

EXPLANATORY MEMORANDUM TO
THE CONTRACTING OUT (FUNCTIONS IN RELATION TO SPACE) ORDER 2021
2021 No. XXXX

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the UK Space Agency and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The current regulator for spaceflight activity under the Outer Space Act 1986 (the 1986 Act) is the Secretary of State. The Secretary of State's functions under the 1986 Act are carried out by the executive agency the UK Space Agency (UKSA) on behalf of the Secretary of State. In June 2020 the Secretary of State for BEIS decided that the future regulator for activities regulated under the 1986 Act should be the Civil Aviation Authority (CAA).
- 2.2 This Order (the Order) will permit the Secretary of State to delegate specified functions to an authorised person. Such functions include issuing licences under the 1986 Act. The Order provides the legal mechanism by which these functions can be contracted out to the CAA.

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 The powers under which this instrument is made cover the entire United Kingdom and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland, and Northern Ireland.
- 4.2 The territorial application of this instrument is England and Wales, Scotland, and Northern Ireland.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State at the Department for Business, Energy & Industrial Strategy, Amanda Solloway MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Contracting Out (Functions in Relation to Space) Order 2021 are compatible with the Convention rights.”

6. Legislative Context

The Outer Space Act 1986

- 6.1 The 1986 Act is the primary legislation which currently governs spaceflight activity conducted by UK entities. The Act sets out the licensing regime for such activities, where these are carried out by UK nationals, Scottish Firms or bodies incorporated under UK law. The 1986 Act confers powers on the Secretary of State to enable the Secretary of State to perform licensing and regulatory functions, which are currently carried out by the Secretary of State acting through UKSA. To the extent permitted under the Deregulation and Contracting Out Act 1994 (the 1994 Act), these functions will be contracted out to the CAA.
- 6.2 The Order, which is being made under section 69(2) and (4) of the 1994 Act, will have the effect that these functions performed by the CAA will be treated as being done by the Secretary of State.
- 6.3 The Order will be subject to the affirmative parliamentary procedure in accordance with section 77(2) of the 1994 Act.
- 6.4 The CAA is a public corporation of the Department for Transport, and is therefore a non-departmental public body.
- 6.5 Under section 71(1) of the 1994 Act there are specified functions which cannot be authorised to be carried out on the Secretary of State's behalf and must therefore be reserved with the Secretary of State. A function cannot be included in the Order if:
- (a) its exercise would constitute the exercise of a jurisdiction of any court or tribunal which exercises power of the State;
 - (b) its exercise (or a failure to exercise it) would necessarily interfere with or otherwise affect the liberty of any individual;
 - (c) it is a power or right of entry, search or seizure into or of any property; or
 - (d) it is a power or duty to make subordinate legislation.

Article 6 of the Order makes clear provision that no function which could fall within categories (b) or (c) has been included within the Order.

The Space Industry Act 2018

- 6.6 The Space Industry Act 2018 (the 2018 Act) is the legal basis for which licences are issued for spaceflight activity taking place from the UK. The 1986 Act will continue to govern spaceflight activities carried out by UK entities overseas.
- 6.7 There is an obligation on the Secretary of State in section 61(1) of the 2018 Act to maintain a register of launches that have taken place from spaceports in the UK. There is a parallel obligation on the Secretary of State in section 7(1) of the 1986 Act to maintain a register of space objects.
- 6.8 Section 61(5) of the 2018 Act permits the Secretary of State to discharge these two obligations by maintaining a single register.
- 6.9 Therefore, in addition to the regulatory functions in the 1986 Act, the Order permits the Secretary of State to authorise the CAA to perform one regulatory function in the 2018 Act by including the function in s.61(1) to maintain a register of launches from UK spaceports.

7. Policy background

What is being done and why?

- 7.1 The UKSA has a key role in promoting growth in the UK space sector. Successive governments have followed a policy of separating safety regulation from sector promotion to ensure regulation is impartial. To ensure that spaceflight and associated activities are carried out safely and responsibly, the Secretary of State has agreed to appoint the CAA as the regulator for spaceflight activities.
- 7.2 The coming into force date of the Order coincides with the coming into force date of separate Regulations being made under the 2018 Act. This will allow the CAA to commence the carrying out of regulatory functions under the 1986 Act, and perform new regulatory functions under the 2018 Act on the same day.

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 / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This Order does not give rise for the need to consolidate.

10. Consultation outcome

- 10.1 A 12 week public consultation on draft Regulations being made under the 2018 Act ran from 29 July to 21 October 2020, which included setting out the Government's intention that the CAA will undertake all regulatory functions in relation to the 2018 Act, in addition to regulating orbital activities under the 1986 Act. The intention to transfer regulatory functions to the CAA has also been communicated at industry plenary events.
- 10.2 Although no specific question was asked on the appointment of the CAA as the regulator, some respondents still commented on this issue. The majority of respondents who commented on this issue agreed that the CAA would be an appropriate regulator for spaceflight activities. There was overall agreement that its expertise, derived from regulating the aviation industry rendered it well-placed for such a role.
- 10.3 A full Government response to the consultation has been prepared by the Department for Transport and the UKSA and can be found here:
<https://www.gov.uk/government/consultations/spaceport-and-spaceflight-activities-regulations-and-guidance>

11. Guidance

- 11.1 Guidance is not required.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment is not required for this instrument as it relates to the maintenance of an existing regulatory and licensing regime. However, the impact of those transition costs associated with moving regulatory functions from the UKSA to the CAA have been considered in an Impact Assessment which has been prepared alongside the draft Regulations being made under the 2018 Act. The intention is for that Impact Assessment to be published alongside the Regulations made under the 2018 Act.

13. Regulating small business

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

14. Monitoring & review

14.1 There are no plans to monitor or review the effect of this Instrument. However, under Section 69(5) of the 1994 Act the authorisation given by this Order shall not last longer than 10 years and may be revoked under the terms agreed in the authorisation.

15. Contact

15.1 Emily James at the UK Space Agency Telephone: 020 7215 3155 or email: Emily.james2@ukspaceagency.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sarah Boyall, Director for Regulation at the UK Space Agency can confirm that this Explanatory Memorandum meets the required standard.

15.3 Amanda Solloway, Minister for Science, Research and Innovation at the Department for Business, Energy & Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.