
STATUTORY INSTRUMENTS

2009 No. 1735

CIVIL AVIATION

The Air Navigation (Single European Sky) (Penalties) Order 2009

Made - - - - - *8th July 2009*
Laid before Parliament *15th July 2009*
Coming into force - - - *1st September 2009*

At the Court at Buckingham Palace, the 8th day of July 2009

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 2(2) of the European Communities Act 1972 ^{M1} and sections 60 and 61 of the Civil Aviation Act 1982 ^{M2}, is pleased, by and with the advice of Her Privy Council, to order as follows.

Marginal Citations

- M1** 1972 c.68. Section 2(2) has been amended by section 27 of the [Legislative and Regulatory Reform Act 2006 \(c. 51\)](#).
- M2** 1982 c.16. Sections 60 and 61 were amended by the [Airports Act 1986 \(c. 31\)](#), [Schedule 6 Part 11](#), and section 60 was further amended by the [Aviation and Maritime Security Act 1990 \(c.31\)](#) section 47 and Schedule 4.

Citation and commencement

1. This Order may be cited as the Air Navigation (Single European Sky) (Penalties) Order 2009 and comes into force on 1st September 2009.

Interpretation

2.—(1) In this Order—

[^{F1}“air traffic flow management regulation” means Commission Regulation (EU) No 255/2010 laying down common rules on air traffic flow management;]

“authorised person” means the CAA, any constable and any person authorised by the CAA (whether by name or by class or description) either generally or in relation to a particular case or class of cases;

F2 ...

“the common requirements regulation” means [^{F3}Commission Implementing Regulation (EU) No 1035/2011 laying down common requirements for the provision of air navigation services and amending Regulations (EC) No 482/2008 and (EU) No 691/2010];

“the interoperability regulation” means Regulation (EC) No 552/2004 of the European Parliament and of the Council on the interoperability of the European Air Traffic Management network ^{M3};

“notified” has the same meaning as in [^{F4}paragraph 1 of Schedule 1 to the Air Navigation Order 2016];

“the service provision regulation” means Regulation (EC) No 550/2004 of the European Parliament and of the Council on the provision of air navigation services in the single European sky ^{M4}.

(2) Expressions used in this Order that are defined in article 2 of Regulation (EC) No 549/2004 of the European Parliament and of the Council laying down the framework for the creation of the single European sky ^{M5} have the same meaning in this Order as in that Regulation.

(3) Other expressions used in this Order have the same meaning as in the service provision regulation.

Textual Amendments

- F1** Words in art. 2(1) inserted (12.12.2013) by *The Air Navigation (Single European Sky) (Penalties) (Amendment) Order 2013* (S.I. 2013/2874), arts. 1, **3(a)**
- F2** Words in art. 2(1) omitted (31.12.2020) by virtue of *The Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2019* (S.I. 2019/459), regs. 1(2), **390(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in art. 2(1) substituted (12.12.2013) by *The Air Navigation (Single European Sky) (Penalties) (Amendment) Order 2013* (S.I. 2013/2874), arts. 1, **3(b)**
- F4** Words in art. 2(1) substituted (10.1.2019) by *The Air Navigation (Single European Sky) (Penalties) (Amendment) Order 2018* (S.I. 2018/1354), arts. 1, **3(b)**

Marginal Citations

- M3** O.J. No. L 96, 31.3.2004, p.26.
- M4** O.J. No. L 96, 31.3.2004, p.10.
- M5** O.J. No. L 96, 31.3.2004, p.1.

Provision of air navigation services

3. A person must not provide any air navigation services without the certification required for the provision of such services by article 7.1 of the service provision regulation.

Provision of air traffic services

4. Where the CAA designates an air traffic service provider to provide air traffic services on an exclusive basis within a specific airspace block under article 8.1 of the service provision regulation—

- (a) it must ensure that the terms of that designation are notified, and

- (b) no other air traffic services provider may provide air traffic services within that airspace block contrary to those notified terms.

