

EXPLANATORY MEMORANDUM TO
THE CIVIL AVIATION (ALLOCATION OF SCARCE CAPACITY) REGULATIONS
2007

2007 No. 3556

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1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations make provision to comply with article 5 of Regulation 847/2004 of the European Parliament and Council on the negotiation and implementation of air service agreements between Member States and third countries.

2.2 Article 5 provides that a Member State shall ensure a distribution of traffic rights among eligible Community air carriers on the basis of a non-discriminatory and transparent procedure.

2.3 These Regulations set out the regime for distributing traffic rights amongst interested airlines where scarce capacity exists (i.e. where the traffic rights granted to the UK by a third country are insufficient to enable all the carriers who would wish to operate an air service to a third country to make available all the air services they would wish to provide) .

2.4 They replace the current arrangements for allocating scarce traffic rights amongst UK air carriers which are operated under the Civil Aviation Act 1982 and the Civil Aviation Authority Regulations 1991.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 These Regulations are made under powers conferred by sections 7(1) and (2) and 102(2)(b) of, and parts II and III of Schedule 13 to, the Civil Aviation Act 1982 and section 2(2) of the European Communities Act 1972. The Secretary of State is a Minister designated for the purposes of that section in relation to measures relating to air transport.

5. Extent

5.1 This instrument applies to the United Kingdom.

6. European Convention on Human Rights

6.1 This instrument is subject to negative procedure and does not amend primary legislation. Therefore, no statement as to compatibility has been made.

7. Policy background

7.1 The need to amend the existing arrangements derives from a 2002 European Court of Justice judgement which determined that Article 43 of the EC Treaty requires that rights to operate air services under bilateral treaties should be available to all Community air carriers and not just those owned and controlled by UK nationals or registered in the UK. Regulation 847/2004 of the European Parliament and Council was introduced in response to that judgement.

7.2 The existing arrangements for allocating scarce capacity are implemented through the Civil Aviation Authority (CAA) conditioning UK airlines' licences to reflect the outcome of hearings. Because this possibility will not be available to the CAA in the case of any airlines registered in another member state, it has been necessary to develop a new regime of "scarce capacity allocation certificates" that will be awarded by the CAA to reflect the outcome of the allocation process.

7.3 The opportunity has also been taken in these regulations to consolidate and update the existing provisions relating to the CAA's duties and associated procedures in carrying out this function.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared because no impact on the private or voluntary sector is foreseen.

9. Contact

9.1 Phil Dykins at the Department for Transport (tel: 020 7944-4540 or email: phil.dykins@dft.gsi.gov.uk) is the first point of contact.