

EXPLANATORY MEMORANDUM TO

THE AVIATION SAFETY (AMENDMENT) REGULATIONS 2022

2022 No. 637

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 uses powers in the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) to correct deficiencies arising as a result of the withdrawal of the UK from the EU in EU-derived aviation legislation concerning unmanned aircraft.
- 2.2 The instrument also amends both retained direct principal EU legislation, specifically 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”) and retained direct minor EU legislation relating to aircrew, balloons and sailplanes made under powers in the Basic Regulation.
- 2.3 The amendments update references in the Basic Regulation in order to implement revised Standards and Recommended Practices (“SARPs”) adopted by the International Civil Aviation Organization (“ICAO”) in accordance with the Convention on International Civil Aviation 1944 (“the Chicago Convention”) and make other technical amendments to remove unnecessary transitional provisions in relation to balloon and sailplane licensing.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The instrument was laid for sifting before the Sifting Committees on 11 May. On 24 May, the European Statutory Instruments Committee and the Secondary Legislation Scrutiny Committee confirmed that the Aviation Safety (Amendment) Regulations 2022 should proceed subject to the negative resolution procedure. The Department for Transport is now proceeding on that basis.

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 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following statement regarding Human Rights:

“In my view, the provisions of the Aviation Safety (Amendment) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

6.1 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 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 to ensure compliance with the essential requirements set out in the Annexes to the Regulation, and to make amendments to the Basic Regulation itself in light of certain amendments to the Chicago Convention.

6.2 The regulation making powers referred to in paragraph 6.1 above are being used in this instrument to amend both provisions within the Basic Regulation itself and also retained implementing rules made under the Basic Regulation, specifically:

- i) Article 9(2) of the Basic Regulation relating to the compliance of aircraft and engines with the environmental protection requirements of Volumes I, II and III of Annex 16 to the Chicago Convention;
- ii) Commission Regulation (EU) No 1178/2011 of 3 November 2011 laying down technical requirements and administrative procedures related to civil aviation aircrew;
- iii) 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; and
- iv) Commission Implementing 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.

6.3 This instrument is also made in exercise of powers in section 8(1) of the Withdrawal Act in respect of amendments to 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?

Environmental Standards

7.1 Article 9(2) of the Basic Regulation is being amended to update references to the most recent amendments to Volumes I, II and III of Annex 16 to the Chicago Convention. These provisions establish SARPs on the certification of aircraft for noise, the certification of engines for emissions that primarily affect local air quality and the certification of aeroplanes for carbon dioxide emissions, respectively. The amendment

is necessary to secure compliance with the updated SARPs that were adopted by the ICAO Council in 2020.

- 7.2 The amendments to Volumes I and III introduce minor clarifications and corrections that do not affect the stringency or applicability of the SARPs and are already applicable and therefore are being brought into force at the earliest date.
- 7.3 The amendments to Volume II are more extensive and include i) an update to the applicability date provisions for new engine types, ii) new non-volatile particulate matter (nvPM) mass and number engine emissions standards and consequential amendments, and iii) other technical, typographical or consistency corrections that do not affect stringency or applicability. These amendments apply from 1 January 2023 and are therefore coming into force at a later date.
- 7.4 The primary effect of these amendments is therefore to implement the new nvPM mass and number standards in the UK.

En Route Instrument Rating

- 7.5 Article 4c of retained Commission Regulation (EU) No 1178/2011 is being removed. This Article contains transitional measures for holders of an en route instrument rating to move to the basic instrument rating which will eventually replace the en route instrument rating under European Union legislation. However, the UK Government does not have any plans currently to introduce a basic instrument rating to replace the en route instrument rating. The provision is being deleted as it is both redundant and potentially confusing.

Balloon Pilot Licences

- 7.6 Article 3b of Commission Regulation (EU) 2018/395 is being amended to allow the use of balloon pilot licences that were issued by the Civil Aviation Authority (“CAA”) under the Air Navigation Order 2016 (S.I. 2016/765) (“the ANO”) after 7 April 2020. The use of such licences will be permitted until 8 December 2023. These licence and certificate holders have been the subject of a number of exemptions delaying the implementation of this requirement (ORS4 No.1309, ORS4 No.1475 and ORS4 No.1518). The current exemption (ORS4 No. 1518) extends the deadline for conversion of licences issued after the 8 April 2020 until 1 July 2022. This mirrors changes made in the Aviation Safety (Amendment) (No3) Regulations 2021 (S.I. 2021/1203), which allowed licences issued under the ANO before 8 April 2020 to be used until 8 December 2023. Article 3c is also being amended to allow training undertaken in accordance with the ANO before 8 December 2023 to be credited toward the issue of a licence under Commission Regulation (EU) 2018/395. These changes are being made as the CAA is undertaking a post EU Exit review of private pilot licensing which may result in significant changes to licensing requirements. The amendments are designed to remove the need for existing licence holders to change their licences before any new system is established, and to provide continuity for both pilots under training and training organisations.

Sailplane Pilot Licences

- 7.7 Articles 3b and 3c of Commission Regulation (EU) 2018/1976 which deals with sailplanes (gliders) are being amended in the same manner, and for the same reason, to the balloon licensing requirements as set out in paragraph 7.6, including the ORS4 exemptions listed in paragraph 7.6. However, the amendments differ slightly, as

sailplane licencing is not regulated under the ANO. Rather, the British Gliding Association (8 Mercus Court, Leicester, LE19 1RJ, www.gliding.co.uk) sets training standards and issues gliding certificates in place of a licence.

Unmanned Aircraft

- 7.8 Commission Implementing Regulation (EU) 2019/947 of 24 May 2019 on the rules and procedures for the operation of unmanned aircraft is amended to revoke particular redundant provisions.

