

EXPLANATORY MEMORANDUM TO
THE AIRPORTS (NOISE-RELATED OPERATING RESTRICTIONS) (ENGLAND
AND WALES) REGULATIONS 2018

2018 No. 785

1. Introduction

- 1.1 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 statutory instrument ensures the Government fulfils its obligation under EU Regulation No 598/2014 (“the Regulation”) to designate a competent authority in relation to England and Wales. The Regulation itself establishes the rules and procedures on the introduction of noise-related operating restrictions at airports within a “Balanced Approach” to noise management, a practice promoted by the International Civil Aviation Organisation.
- 2.2 The instrument provides for the relevant planning authority to be the competent authority for ensuring application of the balanced approach and compliance with the procedure for adopting operating restrictions, when determining a planning matter in relation to a relevant airport within their area. Depending on the decision to be taken, this would either be the local planning authority, the Secretary of State, or the Welsh Ministers. The instrument also provides for the local planning authority to be the competent authority for monitoring compliance with restrictions imposed by an order granting development consent, except as otherwise notified in writing by the Secretary of State. In any other case the Secretary of State will be the competent authority.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument implements the obligation to appoint a competent authority for England and Wales under EU Regulation No 598/2014 “on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports within a Balanced Approach and repealing Directive 2002/30/EC”.
- 6.2 Under the Regulation, which came in effect on 13th June 2016, the Government is required to appoint competent authorities to ensure that the correct rules and procedures are followed when noise-related operating restrictions are being considered at airports with more than 50,000 civil aircraft movements per year¹.
- 6.3 The instrument provides for the local planning authority, the Secretary of State, or the Welsh Ministers, as the case may be, to be the competent authority when any operating restrictions form part of any planning matter which is being determined by them under the Town and Country Planning Act 1990. The relevant local planning authority will also be the competent authority for monitoring compliance with any restrictions imposed by an order granting development consent under the Planning Act 2008, except when otherwise notified in writing by the Secretary of State (in which case the Secretary of State will be the competent authority). In any other case, the Secretary of State will be the competent authority.
- 6.4 The instrument will revoke, and together with the Regulation will replace, in relation to England and Wales the Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, which implemented EU Directive 2002/30/EC on the introduction of noise-related operating restrictions at Community airports (which was revoked by the Regulation).
- 6.5 There have been no specific undertakings given in previous debates, parliamentary questions, or committee appearances on this particular topic.
- 6.6 The instrument does not pave the way for future instruments.

7. Policy background

What is being done and why?

- 7.1 The UK is required to appoint a competent authority to ensure that the rules as set out in the Regulation are followed when the introduction of operating restrictions is being considered at major airports. The competent authority would be required, amongst other things, to ensure that the “Balanced Approach”, as promoted by the International Civil Aviation Organisation, is applied, and noise problems are addressed in the most cost effective way.
- 7.2 The balanced approach consists of identifying noise problems at a specific airport and giving consideration to various measures that could be available to reduce noise. There are four principal elements to the balanced approach, namely, the reduction of noise at source, land-use planning and management, noise abatement operational procedures, and operating restrictions. The role of the competent authority is to ensure

¹ Definitions as stated in the Regulation: ‘aircraft’ means fixed-wing aircraft with a maximum certificated take-off mass of 34 000 kg or more, or with a certificated maximum internal accommodation for the aircraft type in question consisting of 19 passenger seats or more, excluding any seats for crew only; airport’ means an airport which has more than 50 000 civil aircraft movements per calendar year (a movement being a take-off or landing), on the basis of the average number of movements in the last three calendar years before the last assessment of the noise situation at the airport.

that the balanced approach is applied when operating restrictions are considered or implemented, that any operating restrictions are cost effective, that proper consultation has taken place, and that they are only adopted after consideration of other measures to address the noise problem.

