

EXPLANATORY MEMORANDUM TO
THE AIR NAVIGATION (AMENDMENT) ORDER 2021

2021 No. 879

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 This instrument amends the Air Navigation Order 2016 (S.I. 2016/765) (“the Order”) to:
- (i) create requirements to notify the Civil Aviation Authority (“the CAA”) of specified details in relation to en-route obstacles, and to update the CAA of relevant changes;
 - (ii) introduce a new category of microlight aircraft with a maximum take-off mass of 600kg (650kg for an amphibian or floatplane) by amending the definition of microlight aeroplane to include aeroplanes currently within the scope of Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4th July 2018 on common rules in the field of civil aviation (EUR 2018/1139) (“the Basic Regulation”), and by making consequential changes;
 - (iii) reflect changes to the retained Commission Regulation (EU) No 1178/2011 of 3rd November 2011 laying down technical requirements and administrative procedures related to civil aviation aircrew (EUR 2011/1178) (“the Aircrew Regulation”) regarding the use of medical declarations on Part 21 aircraft;
 - (iv) provide for flight restriction zones around protected space sites (as is currently provided for protected aerodromes in article 94A of the Order);
 - (v) remove rockets that are regulated under the Space Industry Act 2018 (“the 2018 Act”) from the CAA’s rocket permission regime and require an applicant for permission for a large rocket to have a safety case and insurance; and
 - (vi) remove a redundant provision in relation to aviation safety that is no longer used (Article 96(7) of the Order).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Order is made under various powers including section 2(2) of the European Communities Act 1972. However, none of the provisions being amended by this instrument relates directly to provisions made under section 2(2) powers. Rather, they are made under section 60 of the Civil Aviation Act 1982 (“the Act”). Therefore

paragraphs 13, 14 and 15 of Schedule 8 to the European Union (Withdrawal) Act 2018 (“EUWA 2018”) do not apply to this instrument.

- 3.2 As article 9 is the sole correcting provision in this instrument, and makes a minor correction to an obvious error, the Department considers it disproportionate to apply the free issue procedure in this case. The Department has consulted the SI Registrar in accordance with paragraph 4.7.6 of the Statutory Instrument Practice.

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

- 3.3 N/A.

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 and (by virtue of article 17 of the Order) on or in the neighbourhood of an offshore installation.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 This instrument is being made to introduce new requirements into, or amend existing requirements in, the Order.

7. Policy background

What is being done and why?

Changes needed because of the 2018 Act

- 7.1 Applications for, and granting of, permissions for launches from the UK of large rockets are currently regulated under article 96 of the Order.
- 7.2 The 2018 Act, together with the Space Industry Regulations 2021 (S.I. 2021/792), the Space Industry (Appeals) Regulations 2021 (S.I. 2021/816), the Spaceflight Activities (Investigation of Spaceflight Accidents) Regulations 2021 (S.I. 2021/793), the Regulator’s Licensing Rules (“the Rules”) and associated guidance will provide the framework for regulating spaceflight activities carried out from the United Kingdom once they are fully in force. The Rules are available in draft here: [The Space Industry Regulations 2021 \(legislation.gov.uk\)](#). Once the Space Industry Regulations 2021 come into force on 29 July 2021, the Rules will be issued by the CAA and will be available at [Publications | UK Civil Aviation Authority \(caa.co.uk\)](#). Any amendments to the Rules will be made by the CAA and published on the CAA’s website.
- 7.3 It is necessary to amend the Order so that launches from the UK of rockets that are regulated under the 2018 Act do not also require permission under the Order, as this would be double regulation. This instrument also requires the CAA to grant permission for a large rocket only if the applicant has submitted a safety case and has adequate insurance. This will apply to rockets that are “large rockets” within the

existing meaning of the Order but which are not regulated under the 2018 Act and the aim is to bring the safety and insurance requirements closer to those in and under the 2018 Act.

- 7.4 Article 96(7) contains a redundant provision that has never been used and is no longer needed. This instrument removes this provision so the requirement for a permission will be the same for commercial and non-commercial rockets and be based on the power output of the motors.
- 7.5 Additionally, this instrument makes a change to give spaceports the benefit of “flight restriction zones” (similar to those for protected aerodromes), within which no-one may operate an unmanned aircraft without permission. Article 12 imposes a penalty for breach of this requirement.

Amendment to Part 6 (aircrew) - Medical Declarations

- 7.6 The Aviation Safety (Amendment) Regulations 2021 (S.I. 2021/10) amended the Aircrew Regulation to permit pilots subject to those Regulations to use a medical self-declaration made under article 163 of the Order to fly certain aircraft without obtaining a medical certificate. This instrument makes a consequential amendment to article 162 of the Order to reflect that change. This change could not be made in those Regulations, as an Order in Council is needed to effect the change.

Notification of En-Route Obstacles

- 7.7 International standards set under the Convention on International Civil Aviation require the identification of obstacles over 100 metres (328ft) above ground level (“en-route obstacles”) and promulgation of their location. This is to ensure that flights can be planned and undertaken without coming into hazardous proximity to such obstacles.
- 7.8 Currently the UK aims to meet those standards through the Ministry of Defence’s Defence Geographic Centre database of en-route obstacles. However, this information is collected through best endeavour practices, such as military pilots’ reports and research, and is not complete.
- 7.9 The importance of accurate data on en-route obstacles was highlighted by the helicopter accident near Vauxhall Bridge, on 16 January 2013. The investigation¹ of the accident by the Air Accident Investigation Branch (“AAIB”) found that there was no effective system in place to anticipate the potential effects of new obstacles on existing airspace arrangements where the obstacles are outside officially safeguarded areas (which are safeguarded in terms of development due to their proximity to nationally important civil aerodromes). As a result, the AAIB recommended that the Department for Transport implement, as soon as practicable, a mechanism compliant with Commission Regulation (EU) 73/2010 of 26 January 2010 laying down requirements on the quality of aeronautical data and aeronautical information for the single European Sky (EUR 73/2010), which lays down requirements on the quality of aeronautical data and information in terms of its accuracy, resolution and integrity. This should be applicable to the whole of the UK for the formal reporting and management of obstacle data, including a requirement to report data relating to newly permitted developments.

