

EXPLANATORY MEMORANDUM TO
THE AVIATION SAFETY (AMENDMENT) (NO. 3) REGULATIONS 2021
2021 No. 1203

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.

2. Purpose of the instrument

- 2.1 The instrument amends nine retained EU Regulations. The amendments implement revised standards and recommended practices (“SARPs”) adopted by the International Civil Aviation Organization (“ICAO”) in accordance with the Convention on International Civil Aviation (“the Chicago Convention”) and introduce other measures to improve aviation safety.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland. In addition, it applies to aircraft registered in the United Kingdom wherever they are.

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 Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency (“the Basic Regulation”) as amended by S.I. 2019/645 establishes a framework, and essential requirements, in respect of aviation safety and provides for the implementation of Standards and Recommended Practices (“SARPs”) as set out in the Annexes (as amended from time to time) to the Chicago Convention. The Basic Regulation as retained in UK law contains regulation making powers whereby the Secretary of State can make and amend detailed regulations in respect of aviation safety and to ensure compliance with the essential requirements set out in the Annexes to the Regulation.
- 6.2 This instrument is made in exercise of regulation making powers set out in Article 17 (airworthiness), Article 23 (pilots and cabin crew), Article 27 (training, testing, checking and medical assessment), Article 31 (air operations), Article 36 (aerodromes

and safety-related aerodrome equipment), Article 39 (delegated powers including those which relate to the operation of aerodromes), Article 43 (air traffic management and air navigation service providers and organisations), Article 44 (airspace and airspace structures), Article 57 (unmanned aircraft), Article 62 (certification, oversight and enforcement) and Article 127(3)(b) (power to include consequential provision) of the Basic Regulation.

- 6.3 A number of retained implementing Regulations made under the Basic Regulation (and its predecessor, Regulation (EC) 216/2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency) need updating to give effect to updated SARPs and to introduce other measures to improve aviation safety. These Regulations are:
- i) Commission Regulation (EU) No 1178/2011 of 3 November 2011 laying down technical requirements and administrative procedures related to civil aviation aircrew pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council;
 - ii) Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council;
 - iii) Commission Regulation (EU) No 139/2014 of 12 February 2014 laying down requirements and administrative procedures related to aerodromes pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council;
 - iv) Commission Regulation (EU) No 1321/2014 of 26 November 2014 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks;
 - v) Commission Regulation (EU) 2015/640 of 23 April 2015 on additional airworthiness specifications for a given type of operations and amending Regulation (EU) No 965/2012;
 - vi) Commission Implementing Regulation (EU) 2017/373 of 1 March 2017 laying down common requirements for providers of air traffic management/air navigation services and other air traffic management network functions and their oversight, repealing Regulation (EC) No 482/2008, Implementing Regulations (EU) No 1034/2011, (EU) No 1035/2011 and (EU) 2016/1377 and amending Regulation (EU) No 677/2011;
 - vii) Commission Regulation (EU) 2018/395 of 13 March 2018 laying down detailed rules for the operation of balloons as well as for the flight crew licensing for balloons pursuant to Regulation (EU) 2018/1139 of the European Parliament and of the Council;
 - viii) Commission Regulation (EU) 2018/1976 of 14 December 2018 laying down detailed rules for the operation of sailplanes as well as for the flight crew licensing for sailplanes pursuant to Regulation (EU) 2018/1139 of the European Parliament and of the Council and
 - ix) Commission Implementing Regulation (EU) 2019/947 of 24 May 2019 on the rules and procedures for the operation of unmanned aircraft.

7. Policy background

What is being done and why?

Regulation (EU) 1178/2011

- 7.1 Regulation 1178/2011 is amended in Chapter 1 of Part 3 of the instrument to introduce the concept of evidence-based training (EBT) for flight crew competence and training methods. The objective of EBT is to improve safety and to enhance the competencies of flight crews to safely operate the aircraft in all situations and to be able to identify and manage unexpected situations. The EBT concept is designed to maximise learning and limit formal checking. Some minor editorial changes are also being made to the Regulation.

