

EXPLANATORY MEMORANDUM TO
THE CIVIL AVIATION ACT 2012 (REGULATION OF OPERATORS OF
DOMINANT AIRPORTS) (CONSEQUENTIAL AMENDMENTS)
REGULATIONS 2013

2013 No. 610

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

2. Purpose of the instrument

2.1 This instrument makes the necessary amendments and revocations to items of legislation relating to the economic regulation of airports that arise as a consequence of the Civil Aviation Act 2012 coming into force.

2.2 These Regulations make amendments to the Airports Act 1986, the Airports (Groundhandling) Regulations 1997, the Enterprise Act 2002 (Super-complaints to Regulators) Order 2003, the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003, and the Utilities Contract Regulation 2006, the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 and the Airport Charges Regulations 2011,

2.3 These Regulations expressly revoke the Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986 and the Civil Aviation Authority (Economic Regulation of Airports) (Northern Ireland) Regulations 1995 which are based on powers deriving from the Civil Aviation Act 1982, Airports Act 1986, and others.

2.4 The Economic Regulation of Airports (Designation) Order 1986 (S.I. 1986/1502), the Economic Regulation of Airports (Expenses of the Monopolies and Mergers Commission) Regulations 1997 (S.I. 1997/403) and the Economic Regulation of Airports (Designation) Order (Amendment) Order 2008 (S.I. 2008/2702) derive from powers wholly within Part IV of the Airports Act 1986. As such, these instruments are impliedly revoked when those powers under Part IV of the Airports Act 1986 are repealed, so there is no need to separately revoke them.

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

3.1 None

4. Legislative Context

4.1 The commencement of Part 1 of the Civil Aviation Act 2012 and the repeal of Part IV the Airports Act 1986 (as given effect to by section 76(1) of

4.2 The power to draft this statutory instrument is provided in section 108 of the Civil Aviation Act 2012, primarily subsections (1) and (2). This power allows the Secretary of State to legislate by making regulations in order to implement the changes that necessarily arise as a consequence of the provisions of the Act. Those changes can include the amendment, repeal, revocation or other modification of the affected legislation.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Simon Burns, Minister of State at the Department for Transport, has made the following statement regarding Human Rights:

In my view the provisions of the Civil Aviation Act 2012 (Economic Regulation of Airports) (Consequential Amendments) Regulations 2013 are compatible with the Convention rights.

7. Policy background

7.1 Part 1 of the Civil Aviation Act 2012 introduces a new framework for the regulation of operators of dominant airports, replacing the framework as set out under Part IV of the Airports Act 1986 and the Airports (Northern Ireland) Order 1994. The framework under the 1986 Act was deemed to be out of date, inflexible and bureaucratic, providing only for fixed five year price controls at airports deemed to have substantial market power. Part 1 of the Civil Aviation Act 2012 introduces a flexible licensing regime which will facilitate targeted and proportionate regulation and gives the expert regulator, the Civil Aviation Authority, the responsibility for determining which airport operators should be subject to regulation.

7.2 Many of the consequential amendments arising from the Civil Aviation Act 2012 have been provided for in section 76(1), (2) and (4) of, and Schedule 9 to the Act. This instrument provides for additional matters not dealt with in the Act.

7.3 A separate Commencement Statutory Instrument sets out the dates on which certain provisions within the Airports Act 1986 are to be repealed and the Airports (Northern Ireland) Order 1994 are to be revoked, and the dates on which certain provisions in the Civil Aviation Act 2012 come into force.

7.4 Consequential amendments to other items of legislation are required to reflect these changes. The amendments in Schedule 1 to the instrument come into force on the day the instrument comes into force. The amendments in Schedule 2 to the instrument come into force on 1 April 2014. These

Amendments

The Airports Act 1986

7.5 Amendments to the Airports Act 1986 are required in order to replace references to Part IV of that Act in sections 30(5) and 69(5) with appropriate references to the relevant parts of the Civil Aviation Act 2012 and Airports Act 1986.

The Airports (Groundhandling) Regulations 1997

7.6 Regulation 27(2) of the 1997 Regulations provides that “*nothing in Part IV of neither the Airports Act 1986, nor anything done under it shall prejudice or affect the operation of the regulations*”. Groundhandling services are included in the definition of “airport operation services” under section 68 of the Civil Aviation Act 2012. These regulations relate to access to the groundhandling market at Community airports whereas the Civil Aviation Act 2012 is not intended to cover the same ground. As the old regime is being phased out rather than instantly removed, both the old and new regimes need to be covered in the interim period. Therefore, a reference to Part 1 of the Civil Aviation Act 2012 is included from April 2013. Once Part IV of the Airports Act 1986 is removed completely, the references to the Airports Act 1986 will be removed. Reference to the Airports (Northern Ireland) Order 1994 will not be needed from April 2013.

Enterprise Act 2002 (Super-complaints to Regulators) Order 2003

7.7 Reference to the Civil Aviation Act 2012 is to be included in the Schedule to this Order as a consequence of the Civil Aviation Authority being granted concurrent competition powers with the Office of Fair Trading in Chapter 2 of the Civil Aviation Act 2012.

The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003

7.8 Section 54 of the Airports Act 1986 will be repealed and there is no need to replicate its provisions as amended by Schedule 7 of the Enterprise Act 2002 and the 2003 Order. Furthermore, Part IV of the Airports (Northern Ireland) Order 1994 will be revoked. Consequently, paragraphs 5 (relating to the Airports Act 1986) and 13 (relating to the Northern Ireland Order) of Schedule 4 to the 2003 Order are to be omitted.

