

Title: Summary Impact Assessment for Air Navigation (Amendment) Order 2017 IA No: DfT00374 Lead department or agency: Department for Transport Other departments or agencies: Civil Aviation Authority	Impact Assessment (IA)		
	Date: 23/11/16		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
Contact for enquiries: Andy Kirby andy.kirbyt@df.t.gsi.gov.uk, 07584157697			
Summary: Intervention and Options		RPC Opinion: EANCB Validated	

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2014 prices)	In scope of One-In, Three-Out?	Measure qualifies as
N/A	N/A	£0.04m	No	N/A

What is the problem under consideration? Why is government intervention necessary?

This is a summary impact assessment for the individual Regulatory Triage Assessments (IAs) for the measures that together form the Air Navigation (Amendment) Order 2017. This amending order was driven primarily by the need to implement new EU requirements by the end of 2016 in the Air Navigation Order 2016. This IA summarises changes from the following three areas;

1. Revisions to the loss of communications offence and penalty;
2. Air Traffic Control Licensing (ATCO) and medical certification regulation consequential for the ANO;
3. Air operations regulation offences for Special Operations SPO and Non Commercial Operations NCO.

What are the policy objectives and the intended effects?

To implement EU required safety requirements, introduce unlimited fines for UK airspace infringements

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The preferred options in the three policy areas are:

1. Revisions to the loss of communications offence and penalty: Aims to introduce fines for aircraft infringing UK airspace in cases where they have lost communications either through fault or design. Without this change it will not be possible to impose penalties that increase compliance and reduce disruptions to airspace;
2. Air Traffic Control Licensing (ATCO) and medical certification regulation consequential for the ANO: to comply with Regulation (EU) 2015/340 ATCO Licensing Implementing Regulation (ATCO IR) and designate the Civil Aviation Authority as the UK competent authority for the purposes of the regulation to ensure compliance with its requirements. Not implementing these changes would mean disparity between UK and EU legislation and leave us open to potential infraction proceedings.
3. Commission Regulation (EU) No 965/2012 contains operating rules for European aviation. This regulation has been amended and while the new rules are directly applicable regulation and will supersede national law, they do not contain any penalties or sanctions for operators who act outside of the rules. As is the case with other such Commission Regulations, the UK needs a process to enable the courts to impose penalties. Without this intervention, the UK courts will have no powers to impose penalties on those who contravene any provision of Part-SPO. It is also required by EU law for the UK to enact penalties or sanctions and failure to do so could lead to infraction proceedings.

The intended effect is therefore to empower the UK courts and, in doing so, put in place a deterrent to improve flight safety for both those in the aircraft, other airspace users and those on the ground.

Will the policy be reviewed? It will not be reviewed. **If applicable, set review date:** N/A

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible: Minister

Lord Ahmad Date: 25/11/2016

Summary: Analysis & Evidence

Preferred Policy Option

Description: Summary Impact Assessment for for Air Navigation (Amendment) Order 2017

FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.00	High: 0.00	Best Estimate: 0.00

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	0.0
High	N/A	N/A	0.0
Best Estimate	0.4	0.4	0.4

Description and scale of key monetised costs by 'main affected groups'

These are defined in the individual RTAs. The summary figures in this Analysis & Evidence section reflect those from the preferred option from each RTA. Given all of the measures in this amending order were considered suitable for the Fast Track they were not required to produce full breakdowns of costs in the manner of a full Impact Assessment. Therefore for the purposes of this summary IA we have only included summary figures.

Key changes are transitional costs as industry and pilots familiarise themselves with new regulations and update their training material. The revisions to the loss of communications offence and penalty

Other key non-monetised costs by 'main affected groups'

These are defined in the individual RTAs.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	0.0	0.0	0.00

Description and scale of key monetised benefits by 'main affected groups'

These are defined in the individual RTAs. The summary figures in this Benefits section reflect those from the preferred option from each RTA.

Other key non-monetised benefits by 'main affected groups'

N/A

Key assumptions/sensitivities/risks

These are defined in the individual RTAs.

Discount rate

3.5%

BUSINESS ASSESSMENT (Preferred Option)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0.0	Benefits: 0.0	Net: 0.0	No	NQRP

DESCRIPTION

In August 2016 the ANO 2009 was replaced with a new revision the ANO 2016. This is the first amending order to the ANO 2016, which includes increased fines for the loss of communications and the implementation of a number of EU requirements.

The changes in this Order are small in scale implementing EU requirements. For this reason these amendments have not required a consultation and have minimal impacts on business.