Regulation (EU) 965/2012

- 7.2 Regulation (EU) 965/2012 is amended by Chapter 2 of Part 3 to introduce new provisions in relation to alcohol testing and the prevention, detection and misuse of psychoactive substances in respect of flight and cabin crew members. The need for these changes was identified following the crash involving Germanwings Flight 9525 in France in 2015.
- 7.3 The instrument makes provision for alcohol testing by the Civil Aviation Authority (“CAA”) of flight and cabin crew members at airports and for the recording of the results of such tests. It prescribes, using the same alcohol limits for flight and cabin crew set out in section 93(2) of the Railways and Transport Safety Act 2003, the point at which those members will no longer be fit to undertake their duties and are thereby prohibited from doing so. These tests will form part of the Safety Assessment of Foreign Aircraft Programme. The programme was initiated by the European Civil Aviation Conference. It provides for data exchange of information in respect of the testing programme which will be managed through a centralised database controlled by the European Union Aviation Safety Agency (“EASA”). In common with other non-EU authorities participating in the programme, the CAA has entered into working arrangements with EASA in regarding the collection and exchange of information derived from ramp inspection of foreign aircraft which includes using the EASA database. Regulation 11 therefore amends ARO.RAMP.106 of Annex 2 to Regulation (EU) 965/2012 to reflect the fact that we will be using the EASA database rather than the CAA one.
- 7.4 In addition, the instrument creates new obligations on airlines in relation to the prevention, detection and misuse of psychoactive substances. In particular, airlines will be required to develop and implement a policy on the prevention and detection of misuse of psychoactive substances by flight crew members and cabin crew members and other safety-sensitive personnel under their direct control. They will be obliged to notify the CAA in cases of misuse that they identify. Airlines will also be required to establish pro-active and non-punitive support programmes for flight crew members who might have a substance abuse problem to seek appropriate help.
- 7.5 The Regulation is further amended to implement new SARPs in Annex 6 Part 1 to the Chicago Convention relating to the use of the Global Reporting Format (“GRF”) for runway surface conditions. Airlines will be required to assess landing performance of aircraft in accordance with the GRF system. In addition, conditions are established under which approval may be given to land within a reduced available landing distance.

Regulation (EU) 139/2014

- 7.6 Regulation (EU) 139/2014 is amended by Chapter 3 of Part 3 to implement recent amendments to the SARPs in Annex 15 to the Chicago Convention which deal with Aeronautical Information Services and the ICAO publication Procedures for Air Navigation Services — Aeronautical Information Management (“PANS-AIM”). The changes relate to the requirements for Aeronautical Data Quality (“ADQ”) and GRF.
- 7.7 The ADQ requirements are to ensure that aeronautical data disseminated by aerodromes is of sufficient quality for its intended use.
- 7.8 The requirements in respect of GRF apply to aerodromes and complement the changes to Regulation (EU) 965/2012 as set out in paragraph 7.5 of this memorandum.

Regulation (EU) 1321/2014

- 7.9 Regulation 1321/2014 is amended by Chapter 4 of Part 3 to require the use of a corrosion prevention and control programme and a continuing structural integrity programme established in accordance with Regulation (EU) 2015/640 as outlined in paragraph 7.12 below.

Regulation (EU) 2015/640

- 7.10 Regulation 2015/640 is amended by Chapter 5 of Part 3 to improve safety in a number of areas as detailed below.
- 7.11 The fire protection standards for the cargo and baggage holds of aircraft types for which type certification commenced before 1 September 2007 are brought into line with the upgraded standards which are applicable to aircraft types whose type certification commenced after 31 August 2007.
- 7.12 New requirements are introduced to ensure the structural integrity of certain ageing aircraft. In particular, the organisation responsible for the design of an aircraft type has to introduce a corrosion prevention and control programme and a continuing structural integrity programme for that aircraft type. Aircraft operators will use these programmes as part of their continuing airworthiness and maintenance programmes required by Regulation 1321/2014.
- 7.13 Large aeroplanes used for commercial air transport which enter service on or after 1 January 2026 are to be fitted with a runway overrun awareness and alerting system.
- 7.14 Supplemental type certificate holders will have to develop damage tolerance data if this is required by operator of the aircraft concerned.
- 7.15 In addition, the Regulation is amended to exempt certain aircraft types from the requirements to demonstrate passenger seat performance in emergency landings.

Regulation (EU) 2017/373

- 7.16 Regulation 2017/373 is amended by Chapter 6 of Part 3 to implement the amended SARPs in Annex 15 and PANS-AIM. The changes complement those being made to Regulation 139/2014. The ADQ requirements are to ensure that aeronautical data disseminated by air traffic management and air navigation service providers is of sufficient quality for its intended use.

Regulation (EU) 2018/395

- 7.17 Regulation (EU) 2018/395 is amended by Chapter 7 of Part 3 to extend the deadline by which balloon pilots with licences issued under the Air Navigation Order 2016

(“the ANO”) have to hold a Balloon Pilot Licence issued under the Regulation. The original deadline for this was 8 April 2021. The CAA issued an exemption from the requirement to hold a licence issued under the Regulation which allowed pilots to continue to fly on licences issued under the ANO until 8 December 2021. The reason for the exemption was that COVID-19 had disrupted the ability of pilots to transition to the new licensing regime. The CAA is undertaking a post EU Exit review of private pilot licensing which may result in significant changes to licensing requirements. In light of this, the instrument amends the Regulation to establish a new deadline of 8 December 2023 for obtaining a licence issued under the Regulation. Delaying the applicability of the requirement will remove the possibility of existing licence holders from having to change their licences several times within short space of time and aim for consistency.