The Utilities Contracts Regulations 2006

7.9 We propose to omit the entries referring to the Airports Act 1986 and the Airports (Northern Ireland) Order 1994 in Part O of these Regulations. As a consequence of moving to the new regulatory regime, simply replacing these references with references to Part 1 of the 2012 Act would not be sufficient as almost all private airports would be removed from the procurement regime. However, if an airport operator is shown to have special or exclusive rights, i.e. it is a “relevant person” then that operators would be subject to the procurement regime.

The Legislative and Regulatory Reform (Regulatory Functions) Order 2007

7.10 In order to maintain the exclusion of airport economic regulation from the 2007 Order, the reference to Part IV of the Airports Act 1986 needs to be replaced with a reference to Part 1 of the Civil Aviation Act 2012. A reference to Part 1 of the Civil Aviation Act 2012 will added to cover the interim period, and once Part IV is repealed completely, the reference to the Airports Act 1986 will be removed leaving only the reference to the Civil Aviation Act 2012.

Airport Charges Regulations 2011

7.11 When Part IV of the Airports Act 1986 is repealed and Part IV of the Airports (Northern Ireland) Order 1994 is revoked the following amendments will be needed to the Airport Charges Regulations 2011:

7.11.1 Parts 7 and 8 of the Airport Charges Regulations 2011 concerning the designation of airports under those Part IVs will need to be revoked; and

7.11.2 In regulation 32, references to Part IV of the Airports (Northern Ireland) Order 1994 will be removed as Northern Ireland will follow the same scheme for the economic regulation of airport as set out in Part I of the Civil Aviation Act 2012, and references to parts of the Airports Act 1986 will be removed as similar reporting obligation are dealt with under Part I of the Civil Aviation Act 2012.

Revocations

The Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986

7.12 These Regulations set out the procedures the Civil Aviation Authority must follow in exercising its functions under Part IV of the Airports Act 1986. Therefore, they will need to be revoked when Part IV of the Airports Act 1986 is revoked.

The Civil Aviation Authority (Economic Regulation of Airports) (Northern Ireland) Regulation 1995

7.13 These Regulations relate to the function of the Civil Aviation Authority conferred by Part IV of the Airports (Northern Ireland) Order 1994. Therefore, these Regulations will need to be revoked when Part IV of that Order is revoked.

8. Consultation outcome

8.1 There has been no public consultation on this instrument. This is because the purpose of the instrument is to make consequential amendments to reflect the commencement of airport economic regulation provisions the Civil Aviation Act 2012. The reforms to airport economic regulation in the Civil Aviation Act were subject to formal consultation ahead of introduction and stakeholders were engaged throughout the passage of the legislation. Stakeholders were also consulted on the Commencement Order bringing into force the airport economic regulation provisions in the Civil Aviation Act 2012.

8.2 Regarding amendments to legislation which is not the responsibility of the Department for Transport, we sought views from the Department for Business Innovation and Skills, the Cabinet Office, the Scottish Government, the Northern Ireland administration, the Competition Commission and the Civil Aviation Authority. The provisions included in these consequential amendments Regulations are the outcome of those consultations.

9. Guidance

9.1 The Department for Transport does not plan to issue guidance on this instrument. The revocations and amendments made by these Regulations are consequential to the repeal of Part IV of the Airports Act 1986, the revocation of Part IV of the Airports (Northern Ireland) Order 1994, and the commencement of Part 1 of the Civil Aviation Act 2012. Throughout the passage of the Civil Aviation Act 2012 through Parliament stakeholders were made aware that consequential amendments would be required and given effect to by regulations.

10. Impact

10.1 The impact on business, charities or voluntary bodies of the airport economic regulation reforms is set out in the Impact Assessment accompanying the Civil Aviation Act 2012. There are no impacts on business, charities and voluntary bodies directly associated with the consequential amendments that this instrument makes

10.2 The impact on the public sector of the airport economic regulation reforms is set out in the Impact Assessment accompanying the Civil Aviation Act 2012. There are no impacts on the public sector directly associated with the consequential amendments that this instrument makes

10.3 An Impact Assessment has not been prepared for this instrument. The Impact Assessment of the reforms to airport economic regulation

accompanying the primary legislation can be found here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/86150/aer-impact-assessment.pdf

11. Regulating small business

11.1 The legislation applies to small business.

11.2 This instrument alone has no direct impact on small business. The impact on small business of the reforms to airport economic regulation set out in the Civil Aviation Act 2012 is assessed in the small firms specific impact test in set out on page 66 of the Impact Assessment accompanying the Act.

11.3 There are currently only three airports subject to price control regulation, Heathrow, Gatwick and Stansted. None of these airport operators could be classified as small businesses. There is a theoretical possibility that at some point in the future an airport which is classified as a small business could satisfy the relevant criteria and therefore be subject to economic regulation. However, the existence of the criterion “for users of air transport services, the benefits of regulating the relevant operator by means of a licence are likely to outweigh the adverse effects” should ensure that regulation is only ever imposed on any business (including a small business) if the benefits of regulation clearly exceed the costs. In practice, the existence of this criterion will make it far less likely that a small airport will be subject to regulation. As a result, the Department does not believe the reforms should have any material impact on small businesses.

12. Monitoring & review

12.1 There is no intention to review this instrument as a stand alone item as its purpose is to give effect to consequential amendments as a result of the Civil Aviation Act 2012. The impact of the reforms to airport economic regulation in the Civil Aviation Act 2012 is set out in the Impact Assessment accompanying the primary legislation and will be reviewed in April 2019.

13. Contact

Laura Marquis at the Department for Transport (tel: 020 7944 6892 or email: laura.marquis@dft.gsi.gov.uk) can answer any queries regarding the instrument.