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Issues for aviation of a “no deal” Brexit

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Introduction

On 24th September the Government issued new information on implications for UK aviation of a “no deal” Brexit next March.

This briefing provides a provisional assessment of possible issues for Prospect members in the sector, based on information so far published or provided by employers and others.

We will continue to update this briefing as the situation becomes clearer, and will be glad to hear from members or others with information or experiences that may be relevant.

Background – the state of the Brexit negotiations

The Government's negotiations with the European Commission are entering a critical phase.

Both sides say they are working to finalise a "Withdrawal Agreement" that will secure a "transitional period" to December 2020 and provide guarantees on issues such as the status of current expatriates and the future of the Irish border, as well as some kind of broad agreement on the UK's future relationship with the EU.

However if these ongoing negotiations do not produce a result in the next few months then the UK will cease to be a member of the European Union at the end of March 2019 without any of the "transitional" arrangements designed to provide some security and continuity to citizens, businesses and other organisations while the longer-term relationship is settled.

Depending on what preparations are in place, this "no deal" scenario could have disruptive effects in some sectors, including aviation.

Impact on aviation of a "no deal" outcome on aviation

On 24th September the UK Government has published three "technical papers" outlining implications of a "no deal" scenario on aviation safety,¹ aviation security,² and flights to and from the UK,³ and offering some guidance to affected stakeholders. The Civil Aviation Authority has also published guidance in line with this information.⁴

Most UK-based airlines have expressed confidence that Brexit, including a "no deal" outcome, would have little impact on their operations or business. Many, including Flybe, BA and Virgin would see little impact due to the routes they operate and the fact that most or all of their aircraft are UK-licensed. Others such as Easyjet have also taken steps needed to ensure they can continue to operate as currently in the event of a "no deal" scenario.

There are three key aviation-specific issues that some Prospect members working in aviation may have questions about:

1. UK-licensed airlines will no longer have an automatic right to fly to and from EU member states, nor will airlines registered in the EU have such rights regarding the UK.
2. Licenses, approvals and certificates issued by the UK Civil Aviation Authority to individuals and organisations will no longer have validity with regard to EU-registered aircraft.
3. The increased workload that would fall to the Civil Aviation Authority, an issue both for its employees and others in the sector who depend on its oversight and services

In addition to these issues specific to the aviation sector, there is the general question facing any UK citizens currently working on the continent, and EU nationals currently

¹ <https://www.gov.uk/government/publications/aviation-safety-if-theres-no-brexite-deal>

² <https://www.gov.uk/government/publications/aviation-security-if-theres-no-brexite-deal>

³ <https://www.gov.uk/government/publications/flights-to-and-from-the-uk-if-theres-no-brexite-deal>

⁴ <http://publicapps.caa.co.uk/docs/33/CAP1714BrexitAviationSafety.pdf>

working in the UK, of their work and residency status in the event of a “no deal” outcome.

There is still a lack of certainty and clarity around many of these questions, but this briefing aims to offer a provisional assessment based on information and advice received so far.

1. Flying rights

In the event of “no deal”, UK and EU licensed airlines would lose their automatic right to operate air services between the UK and the EU, and UK-licensed airlines would lose some automatic rights to fly to and from some other countries covered by EU-wide agreements.

UK-licensed airlines would have to seek individual permissions from EU member states to continue to operate flights to and from the EU – as well as safety authorisations and foreign carrier permits. EU-licensed airlines would have to do likewise as regards the UK.

The UK Government remains hopeful that even if there is “no deal” on overall EU exit, a “bare bones” agreement with the EU can ease this process. (Some airlines, such as EasyJet, have already registered and licensed subsidiaries in other EU member states as a substitute for seeking ad hoc permissions.) The UK Government also says it is close to finalising agreements with states outside the EU and that it is sure these will be in place before the UK exits the EU.

In sum, the UK government remains confident that airlines will be able to secure the permissions and authorisations needed to continue current operations, though this may entail some extra administrative and legal costs for airlines and regulators.

2. EASA recognition

In the event of “no deal”, the Civil Aviation Authority will immediately cease to be a member of the European Aviation Safety Agency (EASA). EASA has reportedly rebuffed requests from the CAA for discussions on how to minimise disruption in this eventuality.⁵ However on 2nd October it published an update stating that it “will start to process some applications for Third Country approvals from existing UK approval holders” in some areas.⁶

The immediate consequence of this is that approvals and licenses issued by the CAA will no longer have automatic validity for aircraft registered in (continuing) EU member states. These include aviation safety certificates issued to organisations and individuals involved in the design, production, maintenance and operation of aircraft, including:

- pilots
- cabin crew
- aircraft maintenance engineers
- air traffic controllers

⁵ <https://www.bbc.co.uk/news/uk-politics-45755047>

⁶ <https://www.easa.europa.eu/brexit>

- maintenance organisations
- providers of pilot, air traffic control and maintenance training courses

Approvals and licenses issued by other EASA-member regulators will typically continue to be recognised by CAA for up to two years under the UK Withdrawal Act.

