

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Fourteenth Delegated Legislation Committee

DRAFT AIR SERVICES (COMPETITION)  
(AMENDMENT) (EU EXIT) REGULATIONS 2019

*Wednesday 23 January 2019*

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**Sunday 27 January 2019**

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

*Chair:* SIR HENRY BELLINGHAM

Abrahams, Debbie (*Oldham East and Saddleworth*)  
(Lab)

† Afolami, Bim (*Hitchin and Harpenden*) (Con)

† Beresford, Sir Paul (*Mole Valley*) (Con)

† Cunningham, Mr Jim (*Coventry South*) (Lab)

Eagle, Ms Angela (*Wallasey*) (Lab)

† Foxcroft, Vicky (*Lewisham, Deptford*) (Lab)

† Fysh, Mr Marcus (*Yeovil*) (Con)

† George, Ruth (*High Peak*) (Lab)

† Hendry, Drew (*Inverness, Nairn, Badenoch and Strathspey*) (SNP)

† Johnson, Dr Caroline (*Sleaford and North Hykeham*) (Con)

† Jones, Graham P. (*Hyndburn*) (Lab)

† Mercer, Johnny (*Plymouth, Moor View*) (Con)

† Norman, Jesse (*Minister of State, Department for Transport*)

Percy, Andrew (*Brigg and Goole*) (Con)

† Pursglove, Tom (*Corby*) (Con)

† Stewart, Iain (*Milton Keynes South*) (Con)

† Turner, Karl (*Kingston upon Hull East*) (Lab)

Matthew Congreve, Mariam Keating, *Committee Clerks*

† **attended the Committee**

# Fourteenth Delegated Legislation Committee

Wednesday 23 January 2019

[SIR HENRY BELLINGHAM *in the Chair*]

## Draft Air Services (Competition) (Amendment) (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 Air Services (Competition) (Amendment) (EU Exit) Regulations 2019.

It is a pleasure to serve under your chairmanship, Sir Henry. The draft instrument will be made under the powers conferred by the European Union (Withdrawal) Act 2018 and will apply if the UK leaves the European Union in March without a deal. Although we strongly believe that leaving with a deal is the best outcome for the UK and the EU, it is the Government's duty to make reasonable preparations for all scenarios. That includes ensuring that there is a functioning statute book, irrespective of the outcome of negotiations. The regulations are of a very minor and technical nature.

The effect of section 3 of the 2018 Act is that any direct EU legislation in force and applicable on exit day will automatically become part of the UK's statute book. That includes Regulation (EC) 868/2004, which is intended to provide protection for Community air carriers against injury caused by subsidisation and unfair pricing practices relating to air services between EU member states and third countries. However, as Members may be aware, that EU regulation has never been used and is currently in the process of being replaced. The instrument we are considering today therefore simply makes the corrections necessary so that the version of Regulation (EC) 868/2004 brought into UK law by the 2018 Act is in principle legally operable after exit day.

The EU regulation sets out the process and requirements for imposing redressive measures—in practice, fines or tariffs—where it has been demonstrated that subsidies or unfair pricing practices by third-country bodies and air carriers on routes between EU member states and third countries have caused injury to the EU aviation industry.

Turning first to subsidies, under the EU regulation, subsidies are deemed to exist where a Government or regional or other public body of a third country has transferred funds, forgone revenue or provided services or goods beyond basic infrastructure. The same applies if that Government or regional or public body has made payments to a funding mechanism or has instructed a private body to do so.

Turning next to unfair pricing practices, the EU regulation sets out that such practices are considered to exist in relation to specific routes where non-Community carriers benefit from a non-commercial advantage and charge air fares that are sufficiently below those offered by competing Community air carriers as to cause injury. The provisions in the regulation for imposing redressive measures apply to unfair pricing practices only where

these go beyond normal competitive pricing practices. The regulation sets out factors that should be considered when comparing airfares, which include: the actual price at which tickets are offered for sale; the number of tickets available at the allegedly unfair price; any restrictions and conditions attached to these tickets; the level of service provided by all carriers operating the air service in question; and the actual costs of providing the services.

Where an investigation has determined that the subsidies or unfair pricing practices in question have caused injury to the EU aviation industry, the EU regulation sets out that redressive measures can be imposed. These measures can be either provisional, for a maximum period of six months, or definitive. The EU regulation envisages that any redressive measures would be imposed by means of a regulation and enforced by member states.

The level of the measures should be set so that they offset the benefit from which the non-Community carrier has benefited and should be less than the total amount of any subsidies. Any measures imposed to offset unfair pricing practices should not exceed the difference between the fares charged by the non-Community carrier and the fares offered by the Community carrier. Definitive measures should remain in force only for the length of time necessary to offset the subsidies or unfair pricing practices that are causing injury.

The draft instrument makes only minor corrections to the retained EU Regulation (EC) 868/2004 to ensure that the regulation continues to be legally operable after exit day. The substantive requirements for assessing whether there has been subsidisation, unfair pricing practices or injury to industry remain exactly the same. The changes made by the instrument are intended primarily to ensure that the scope of the retained EU regulation is correct once the UK has left the EU. Amendments made by the instrument include, for example, the substitution of references to "Community" with references to the "United Kingdom".

The draft instrument has a number of effects. The retained regulation applies where there has been injury to the UK aviation industry instead of the Community industry. Instead of applying where there are unfair pricing practices by non-community air carriers on certain routes to and from the EU, the retained regulation will apply where non-United Kingdom air carriers have engaged in unfair pricing practices on certain routes to or from the UK. Similar changes apply in relation to the subsidisation provisions in the retained EU regulation. The instrument also transfers functions currently carried out by EU institutions to appropriate bodies in the UK. The European Commission, for example, is currently tasked with carrying out investigations covering subsidisation and/or unfair pricing practices. The draft instrument transfers that function to the Civil Aviation Authority.

Finally, the draft instrument transfers the function of imposing provisional or definitive redressive measures. As the EU regulation sets out that that should be done using a regulation, the draft instrument also sets out that any provisional or definitive redressive measures would be imposed by the Secretary of State through regulations. I want to make it clear that we do not expect to use those powers, but if we do, in order to allow parliamentary scrutiny and debate, any such regulations must follow the affirmative resolution process and be approved by both Houses of Parliament.

We continue to work hard to achieve a positive future relationship with the EU and to ensure that the UK's aviation framework in law remains operable in a no-deal scenario. I commend the regulations to the Committee.

2.35 pm

**Karl Turner** (Kingston upon Hull East) (Lab): It is always a pleasure to serve under your chairmanship, Sir Henry. As the Minister said, the draft instrument will retain Regulation (EC) 868/2004 in UK domestic law. It permits the Civil Aviation Authority to initiate proceedings where there is evidence of anti-competitive practices, by countries other than the UK, that adversely

impact on the United Kingdom. Although, as the Minister said, that EU regulation has never been used, we recognise its importance and support the draft statutory instrument.

2.36 pm

**Jesse Norman:** I am very grateful to the Opposition for their support for the instrument. I am very glad that we can bring this small but important change into law with their support.

*Question put and agreed to.*

2.37 pm

*Committee rose.*