Provision of meteorological services

5. A person must not provide any meteorological services in airspace for which a provider of meteorological services has been notified as having been designated on an exclusive basis under article 9.1 of the service provision regulation, unless he is the designated provider.

Relations between service providers

6. Air navigation service providers must not avail themselves of the services of other air navigation service providers that have not been certified ^{F5}... under article 7.1 of the service provision regulation.

Textual Amendments

F5 Words in art. 6 omitted (31.12.2020) by virtue of [The Air Traffic Management \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/459\)](#), regs. 1(2), **390(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Safeguards relating to the use of the [^{F6}United Kingdom air traffic management system]

7. A person must not make use of any system or constituent of the [^{F7}United Kingdom air traffic management system] contrary to—

- (a) a prohibition on its use, or
- (b) a restriction on the area of its application,

established by the CAA under article 7.1 of the interoperability regulation and notified by it.

Textual Amendments

F6 Words in art. 7 heading substituted (31.12.2020) by [The Air Traffic Management \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/459\)](#), regs. 1(2), **390(4)**; 2020 c. 1, Sch. 5 para. 1(1)

F7 Words in art. 7 substituted (31.12.2020) by [The Air Traffic Management \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/459\)](#), regs. 1(2), **390(4)**; 2020 c. 1, Sch. 5 para. 1(1)

Compliance monitoring

8.—^{F8}(1)

(2) For the purpose of monitoring compliance with the requirements laid down for the provision of air navigation services in the common requirements regulation, authorised persons have the right to undertake inspections and surveys using any of the powers described in article [^{F9}7] of that regulation.

(3) In order to facilitate inspections and surveys under [^{F10}paragraph] (2) by an authorised person, an air navigation service provider must within a reasonable time after being requested to do so by an authorised person—

- (a) cause to be produced to that person documents, records, data or other material relevant to the provision of air navigation services ^{F11}...;
- (b) make available such facilities and equipment that he possesses that may reasonably be required by that authorised person for the purpose of examining or taking copies of or

extracts from documents, records, data or other material relevant to the provision of air navigation services ^{F12}...; and

(c) provide such oral explanations as may be requested on site by that authorised person.

^{F13}(4)

Textual Amendments

- F8** Art. 8(1) omitted (31.12.2020) by virtue of [The Air Traffic Management \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/459\)](#), regs. 1(2), **390(5)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F9** Word in art. 8(2) substituted (12.12.2013) by [The Air Navigation \(Single European Sky\) \(Penalties\) \(Amendment\) Order 2013 \(S.I. 2013/2874\)](#), arts. 1, 4
- F10** Word in art. 8(3) substituted (31.12.2020) by [The Air Traffic Management \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/459\)](#), regs. 1(2), **390(5)(b)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F11** Words in art. 8(3)(a) omitted (31.12.2020) by virtue of [The Air Traffic Management \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/459\)](#), regs. 1(2), **390(5)(b)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F12** Words in art. 8(3)(b) omitted (31.12.2020) by virtue of [The Air Traffic Management \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/459\)](#), regs. 1(2), **390(5)(b)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F13** Art. 8(4) omitted (31.12.2020) by virtue of [The Air Traffic Management \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/459\)](#), regs. 1(2), **390(5)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

Offences in relation to documents, records and explanations etc.

9.—(1) A person must not, with intent to deceive—

- (a) use any certificate or any designation issued or required by or under article 7, 8 or 9 of the service provision regulation which has been forged, altered, revoked or suspended, or to which he is not entitled;
- (b) lend any certificate or any designation issued, having effect or required by or under article 7, 8 or 9 of the service provision regulation to, or allow it to be used by, any other person;
- (c) make any false representation for the purpose of procuring for himself or any other person the issue of any such certificate or designation;
- (d) make a declaration for the purpose of article 5.2 or 6.2 of the interoperability regulation that is false in any material particular; or
- (e) on the occasion of an inspection or survey under article [^{F14}7] of the common requirements regulation ^{F15}..., provide false documents, records, data or other material or false oral explanations.