However the EU's statement that it will not recognise CAA-issued licenses and approvals in the event of a "no deal" Brexit could mean that some UK aviation workers would need to switch to EASA licenses. The UK Government guidance is for pilots, cabin crew and maintenance engineers with CAA-issued licenses to "check with their employer" on whether they will need to work on EU-registered aircraft and therefore need EASA-issued licenses. Many will not – for example, engineers who work only on UK-licensed ("G") aircraft. In other cases, some employers may already be taking action to ensure the right licenses are in place for this scenario; for example, it has been reported that Easyjet has converted all its UK pilot licenses to Austrian ones.⁷

The CAA states that UK-registered **engineers** "would be able to continue to maintain UK registered aircraft, but not EU-registered aircraft unless the EU decides to recognise UK engineer licences."⁸ Their advice is that those with EASA Part-66 Licenses issued by the CAA

"would not be able to continue to release EU-registered aircraft to service. If you wish to continue to release EU-registered aircraft to service you would need to transfer your licence to the National Aviation Authority of another EASA member state before exit day. You are advised to have a discussion with the relevant NAA as soon as possible about their process and timetable for transfers."⁹

Prospect has been told that UK-licensed engineers will be able to continue working on EU-registered aircraft if they are working as part of a maintenance organisation with an EASA 145 certificate (see below).

Maintenance organisations with CAA-issued approvals will no longer be recognised by the EASA to work on EU-registered aircraft. EASA currently approves (via EASA 145 certificates) many "third country" organisations in non-EU member states across the world, though the UK Government guidance asserted on 24th September that "EASA has yet to provide the details for how and when it would process applications from UK maintenance organisations in advance of the UK leaving the EU." However EASA's 2nd October update included "Maintenance Organisations", "Continuing Airworthiness Maintenance Organisations" as well as "Maintenance Training Organisations" among approval types for which it said it would start to process some applications for Third Country approvals.¹⁰ Many airlines already have third party MRO's based in EU member states.

In the medium and longer term, the loss of a single cross-border licensing regime could also have an effect on labour mobility. Many UK citizens work in the aviation industry in other EU states, and many employers in the UK aviation industry – for example NATS and the CAA – employ significant numbers of EU nationals. Separate EU and UK licenses could make it harder for individuals to take up roles in different countries, though much would depend on application and approval processes.

⁷ <https://inews.co.uk/news/easyjet-pilots-austrian-licences-change-no-deal-brexite-fears/>

⁸ <http://publicapps.caa.co.uk/docs/33/CAP1714BrexitAviationSafety.pdf>

⁹ <https://info.caa.co.uk/eu-exit/licensed-engineers/>

¹⁰ <https://www.easa.europa.eu/brexit>

With regard to UK-based **manufacturers of aeronautical products**, CAA approvals would no longer be automatically recognised by EASA, meaning that parts manufactured and certified by organisations approved by the CAA could no longer be installed on EU-registered aircraft. According to the UK Government note of 24th September, "EASA has yet to provide the details for how and when it would process applications from UK manufacturers in advance of the UK leaving the EU". However the EASA update of 2nd October includes application processes for "Production Organisation Approval" and "Letters of agreement for production without a POA".¹¹

Aeronautical products made in the UK would no longer be approved directly by EASA but by the CAA.

3. Regulatory workload and capacity

Although not highlighted by the Government, a significant implication of a "no deal" scenario would be an increase in the workload faced by the UK Civil Aviation Authority as it takes over functions currently undertaken by EASA. Whatever implications this may have in the long run, there are immediate concerns over the abruptness of the transition that a "no deal" scenario would entail, and the extent to which the UK CAA has been able to prepare.

For many years the CAA has seen significant reductions in resources and capacity, particularly in the area of safety regulation. This has been partly mitigated by its ability to pool resources and expertise with EASA and the wider community of European regulators. For example the number of employees working on safety and airspace regulation at the CAA has fallen from 860 in 2002 to 477 in 2017. At the same time the UK is one of the biggest contributors of employees to EASA, which could face its own capacity problems if those skills came back to the CAA.

The Government's new papers make clear that a "no deal" scenario would result in an immediate transfer of new functions to the CAA, for example:

- processing applications from EU-licensed airlines for permissions and authorisations needed to operate in the UK
- taking on the work previously done by EASA in relation to approvals for UK designed aeronautical products and approvals for third country organisations

In relation to the former, the UK government says that "The CAA has been preparing to take on these responsibilities since the EU referendum, and we are confident that they will be ready to perform these functions if required". In relation to the latter, the UK government says that "Although elements of this function have formally been assigned to EASA, the CAA has maintained capability in this area and is actively building the resources, systems and processes to perform these functions".

