

**EXPLANATORY MEMORANDUM TO**  
**THE SINGLE EUROPEAN SKY (NATIONAL SUPERVISORY AUTHORITY)**  
**REGULATIONS 2013**

**2013 No. 2620**

**1.** This explanatory memorandum has been prepared by the Department for Transport (DfT) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The purpose of these Regulations is to;

- revoke the Single European Sky (National Supervisory Authority) Regulations 2004 and the Single European Sky (Functions of the National Supervisory Authority) Regulations 2006,
- consolidate them into one instrument,
- incorporate updated national obligations arising from European (EU) Single European Sky (SES) legislation introduced since 2009, and
- maintain the UK's compliance with EU SES legislation.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative Context**

4.1 This instrument is being made to implement EU obligations that arise from the EU SES legislation.

4.2 The EU legislative basis for the SES was laid in April 2004 with four high-level EU Regulations:

- Regulation (EC) No 549/2004 laying down the framework for the creation of the Single European Sky (the Framework Regulation),
- Regulation (EC) No 550/2004 on the provision of air navigation services in the Single European Sky (the Service Provision Regulation),
- Regulation (EC) No 551/2004 on the organisation and use of the airspace in the Single European Sky (the Airspace Regulation), and
- Regulation (EC) No 552/2004 on the interoperability of the European Air Traffic Management network (the Interoperability Regulation).

4.3 These high-level EU Regulations were amended in December 2009 by Regulation (EC) 1070/2009 to improve the performance and sustainability of the European aviation system.

4.4 This EU SES legislation includes powers delegated to the EU Commission to make Implementing Rules (IRs). The EU SES Regulations and the IRs made under them are binding in their entirety and directly applicable in the UK, however, the EU SES legislation still requires Member States to make provision in their national law to fulfil certain specific obligations.

4.5 One requirement under the Framework Regulation is for Member States to designate a National Supervisory Authority (NSA) for the purpose of carrying out the tasks and functions assigned to such an authority under the EU SES legislation. The UK's Single European Sky (National Supervisory Authority) Regulations 2004 (SI 2004/1958) designated the Civil Aviation Authority (CAA) as its NSA in the UK and that designation needs to continue.

4.6 Additionally, the EU SES legislation places certain responsibilities on Member States (e.g. designation of air traffic service providers). In the UK these responsibilities are routinely administered by the CAA on the Secretary of State's behalf, so express authorisation is required to allow the CAA to administer these responsibilities and ensure transparent compliance with EU legislation.

### Scrutiny History

4.7 The scrutiny history of the proposals which resulted in Regulations (EC) No 549/2004 – (EC) 552/2004 is at Annex A. The proposal that resulted in Regulation (EC) 1070/2009, which amends these SES high level regulations, was the subject of EM 11323/08. The House of Commons European Scrutiny Committee considered the EM on 16 July 2008 and recommended that the document was politically important and should be debated in Standing Committee together with the Commission Communication on development of the Single European Sky and the draft Regulation to extend the remit of the EASA (Report 30, Session 2007-2008, 29798). The debate took place on 7 October 2008.

4.8 The House of Lords Select Committee on the European Union referred the EM to Sub-Committee B at the 1330<sup>th</sup> sif of 15 July 2008. Sub-Committee B considered the document on 21 July and cleared it from scrutiny. Ministerial letters were sent to both Committees on 20 November 2008 to keep them informed of progress in negotiations.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The European Commission's SES programme modernises air traffic management system across Europe. The amendments made in 2009 to the EU SES high level Regulations necessitate the following provisions in these Regulations:

### Removal of obsolete provision

7.2 The amended Airspace Regulation replaced the original requirement for a Member State to approve the establishment or modification of routes and sectors in airspace for which it is responsible with the principles of a new Europe-wide Network Management

Function (NMF). Regulation 6 of SI 2006/3104 is therefore obsolete so there is no equivalent to it in these consolidated Regulations.

### Retained Provisions

7.3 The following provisions are retained in these Regulations:

- The designation of the CAA as NSA (regulation 2, SI 2004/1958). This maintains the UK's compliance with Article 4(1) of the Framework Regulation;
- The designation of the CAA as the competent authority (regulation 3, SI 2006/3104). This maintains the UK's compliance with Article 12(4) of the Service Provision Regulation and helps the CAA ensure compliance by Air Navigation Service Providers (ANSPs) with the SES common requirements for air navigation service provision and the SES common charging regulation; and
- Member State obligations administered by the CAA as NSA from SI 2006/3104, specifically;
  - designating air traffic service providers,
  - informing the Commission and other Member States of any air traffic service provider designations,
  - designating meteorological service providers,
  - informing the Commission and other Member States of any designation of meteorological service providers,
  - approving working relationships between air navigation service providers, now including meteorological services providers, and
  - recognising certification issued in other Member States.