The only exception to this is the fines for the loss of communications amendment, which was consulted upon on the 17 March to the 22 April 2016. On average, over 100 aircraft in UK airspace lose two-way communications with Air Traffic Control (ATC) sparking, post 9/11, considerable security concerns. The current maximum fine available for the pilot is £2,500. The Government consulted on a proposal to permit unlimited fines as magistrates deem proportionate e.g. offences in circumstances within the pilot's control. 58 responses to this consultation were received, of which six were in favour, one neutral and 51 against for various reasons. In spite of the resistance the Government believes that the extra deterrence unlimited fines will give to airspace infringements justifies their use.

This summary cover sheet brings together the three individual regulatory triage assessments that together encompass the changes within the for Air Navigation (Amendment) Order 2017.

The three relevant RTA's are attached to this summary below.

Regulatory Triage Assessment

Title of regulatory proposal	Increased fines for Infringements of Rules of the Air
Lead Department/Agency	Department for Transport
Expected date of implementation	March 2016
Origin	Domestic
Date	01/03/15
Lead Departmental Contact	Phil Williams 020 7944 2507
Departmental Triage Assessment	Low-cost regulation (fast track)

Rationale for intervention and intended effects

This proposed policy change addresses the problem of non-communication by aircraft in UK airspace. The main issue is that on average approximately 120 times each year aircraft fail to maintain two-way communications with Air Traffic Control (ATC) although on occasion flight plans have not been filed. Such incidents trigger an escalating response which may ultimately require resource intensive and potentially fatal military intervention. The current maximum level of penalty for such offences is not considered to be an adequate deterrent or punishment in the more serious cases.

Currently, a person contravening relevant provisions of the Standardised European Rules of the Air (SERA), for example the need to maintain two way radio communications with ATC, is liable on summary conviction to a maximum Level 4 fine (maximum £2,500) on the Criminal Justice Scale. While SERA is directly applicable EU legislation, the penalties contravening its provisions are established in the Air Navigation Order (ANO).

Introducing unlimited fines would be more appropriate and proportionate to penalise negligent behaviour where regulations are not adhered to in circumstances within the pilot's control; they will provide greater incentive for pilots and airlines to ensure that they take the required actions and therefore reduce the chances of such incidents triggering security concerns and a large-scale response.

Viable policy options (including alternatives to regulation)

As set out above, regulations currently exist to address the problem under consideration. Therefore alternatives to regulation would not achieve the policy objective because regulations are required to amend the existing regulatory framework.

The proposal is to increase the fines (by changing the status of the offence to a Level 5) that could be levied on non-compliant behaviour, because the current penalty maximum is adjudged to be insufficient given the consistent level of incidents and the potential consequences of such events.

These incidents continue despite pilots being well aware of the ANO's requirements regarding communications with ATC, which have been in existence since at least 1981 and are promulgated through various freely available sources such as the Aeronautical Information Service and HMG and CAA websites. These requirements are based on international standards established by the International Civil Aviation Organisation, in accordance with the Convention on International Civil Aviation.

In addition, DfT undertakes regular proactive educative efforts reminding industry of their responsibilities and, post-incident, identifies and pursues lessons learnt with the pilot and/or company in question, to mitigate the chance of repetition. The offences are clear – they are not being changed – and the CAA have recently been asked by

Cabinet Office to ensure that they investigate each reported incident thoroughly and robustly to seek prosecution where warranted under the current regulations.

An SI is necessary to amend the ANO to allow for a Level 5 penalty for the relevant SERA offences (Level 5 offences are triable on summary conviction to maximum fine of £5000 or can be sent to Crown Court where an unlimited fine may be applied). This may include splitting existing “Level 4” offences into a more serious part for which the sanction is increased, and the remainder to which Level 4 will continue to apply. As and when the relevant parts of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012, are brought in to force, all Level 5 fines will be made unlimited on summary conviction in England, Wales and Northern Ireland. LASPO will not apply in Scotland, where a maximum Level 5 penalty will continue to apply. DfT will consult on these proposals.

Initial assessment of business impact

The sanctions will apply to any pilots flying in controlled airspace in the UK who contravene the regulations, as well as operators failing to comply. This is consistent with the current sanctions, which also apply to pilots and operators. There will be NO additional costs of compliance – these are existing and on-going obligations – and no fines levied on industry if they comply with regulations.

The only costs requiring assessment here are the individual fines on pilots and operators, which will be made unlimited.