(2) In paragraph (1) a reference to a certificate or designation includes a copy or purported copy.

Textual Amendments

- F14** Word in art. 9(1)(e) substituted (12.12.2013) by [The Air Navigation \(Single European Sky\) \(Penalties\) \(Amendment\) Order 2013 \(S.I. 2013/2874\)](#), arts. 1, 5
- F15** Words in art. 9(1)(e) omitted (31.12.2020) by virtue of [The Air Traffic Management \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/459\)](#), regs. 1(2), **390(6)**; 2020 c. 1, Sch. 5 para. 1(1)

Obstruction of persons

10. A person must not intentionally obstruct or impede an authorised person using any of the powers referred to in article [^{F16}8(2)] when undertaking an inspection or survey under that article.

Textual Amendments

F16 Word in art. 10 substituted (31.12.2020) by The Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/459), regs. 1(2), 390(7); 2020 c. 1, Sch. 5 para. 1(1)

Penalties

11.—(1) Any person who—

- (a) fails to comply with any obligation imposed upon him under a designation made under article 8 of the service provision regulation;
- (b) fails to formalise, notify or secure the required approval of any working relationship under article 10 of the service provision regulation;
- (c) contravenes article [F17 6.1 or 6.2] of the common requirements regulation;
- (d) fails to take the corrective action imposed upon him by the CAA under article [F18 6.3] of the common requirements regulation

is guilty of an offence and is liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both.

(2) Any person who fails to comply with any obligation imposed upon him by—

- (a) articles 3, 4(b), 6 or 9, or
- (b) article 8(3) F19 ...,

is guilty of an offence and is liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both.

(3) Any person who fails to comply with any obligation imposed upon him by—

- (a) article 5, or
- (b) a designation made under article 9 of the service provision regulation,

is guilty of an offence and is liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

(4) Any person who fails to comply with any obligation imposed upon him—

- (a) by articles 7 F20 ... or 10,
- [F21(aa) by articles 6, 7, 8, 9.2, 10.2, 11.2 or 11.5 of the air traffic flow management regulation,]
- (b) to provide [F22 a] declaration of conformity or suitability for use as required by article 5.2 of the interoperability regulation,
- (c) to provide [F23 a] declaration of verification as required by article 6.2 of the interoperability regulation,
- (d) to submit to the CAA the declaration referred to in sub-paragraph (c) together with the technical file as required by the said article 6.2, F24 ...
- (e) to provide the CAA, within a reasonable time after being requested so to do, with such additional information as the CAA may require under the said article 6.2, [F25 or]
- [F26(f) by an implementing rule listed in the Schedule to this Order,]

is guilty of an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

[^{F27}(4A) Any local air traffic flow management unit who, when requested by an airport slot coordinator or a managing body of a coordinated airport, fails to provide to the person making the request the accepted flight plan of a flight operating at that airport, before that flight takes place, is guilty of an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.]

^{F28}(5)