Explanations

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

- 7.9 Paragraphs 2, 3 and 5 of Article 23 of Commission Implementing Regulation (EU) 2019/947 purport to commence other provisions of that Regulation that were not retained pursuant to the Withdrawal Act because they were not applicable before the end of the transition period. In EU law, these provisions would have brought into force particular technical requirements relating to the operation of unmanned aircraft on the dates specified. In domestic law, by virtue of the operation of section 3 of the Withdrawal Act, which requires legislation to both be in force and apply before the end of the transition period to be retained, which is not the case here, there is no associated provision to commence and accordingly the paragraphs in question have no effect.

Why is it being changed?

- 7.10 Paragraphs 2, 3 and 5 of Article 23 of Commission Implementing Regulation (EU) 2019/947 are being revoked because they are redundant. The provisions have no legal effect and should be removed from the statute book to avoid potential confusion for readers of the legislation.

What will it now do?

- 7.11 Nothing. If the Government were to amend Commission Implementing Regulation (EU) 2019/947 to impose similar or identical technical requirements to those which were not retained, those requirements would be commenced in the ordinary way in any subsequent amending regulations.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is being made using the power in section 8(1) of the Withdrawal Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act, the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.
- 8.2 Alongside the Withdrawal Act power, the instrument is also being made under powers in the Basic Regulation, as set out in paragraphs 6.1-6.2 above.

9. Consolidation

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

10. Consultation outcome

- 10.1 The Department for Transport has not consulted formally on the amendments being made by the instrument to the retained EU tertiary legislation. This is because these either remove redundant provisions or provide alleviations from recently introduced requirements on private pilot licensing pending a review of the licensing regime by the CAA. This is in line with representations received from stakeholders.
- 10.2 The Department for Transport has not consulted formally on the amendment to the Basic Regulation. However, those parts of the UK industry most impacted were involved in the process of agreeing the changes to Annex 16 within ICAO and are content with the amendments.

11. Guidance

- 11.1 No guidance will be produced for this instrument. However, the CAA will communicate the changes introduced by this instrument to stakeholders.

12. Impact

- 12.1 With the exception of the amendments set out in regulation 2(b), 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 For the amendments in regulation 2(b), a full Impact Assessment on the changes required to implement the nvPM emissions standards set out in amendment 10 of Volume II of Annex 16 to the Chicago Convention is submitted with this Explanatory Memorandum and published alongside it on the legislation.gov.uk website.
- 12.4 The impact assessment highlights that benefits of the new standards will include the health and environmental benefits of a reduction in nvPM emissions, whilst the cost to business, charities or voluntary bodies is estimated to be approximately £24.1 million per year (equivalent annual net direct cost to business). The costs and benefits are detailed in full in the published impact assessment.
- 12.5 A full Impact Assessment has not been prepared for the other amendments being made by this instrument because they do not introduce any new requirements and have no impact on business, charities, voluntary bodies or on the public sector.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The Impact Assessment for the nvPM emissions standards identified very few, if any, small businesses that will be impacted by the new nvPM standards.
- 13.3 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.4 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 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, Robert Courts MP, 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 (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 for 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 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.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

| Statement | Where the requirement sits | To whom it applies | What it requires |
|------------------|---|--|--|
| Sifting | Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7 | Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI | Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees |
| Appropriate-ness | Sub-paragraph (2) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 | A statement that the SI does no more than is appropriate. |
| Good Reasons | Sub-paragraph (3) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 | Explain the good reasons for making the instrument and that what is being done is a reasonable course of action. |
| Equalities | Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 | Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010. |
| Explanations | Sub-paragraph (6) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs | Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law. |
| Criminal | Sub-paragraphs (3) and (7) | Ministers of the Crown | Set out the 'good reasons' for creating a |

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|---|-----------------------------|---|--|
| offences | of paragraph 28, Schedule 7 | exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence | criminal offence, and the penalty attached. |
| Sub-delegation | Paragraph 30, Schedule 7 | Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument. | State why it is appropriate to create such a sub-delegated power. |
| Urgency | Paragraph 34, Schedule 7 | Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7. | Statement of the reasons for the Minister's opinion that the SI is urgent. |
| Scrutiny statement where amending regulations under 2(2) ECA 1972 | Paragraph 14, Schedule 8 | Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA | Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid. |
| Explanations where amending regulations under 2(2) ECA 1972 | Paragraph 15, Schedule 8 | Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA | Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law. |

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

| Statement | Where the requirement sits | To whom it applies | What it requires |
|-----------|----------------------------|--|--|
| Sifting | Paragraph 8 Schedule 5 | Ministers of the Crown exercising section 31 to make a Negative SI | Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees |

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Aviation Safety (Amendment) Regulations 2022 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because the instrument only uses such powers to correct deficiencies and failures in law that have arisen as a result of the UK leaving the EU and leaves the substantive requirements unchanged. It does not create criminal offences, any powers to make regulations or raise any fees. Other powers used to make this instrument are subject to the negative procedure.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Aviation Safety (Amendment) Regulations 2022 does no more than is appropriate”.

- 2.2 This is the case because the instrument only uses powers in the European Union (Withdrawal) Act 2018 to correct deficiencies and failures in law that have arisen as a result of the UK leaving the EU. The technical requirements for operations of unmanned aircraft are unaffected by the provision made in this instrument, but the removal of redundant provisions will improve the accessibility of those requirements for readers of the legislation.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 These are to ensure that legislation governing the operation of unmanned aircraft in the UK functions correctly now that the UK has left the EU and ensuring the law is accessible to those affected by this legislation by removing redundant (and potentially confusing) provisions.

4. Equalities

4.1 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

4.2 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Robert Courts MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

5. Explanations

5.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.