discussions. We heard the announcements that the European Commission made on 13 November about periods of visa-free staying in the EU for UK nationals, which of

course will be reflected on both sides. The Committee will also recall that, at that point, the EU made it clear that it was comfortable with the overflying of EU states, which is important.

There is a positive trajectory here. It is important to say that we are looking at the proposals with a degree of caution, because they are not yet fully implemented; they are proposals from the Commission, and it is not absolutely clear that member states will not have their own ideas about these things. Possibly they will be more liberal and open than the Commission anticipates.

The hon. Gentleman asked how many more SIs there will be. We have four more SIs remaining in the area of aviation. We—and the Government, looking across the piece—do not anticipate any interruption to the flow of secondary legislation in this area.

The hon. Gentleman mentioned the industry’s concerns about the lack of clarity, and we fully recognise that this inevitably complex process has a lack of clarity associated with it. I hope he and the Committee will understand that, between the technical notices, the withdrawal Act and the various other commitments the Government have put in the public eye, as well as the implementing legislation, we have sought to reduce any obscurity and to create as much clarity and stability as possible for the sector.

I am also grateful to the hon. Member for West Dunbartonshire for his questions and, as I have said, for the SNP’s support. I can give him a very strong assurance that, as we have done in this contingency arrangement, we will not really be carrying over the standards of EASA, many of which were, of course, originally derived from CAA standards and are the product of UK regulation over many years, but we see no reason why there may not, in time, be scope to lead a conversation about improving standards across the European continent, whatever the status of the country.

The hon. Gentleman’s point about strengthening the independence of the CAA is well made. Of course, it is an independent body, funded by the industry; it has been supported a little in the past year by some taxpayer money to deal with contingency planning, but his point is well recognised. As an expert agency, it is important that it remains appropriately independent of any political influence.

To wind up, we remain confident that we will reach an agreement with the EU, but it is important that we, as a Government, prepare for the unlikely outcome that we may leave with no deal. This instrument is essential to ensure that a crucial part of the regulatory framework for civil aviation continues to work effectively from exit day in this country, and, as hon. Members have mentioned today, that we have a high level of safety, irrespective of the outcome of negotiations. I hope the Committee has found this sitting useful and will join me in supporting the regulations.

The Chair: I should hate to be left out, so may I wish everyone present and those watching via the ether a very merry Christmas and a happy 2019?

Question put and agreed to.

2.51 pm

Committee rose.