Regulation (EU) 2018/1976

- 7.18 Regulation (EU) 2018/1976 is amended by Chapter 8 of Part 3 to extend the deadline by which sailplane (glider) pilots will have to hold a Sailplane Pilot Licence issued under the Regulation. As with Balloon Pilot Licences above at point 7.17, the deadline has been extended by way of an exemption to 8 December 2021, which this instrument extends to 8 December 2023.

Regulation (EU) 2019/947

- 7.19 Regulation (EU) 2019/947 is amended by Chapter 9 of Part 3. A definition of ‘small control line model aircraft’ is added to Article 14 of that Regulation. Article 14 is further amended to exclude operators of such aircraft from the requirement to register with the CAA when operating in the open category or in the specific category in accordance with an authorisation received under Article 16 (a model aircraft club or association authorisation). This is because it is not considered to be proportionate or necessary for operators of small control line model aircraft to register in these low-risk circumstances.

Consequential revocation

- 7.20 As a consequence of the amendments made by this instrument to Regulation (EU) 2017/373 and Regulation (EU) 139/2014, Part 2 of this instrument revokes Commission Regulation No 73/2010 (requirements on the quality of aeronautical data) which is superseded by the new provisions.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 There are currently no plans to consolidate the legislation being amended.

10. Consultation outcome

- 10.1 The significant changes made by this instrument arise from work on the implementation of ICAO SARPs and general safety enhancements undertaken by EASA while the UK was a member of the EU. This involved two rounds of consultation. The UK fully participated in the development of the requirements and supported the position reached after the consultation had taken place. A consultation on the changes to the retained legislation has not taken place as the views of the

aviation industry, which are generally supportive, are already known through the EASA consultation.

- 10.2 The EASA consultations can be found at <https://www.easa.europa.eu/document-library/notices-of-proposed-amendment>.

11. Guidance

- 11.1 In accordance with Articles 76 and 115 of Regulation 2018/1139, the Civil Aviation Authority is required to adopt acceptable means of compliance and guidance material for the revised requirements. These will be published on the CAA website www.caa.gov.uk.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is minimal.
- 12.2 The amendments to Regulation 2011/1178 provide an option for commercial air transport operators to use evidence-based training. There is no compulsion to do so.
- 12.3 The amendment to Regulation 965/2012 introduces measures to combat misuse of alcohol and other psychoactive substances. These include a requirement on Commercial Air Transport operators to develop a policy on the detection and prevention of misuse of psychoactive substances by safety sensitive personnel. There is also a requirement on operators to implement a support programme for flight crew, and to introduce psychological assessment. These requirements have been the subject of extensive consultation since 2018, and operators are prepared to apply new requirements.
- 12.4 The amendment to Regulation 965/2012 in respect of GRF reflects international requirements which airlines will have to meet to fly internationally. Without the changes they could find it difficult to continue to fly internationally. Airlines are already prepared to apply the new standards.
- 12.5 The amendment to Regulation 139/2014 implements international standards and aerodrome operators are already prepared to apply those standards.
- 12.6 The amendment to Regulation 1321/2014 and the linked amendments to Regulation 2015/640 have a greater impact than any other change made by the instrument. The new requirements have been consulted on over a period of years, and extensive preparatory work has already taken place across industry, including by design approval holders and Commercial Air Transport operators. The detail of these changes has been known since 2020. The industry is therefore prepared to apply new requirements, and in many cases is already applying them to EU operations.
- 12.7 The amendments to Regulation 2017/373 implement international standards and air traffic management/air navigation service providers are already prepared to apply those standards.
- 12.8 The amendments to Regulation 2018/395 provide an alleviation to allow balloon pilots to continue flying under their current licence pending the outcome of a review of pilot licensing by the CAA.
- 12.9 The amendments to Regulation 2018/1976 provide an alleviation to allow sailplane pilots to continue flying under their current licence pending the outcome of a review of pilot licensing by the CAA.

- 12.10 The amendments to Regulation 2019/947 provide an alleviation from the unmanned aircraft operator registration requirements for the operators of certain small control line model aircraft.
- 12.11 There is no, or no significant, impact on the public sector.
- 12.12 A full Impact Assessment has not been prepared for this instrument because the changes were subject to impact assessments conducted by EASA. These impact assessments formed part of the initial consultation referred to in paragraph 10.2. As the UK was member of the European Union at the time, and fully participated in the development of the requirements, a further impact assessment would not affect the outcome.

13. Regulating small business

- 13.1 The legislation applies to activities that may be undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is the limited impact that the changes will have on small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is for it to be kept under review by the CAA as part of their ongoing oversight responsibilities.
- 14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Robert Courts has made the following statement:

“A statutory review clause has not been included as the impacts of the changes will not be significant and there are no other factors which would make it desirable to include a review clause.”

15. Contact

- 15.1 Duncan Nicholls at the Department for Transport, Telephone: 07825 263416 or email: duncan.nicholls@dft.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 David Harding, Deputy Director for General Aviation, Safety, Skills and the CAA, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Robert Courts at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.