Others have been less sanguine about the CAA's ability to replicate EASA functions within a short space of time.¹² The CAA's chief executive himself said in 2017:

¹¹ <https://www.easa.europa.eu/brexit>

¹² See for example <http://www.bbc.co.uk/news/business-40743826>; and <https://www.ft.com/content/7dc9a004-c6c4-11e6-8f29-9445cac8966f>: 'Recreating a domestic regulatory system in the UK would be expensive and take years, say executives. "The Civil Aviation Authority has been run down considerably because many of the staff have gone to work at EASA,"

“we are very uncompromising in our view that we should not be planning for a new independent aviation safety system in the UK. Indeed, we have consciously decided not to do that work as it would be misleading to suggest that’s a viable option. Of course in the very long term, it might be, but it’s not one we will be espousing.”¹³

4. Work and residency rights of EU and UK citizens

The proposed “Withdrawal Agreement” includes rules and procedures for securing the position of UK citizens currently living or working on the continent, and EU nationals currently living or working in the UK. However in a “No Deal” scenario this Withdrawal Agreement would not hold.

The UK Government has given assurances that the position of **EU citizens now in the UK** would be secured, though it has not committed to exact details on this.¹⁴ According to one think tank the provision of the EU Withdrawal Act along with recent amendments to UK immigration rules mean that “the right of EEA citizens (including those from non-EU countries, like Norway, and from Switzerland) to live and work here – and the legality of employers continuing to employ them, hospitals and schools continuing to treat and educate them, and so on – would broadly continue unless and until the UK government or Parliament changes the rules”.¹⁵

However the position of **UK citizens living or working in EU member states** in the event of “no deal” is less clear, and would depend on the existing legal frameworks and any new policy decisions made by the individual states, which may vary from country to country.

What Prospect is doing

Since the referendum Prospect has been campaigning and lobbying to raise awareness of the impact and implications for members working in the aviation sector.

In particular Prospect has consistently called for:

- a Swiss-style bilateral agreement on flying rights to minimise disruption and damage to UK aviation jobs and investment
- continued membership of the European Aviation Safety Agency, which would ensure continued cross-European validity of key licenses and approvals, and allow the continued sharing of capacity and expertise

said Simon Whalley, external affairs director at the Royal Aeronautical Society. “That’s where competence has been transferred.” As the aviation and aerospace industries have to fund their own regulation, reversing that process would be “a considerable burden”, he said.’

¹³ https://www.caa.co.uk/uploadedFiles/CAA/Content/News/Speeches_files/UKTiE%20-%20Andrew%20Haines.pdf

¹⁴ “It is inconceivable we would do anything other than make sure that they are legally in a position where they’re secure to stay ... There’s no question that we’re going to see EU citizens turfed out. We’ve made that clear in the past. I’ve made that clear in the past, I’m happy to give that reassurance today.” <https://www.bbc.co.uk/news/uk-politics-45258343>

¹⁵ <http://ukandeu.ac.uk/wp-content/uploads/2018/09/Cost-of-No-Deal-Revisted.pdf>

- increased resources for the Civil Aviation Authority's work on Safety and Airspace Regulation

These objectives form key planks of Prospect's aviation "manifesto" which it has been promoting in 2018,¹⁶ and priority items for all submissions and discussions with Government, regulators and employers since 2016, as well as its wider campaigning on Brexit.¹⁷

Prospect has been clear that a "no deal" scenario, which among other things would preclude continued membership of EASA and a covering agreement on flying rights, would pose a grave risk to the UK aviation sector and the UK economy as a whole.¹⁸

Now that the Government has clarified the position of CAA-issued license-holders in the event of a "no deal" Brexit, Prospect will be discussing with employers how appropriate EASA-issued licenses can be arranged and funded for any members who do not work solely on UK-licensed "G" aircraft.

Prospect has been highlighting concerns over CAA resourcing and the need to ensure pay rates are sufficient to recruit needed specialists,¹⁹ and will escalate these calls over the coming period.

Prospect will continue to update this briefing as the situation becomes clearer, and will be glad to hear from members or others with information or experiences that may be relevant. In the first instance please email steve.jary@prospect.org.uk

¹⁶ <https://www.prospect.org.uk/news/id/2018/February/6/A-future-UK-aviation-manifesto>

¹⁷ See for example <http://brexit.prospect.org.uk/>

<https://www.prospect.org.uk/news/id/2018/February/23/Protecting-jobs-rights-standards-Prospect-sets-out-Brexit-checklist>

¹⁸ <https://www.prospect.org.uk/news/id/2018/August/23/No-deal-Brexit-risks-damaging-economy-research-living-standards>

¹⁹ <https://www.prospect.org.uk/news/id/2018/July/6/CAA-must-prioritise-skills-pay-Brexit-plans>

