

**EXPLANATORY MEMORANDUM TO**  
**THE AIR NAVIGATION (SINGLE EUROPEAN SKY) (PENALTIES) (AMENDMENT)**  
**ORDER 2013**

**2013 No. 2874**

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 Air Navigation (Single European Sky) (Penalties) Order 2009 (SI 2009/1735), the 2009 Order, introduced offences for breaches of certain obligations under the European Union's (EU) Single European Sky (SES) Regulations and Implementing Rules (IRs). Since then, further new obligations, that also require penalties, have become directly applicable under EU SES Regulations. This Amendment Order amends the 2009 Order by adding the new offences and appropriate penalties associated with these new obligations.

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

3.1 None

**4. Legislative Context**

4.1 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).

4.2 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.

4.3 This EU SES legislation includes powers delegated to the EU Commission to make 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 national law to set out penalties for infringements of the EU SES Regulations and IRs.

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.

4.8 The proposal that resulted in Regulation (EC) 1070/2009, amended the 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.

4.9 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 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 across Europe. The UK currently discharges its obligations regarding penalties for non-compliance with directly applicable EU SES obligations through the 2009 Order. The 2009 Order currently applies penalties to 20 SES related offences concerning the provision of air navigation services in the single European sky, the interoperability of the European Air Traffic Management network, common requirements for the provision of air navigation services, and the common charging scheme for air navigation services.

7.2 Since the 2009 Order came into force, the EU SES legislation has, by virtue of the amending Regulation (EC) 1070/2009, introduced a performance driven approach, a network management function and the formation of cross-border functional airspace blocks (FABs). FABs involve the collaboration of two or more neighbouring States to improve the operational efficiency of their collective airspace. Additionally, further IRs under Article 3 of the Interoperability Regulations have come into force which provide the requirements of systems enabling the interoperability of the European air traffic management network.

7.3 DfT and the CAA conducted a review of the amended EU SES legislation and identified further obligations which require penalties, which should be added to the 2009 Order. This Amending Order incorporates those additional provisions into the 2009 Order to bring national legislation in line with EU legislation and maintain the UK's compliance with Article 9 of the Framework Regulation. The additional obligations relate to air traffic flow management, and compliance with certain EU IRs. These obligations are listed and described in Annex B of the Impact Assessment accompanying this Order.

7.4 In addition, the Commission Implementing Regulation 1035/2011 referred to in Article 3 supersedes Commission Regulation No 2096/2005 concerning the common requirements for providing air navigation services. This Amending Order updates the relevant references to those Regulations in respect of compliance monitoring, offences relating to documents and the respective penalties.

7.5 This instrument is the first amendment to the 2009 Order. There is no current intention to consolidate that Order.

## **8. Consultation outcome**

8.1 The aviation industry is regularly updated on SES developments across the board via the DfT's European Air Traffic Management Stakeholders Forum which was set up as the appropriate consultation mechanism under Article 10 of the Framework Regulation. Aviation stakeholders are represented on the Forum and are made aware of their obligations under the SES legislation as well as having their views taken into account in developing new regulations and implementing rules.

## **9. Guidance**

9.1 The CAA will inform responsible parties of the introduction of these penalties as part of their ongoing engagement and compliance monitoring.

## **10. Impact**

10.1 The businesses involved are already required to comply with the obligations set out in the SES legislation and bear the compliance costs of doing so. The sanctions regime does not of itself add further compliance costs other than minimal additional familiarisation costs. Additional legal and court costs may be incurred by the CAA in prosecuting cases, with those costs being recouped through costs Orders made against offenders and CAA charges to the industry. There is no impact on charities or voluntary bodies.

10.2 The impact on the public sector is limited to 5 Air Navigation Service Providers (ANSPs) that are publicly owned. As with businesses above, they are already required to comply with the obligations set out in the SES legislation and already bear the compliance costs of doing so.

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 This instrument does not impose any additional regulatory burden on small businesses.

11.2 The parties involved are already required to comply with the obligations in the SES legislation and bear the compliance costs of doing so. The sanctions regime, and this amendment to it, does not of itself add further compliance costs other than minimal additional familiarisation costs.

## **12. Monitoring & review**

12.1 Article 8 of this Amendment Order inserts a statutory requirement to review the 2009 Order and publish a report of the review within 5 years of the Amendment Order 2013 coming into force, with subsequent reviews after intervals not exceeding 5 years.

### **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.