Most incidents involve lost two way communications with ATC. There are on average 120 of these per annum but to date **no prosecutions** have occurred (one investigation is ongoing). There are often factors which either mean that prosecution is not possible (e.g. the incident occurred outside UK controlled airspace) even though the military may have taken precautionary action and/or proportionate (e.g. there were contributory factors beyond the pilot’s control such as ATC errors, technical or meteorological problems and/or the pilot made a simple error rather than being wilfully negligent). The prevalence of such mitigating factors means that it is unlikely there will be more than one or two prosecutions each month, meaning that the gross costs to business resulting from the increased fine will remain significantly less than £1m per annum.

It is reasonable to assume that if prosecution were to occur, the average fine following this legislative change would not exceed £5000 (representing a £2500 increase on the current fine), and is likely to be less than this. If prosecution was to occur for each of the incidents then the total increased cost would be £2,500 x 120 = £300,000 p.a. There is no reason to envisage anything even approaching this level: it is estimated that no more than 12 prosecutable contraventions will occur per year i.e. a cost of £30,000 in total.

If we are to consider the extremely unlikely possibility that the average fine on prosecution may exceed £5000, it is noted that fines would have to be on average £8,333 [£1m divided by 120 incidents per year (most of which will not be prosecutable due to mitigating factors)] or £83,333 [£1m divided by 12 prosecutions per year (our working assumption for the number of prosecutions which is possible)] in order for the gross costs to business to be greater than £1m. This would equate to between 3 and 33 times the current fine for this offence. We do not think this will be judged proportionate to the offence in most cases, and therefore we do not think the additional cost to business will exceed £1m.

In addition, in the vast majority of cases, airlines could present the defence that they had detailed procedures in their operations manual, which had been approved by their national aviation authority, and that they had provided the required training to their pilots and thus exercised all due diligence to prevent the incident from occurring. Thus

airlines are very unlikely to be prosecuted and the fines listed above would apply to the pilot only, and as such do not represent a cost on business.

The increase in fines presents a greater deterrent to pilots and airline companies, to ensure that they comply with the ANO/SERA and thus avoid prosecution. This in turn will mean that it is not necessary to launch military assets to deal with the situation and run the risk of a fatal engagement.

One-in, Two-out status

The Better Regulation Framework Manual states that fines and penalties sit outside the scope of the One-in, Two-out framework (Paragraph 1.9.8.ix, page 41). As this policy relates exclusively to fines and penalties, we consider it to be outside the scope of OITO.

Rationale for Triage rating

The Department has chosen a fast-track appraisal route because the policy sits outside the scope of OITO and the gross cost to business is clearly below the requisite £1m threshold. The Prime Minister has also requested that this be introduced as quickly as possible.

Departmental signoff (SCS):

Date:

Economist signoff (*senior analyst*):

Date:

Better Regulation Unit signoff:

Date:

Supporting evidence

The narrative in this section should provide evidence that supports the information in the summary template. For the majority of proposals we would expect to see around 2-3 pages and no more than 6 pages of supporting information. The narrative should include the following items:

1. The policy issue and rationale for Government intervention

The number of airspace incidents of sufficient duration and/or severity notified to DfT, where airborne pilots have exhibited unexpected behaviour or requested assistance, has decreased from 163 in 2011 to 132 in 2014. A number of these are events beyond the pilot's control e.g., bomb threats or disruptive passengers.

The relevant required actions are contained in the Standardised European Rules of the Air (SERA):

SERA.5005 Visual flight rules (VFR)

- (i) This requires VFR flights operating within or into designation areas or routes to maintain continuous air-ground voice communication watch on the appropriate communication channel of, and report its position as necessary to, the air traffic services unit providing flight information service.

SERA.5025 IFR — Rules Applicable to IFR flights outside controlled airspace

(b) Communications

This requires aircraft operating under instrument flight rules in uncontrolled airspace but within airspace designated under SERA.4001(b)(3) or (4) maintain an air-ground voice communication and establish two-way communication, as necessary, with the air traffic services unit providing flight information service.

(c) Position reports

This requires aircraft that are operating under instrument flight rules in uncontrolled airspace and that are required to maintain an air-ground voice communication watch to follow the position reporting requirements specified in SERA.8025 for controlled flights.

SERA 8020 – pilots must adhere to current flight plan unless a request for a change has been made and clearance obtained from appropriate air traffic control unit.

SERA 8025 – position reports: pilots must report to the appropriate air traffic services unit the time and level of passing each designated compulsory reporting point. In the absence of designated reporting points, position reports to be made at intervals prescribed by competent authority or appropriate air traffic services unit.

