

EXPLANATORY MEMORANDUM TO

THE AIR NAVIGATION (CARBON OFFSETTING AND REDUCTION SCHEME FOR INTERNATIONAL AVIATION) (AMENDMENT) ORDER 2022

2022 No. 1050

1. Introduction

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

2. Purpose of the instrument

- 2.1 The purpose of this Order is to implement in the United Kingdom (“UK”) Volume IV of Annex 16 to the Chicago Convention on International Civil Aviation (1944), known as the Carbon Offsetting and Reduction Scheme for International Aviation (“CORSIA”). Agreed by the International Civil Aviation Organisation (“ICAO”) in 2016, CORSIA requires qualifying aeroplane operators, from 2021, to offset their international carbon dioxide (“CO₂”) emissions above a given baseline by purchasing ICAO approved offset credits. The baseline is currently defined as an average of 2019 and 2020 emissions, however due to the COVID-19 pandemic, the ICAO Council agreed to change this to 2019 only for the Pilot Phase. The CORSIA Periodic Review in 2022 will consider whether to extend the baseline change to the subsequent phases. This amending Order implements the CORSIA provisions related to the offsetting of CO₂ emissions for the 2021 scheme year by aeroplane operators that are attributed to the UK and operate international flights.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 In its letter to the Department of 12th July 2021 the Joint Committee on Statutory Instruments identified non-reportable errors in the Air Navigation (Carbon Offsetting and Reduction Scheme for International Aviation) Order 2021 (S.I. 2021/534, the “2021 Order”). Those errors are corrected in this Order by articles 4, 5, 6(3) and (5), 7, 8, 9(2) and (3), 10(3), 11(3), 12, 13(2), 18(3), 20, 21, 22, 23, 24(3), 25, 28(4), 29, 33(2), (3) and (4)(a), and 35(2)(b) and (c) of this Order.
- 3.2 In its Eleventh Report of the 2021-22 Session the Committee identified reportable errors in the same Order. The corrections to those errors are provided in articles 14, (4), 24(2), 28(2) and (3), 30, 31(2), 35(2)(b), (c) and (3), of this Order.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 The power to make an instrument that gives effect to the Chicago Convention is at section 60 of the Civil Aviation Act 1982. That power is exercisable by His Majesty by an Order in Council (an Air Navigation Order). This Order is subject to the negative procedure.
- 6.2 This Order implements CORSIA's emissions offsetting requirements for the 2021 scheme year, as per Chapter 3 of the CORSIA Standards and Recommended Practices ("SARPs"), in the UK by amending the 2021 Order, which implemented the monitoring, reporting and verification provisions of the CORSIA SARPs.
- 6.3 Further secondary legislation to amend the UK's civil aviation emissions legislation will be required to implement CORSIA's offsetting requirements for the full duration of the scheme and clarify any interaction between the CORSIA and the UK Emissions Trading Scheme (UK ETS). The Government aims to have this legislation in force by 2024.
- 6.4 The instrument provides a legal framework with which to apply CORSIA's offsetting requirements for the 2021 scheme year in the UK. The instrument is designed to ensure legislation is in force before the deadline to calculate aeroplane operators' offsetting obligations for the 2021 scheme year on 30th November 2022, as specified by the CORSIA SARPs.

7. Policy background

What is being done and why?

- 7.1 ICAO is the United Nations specialised agency established under the Chicago Convention (1944) to manage the administration and governance of international aviation, which includes responsibility for tackling international aviation emissions, which fall outside States' nationally determined contributions under the 2015 Paris Agreement established within the UN Framework Convention on Climate Change.
- 7.2 The Government believes that emissions from this sector are a global problem requiring a global solution, and it is vital that an international answer is found, rather than simply displacing emissions elsewhere across the world.
- 7.3 The UK plays a leading role on environment matters in ICAO, having helped negotiate and secure the first ever global market-based measure to tackle emissions in a single sector. The Government is now negotiating for a long-term emissions reduction goal for international aviation.
- 7.4 In October 2016, ICAO agreed on a global market-based measure to address CO₂ emissions from international aviation from 2021, aimed at achieving ICAO's medium-term climate change goal of Carbon Neutral Growth from 2020.
- 7.5 This global scheme, known as the CORSIA, requires qualifying aeroplane operators to offset their growth in international aviation CO₂ emissions covered by the scheme above the baseline. The growth in emissions will be offset by these operators

purchasing and cancelling emissions units (with one unit equivalent to one tonne of CO₂ equivalent emissions avoided or removed from the atmosphere).

