

Title: The Air Navigation (Single European Sky) (Penalties) Order 2009 PIR No: DfTPIR0099 Original IA/RPC No: N/A Lead department or agency: DfT Other departments or agencies: Civil Aviation Authority Contact for enquiries: Craig Griffiths	Post Implementation Review
	Date: 26/06/2024
	Type of regulation: Domestic
	Type of review: Statutory
	Date measure came into force: 01/09/2009
	Recommendation: Keep
RPC Opinion: N/A	

<p>Recommendation and Summary of Justification</p> <p>Renewal.</p> <p>The intended effects of the legislation have been realised. The Regulations were amended to ensure that these remained fully operable in the UK (and these became part of the Single European Sky (SES) package of Retained, now assimilated EU Law) after EU Exit and that we continue to have a functioning system of Air Traffic Management (ATM) and airspace.</p> <p>The Civil Aviation Authority (CAA) as the UK's independent aviation regulator is still the body who should undertake the role and responsibilities which are required in relation to both ensuring compliance with and issuing penalties (through prosecution where appropriate) for non-compliance with these Regulations in the UK.</p>
--

1. What were the policy objectives of the measure?

The Air Navigation (Single European Sky) (Penalties) Order 2009 introduced offences for breaches of certain obligations under the EU's Single European Sky (SES) Regulations and Implementing Rules (IRs).

The SES legislation required States to set out in their domestic law the penalties for infringements of the legislation. The Government was required to put in place "effective, proportionate and dissuasive" penalties for non-compliance with the related (SES) legislation.

In 2009 further obligations were introduced in the EU legislation, which required additional penalties. The Regulations were subsequently amended by The Air Navigation (Single European Sky) (Penalties) (Amendment) Order 2013, which added new offences which had been identified, following a review, undertaken by DfT and the Civil Aviation Authority (CAA) along with the appropriate penalties which were associated with the new obligations.

The 2013 amendment Regulations also introduced the need for a periodic statutory review to be undertaken into the 2009 Regulation.

The policy objective of the Regulation was to ensure that the CAA had the powers to prosecute for non-compliance with the obligations under this legislation, should the need arise. Without this intervention and the 2009 Regulation, the UK would have been unable to enforce the requirements under the SES legislation through criminal legislation.

The EU legislation from which this Regulation derived, namely, the Framework Regulation (No 549/2004), the Service Provision Regulation (No 550/2004), and the Interoperability Regulation (552/2004) ("the EU Regulations") were given direct effect in UK law. The wider purpose of the SES initiative, and the subsequent legislation, was to modernise the ATM system across Europe.

In the late 1990s, with air traffic related delays increasing, EU member states, including the UK embarked on work to consider how EU competence could help ensure that the ATM system was responding to the challenge of aviation traffic growth. At the time, it was estimated by the European Commission that inefficiencies in the European ATM System were costing airlines approximately 4 billion euros per annum in comparison to the US system. Around 40% of all departure delays across Europe were attributed to ATM related issues. The SES regulatory package included the aim of ensuring that there was a separation of roles between those responsible for regulatory oversight and Air Navigation Service Providers (ANSPs) responsible for example for delivery of Air Traffic Control (ATC) services.

The EU Regulations which were introduced in 2004 required Member States (including the UK at the time) to appoint a National Supervisory Authority ("NSA") for the purpose of carrying out the tasks and functions assigned to NSAs under the EU Regulations. The Single European Sky (National Supervisory Authority) Regulations 2004 (as amended in 2013) appointed the CAA, the independent regulator for aviation, as the NSA for the SES legislation in the UK.

These Regulations complement the Single European Sky (National Supervisory Authority) Regulations 2004. They set out the offences in place for breaching obligations under the SES legislation and the penalties which are at the CAA's disposal for managing non-compliance with these rules.

The 2009 Regulation was further amended by the Air Navigation (Single European Sky) (Penalties) (Amendment) Order 2018. The purpose of this was to update the Regulations to reflect references which had become outdated since the initial legislation had been introduced, for example references to the 2005 Air Navigation Order (ANO) which had itself been amended in 2016.

The Regulations were amended by the Air Traffic Management (Amendment etc) (EU Exit) Regulations, 2019¹ to deliver the changes required to ATM Regulations linked to the UK's exit from the EU, to ensure that these would remain operable for the UK. These now form part of the UK's Retained, now assimilated EU Law package for ATM, alongside the suite of SES related legislation, to which the required amendments were also made prior to EU Exit.

The CAA continues to undertake the required functions in relation to breaches of obligations and the penalties for non-compliance which are associated with these Regulations.

2. What evidence has informed the PIR?

The 2009 Regulations gave the CAA the appropriate powers to prosecute for non-compliance with the rules and requirements under the SES legislation. The CAA was the primary source for evidence for this review, which was connected to the evidence gathering process for review of The Single European Sky (National Supervisory Authority) Regulations 2013, which was undertaken in parallel.

We have not sought any evidence directly from business in this review, although we have asked the CAA to use its expert position and knowledge on the matter of whether or not there have been any unintended costs or burdens to business as a result of the Regulation. The CAA estimates that there are over 100 operators of air navigation and air traffic control services in the UK who could potentially be penalised under the powers set out in the Regulation. In addition, the CAA has the power to impose penalties under the Regulations on 7 European ANSPs for delegated air traffic services which they provide in the UK.

The assessment of the CAA is that there have been no unintended costs or burdens to business as a result of the Regulation. The statutory powers contained within the regulations are still needed in order to mandate the CAA's roles and responsibilities in relation to these and to achieve the policy objectives.

