

EXPLANATORY MEMORANDUM TO
THE AVIATION SAFETY AND AIR TRAFFIC MANAGEMENT (AMENDMENT)
REGULATIONS 2022

2022 No. 1235

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.

2. Purpose of the instrument

- 2.1 The instrument amends six 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, remove redundant provision and to allow for recognition of certain approvals in the UK therefore reducing administrative burden without affecting 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 extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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) No 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 for aviation safety regulation. In particular, it provides for the implementation of the SARPs contained 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 for the Secretary of State to make and amend detailed regulations in respect of aviation safety to ensure compliance with the essential requirements set out in the Annexes to the Regulation and to meet the general objectives of the Regulation.

- 6.2 This instrument is made in exercise of regulation making powers set out in Article 31 (air operations), Article 31, 32 and 43(1) (air traffic management and air navigation service providers and organisations), Article 44 (airspace and airspace structures), Articles 57 and 58 (unmanned aircraft), and Article 62 (certification, oversight and enforcement) of the Basic Regulation. In addition, the regulation-making powers set out in Article 4(1) of Regulation (EC) No 551/2004 of 10 March 2004 on the organisation and use of the airspace in the single European sky are relied upon in respect of amendments relating to rules of the air.
- 6.3 A number of retained implementing Regulations made under the Basic Regulation (and its predecessor, Regulation (EC) No 216/2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency), and Regulation (EC) No 551/2004, need updating to give effect to the purposes stated above. These Regulations are:
- (i) Commission Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations;
 - (ii) Commission Implementing Regulation (EU) No 923/2012 of 26 September 2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation;
 - (iii) 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;
 - (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 Delegated Regulation (EU) 2019/945 of 12 March 2019 on unmanned aircraft systems and on third-country operators of unmanned aircraft systems; and
 - (vi) 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) No 748/2012

- 7.1 Regulation (EU) No 748/2012 establishes the requirements for the approval of organisations responsible for the design or production of aeronautical products (aircraft, engines or propellers) and parts. It also established the type certification (design approval) requirements for products and parts and the release to service of individual products and parts that are newly produced.
- 7.2 This instrument amends the Regulation to allow the Civil Aviation Authority (“CAA”) to recognise approvals given by the European Aviation Safety Agency (“EASA”) to production organisations based outside of the EU. Under the UK/EU

Trade and Cooperation Agreement (“TCA”), recognition is only given to approvals issued to organisations based in the EU. A number of non-EU companies produce parts that are installed on new aircraft produced in the EU. The production standards of the organisation producing such parts are already accepted in the UK system through the acceptance under the TCA of new aircraft in which such parts are incorporated. The amendment will allow the CAA to accept replacement parts produced by these organisations without the need to issue UK approvals, which avoids unnecessary duplication of certification activities and reduces costs for industry, while maintaining an equivalent level of safety.

Regulation (EU) No 923/2012

- 7.3 Regulation (EU) No 923/2012 establishes the rules of the air to be followed by aircraft and operational requirements for air navigation services and procedures.
- 7.4 This instrument amends the Regulation to reflect current SARPs and Procedures for Air Navigation Services (“PANS”) adopted by ICAO. The instrument makes minor amendments to:
- (i) the rules relating to the right of way for aircraft on aerodromes;
 - (ii) the information to be provided as part of a flight information service;
 - (iii) aircraft observations in relation to runway braking and voice communication procedures.
- 7.5 The amendment to Section 8 of Annex 1 to this Regulation (point SERA.8015 ‘Air Traffic Control Clearances’) is to address safety concerns identified through analysis of data that showed people misunderstood the text. The text has been clarified to be clear that the caveat refers to all 3 conditions. The CAA hopes that this will ensure the text achieves its intended objective and safety standards are improved.

Regulation (EU) No 965/2012

- 7.6 Regulation (EU) No 965/2012 establishes the safety standards applicable to the operation of aircraft (except gliders and balloons).
- 7.7 This instrument amends the Regulation in the ways described in the paragraphs below.
- 7.8 Firstly, it delays the implementation date of requirements for the location of aircraft in distress to reflect a decision by ICAO. In line with a directive from ICAO, all affected aircraft issued with their first Certificate of Airworthiness on or after 1st January 2024 will be required to be fitted with an Autonomous Distress Tracking system in order to meet the requirements of the revised Annex 6, Part 1, 6.18 to the Chicago Convention. The deadline for the completion of this installation is to be no later than 1st January 2025. Industry had been working to an installation date of 1st January 2023, so will not be adversely affected by this change.
- 7.9 Secondly, it extends the requirement for certain helicopters involved in offshore operations that are:
- i) involved in the commercial air transport of passengers;
 - ii) have a maximum certificated take-off mass of more than 3175kg or have nine or more passenger seats; and
 - iii) first received a certificate of airworthiness after 31st December 2018

to be fitted with a helicopter terrain awareness and warning system (“HTAWS”). This instrument will extend the requirement to have HTAWS fitted to all helicopters of that size, regardless of the date of certification, if they are involved in offshore operations after December 2024. In addition, the regulations are amended to require that the HTAWS meets new standards and be specifically configured for offshore operations. These changes will help address a number of safety recommendations made by the Air Accident Investigation Branch and will improve the safety of offshore helicopter operations.