SERA 8035 – communications by a controlled flight: aircraft to maintain continuous air-ground voice communication watch and establish two-way communication as necessary with the appropriate air traffic control unit.

By far and away the largest category of incident is the loss of two-way communications with Air Traffic Control (ATC) which remains fairly constant at around 120 incidents per year.

In the context of a “9/11” scenario, where an aircraft is used as a weapon, a failure to maintain two-way communications is viewed as suspicious by the National Representative of the Air Defence Authority (the RAF) who has, in Defence of the Realm terms, to assess whether that aircraft is demonstrating hostile intent and ultimately the Engagement Authority (the Prime Minister or his nominated deputy) who may order the shooting down of that aircraft.

Despite an enduringly high threat level, all such incidents have been false alarms to date and have been resolved through non-violent intervention by DfT, ATC and RAF. However, whilst acknowledging that most cases are the result of human error or circumstances beyond the pilot’s control (e.g. technical failure) the Prime Minister is adamant that the current £2,500 maximum fine is insufficient as a penalty or a deterrent and has requested that it be made unlimited.

Offences for the breach of various provisions of SERA are found in Schedule 13 of the Air Navigation Order (ANO), which provides that a person contravening certain provisions of SERA, including those relating to communications loss, is liable on summary conviction to a maximum Level 4 fine (maximum £2,500). An SI is required to amend the ANO and increase this to a level 5 offence for certain types of behaviour. (Level 5 offences are triable on summary convention to maximum fine of £5000 or can be sent to Crown Court where an unlimited fine may be applied). This will have the consequential effect that offences to be covered by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which in March 2015 will allow for all Level 5 fines to be made unlimited on summary conviction in England, Wales and Northern Ireland. LASPO will not apply in Scotland, where a maximum Level 5 fine will continue to apply.

2. Policy objectives and intended effects

- To ensure that an appropriate size of penalty is available to Magistrates;
- to provide a greater incentive to pilots to ensure that they take the required actions; and
- thus to reduce the chances of triggering security concerns which may ultimately require costly and potentially fatal military involvement to resolve.

3. Policy options considered, including alternatives to regulation

The offences are clear – they are not being changed – but the current penalty is adjudged to be insufficient as, despite continued awareness raising with industry and work with other countries whose airspace neighbours the UK’s and where some of these incidents begin, incident rates remain stable. The only viable policy option considered is a change to the regulations, which in itself requires regulation. Non-regulatory alternatives would not achieve this aim.

4. Expected level of business impact

The actions required of industry remain the same so there are no increased costs, including costs of familiarisation, but there is a potential increased cost in terms of individual fines to pilots and operators contravening the relevant SERA provisions.

The table below shows the number of airspace incidents in the last four years taken from RAF, ATC and DfT data. The number of lost communications is by far the largest category (between 75% and 92% of the total). The other events are things such as bomb threats and disruptive passengers, which are outside of the pilot’s control and would not be covered by these regulations.

Year	Total Number of incidents	Number of lost comms
2011	163	139
2012	152	115
2013	138	114
2014	132	121

Whilst the future number of relevant incidents cannot be predicted exactly it is reasonable to assume no increase in incidents under our counterfactual (do nothing) option. With the proposed policy the additional deterrent effect of potentially higher fines should bring about a reduction in the number of relevant incidents.

It is reasonable to assume that if prosecution were to occur, the average fine following this legislative change would not exceed £5000 (representing a £2500 increase on the current fine), and is likely to be less than this. Taking the annual average number of lost communications as 120 and multiplying it by the £2,500 increment the cost would be £300,000, well below the £1,000,000 threshold to require a full IA. It is reasonable to assume that the actual costs would be far lower. A working assumption is one prosecution per month or 12 per annum, which on average is the number of times military jets are launched to investigate and assist in the resolution of the most concerning incidents, where two-way communications could not be regained by other means.