- 7.3 The instrument provides for the Secretary of State to be the competent authority for strategically important development consent applications, such as any application for development consent for the proposed third runway at Heathrow, as well as any planning applications called-in by, and planning appeals to, the Secretary of State under the Town and Country Planning Act 1990. Where the planning application is called-in by, or the appeal is made to, the Welsh Ministers they will be the competent authority. The Secretary of State would also be the competent authority for any restrictions brought about outside the planning process, for instance, those introduced by an airport as part of their Noise Action Plan².
- 7.4 For other planning-related operating restrictions considered under the Town and Country Planning Act 1990, the local planning authority determining a planning application lodged by, or on behalf of, a relevant airport will be the competent authority. The local authority would also be the competent authority in respect of monitoring compliance with any operating restrictions imposed under an order granting development consent under the Planning Act 2008 (for nationally significant infrastructure projects or in relation to projects of national significance), except when otherwise notified in writing by the Secretary of State (with the Secretary of State becoming the competent authority).
- 7.5 The policy objective of the instrument allows for operating restrictions to be developed and decided upon locally as part of the planning process, and for central Government's involvement to be focussed on where there are nationally significant decisions to be made, or when local decisions are called-in or appealed. The policy aligns the procedure with the existing planning process.
- 7.6 There are currently nine local authorities in England and Wales that have airports within their boundaries that meet the criteria under the Regulation, namely the local authorities to, Heathrow, Gatwick, Stansted, Luton, Manchester, Birmingham, London City, East Midlands, and Bristol Airports. Other airports will come within the scope of the Regulation if their civil aircraft movements in a calendar year (averaged out over a three year period) exceed 50,000.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union and does not trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument does not amend any other instrument and consolidation is therefore not an issue.

² Under the EU Noise Directive 2002/49/EU (as implemented by the Environmental Noise (England) Regulations 2006, in relation to England, and the Environmental Noise (Wales) Regulations 2006, in relation to Wales), Airports with more than 50,000 civilian aircraft movements per year are required to give the public information about the level of noise in the surrounding environment, and to assess and manage environmental noise. This includes a requirement to produce annual noise map and five yearly noise action plans.

10. Consultation outcome

- 10.1 This policy was consulted upon in the Government's "U.K Airspace Policy: A framework for balanced decisions on the design and use of airspace". This was a wide ranging consultation that set out proposals for modernising the UK's airspace, establishing an Independent Commission on Civil Aviation Noise (ICCAN), and introducing new noise metrics to improve transparency to communities. An element of this consultation also set out the policy proposals for implementing the Regulation.
- 10.2 The consultation closed on 25th May 2017 and the Department for Transport received 794 responses in total. The proposals relating to this particular policy received 366 responses, the majority of whom were supportive of the proposal that operating restrictions should be considered locally as part of the planning process when a development takes place. Most respondents also welcomed the proposal to make the Secretary of State the competent authority in relation to planning applications that are called in, planning decisions that are appealed, and operating restrictions imposed under an order granting development consent for nationally significant projects.
- 10.3 In its consultation, the Government initially proposed that the Civil Aviation Authority (CAA) be the competent authority for when restrictions are brought about outside the planning process. The Government listened to respondent's concerns about the appointment of the CAA to the role of competent authority in these circumstances, and decided instead that the Secretary of State will act as competent authority for any such restrictions. This will address two concerns raised by respondents, firstly, it will avoid over complicating the system, and secondly, it will allow ICCAN to play a role in the process by giving advice to the Secretary of State.
- 10.4 The Government published its policy decisions alongside the relevant impact assessments on 24th October 2017³.
- 10.5 Although the policy area is not devolved in relation to Wales, discussions were also held with the Welsh Government who are content with the proposals in relation to Wales.

11. Guidance

- 11.1 Guidance on the Regulation and the process for deciding on operating restrictions will be published on the Government's website during summer 2018.

12. Impact

- 12.1 Impacts to business will be minimal (c. £65) and limited to relevant airports familiarising themselves with understanding who the competent authority is. There will be no impact on charities or voluntary bodies.
- 12.2 As the instrument broadly aligns the process with existing planning requirements, the impacts on local authorities are also expected to be minimal (c. £10,000), and again focusing on familiarisation costs
- 12.3 There is no, or no significant, impact on the public sector.
- 12.4 A local authorities burdens assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

³ <https://www.gov.uk/government/consultations/reforming-policy-on-the-design-and-use-of-uk-airspace>

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 As the net impacts on business are less than £5m equivalent annual net direct cost to business, a post implementation review is not proposed. The Regulations therefore do not include a statutory review clause. The Parliamentary Under Secretary of State for Transport, Baroness Sugg, has made the following statement:

“Having had regard to sections 28 to 32 of the Small Business Enterprise and Employment Act 2015 and the Statutory Review Guidance for Departments published under section 31(3) of that Act, I have decided that it is not appropriate to make provision for review in this instrument because it would be disproportionate taking into account the economic impact of the regulatory provision on the qualifying activity. This is because of the limited size of the economic impact, which is only familiarisation costs for major airports.”

15. Contact

- 15.1 Jonathan Friel, Senior Policy Advisor, at the Department for Transport Tel: 07469 441 832 or email: jonathan.friel@dft.gsi.gov.uk can answer any queries regarding the instrument.
- 15.2 Sarah Bishop, Deputy Director for the Aviation Policy Directorate at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Sugg, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.