Textual Amendments

- F17** Words in art. 11(1)(c) substituted (12.12.2013) by [The Air Navigation \(Single European Sky\) \(Penalties\) \(Amendment\) Order 2013 \(S.I. 2013/2874\)](#), arts. 1, **6(a)**
- F18** Word in art. 11(1)(d) substituted (12.12.2013) by [The Air Navigation \(Single European Sky\) \(Penalties\) \(Amendment\) Order 2013 \(S.I. 2013/2874\)](#), arts. 1, **6(b)**
- F19** Words in art. 11(2)(b) omitted (31.12.2020) by virtue of [The Air Traffic Management \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/459\)](#), regs. 1(2), **390(8)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F20** Words in art. 11(4)(a) omitted (31.12.2020) by virtue of [The Air Traffic Management \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/459\)](#), regs. 1(2), **390(8)(b)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F21** Art. 11(4)(aa) inserted (12.12.2013) by [The Air Navigation \(Single European Sky\) \(Penalties\) \(Amendment\) Order 2013 \(S.I. 2013/2874\)](#), arts. 1, **6(c)**
- F22** Word in art. 11(4)(b) substituted (31.12.2020) by [The Air Traffic Management \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/459\)](#), regs. 1(2), **390(8)(b)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F23** Word in art. 11(4)(c) substituted (31.12.2020) by [The Air Traffic Management \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/459\)](#), regs. 1(2), **390(8)(b)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F24** Word in art. 11(4)(d) omitted (12.12.2013) by virtue of [The Air Navigation \(Single European Sky\) \(Penalties\) \(Amendment\) Order 2013 \(S.I. 2013/2874\)](#), arts. 1, **6(d)**
- F25** Word in art. 11(4)(e) inserted (12.12.2013) by [The Air Navigation \(Single European Sky\) \(Penalties\) \(Amendment\) Order 2013 \(S.I. 2013/2874\)](#), arts. 1, **6(e)**
- F26** Art. 11(4)(f) substituted (31.12.2020) by [The Air Traffic Management \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/459\)](#), regs. 1(2), **390(8)(b)(iii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F27** Art. 11(4A) inserted (12.12.2013) by [The Air Navigation \(Single European Sky\) \(Penalties\) \(Amendment\) Order 2013 \(S.I. 2013/2874\)](#), arts. 1, **6(g)**
- F28** Art. 11(5) omitted (31.12.2020) by virtue of [The Air Traffic Management \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/459\)](#), regs. 1(2), **390(8)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

Defence

12. In any proceedings for an offence under article 11(1), (2), (3)(a), [^{F29}(4)(a), (aa), (b), or (f), or (4A)] of this Order, it is a defence for the person charged to prove that person took all reasonable steps and exercised all due diligence to ensure that the article in question was complied with.

Textual Amendments

- F29** Words in art. 12 substituted (12.12.2013) by [The Air Navigation \(Single European Sky\) \(Penalties\) \(Amendment\) Order 2013 \(S.I. 2013/2874\)](#), arts. 1, 7

Offences by body corporate

13.—(1) Where a body corporate is guilty of an offence under this Order and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a

person who was purporting to act in any such capacity, that person as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under this Order is committed in Scotland by a Scottish partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is guilty of that offence and is liable to be proceeded against and punished accordingly.

[^{F30}Review

14.—(1) The Secretary of State must from time to time—

- (a) carry out a review of The Air Navigation (Single European Sky) (Penalties) Order 2009,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

[^{F31}(2)]

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by [^{F32}this Order],
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this [^{F33}Order] must be published before 11th December 2018.

(5) Reports under this Order are afterwards to be published at intervals not exceeding five years.]

Textual Amendments

F30 Art. 14 inserted (12.12.2013) by *The Air Navigation (Single European Sky) (Penalties) (Amendment) Order 2013* (S.I. 2013/2874), arts. 1, 8

F31 Art. 14(2) omitted (31.12.2020) by virtue of *The Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2019* (S.I. 2019/459), regs. 1(2), **390(9)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F32 Words in art. 14(3)(a) substituted (31.12.2020) by *The Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2019* (S.I. 2019/459), regs. 1(2), **390(9)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F33 Word in art. 14(4) substituted (31.12.2020) by *The Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2019* (S.I. 2019/459), regs. 1(2), **390(9)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

Judith Simpson
Clerk of the Privy Council

[^{F34}SCHEDULE

Regulation 11(4)(f)

List of implementing rules

Textual Amendments

F34 Sch. inserted (31.12.2020) by [The Air Traffic Management \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/459), regs. 1(2), **390(10)**; 2020 c. 1, Sch. 5 para. 1(1)

