

initiative Title: The Air Navigation (Single European Sky) (Penalties) Order 2009 PIR No: DfTPIR035 Lead department or agency: Department for Transport Other departments or agencies: Civil Aviation Authority (CAA) Contact for enquiries: Click here to enter text.	Post Implementation Review
	Source of intervention: EU
	Type of regulation: Secondary legislation
	Type of review: Statutory - other
	Date of implementation: 12/12/2013
	Date review due (if applicable): 12/12/2018
Summary: Intervention and Review	RPC Opinion: Not Applicable

1a. What were the policy objectives and the intended effects? (If policy objectives have changed, please explain how).

In a broader context, the Air Navigation (Single European Sky) (Penalties) Order 2009 (“the Order”), was implemented to help support the timely implementation of the SES initiative. In the late 1990s, with air traffic related delays increasing, the EU embarked on work to consider how EU competence could help ensure that the Air Traffic Management (ATM) system responded to the challenge of traffic growth. The Commission estimated that inefficiencies in the European ATM system cost airlines approximately 4 billion euros per annum in comparison to the US system. At the time, 40% of all departure delays across the EU were attributed to ATM. The objective of the SES initiative was to deliver a seamless, safe, sustainable, interoperable, cost-effective, operationally efficient, and modern European Air Traffic Management Network (EATMN) able to meet future capacity demands and benefit air carriers and passengers.

The primary policy objective of the Order, as amended in 2013, and as cited in the original Impact Assessment, was to ensure that the UK fulfilled its obligations under EU law.¹ In doing so, the Government also intended to mitigate against the risk of infraction proceedings, and ensured that the Civil Aviation Authority (“CAA”) would be in a position to prosecute non-compliance with EU SES regulations should the need arise.

The EU legislation from which this Order derived, namely, the Framework Regulation (No 549/2004), the Services Provision Regulation (No 550/2004), and the Interoperability Regulation (552/2004) (“the EU Regulations”) have direct effect in UK law. In particular, Article 9 of the Framework Regulation required the Government to put in place “effective, proportionate and dissuasive” penalties for non-compliance with EU Regulations and other related Single European Sky (SES) legislation.

The EU Regulations were initially introduced in 2004. In 2009, the Government introduced the Order to meet this obligation under the 2004 EU Regulations, and this put in place penalties for non-compliance with SES-related legislation made up to September 2009. The Air Navigation (Single European Sky) (Penalties) (Amendment) Order 2013 amended the Order to enable enforcement of the new function allocated to the national supervisory authority under the Single European Sky (National Supervisory Authority) Regulations 2013, being designated in the UK as the CAA, and added a provision to the Order requiring its periodic review. As a result of that review the Order requires updating to put in place penalties for non-compliance of requirements that have been introduced since 2009.

The obligation for this review is set out in Regulation 14 of the Order and it states that the Secretary of State (SofS) must, from time to time, carry out a review of the Order, set out conclusion in a report, and publish the report. This PIR will act as the report.

In carrying out the review the SofS must, so far as is reasonable, have regard to how the air traffic flow management regulation, the service provision regulation, the interoperability regulation, Commission Implementing Regulation (EU) No 1035/2011 of 17 October 2011 laying down common requirements for the

¹ http://www.legislation.gov.uk/ukia/2013/181/pdfs/ukia_20130181_en.pdf

provision of air navigation services and amending Regulations (EC) No 482/2008 and (EU) No 691/2010, and Commission Regulation (EC) No 1794/2006 of December 2006 laying down a common charging scheme for air navigation services are implemented in other Member States.

In particular, the scope of the review must set out the objectives intended to be achieved, 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.

1b. How far were these objectives and intended effects expected to have been delivered by the review date? If not fully, please explain expected timescales.

The intended effects of the Order were expected to have been fully realised by the review date.

2. Describe the rationale for the evidence sought and the level of resources used to collect it, i.e. the assessment of proportionality.

This report includes a review of the EU Regulations and the related domestic legislation. This review is intended to inform and, where appropriate, build on the evidence and analysis that was used when the Order, and the 2013 amending order, were brought forward.

The level of evidence sought for this review is low, for the reasons outlined below.

The Order, 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 this Order, carrying out an enforcement role in accordance with its obligations under the Order. 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 the Order 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 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 sought and used evidence supplied by the CAA on the direct and indirect impacts of the Order (see section 3). 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.

This assessment has not considered the overall effectiveness of the wider SES initiative or the EU Regulations directly as this is detailed in a separate PIR covering The Single European Sky (National Supervisory Authority) Regulations 2013 (“NSA PIR”), which will be published alongside this PIR.

3. Describe the principal data collection approaches that have been used to gathering evidence for this PIR.

The CAA was the primary source for evidence collection. That evidence was sought through correspondence and via a telephone conference, and was connected to the evidence gathering process for The Single European Sky (National Supervisory Authority) Regulations 2013.² In particular, the CAA was asked for feedback on:³

1. Does the CAA consider that the UK met its primary objectives when introducing the Order?

² The Single European Sky (Penalties)(Amendment) Order 2013 was laid alongside The Single European Sky (National Supervisory Authority) Regulations 2013 in November 2013, with both coming into force on 12 December. Both instruments are closely connected and both have a statutory review before 12 December 2018. To minimise CAA time, questions were put to the CAA together to cover both instruments.