Regulatory Triage Assessment	
Title of Measure	Air Traffic Control Licensing (ATCO) and medical certification regulation consequential for the ANO
Lead Department/Agency	Civil Aviation Authority
Expected date of Implementation	March 2017
Origin	EU
Date	20/10/2016
Lead Department Contact	David Drake
Departmental Triage Assessment	Low Cost Regulation (Fast Track)
<p>Rationale for intervention and intended effects</p> <p>It is necessary to amend the Air Navigation Order ('the Order') by 31 December 2016 to effect compliance with Regulation (EU) 2015/340 (the 'Air Traffic Control Officer (ATCO) Licensing Implementing Regulation' (ATCO IR)) and to designate the Civil Aviation Authority as the UK competent authority for the purposes of the regulation to ensure compliance with its requirements. Regulation (EU) 2015/340 addresses the issue of licensing and medical certification of air traffic controllers and proposes detailed requirements, supported by Acceptable Means of Compliance and Guidance Material where necessary, for all aspects governing the access to this safety-related aviation profession, as well as for exercising the privileges granted by the air traffic controller licence. Regulation (EU) 2015/340 additionally fills the gaps between the safety objectives in the relevant essential requirements of Regulation (EC) No 216/2008 and the previously applicable Regulation (EU) No 805/2011.</p> <p>Failure to amend the Air Navigation Order will lead to:</p> <ul style="list-style-type: none"> - UK legislation not aligning with, or contradicting, EU legislation and would therefore put the UK at risk of Commission infringement proceedings. - Non-designation of the Civil Aviation Authority as the competent authority for the UK for the purposes of the ATCO IR to ensure compliance with the requirements of the subject regulation. - Uncertainty within industry regarding related aspects of the contents Air Navigation Order, the relationship between it and EU law, the application of certain aspects of the Order and its enforceability. <p>See 'Supporting evidence' sections 1 and 2.</p>	
<p>Viable policy options (including alternatives to regulation)</p> <p>Do not amend the Order to reflect the applicability of the ATCO IR.</p> <p>OR</p> <p>Change guidance to reflect the applicability of the ATCO IR to make business aware of the EU legislation, but not amending the Order to reflect this. This was identified as not appropriate as it would still leave the UK at risk to Commission infringement proceedings and lead to uncertainty within the industry regarding related aspects of the contents of the Air Navigation order and the relationship between it and EU law.</p> <p>OR</p> <p>Complete amendment of UK legislation as soon as possible. 31 December 2016 is the end of the permissible derogation period as stated in Article 11 of Regulation (EU) 2015/340, by which time EU Member State implementation of the ATCO IR should be complete.</p> <p>This was identified as the preferred option as it allowed time for detailed consideration of the ATCO IR's impacts upon UK regulatory material and consequential amendment to UK regulatory material. It additionally accords with UK government guidance concerning transposition of EU legislation.</p> <p>See 'Supporting evidence' section 3.</p>	

Initial assessment of impact on business

The proposed amendments to the Order provide the State, the CAA and industry with certainty regarding the relationship between UK and EU legislation, and will result in the designation of the CAA as competent authority for the ATCO IR. It does not introduce additional obligations, as the proposed amendments are limited to aligning particular aspects of the Order to reflect and facilitate the UK implementation of Regulation (EU) 2015/340.

All ATCOs, aeromedical examiners and ATCO training organisations will be equally affected by the consequential impacts of the introduction of EU legislation and the necessary domestic legislative change.

There are 34 Air Traffic Service providers (ATSPs) in the UK employing ATCOs. There are 3 training organisations providing undergraduate ATCO training. Each organisation will require one person to assess the ANO revisions. That person will be appointed according to the size and structure of their parent ATSP – it may not necessarily be an ATCO. Therefore it is not possible to state with any certainty who within an ATSP will undertake the assessment, nor their gross hourly pay.

Assuming it will take no more than two hours to note that the changes relate to removal of provisions (i.e. those that are now addressed by Reg (EU) 2015/340) or revised references (i.e. those provisions originally addressed in Reg (EU) 805/2011 and now addressed without text change in Reg (EU) 2015/340):

- o With 37 companies – one employee paid £33.25 per hour (assuming equivalence with CAA 'Market Anchor' payzone values)
- o 2 hours per person, therefore £33.25 x 2 hours = £66.50.
- o 37 x £66.50 = £2460.50 - Therefore the total cost of the changes to the ANO are estimated to be £2460.50

See 'Supporting evidence' section 4.

BIT status/score

The measure implements amended obligations arising from Regulation (EU) 2015/340 and it does not go beyond minimum requirements. Therefore it is a Non Qualifying Regulatory Proposal (NQRP) which does not score against the Business Impact Target.

No new additional legislation is being introduced; rather the Order requires amendment of existing provisions to reflect UK implementation of EU legislation and to align these with it where necessary. The proposal is not within scope of 'one in three out' and the net legislative effect of the change is considered to be neutral.

Rationale for Triage rating

We believe that this is a low cost measure as it imposes gross costs on business which are anticipated to be in the region of thousands rather than tens or hundreds of thousands.

