

## EXPLANATORY MEMORANDUM TO

### THE AIR NAVIGATION (SINGLE EUROPEAN SKY) (PENALTIES) (AMENDMENT) ORDER 2018

2018 No. 1354

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 The Air Navigation (Single European Sky) (Penalties) Order 2009 (“the 2009 Order”) (SI 2009/1735) introduced offences for breaches of certain obligations under the European Union’s (EU) Single European Sky (SES) Regulations and Implementing Rules (IRs). This instrument amends legislative references in the 2009 Order that are now obsolete and require amending.

#### 3. Matters of special interest to Parliament

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

- 3.1 This instrument uses the power under section 2(2) of the European Communities Act 1972 to implement the appropriate obligations apply in the UK in respect of the EU’s Single European Sky legislation. The powers under section 60 of the Civil Aviation Act 1982 are used to implement the UK’s international obligations in respect of regulating air navigation under the Chicago Convention 1944.

##### *Matters relevant to Standing Orders Nos. 83P and 83T section 60 of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### 4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

#### 5. European Convention on Human Rights

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

#### 6. Legislative Context

- 6.1 This instrument amends existing domestic legislation that was introduced to support the EU’s SES initiative. It will ensure that the legal framework remains up-to-date and relevant.

- 6.2 The EU legislative basis for the SES was laid in April 2004 with four high-level EU Regulations (“EU SES 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).
- 6.3 The EU SES Regulations include 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 Regulations still require Member States to make provision in national law to set out penalties for infringements of the EU SES Regulations and IRs. In particular, Article 9 of the Framework Regulation requires Member States to put in place “effective, proportionate and dissuasive” penalties for non-compliance with EU SES Regulations and other related Single European Sky (SES) legislation.
- 6.4 The Government introduced the 2009 Order to meet obligations under the 2004 EU SES Regulations and to make the required provisions. In 2013, the 2009 Order was amended through the Air Navigation (Single European Sky) (Penalties)(Amendment) Order 2013 (“the 2013 Order”) to reflect further new obligations that also require penalties, and which have become directly applicable under EU SES Regulations, and to add a provision requiring a periodic review.
- 6.5 This included offences that supported the Civil Aviation Authority’s (CAA’s) role as National Supervisory Authority (NSA) for new responsibilities provided to it through the Air Navigation (Single European Sky) (National Supervisory Authority) Regulation 2013, and which was brought into force alongside the 2013 Order, and allowed the CAA to bring enforcement action against offences relating to air traffic flow management and common requirements for providing air navigational services.
- 6.6 Certain definitions cited in the 2009 Order are now out of date as they relate to an obsolete EU IRs and domestic order, meaning the UK is currently unable to fully meet its obligation under EU Law. This instrument will ensure the UK is fully able to fulfil its obligations to make the necessary provisions, and it does so by amending and updating obsolete reference in the 2009 Order to reflect the most recent legal framework.
- 6.7 More specifically, this instrument will amend:
- The definition of “the common charging scheme regulations”, substituting “Commission Regulation (EC) No 1794/2006” with ““Commission Implementing Regulation (EU) No 391/2013”, along with consequential amendments needed to realign the article references from the 2006 Regulation to the correct article references in the 2013 Regulation; and
  - The definition of “notified”, substituting “article 155 of the Air Navigation Order 2005” with “Schedule 1 to the Air Navigation Order 2016”.

- 6.8 This instrument also makes minor amendments to the 2009 Order so it remains consistent with articles within the Commission Implementing Regulation (EU) No 391/2013 and Schedule 1 to the Air Navigation Order 2016.
- 6.9 There have been no specific undertakings given in previous debates, parliamentary questions, or committee appearances on the particular topic.
- 6.10 The instrument does not pave the way for future instruments.

## **7. Policy background**

### *What is being done and why?*

- 7.1 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 have previously estimated that inefficiencies in the European ATM system cost airlines approximately 4 billion euros per annum in comparison to the US system. Currently circa. 40% of all departure delays across the EU are still 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.
- 7.2 The 2009 Order ensured the UK met its obligations under the 2004 EU SES Regulations. The 2009 Order implemented penalties for non-compliance with SES-related legislation made up to September 2009 and allowed the Civil Aviation Authority (“CAA”) to prosecute non-compliance with EU SES Regulations should the need arise.
- 7.3 The 2009 Order was amended in 2013 to implement new functions allocated to the NSA under the Single European Sky (National Supervisory Authority) Regulations 2013. The 2013 Order designated the CAA as the UK’s NSA and provision was made for periodic review.
- 7.4 A Post Implementation Review (PIR) of the 2009 Order has been prepared, the outcome of which illustrates that the 2009 Order has met its policy objectives. The CAA has advised that whilst it has not needed to use the penalties powers under the 2009 Order, the threat of penalties has proven to be an effective tool in ensuring compliance. This broadly supports its other enforcement tools, such as suspending certificates, designations, or controller licences. The intention was to publish the PIR prior to the making of this instrument, but it will now be published at the earliest available opportunity.
- 7.5 To the Government’s knowledge, and the knowledge of the CAA, the Order has not brought about any unintended direct or in-direct consequences for the CAA as regulator, or to business. The CAA also agrees with the Government’s 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.
- 7.6 The 2009 Order requires amending as it references a now obsolete EU legislation. This instrument updates those references. The UK will remain fully compliant with its EU obligations, and ensure that the CAA has the most recent legal framework to support its ongoing enforcement activities.

- 7.7 By substituting references to “Commission Regulation (EC) No 1794/2006” with “Commission Implementing Regulation (EU) No 391/2013”, the CAA will be able to take enforcement action should more detailed calculations be required than those set out in relation to a Member State’s charging mechanisms, and if provisions specified in Regulation No 391/2013 not be fulfilled.
- 7.8 By substituting references to “article 155 of the Air Navigation Order 2005” with “Schedule 1 to the Air Navigation Order 2016”, the definitions will continue to apply.
- 7.9 There has been no public interest in the policy.

## **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 and does not trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 There are no plans to consolidate the legislation covered by this instrument.

## **10. Consultation outcome**

- 10.1 No public consultation was required as this instrument just amends and updates obsolete legislative references. We have, consulted with the CAA, and their assessment as regulator is that this instrument will continue to support their ongoing enforcement activities and that it will not place any additional cost burdens on them or the industry.

## **11. Guidance**

- 11.1 None.

## **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 An Impact Assessment has not been prepared for this instrument because it only amends and updates now obsolete legislative references.

## **13. Regulating small business**

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

## **14. Monitoring & review**

- 14.1 This instrument does not include a statutory review clause, however, the 2009 Order, as amended in 2013, will continue to have a review clause stating that it will be subject to periodic review.

## **15. Contact**

- 15.1 Jonathan Friel, Senior Policy Advisor, at the Department for Transport Tel: 07469 441 832 or email: jonathan.friel@dft.gsi.gov.uk can answer any queries regarding the instrument.

- 15.2 Sarah Bishop, Deputy Director for the Aviation Policy Directorate at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Sugg, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.