- 7.6 Under the scheme, aeroplane operators will be required to:
- 7.6.1 monitor their emissions on all international routes (subject to exemption thresholds); and
 - 7.6.2 offset any growth in emissions levels above the baseline in emissions from routes between participating States by purchasing eligible emission units generated by projects that reduce emissions in other sectors (e.g. renewable energy). One emission unit equals one tonne CO₂ equivalent emissions avoided or removed from the atmosphere.
- 7.7 CORSIA is divided into the following three phases:
- 7.7.1 Pilot Phase (2021-2023),
 - 7.7.2 First Phase (2024-2026), and
 - 7.7.3 Second Phase (2027-2035).
- 7.8 States may volunteer for the Pilot and First Phases, meaning that all qualifying aeroplane operators operating on routes between participating States will be subject to offsetting requirements. The Second Phase will include all ICAO States, subject to exemptions.
- 7.9 As committed to in the European Civil Aviation Conference’s Bratislava Declaration of September 2016 and reconfirmed in writing to ICAO in June 2020, the UK is committed to participating in CORSIA from the start of the pilot phase. As a contracting State of ICAO, the UK is obliged to adopt the relevant Standards and Recommended Practices (“SARPs”) relating to CORSIA into domestic law.
- 7.10 This instrument implements CORSIA offsetting in the UK, covering the applicability and calculation of CO₂ offsetting requirements for the 2021 scheme year only. This is to ensure relevant legislation is in force before the deadline to calculate aeroplane operators’ offsetting obligations for the 2021 scheme year on 30th November 2022, as specified by the CORSIA SARPs, and thus ensuring the UK continues to uphold the requirements set by ICAO.
- 7.11 This is a short-term measure while the Government considers the approach to any interaction between CORSIA and the UK Emissions Trading Scheme (UK ETS) on flights in scope of both schemes, following an initial consultation in 2021. Following this decision, further secondary legislation will be required to implement the full CORSIA offsetting requirements in UK law.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.12 The 2021 Order implements the requirements for the monitoring, reporting and verification requirements for CORSIA.

Why is it being changed?

- 7.13 This Order adds the offsetting requirements for the 2021 scheme year to the 2021 Order, to comply with deadlines established by the CORSIA SARPs.

What will it now do?

- 7.14 This Order provides a legislative basis for the calculation of aeroplane operators' CORSIA offsetting obligations for the 2021 scheme year, as specified by the CORSIA SARPs.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

- 9.1 This Order is the first amendment to the 2021 Order. There are no plans to consolidate the legislation covered by this Order.

10. Consultation outcome

- 10.1 On the 23rd June 2022, the Department for Transport published a statement of intent setting out the UK government's initial approach to implementing the emissions offsetting requirements of CORSIA in UK law. A draft of this instrument was published alongside the statement of intent for stakeholder comment. The Department did not receive any comments from stakeholders on the statement of intent or draft instrument.

- 10.2 Full details of the statement of intent can be found at:
www.gov.uk/government/publications/initial-offsetting-approach-for-corsia-statement-of-intent.

11. Guidance

- 11.1 Guidance on CORSIA is regularly published by ICAO, primarily through its website at www.icao.int. In addition, guidance has been issued to UK-administered aeroplane operators by the Environment Agency since 2018 and will continue to be updated regularly.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the impact per business is deemed to be minimal. A *de minimis* assessment of impacts confirmed that there is not expected to be any impact to business, as the legislation only confirms the level of CORSIA obligations for 2021 (expected to be zero due to the impact of COVID-19 on international aviation activity), and does not introduce a requirement for aeroplane operators to purchase credits to offset emissions.

13. Regulating small business

- 13.1 The instrument does apply to activities that are undertaken by small businesses.
- 13.2 To minimise any disproportionate impact of the CORSIA requirements on small businesses, aeroplane operators with levels of emissions below the threshold levels are not subject to the scheme.

14. Monitoring & review

- 14.1 The instrument does not include a statutory review clause. CORSIA is due to be reviewed by ICAO every three years from 2022. The Government will consider whether the ICAO reviews necessitate amendment to this Order.

15. Contact

- 15.1 John Conway, Aviation Decarbonisation Division at the Department for Transport, telephone number: 07815 453863 or e-mail: john.conway@dft.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Holly Greig, Deputy Director for Aviation Decarbonisation at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Vere of Norbiton, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.