The cost of the proposed legislative change to industry is limited to the affected sectors familiarising themselves with the changes to the Order.

CAA notifications to industry of the changes will serve to enhance awareness of the changes and to minimise costs to industry. These notifications will be made available to the appropriate industry sectors through established channels.

As is the case with all such changes this is available free of charge on the CAA website with no impact on the CAA Scheme of Charges, as the costs associated with amendments to UK state regulatory material will be borne by existing budgets the CAA continuously sets aside for routine changes.

See 'Supporting evidence' section 4.

Departmental signoff (SCS): Michael Clark

Date: 01/11/16

Economist signoff (*senior analyst*): Jonathan Saks **Date:** 01/11/16

Better Regulation Unit signoff: Chris Simon

Date: 01/11/16

Supporting evidence

1. The policy issue and rationale for Government intervention

Amendment of the Air Navigation Order ('the Order') is necessary to effect the UK's compliance with Regulation (EU) 2015/340 (the 'Air Traffic Control Officer (ATCO) Licensing Implementing Regulation' (ATCO IR)) by 31 December 2016.

Regulation (EU) 2015/340 addresses the issue of licensing and medical certification of air traffic controllers and proposes detailed requirements, supported by Acceptable Means of Compliance and Guidance Material where necessary, for all aspects governing the access to this safety-related aviation profession, as well as for exercising the privileges granted by the air traffic controller licence.

The Regulation establishes the highest level of synergies within the activities of aeromedical examiners and aeromedical centres concerning the medical certification of flight crew and air traffic controllers, and provides a clear framework for the activities of air traffic controller training organisations, irrespective of whether they are providing initial training only or on-the-job training as well.

It additionally fills the gaps between the safety objectives in the relevant essential requirements of Regulation (EC) No 216/2008 and the previously applicable Regulation (EU) No 805/2011, which did not accomplish this task completely. The ATCO IR also establishes common training standards for air traffic controllers, which is a key factor to facilitate Europe-wide recognition of licences and the mobility of air traffic controllers.

The structure of the regulation enables stakeholders to better identify the requirements applicable to them as well as their interaction with other aspects of the licensing and medical certification of air traffic controllers.

A number of licensing requirements contained within the Air Navigation Order 2009 ('the Order') are superseded by equivalent measures within the ATCO IR. Legislative change is therefore necessary in order to amend or revoke those elements that are addressed by the ATCO IR and to harmonise any residual national provisions by the established deadline. It is also necessary to regularise references to the ATCO IR within the Order.

In addition, amendment of the Order is necessary to redesignate the Civil Aviation Authority as the competent authority for the UK for the purposes of the ATCO IR to ensure compliance with its requirements.

Failure to amend the Air Navigation Order as proposed will:

- Lead to uncertainty within industry regarding related aspects of the contents Air Navigation Order and the relationship between it and EU law.
- Result in UK legislation not remaining aligned with, or becoming contrary to, EU legislation and would therefore put the UK at risk of Commission infringement proceedings.
- Fail to designate the Civil Aviation Authority as the competent authority for the UK for the purposes of the ATCO IR to ensure compliance with the requirements of the subject regulation. Therefore the UK would lack the appropriate body required to enforce an element of EU law.
- Lead to uncertainty as to application of certain aspects of the Order and its enforceability.

The proposed amendments to the Order will introduce no additional obligations, as they are limited to aligning the Order to reflect and facilitate the UK implementation of the ATCO IR. All ATCOs, aeromedical examiners, ATCO training organisations and employers of ATCOs will be equally affected by the consequential impacts of the introduction of EU legislation and the necessary domestic legislative change. There are no competition issues associated with the proposed amendments.

ATCO IR Article 11 allowed EU Member States to decide by derogation not to apply the provisions of this Regulation until no later than 31 December 2016. Implementation is therefore required to be completed by Member States, including the UK, by 31 December 2016. However, the expected date of implementation for the UK is now 10 January 2017.

Having regard for both the scope of change required and the requirements of the legislative change process, the UK notified the European Commission of its intention to exploit the derogation option to the

fullest extent. This has allowed time for detailed consideration of the ATCO IR's impacts upon UK regulatory material and accords with UK government guidance concerning transposition of EU legislation. There are no impacts upon the United Kingdom in terms of meeting its obligations as a Contracting State to the Chicago Convention.

2. Policy objectives and intended effects

The CAA has engaged with the Commission, Eurocontrol and the European Aviation Safety Agency (EASA) throughout the ATCO IR's development. This approach has been largely successful in accommodating the ATCO IR's impacts upon the UK, and of ensuring that the impacts upon to UK legislation are appropriate and proportionate.