- 7.10 Finally, it incorporates the requirements of an operational safety directive first issued by the CAA in 2012 in respect of the operation of helicopter emergency medical services (“HEMS”) at night. The requirements cover the equipment to be carried, the approval of the operator, and the training of pilots. There will be no impact on HEMS operators, as they already comply with these requirements. However, as the requirements are unlikely to change in the foreseeable future, they should be incorporated into the legislation now that it is possible to do so.

Regulation (EU) No 1321/2014

- 7.11 Regulation (EU) No 1321/2014 establishes the requirements for the approval of aircraft maintenance organisations and the licensing of aircraft engineers.
- 7.12 This instrument amends the Regulation to allow the CAA to recognise approvals given to third country maintenance by their home state if equivalent safety standards are applied. The equivalence of safety standards will normally be determined through working arrangements between the CAA and the aviation safety regulator of the state concerned. This will permit engines, propellers and other components that have been maintained in accordance with the requirements of a relevant state to be fitted to UK registered aircraft.
- 7.13 A definition of maintenance data will also be added to the Regulation to ensure consistency with the definition in Regulation (EU) No 748/2012.

Regulation (EU) 2019/945

- 7.14 Regulation (EU) 2019/945 establishes product requirements that must be met before unmanned aircraft intended for use in low-risk flights can be marked to show the class and that they are UK Conformity Assessed (“UKCA”). The Regulation currently provides for the automatic adoption in UK law of technical standards adopted under EU law until such time as the Secretary of State has designated technical standards for the UK. It also provides for the automatic recognition of aircraft bearing the EU “CE” marking placed on the market before the Secretary of State has designated standards.
- 7.15 This instrument amends the Regulation to remove those provisions that allow for the automatic adoption of EU technical standards and recognition of CE marked unmanned aircraft in the UK. In practice, the changes being made to Regulation (EU) 2019/947, described below, enable unmanned aircraft to continue to be sold and operated in the UK without either CE or UKCA marking until the end of 2026, after which time the UKCA marking will be required.

Regulation (EU) 2019/947

- 7.16 Regulation (EU) 2019/947 establishes requirements relating to the operation of unmanned aircraft. The Regulation contains transitional provisions which allow those unmanned aircraft that have not been built to meet the product requirements mandated

by Regulation (EU) 2019/945 to be flown under certain conditions while the processes needed to implement those requirements, and to test the compliance of aircraft with those requirements, are being developed.

- 7.17 As the relevant technical standards have not yet been finalised by the standards bodies (and accordingly, the Secretary of State has not yet designated any), the instrument amends this Regulation to extend the deadlines in the transitional provisions which would otherwise expire on 31st December 2022. This extension will also enable the Department to undertake a review and ensure the requirements which originated in the EU are fit for purpose for the unmanned aircraft industry in the UK in line with the Government's policy of reforming, replacing or revoking retained EU law. The instrument also amends the Regulation to remove a transitional provision that is now redundant.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / 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 Some of the changes made by this instrument arise from work on the implementation of ICAO SARPs and as a result, a consultation on these changes to the retained legislation has not taken place as the amendments are technical in nature.
- 10.2 The amendments to Regulation (EU) 2019/947 were subject to a consultation undertaken by the CAA and were strongly supported. The consultation can be found online on the CAA website [here](#).
- 10.3 The amendments to Regulation (EU) No 965/2012 relating to HTAWS were subject to targeted consultation carried out by the CAA with affected aircraft and equipment manufacturers and helicopter offshore operators. The amendments were generally supported.

11. Guidance

- 11.1 Guidance will be produced by the CAA and published on their website.

12. Impact

- 12.1 With the exception of the amendments to Regulations (EU) No 965/2012, 2019/947 and 2019/945, 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 The Department for Transport (DfT) has not submitted an impact assessment in relation to the HTAWS requirements introduced by the amendments to Regulation (EU) No 965/2012. This is because the direct impacts on business have been assessed at under £5m per year and light-touch internal analysis has been conducted instead. This estimates the transition cost of the requirement at £1.2m and there are no on-going annual costs. The monetised benefits accrued over the 10-year appraisal period

are £10.2m. Additional and significant unmonetised benefits apply. The Total and Business Net Present Values of the measure are £9.0m.

- 12.4 The DfT has not submitted an impact assessment in relation to the amendments to Regulations (EU) 2019/947 and 2019/945. This is because the direct impacts on business have been assessed at under £5m per year and light-touch internal analysis has been conducted instead. as the intervention is only a small amendment to legal operability and businesses will experience no change in their regulatory environment, no annual net direct cost to business has been calculated. Any impacts to business will occur once product requirements are introduced at a later date, and will be analysed in a future impact assessment or DMA once the policy for product requirements has been formed.

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 instrument will not impose regulatory burdens 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, the Parliamentary Under Secretary of State for Transport, Baroness Vere of Norbiton, has made the following statement:

“In my view, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the provisions of the Aviation Safety and Air Traffic Management (Amendment) Regulations 2022 are such that a statutory review clause would be inappropriate, for proportionality reasons, given the high costs of undertaking such a review, with limited scope for change.”

15. Contact

- 15.1 Ana Tudose at the Department of Transport Telephone: 07814 068127 or email: ana.tudose@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 David Harding, Deputy Director for General Aviation, Safety, Skills and CAA 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.