¹ <https://www.gov.uk/aaib-reports/aar-3-2014-g-crst-16-january-2013>

- 7.10 This instrument addresses that recommendation by amending the Order to require the CAA to be notified of:
- (i) existing or planned en-route obstacles;
 - (ii) changes to the height or presence of en-route obstacles; and
 - (iii) the fitting or removal of warning lights.

- 7.11 This instrument creates a new offence in relation to en-route obstacles. Failure to comply with the notification requirements will be an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale (£2,500).

Amendments to Schedule 1 (Interpretation), and to Part 2, Chapter 2, of Schedule 8 (aircraft and instructor ratings and certificates) in relation to Microlight aeroplanes

- 7.12 Some aircraft are excluded from the scope of the Basic Regulation as they pose a low risk for aviation safety. The excluded aircraft included historic aircraft, those designed before 1955, experimental and homebuilt aircraft and very light aircraft. The weight limit for very light aircraft varies with the configuration of the aircraft but in most cases a maximum take-off mass (“MTOM”) of 450kg applies.

- 7.13 Article 2 of the Basic Regulation gives the CAA the option to increase the weight limit for excluded aircraft. The CAA is exercising this option with the support of the general aviation community. The new weight limit will depend on the aircraft configuration, but in most cases a MTOM of 600kg or less will be applicable. The aircraft concerned will now be regulated under the Order, rather than the Basic Regulation.

- 7.14 This instrument therefore amends the Order to support this change by:
- (i) changing the definition of “Microlight aeroplane” to reflect the new weight and performance limits;
 - (ii) inserting a new definition of “Single-seat deregulated aeroplane” to retain the current status of such aircraft;
 - (iii) amending article 33(2)(f) to refer to single-seat deregulated aeroplanes, replacing the previous reference to microlight aeroplanes designed to carry only one person;
 - (iv) changing the requirements in relation to the microlight class rating by changing the requirements for differences training needed to be undertaken by current holders of a microlight rating to fly aircraft which were not previously defined as microlights. These requirements have been changed to reflect the new weight and performance limits of microlight aeroplanes as set out in the updated definition of “microlight aeroplane”.

Amendment to Part 10 (prohibited behaviours, directives, rules, powers and penalties)

- 7.15 Article 265E of the Order applies certain provisions of retained Commission Implementing Regulation (EU) 2019/947 of 24 May 2019 on the rules and procedures for the operation of unmanned aircraft (EUR 2019/947) to tethered small unmanned aircraft which would otherwise not be subject to any regulation because they are excluded from the application of the retained Basic Regulation. Article 9 of this instrument amends article 265E(6) of the Order to replace an incorrect reference to “small tethered unmanned aircraft” with a reference to the defined term “tethered small unmanned aircraft”.

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 no plans to consolidate this instrument.

10. Consultation outcome

10.1 There has been extensive consultation for the 2018 Act and the regulations made under it.

10.2 The CAA has conducted a written consultation of the new weight limit for microlights and associated change to the Order. The responses to the consultation were positive, supporting the changes. The CAA also engaged with the Light Aircraft Association and the British Microlight Aircraft Associations to establish the new regulatory regime. A summary of the responses can be found at https://publicapps.caa.co.uk/docs/33/CAP1920_450-600kg_Response.pdf.

10.3 There was no consultation process in respect of the other provisions of this instrument. The provisions relating to en-route obstacles have minimal impact on stakeholders. The provisions relating to medical declarations do not impose any obligations on individuals or organisations.

10.4 The Devolved Administrations were not consulted directly as aviation safety regulation is a reserved matter and the CAA's remit covers the United Kingdom.

11. Guidance

11.1 This instrument does not establish any requirements which need detailed guidance. The CAA will ensure that the requirements are promulgated to those that are likely to be affected. There is, however, guidance issued by the CAA, in its capacity as regulator under the 2018 Act, about assessing whether risks are as low as reasonably practicable and acceptable. This can be found at [Guidance on applications to launch a large rocket under the Air Navigation Order \(caa.co.uk\)](#). The CAA will update guidance as regularly and as necessary going forwards. However, the CAA consider that for now, the current guidance is sufficiently up to date for the purpose of dealing with the changes made by this instrument.

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 the provisions will have very limited impact on regulated individuals and organisations.

13. Regulating small business

13.1 The legislation applies to activities that are 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 that the impact on business is minimal and generally in line with the wishes of the business sectors concerned.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is for it to take place in the course of normal departmental business.
- 14.2 Article 275 of the Order requires the Secretary of State to review it and publish a report within five years after it comes into force and within every five years after that. This includes reviewing provisions which are amended or inserted by this instrument. Following a review it will fall to the Secretary of State to consider whether provisions in the ANO 2016 should remain as they are, or be revoked or amended.

15. Contact

- 15.1 Jonathan Barlow at the Department for Transport, Telephone 07977 418563 or Email: jonathan.barlow@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 David Harding, Deputy Director for General Aviation, Safety and the CAA, at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Robert Courts MP, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.