### New provisions

7.4 Article 2(6) of the amended Service Provision Regulation provides for NSAs to conclude agreements with other NSAs regarding the division of responsibilities for supervisory tasks and functions "if permitted by national law". These Regulations establish that national provision.

7.5 The following Member State obligations are to be administered by the CAA:

- enforcing IRs (Article 3, the Interoperability Regulation). IRs set out the detailed requirements of the European Air Traffic Management Network systems, constituents and associated procedures in accordance with a set of Essential Requirements in Annex II to the Interoperability Regulation; and
- the discretion to declare systems and constituents of the European Air Traffic Management Network as compliant with the "essential requirements" in Annex II of the Interoperability Regulation. Such compliance would make the systems and constituents exempt from the requirements for an EC declaration of conformity or suitability for use of constituents or an EC declaration of verification of systems (Article 10(2a), the Interoperability Regulation). Member States consider this provision sensible as there are many components in existing systems which have proven their safety and integrity over time and, in the UK, have been regularly monitored and deemed safe by the CAA's Safety Regulation Group. The conformity and verification process for such existing systems and constituents would be an unnecessary burden. It is appropriate for the CAA to exercise this discretion as it already performs safety

and regulatory oversight of systems and equipment on behalf of the Secretary of State.

7.6 With regard to the obligations in paragraphs 7.3 and 7.5 above, the CAA is the UK's expert body that is appropriate to undertake such tasks and functions. These Regulations continue the arrangements for the CAA in respect of the retained provisions, formalise in UK law the arrangements for the CAA to administer the new provisions, and makes transparent the UK's compliance with its SES legal obligations.

## **8. Consultation**

8.1 The Department for Transport holds regular meetings of the European Air Traffic Management Stakeholders Forum to inform, and where appropriate, invite views from UK aviation stakeholders on the implementation of the SES. This includes both informing industry of their obligations under the EU SES legislation and taking their views into account in negotiating and implementing new regulations and implementing rules. However, given the technical nature of this SI, and that it only directly affects the CAA, it has not generated any representations.

## **9. Guidance**

9.1 Guidance is not considered necessary.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is nil because this instrument relates solely to the CAA.

10.2 The impact on the public sector is as follows. The CAA is a "body corporate" independent of the Crown. These Regulations do not impose additional burdens or costs on the CAA. They reiterate the CAA's designation as NSA and the transfer of certain tasks and functions under EU SES legislation that the CAA ordinarily carries out in the UK. There is no effect elsewhere in the public sector.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 These Regulations contain the standard review provision which requires the Secretary of State to periodically review these Regulations and publish review reports within 5 year periods. Additional internal reviews may be required as follows:

- The Commission can propose new EU SES legislation following its statutory periodic review of progress on implementing the SES, if intervention were deemed necessary;

- The EU SES Performance Scheme commenced on 1 January 2012 with the First Reference Period (RP1) running for 3 years. The second and subsequent Reference Periods will be for five years. The Commission's periodic progress reviews on EU SES implementation will be aligned with the end of each Reference Period; and
- The Commission monitors the timeliness and extent of compliance and whether it needs to take appropriate action. The DfT and CAA both monitor the development of SES-related legislation to ensure that timely action is taken to fulfil the UK's EU obligations.

### **13. Contact**

Jeremy Ketley at the Department for Transport; Tel: 020 7944 5114 or email: [Jeremy.ketley@dft.gsi.gov.uk](mailto:Jeremy.ketley@dft.gsi.gov.uk) can answer any queries regarding the instrument.

## Scrutiny History of EU Single European Sky High Level Regulations

The proposals which resulted in Regulations (EC) No 549/2004 – (EC) 552/2004 were the subject of Explanatory Memorandums (EMs) 12692/01 and EM 12693/01 on 9<sup>th</sup> November 2001. The House of Commons European Scrutiny Committee considered these EMs on 21 November 2001, recommended that they were of legal and political importance and should be debated with EM 13735/99 (7<sup>th</sup> report, Session 2001/2002, Reference 22802 and 22804). The Lords Select Committee referred the EMs to sub Committee B following the 1081<sup>st</sup> sift on 13 November 2001.