Implementation of the ATCO IR will ensure that ATCOs, aeromedical examiners, ATCO training organisations, employers of ATCOs and the CAA will comply with both EU and UK legislation, and that the UK avoids infringement proceedings that would otherwise arise were the Regulation not to be implemented.

3. Policy options considered, including alternatives to regulation

To 'do nothing' was considered inappropriate as:

- Not amending the Order would not align UK legislation with EU legislation, thus putting the UK at risk of Commission infringement proceedings.
- In addition, the UK would fail to meet its obligations associated with the ATCO IR.
- The UK would also fail to meet obligations associated with the EASA Basic Regulation.
- The subject European legislation would take effect at the end of the derogation period regardless, thus leading to uncertainty within industry regarding related aspects of the Air Navigation Order, the status of its contents and the relationship between it and EU law.
- Such confusion would lead to uncertainty within the competent authority and industry as to application of certain aspects of the Order and its enforceability, and would render ATCO licences issued under previous legislation invalid.
- Such confusion would additionally bring about an unacceptable degradation in understanding of ATCO licensing requirements, and the risk of air traffic services being provided by inappropriately licensed (or unlicensed) ATCOs.

OR

Complete amendment of UK legislation by 31 December 2016 (at the end of the permissible derogation period as stated in Article 11 of Regulation (EU) 2015/340, by which time EU Member State implementation of the ATCO IR is to be complete.

This was identified as the preferred option as it allows time for detailed consideration of the ATCO IR's impacts upon UK regulatory material. It additionally accords with UK government guidance concerning transposition of EU legislation.

The measure implements obligations arising from Regulation (EU) 2015/340. No new additional legislation is being introduced; rather the Order requires amendment of existing provisions to reflect UK implementation of EU legislation and to align these with it where necessary. The proposal is not within scope of 'one in three out' and the net legislative effect of the change is considered to be neutral.

4. Expected level of business impact

There are 2514 licensed ATCOs in the UK (including 92 student ATCOs), there are 34 Air Traffic Service providers (ATSPs) in the UK employing ATCOs. There are 3 training organisations providing undergraduate ATCO training.

The cost of the proposed legislative change to industry would be limited to the affected sectors familiarising themselves with the changes to the Order to ensure that they are still compliant with the affected elements, but the costs of doing so are assessed as being less than £1m.

Each organisation will require one person to assess the ANO revisions. That person will be appointed according to the size and structure of their parent ATSP – it may not necessarily be an ATCO. Therefore it is not possible to state with any certainty who within an ATSP will undertake the assessment, nor their gross hourly pay.

Assuming it will take no more than two hours to note that the changes relate to removal of provisions (i.e. those that are now addressed by Reg (EU) 2015/340) or revised references (i.e. those provisions originally addressed in Reg (EU) 805/2011 and now addressed without text change in Reg (EU) 2015/340):

- o With 37 companies – one employee paid £33.25 per hour (assuming equivalence with CAA 'Market Anchor' payzone values)
- o 2 hours per person, therefore £33.25 x 2 hours = £66.50.
- o 37 x £66.50 = £2460.50
- o Therefore the total cost of the changes to the ANO are estimated to be £2460.50.

Regulation (EU) 2015/340 applies to **all** ATCOs, aeromedical examiners, ATCO training organisations, employers of ATCOs and competent authorities within the EU. Because the ATCO IR affects all of the organisations that provide services in the EU, they all have to comply and there are no competition issues associated with its implementation or the consequential UK legislative changes.

The proposed amendments to the Order will provide the State, the CAA and industry with certainty regarding the relationship between UK and EU legislation, and will result in the designation of the CAA as competent authority for the ATCO IR. It does not introduce additional obligations, as the proposed amendments are limited to aligning particular aspects of the Order to reflect and facilitate the UK implementation of Regulation (EU) 2015/340.

Implementation of the Regulation will ensure that EU and UK legislation will continue to provide certainty to industry and the Competent Authority as to the obligations they need to comply with, without creating additional obligations.

CAA notifications to industry of the changes will serve to enhance awareness of the changes and to minimise costs to industry. These notifications will be made available to all industry sectors through established channels. As is the case with all such changes this is available free of charge on the CAA website with no impact on the CAA Scheme of Charges, as the costs associated with amendments to UK state regulatory material will be borne by existing budgets the CAA continuously sets aside for routine changes.