The level of evidence sought for this review is low, for the reasons outlined below. The 2009 Regulations, as amended in 2013, provided for the CAA to be the authorised body responsible for compliance and enforcement for the UK aviation industry.

The CAA is a public corporation funded by the industry, and it was already, prior to the introduction of the 2009 Regulations. As a result, we assessed the cost burden to the CAA to be minimal, relating to familiarisation costs, and the CAA writing to the responsible parties setting out the new penalties. We also considered that this would bring minimal familiarisation costs to business. We did not anticipate any ongoing costs to business, as applying criminal penalties to the new SES offences which were already directly applicable in the UK would not impact on responsible parties as the obligation to comply with these was already in place, and if they were not in breach of the legislation, they would incur no penalties or legal costs.

For this assessment, we have consulted the CAA on the direct and indirect impacts of the Regulations. The CAA, as the regulating authority for aviation in the UK, is the expert body in this matter and best placed to provide the required evidence and has been involved throughout this PIR process.

Following the UK's exit from the EU, the Regulation was amended (as discussed in Section 1, above) to ensure that it would remain operable in a post EU Exit UK and became part of the package of Retained, now assimilated package of EU Law for ATM.

¹ <https://www.legislation.gov.uk/uksi/2019/459/made>

The CAA continues to undertake the required enforcement role and functions in relation to breaches and can impose penalties for these should the circumstances justify this, as set out in the 2009 Regulations.

3. To what extent have the policy objectives been achieved?

Our assessment is that the Regulations have met their objectives in full since coming into force in 2009.

After 2009, further obligations were introduced to the EU legislation, which required penalties. The Regulation was amended in 2013, in order to add new offences which were identified, following a review undertaken by DfT and the Civil Aviation Authority (CAA) along with the appropriate penalties which were associated with the new obligations.

The policy objective of the 2009 Regulations was to ensure that the CAA was in a position to prosecute for non-compliance with the obligations under this legislation, should the need arise. Without this intervention, the UK would have been unable to enforce the SES requirements under criminal legislation.

Compliance with the legislation remains strong as a result of the introduction of the Regulation and the associated penalties. Compliance is not a black and white issue, and enforcement covers a wide spectrum of regulatory interventions. The CAA uses whatever intervention it deems appropriate in the circumstances and is confident that the powers it has serve as a deterrent and need to be retained.

As with all oversight activity, while the view of the CAA, is that the majority of businesses will comply because they have the necessary safety culture and competence to do so, there will always be marginal cases where compliance must be chased and, in some circumstances, it may be appropriate for them to consider prosecution.

The sanctions regime introduced for non-compliance by the Regulations has not added any costs for industry. Any legal costs incurred by the CAA in prosecuting cases are recouped from costs placed on offenders.

Whilst the CAA does not have a statistic to measure compliance with the overall SES Regulations, they have advised that in nearly all cases they attempt to deal with non-compliance in accordance with CAA's enforcement policies. This involves a stepped approach escalating from discussions, through to warnings, possible licence action, and potentially prosecution.

The CAA has confirmed that it has not needed to use the full penalties powers under the Order, although the threat of penalties has proven to be an effective tool in ensuring compliance, and this broadly supports the CAA's other tools, such as revoking, suspending or varying certificates, designations, or controller licences.

To our knowledge, and the knowledge of the CAA, the Regulation has not brought about any unintended direct or in-direct consequences to the CAA as regulator, or to businesses.

Following the UK's exit from the EU, the Regulation has been amended to ensure that this continues to operate efficiently. The CAA remains the NSA for the UK and has the necessary powers to ensure compliance with the legislation and to prosecute for non-compliance where this is necessary.

The CAA agrees with our assessment that the Government has met its objectives in relation to the 2009 Regulations.

Sign-off for Post Implementation Review: Minister

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: **Mike Kane**

Date: 09/12/2024

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions?

The 2009 Regulations introduced no additional burdens or financial costs for the CAA, as the Government's statutory regulatory authority for aviation. It imposed no additional costs on Government or business.

These assumptions are consistent with what has transpired in relation to the effect of this Regulation.

5. Were there any unintended consequences?

None.

6. Has the evidence identified any opportunities for reducing the burden on business?

To the knowledge of the Government and the CAA, the 2009 Regulation has not brought about any unintended direct or in-direct consequences either for the CAA as regulator, or to businesses.

The CAA, as the independent aviation Regulator in the UK, clearly has expertise in this area, and we consider its evidence which relates to business impacts to be reliable.

Compliance with the Regulation from business continues to be strong. Given the number of certified entities who could be penalised under this Regulation, and the volume of traffic that is handled by these businesses across the UK and beyond, it is appropriate to retain these provisions to maintain high levels of compliance. To remove these powers would result in the only area of the CAA's current regulatory oversight role where it has neither criminal or administrative penalties to penalise an entity for non-compliance.

We believe the CAA has fulfilled its duties as required in relation to the Regulations and in having the option of prosecuting offenders as a serious deterrent to non-compliance. Compliance with the legislation relating to the SES Regulations is also considered to be high.

This PIR, and the PIR relating to the CAA's continued role as the NSA for the SES legislation, will be published together.

7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements?

We are not aware of the precise enforcement mechanisms in EU Member States or other States. Some States, including the US, utilise civil penalties (fines) as an enforcement tool in addition to regulatory enforcement powers, though usually also have criminal sanctions for a range of offences.

As in the UK system, there is usually a spectrum of enforcement options open to the regulatory body, depending on the nature and seriousness of the breach, and on mitigating or aggravating factors.