³ paraphrased from original text or points of discussion

2. What are the CAA's views on the effectiveness of the Service Provisions Regulation and the Interoperability Regulation?
3. Does the CAA consider that the Order brought any additional burdens or cost to the CAA itself?
4. Does the CAA consider that the Order brought any additional burdens or cost to business? Specially, did the legislation have any impacts on micro and small businesses and if so, were impacts any different to larger businesses?
5. Has the CAA received any evidence or viewpoints from stakeholders regarding its implementation of the Order?
6. Is the CAA aware of any unintended effects or indirect impacts of the legislation and if so, what were they and what were the impacts?
7. What would be the impacts if the Government removed the legislation without replacement? For instance, would the CAA have any other powers to achieve the same results on a non-statutory basis?
8. In the CAA's view, did the UK go beyond what is required in the primary EU Regulations? If so, does the CAA believe this approach could be putting UK businesses at an economic disadvantage against other EU nations?
9. The Government's impact assessment, as is standard practice at the IA stage, assume compliance as 100%. Could you provide your assessment on compliance (%) for 2013, 2015/16, and now? Can you confirm that any assessment of effectiveness is assessed against the Hampton Principle and the Regulators Code?
10. Has the industry, or the situation on the ground, changed since 2013, and if so, please explain the changes?

4. To what extent has the regulation achieved its policy objectives? Have there been any unintended effects?

We assess that this Order has met its objectives since being amended in 2013. The Order brought the UK in line with more recent EU SES related legislation. This ensured that the UK continued to comply with Article 9 of the Framework Regulation which requires the Government to put in place "effective, proportionate and dissuasive" penalties for non-compliance with EU Regulations, and other related Single European Sky (SES) legislation.

By fulfilling its obligations under EU law, the Government reduced the risk of infraction proceedings. The Order as amended also ensured that CAA would be in a position to prosecute non-compliance should the need arise.

The CAA agrees with our assessment that the Government has met its objectives.

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 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 suspending certificates, designations, or controller licences. The CAA has not specifically considered whether civil sanctions would be of benefit here, but more generally the CAA believe that civil sanctions would support their wider enforcement toolkit.

To our knowledge, and the knowledge of the CAA, the Order has not brought about any unintended direct or in-direct consequences to the CAA as regulator, or to businesses. The CAA also agrees with our assessment, that the UK has not "gold plated" its implementation, and that the Order has not placed UK businesses at a disadvantage against other EU competitors.

5a. Please provide a brief recap of the original assumptions about the costs and benefits of the regulation and its effects on business (e.g. as set out in the IA)

As described in box 2 above, we anticipated that the Order would only have minimal impact on the CAA as regulator, and on businesses, and those costs would be have been related to familiarisation cost.

5b. What have been the actual costs and benefits of the regulation and its effects on business?

The CAA has advised that it does not consider there to have been any costs to business, including mirco and small businesses. In relation to initial familiarisation costs, the CAA has said that for all practical purposes, the familiarisations cost are and were zero with, at best, impacted parties needing to read an explanatory note to understand that they could face fines of some description for non-compliance. The CAA does not have a specific figure for “practically zero” familiarisations costs, and we consider it to be disproportionate to consult business to understand exactly how low the cost were. For the purpose of this assessment we therefore consider that all costs, including familiarisations costs, to be zero.

6. Assessment of risks or uncertainties in evidence base / Other issues to note

The primary risk to the evidence in this assessment relates to there not being a wider consultation, and with the CAA being the only external source for evidence. However, given that the Order has a minimal cost impact on the CAA and businesses, this is considered to be a low risk. We also believe that the CAA, as regulator, clearly has expertise in this area, and we consider its evidence which relates to business impacts, in-direct impacts, and unintended consequences to be reliable.

7. Lessons for future Impact Assessments

There are lessons relating to the wider SES initiative in the PIR covering The Single European Sky (National Supervisory Authority) Regulations 2013

8. What next steps are proposed for the regulation (e.g. remain/renewal, amendment, removal or replacement)?

Renewal.

On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

The Order is considered to be working well. As a result, the Government is currently in the process of implementing a new amending instrument to bring the UK in line with the new functions and obligations that have become EU law since the Regulation came in force.

More broadly, the Government intends to introduce civil sanctions as an alternative to criminal prosecution for safety offences in the Air Navigation Order 2016, and will consult on proposals in due course. However, bringing this about will require a minor change to primary legislation, secondary legislation and consultation by the CAA on its use of the powers. It is therefore likely to be a matter of years before these can be brought into effect.

In relation to lessons learnt, as detailed in section 2, we accept that the evidence gathered in this assessment may have limitations due to a “light touch” consultation with the relevant expert body rather than

a wider consultation with business, and use of secondary evidence rather than direct consultation with other member states (See NSA PIR that has been published alongside this document). We also accept that some of the responses and the Department's interpretation of such may have a subjective element. However, given the nature of the impacts, we do not consider a change in approach would be needed in the future.

Sign-off for Post Implementation Review:

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

Signed: Nicholas Herrick

Date: 24/10/2018