It has not been necessary for the CAA to introduce additional resource to staff the proposed amendments to the Order, nor is additional resource required for it to effect changes to its publications arising from the change proposal.

URN: BIS/16/178

Regulatory Triage Assessment

Title of measure	Air operations regulation offences for Special Operations SPO and Non Commercial Operations NCO.
Lead Department/Agency	Civil Aviation Authority
Expected date of implementation	March 2017
Origin	EU
Date	09/11/16
Lead Departmental Contact	Geoff Parker
Departmental Triage Assessment	Low-cost regulation (fast track)

Rationale for intervention and intended effects

Commission Regulation (EU) No 965/2012 contains operating rules for European aviation. Generally referred to as the Air Operations Regulation, it has a number of Annexes covering various types of aviation. The rules for commercial air transport flights and non-commercial flights are already in force. The final parts cover specialised operations and are due to apply from 21 April 2017. These rules deal with flights where the aircraft is used to conduct specialised tasks such as aerial photography, surveys, pipe line inspection, parachuting etc. Most of these activities are conducted on a commercial basis, with payment being made for the role undertaken by the aircraft operator. The rules are commonly known as Part-SPO.

The new rules are directly applicable Regulation and will supersede national law. However, they do not contain any penalties or sanctions for operators who act outside of the rules. As is the case with other such Commission Regulations, the UK needs a process to enable the courts to impose penalties. This has previously been done through Schedule 13 to the Air Navigation Order 2016. The Schedule describes all the possible offences that could be made against the regulations' implementing rules and, for each offence, sets out the level of fine or term of imprisonment available to the courts for any person convicted of such an offence.

Without this intervention, the UK courts will have no powers to impose penalties on those who contravene any provision of Part-SPO. It is also required by EU law for the UK to enact penalties or sanctions and failure to do so could lead to infraction proceedings.

The intended effect is therefore to empower the UK courts and, in doing so, put in place a deterrent which will improve flight safety for both those in the aircraft, other airspace users and those on the ground.

Viable policy options (including alternatives to regulation)

Do not amend the Order to empower the UK courts. The implementing rules affecting specialised operations will still apply from 21 April 2017. However, in the event of any offence being made against the rules it will not be possible for the UK courts to impose any penalties. The UK will also be at risk of infraction proceedings.

OR

Do not amend the Order but warn operators they may be prosecuted in the future. This would not be effective as operators would know it would not be possible for the UK courts to impose any penalties. The UK will also be at risk of infraction proceedings.

OR

Amend the Order to empower UK courts. In the event of any offence being made against the rules it will be possible for the UK courts to impose penalties. The UK will also not be subject to infraction proceedings.

Initial assessment of impact on business

The proposed amendment to the Air Navigation Order will not directly impact upon business. The new implementing rules for specialised operations have been in place since July 2014. The UK has used the full derogation period permitted under Commission Regulation (EU) No 965/2012. However, that derogation ends on 21 April 2017 and from that date UK operators must comply with the rules.

Any impact on business will result from the rules contained in the EU Regulation rather than this proposed amendment to the Air Navigation Order which only sets out penalties for failure to comply with the rules.

BIT status/score

Because the measure is of EU origin and does not exceed EU minimum requirements, it is a Non Qualifying Regulatory Provision (NQRP) which does not score against the Business Impact Target and is out of scope of one-in, three-out.

Rationale for Triage rating

No new additional operating rules are being introduced; rather the amendment to the Air Navigation Order regularises the ability of UK courts to impose penalties on those who contravene separate rules which will take effect regardless of this proposal.

This is a low cost measure as the amendment to the Air Navigation Order will not require any additional expense by business unless they wish to familiarise themselves with the penalties.

Assuming that operators were to spend time familiarising themselves with the penalties; the estimate from the CAA of the size of the market is 100 companies.

This estimate of 100 companies is based on the number who have made themselves known to the CAA such as some current commercial air transport operators who also undertake SPO activities, and those who need an exemption/permission to fly low. This is combined with an estimate of the number of operators conducting surveys, parachuting etc, who do not have to declare themselves to the CAA under current regulations to arrive at 100.

In those companies if one person spent one hour at a wage rate of £33.25 per hour (assuming equivalence with CAA 'Market Anchor' payzone values)

This would mean the total cost would be £33.25 x 100 hours = £3,325.

Departmental signoff (SCS): Michael Clark

Date: 11/11/16

Economist signoff (senior analyst): Jonathan Saks

Date: 15/11/16

Better Regulation Unit signoff: Chris Simon

Date: 11/11/16