1. Commission Regulation (EC) No 1032/2006 of 6 July 2006 laying down requirements for automatic systems for the exchange of flight data for the purpose of notification, coordination and transfer of flights between air traffic control units.
2. Commission Regulation (EC) No 1033/2006 of 4 July 2006 laying down the requirements on procedures for flight plans in the pre-flight phase for the single European sky.
3. Commission Regulation (EC) No 633/2007 of 7 June 2007 laying down requirements for the application of a flight message transfer protocol used for the purpose of notification, coordination and transfer of flights between air traffic control units.
4. Commission Regulation (EC) No 29/2009 of 16 January 2009 laying down requirements on data link services for the single European sky.
5. Commission Regulation (EC) No 262/2009 of 30 March 2009 laying down requirements for the coordinated allocation and use of Mode S interrogator codes for the single European sky.
6. Commission Regulation (EU) No 73/2010 of 26 January 2010 laying down requirements on the quality of aeronautical data and aeronautical information for the single European sky.
7. Commission Decision of 20 May 2011 on exemptions under Article 14 of Commission Regulation (EC) No 29/2009 on data link services.
8. Commission Implementing Regulation (EU) No 1206/2011 of 22 November 2011 laying down requirements on aircraft identification for surveillance for the single European sky.
9. Commission Implementing Regulation (EU) No 1207/2011 of 22 November 2011 laying down requirements for the performance and the interoperability of surveillance for the single European sky.
10. Commission Implementing Decision of 9 December 2011 on exemptions under Article 14 of Commission Regulation (EC) No 29/2009.
11. Commission Implementing Regulation (EU) No 1079/2012 of 16 November 2012 laying down requirements for voice channels spacing for the single European sky.]

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in respect of the enforcement of EC measures relating to the single European sky comprising—

- (a) Regulation (EC) No 550/2004 of the European Parliament and of the Council on the provision of air navigation services in the single European sky (O.J. No. L 96, 31.3.2004, p. 10),

- (b) Regulation (EC) No 552/2004 of the European Parliament and of the Council on the interoperability of the European Air Traffic Management network (O.J. No. L 96, 31.3.2004, p. 26),
- (c) Commission Regulation (EC) No 2096/2005 laying down common requirements for the provision of air navigation services (O.J. No. L 335, 21.12.2005, p. 13), and
- (d) Commission Regulation (EC) No 1794/2006 laying down a common charging scheme for air navigation services (O.J. No. L 341, 7.12.2006, p. 3).

In relation to the instrument at (a) the Order precludes a person providing air navigation services when not certificated, precludes the provision of an air traffic service contrary to the terms of any exclusive designation under article 8 of that instrument notified by the CAA, precludes the provision of meteorological services within an exclusive airspace area unless the provider is the designated provider of those services and precludes the use by air navigation service providers of the services of other air navigation service providers that have not been certificated – *articles 3 to 6*.

In relation to the instrument at (b) the Order precludes the use of any system or constituent of the European air traffic management network contrary to any prohibition on its use or any restriction on the area of its operation that has been established by the CAA under article 7 of that instrument and notified by it – *article 7*.

In relation to the instruments at (c) and (d) the Order empowers authorised persons to undertake inspections and surveys to monitor compliance with those instruments and requires the provision of facilities and equipment and the provision of oral explanations necessary to facilitate that compliance monitoring – *article 8*.

It creates offences relating to the use or lending of false certificates or designations, the making of false representations or declarations and the provision of false documents or oral explanations – *article 9*.

It creates an offence for obstruction of inspections and surveys – *article 10*.

Penalty provisions are created and a due diligence defence provided – *articles 11 to 13*.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

The Explanatory Memorandum relating to this instrument is available, alongside this instrument, on the Office of Public Sector Information website at www.opsi.gov.uk. A copy has also been placed in the Library of each House of Parliament.

Changes to legislation:

There are currently no known outstanding effects for the The Air Navigation (Single European Sky) (Penalties) Order 2009.