Two further EMs 12692/1/01 Rev 1, dated 11<sup>th</sup> February 2002 and EM 12693/1/01 Rev 1, dated 14<sup>th</sup> February 2002, were submitted by the Department for Transport, Local Government and the Regions. The Commons European Scrutiny Committee considered these EMs on 6 March 2002 and maintained their recommendation that the proposals were of legal and political importance and should be debated (20<sup>th</sup> Report, Session 2001/2002, Reference 23132 and 23149). The Single Sky debate took place on the floor of the House on 24<sup>th</sup> June 2002. A Ministerial letter was sent on 22 November 2002 to bring the European Scrutiny Committee up to date with developments.

The Lords Select Committee on the European Union referred the EMs to sub Committee B following the 1093<sup>rd</sup> sift on 26 February 2002. The Single Sky EMs were cleared by a letter to the Minister on 5 March 2002, but further information was requested. A Ministerial letter was sent on 28 March 2002 to provide further information and a reply was sent to the Minister on 16 April asking for a further update in due course. A further Ministerial letter was sent on 22 November 2002 to bring the Committee up to date with progress, and a reply was sent to the Minister on 4 December asking for further information.

The Department for Transport issued a further EM 14964/02 on amended proposals on 6<sup>th</sup> January 2003. The House of Commons European Scrutiny Committee considered the EM on 15 January 2003, recommended that it was of political importance but cleared it (7<sup>th</sup> Report, Session 2002/3, 24095). The House of Lords Select Committee on the European Union sifted the EM to sub Committee B following the 1127<sup>th</sup> sift on 15 January 2003. The document was cleared by a letter to the Minister on 23 January 2003. A Ministerial letter was sent on 17 January 2003, and a reply was sent to the Minister on 29 January 2003.

EM 10820/03 and 10821/03 was submitted by the Department for Transport on 21 August 2003 on the outcome of the European Parliament's second reading. The House of Commons European Scrutiny Committee considered the EM on 10 September 2003, recommended that it was of political importance but cleared it (Report 31 session 02/03, references 24768 and 24780). A Ministerial letter was sent on 10 December 2003 reporting the outcome of conciliation. The House of Lords Select Committee on the European Union referred the EM to sub Committee B following the 1152<sup>nd</sup> sift on 9 September 2003. A letter was sent to the Minister on 17 September 2003 maintaining the scrutiny reserve.

EM 12243/03 was submitted by the Department for Transport on 25 September 2003 on the Commission's Opinion. The Commons European Scrutiny Committee considered the EM on 15 October 2003, recommended that it was of political importance and cleared it (Report 33, session

02/03, reference 24864). The Lords Select Committee on the European Union referred the EM to sub Committee B following the 1154<sup>th</sup> sift on 7 October 2003. A letter was sent to the Minister on 20 November 2003 maintaining the scrutiny reserve and asking to be kept informed of outcome of conciliation.

A Ministerial letter was sent to both Committees on 10 December 2003 reporting the outcome of conciliation. The House of Lords Select Committee on the European Union cleared this by a letter to the Minister of 14 January 2004.

The proposal which resulted in Regulation (EC) 219/2007 was the subject of EM 15143/05. The House of Commons European Scrutiny Committee considered the EM on 25 January 2006. The Committee recommended that that document was politically important, and should be debated (Report 16, Session 2005/2006, 27066). The House of Lords Select Committee on the European Union referred the EMs to Sub-Committee B at the 1236<sup>th</sup> sift of 19 December 2005. The Chairman wrote to the Minister on 18 January 2006 noting that the document remained under scrutiny pending receipt of a Regulatory Impact Assessment and further information.

A Ministerial letter was sent to both Committees on 14 February 2006. The House of Commons European Scrutiny Committee considered the letter on 1 March 2006. The Committee maintained its recommendation that the document was politically important and should be debated (Report 20, Session 2005/2006). The debate was held on 13 March 2006. Further Ministerial letters were sent to the Commons Committee on 1 March 2006, 22 May 2006 and 1 December 2006.

The Chairman of the House of Lords Select Committee on the European Union wrote to the Minister on 8 March 2006 requesting further information. Further Ministerial letters were sent to the Lords Committee on 7 April 2006, 22 May 2006, 12 July 2006, 8 November 2006 and 1 December 2006. The proposal was cleared in a letter to the Minister of 29 November 2006.