

EXPLANATORY MEMORANDUM TO
THE AIR TRAFFIC CONTROLLER LICENSING (NATIONAL
SUPERVISORY AUTHORITY) REGULATIONS 2011

2011 No. 2261

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument designates the Civil Aviation Authority (CAA), which is the independent regulator for the United Kingdom aviation industry, as the national supervisory authority and the competent authority with respect to the tasks contained in Commission Regulation (EU) No 805/2011 of 10th August 2011 laying down detailed rules for air traffic controllers' licences and certain certificates ("Regulation 805/2011") pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council.

3. Matters of special interest to the Joint Committee on Statutory Instruments and the Merits Committee

3.1 None

4. Legislative Context

4.1 This instrument is required to come into force in the UK as a result of the adoption of Regulation 805/2011, which lays down detailed rules for Air Traffic Controllers' (ATCOs) licences. Regulation 805/2011 was adopted by the Commission on 10th August 2011 and came into force on 31st August and has replaced the provisions found within Directive 2006/23/EC.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 The purpose of this amendment is to designate the Civil Aviation Authority (CAA) as the national supervisory authority and the competent

authority for the United Kingdom for the purposes of Regulation 805/2011 so that it may issue Licences to Air Traffic Controllers (ATCOs), as well as medical certificates and certificates for training organisations.

7.2 The CAA requires this designation urgently due to the introduction of a change in European legislation with regards to the licensing of ATCOs. From 31st August 2011, Regulation 805/2011 replaced the earlier transposed Directive 2006/23/EC. The CAA was designated as national supervisory authority for the purposes of this earlier Directive (see article 246(4) of the Air Navigation Order (ANO) 2009), but requires re-designation under the new Regulation.

7.3 In October 2009 Regulation (EC) No 216/2008 of 20th February 2008 on common rules in the field of aviation safety and establishing a European Aviation Safety Agency (EASA), was amended to bring standards on air traffic management within its scope. As a result, Regulation 805/2011 was subject to a fast-track drafting and adoption procedure. Unfortunately due to this and the fact that there was no substantive change in licensing requirements, the need for a transitional period was not considered by the European Commission and Member States. Once the CAA advised the Department in August 2011 that the designation needed to be made, urgent action was taken.

7.4 As a result of needing to make this amendment urgently this instrument has been produced using section 2 (2) of the European Communities Act 1972. The instrument will cease to have effect at the end of 31st December 2014.

7.5 An amendment to update article 246(4) of the ANO 2009 will be made at the first available opportunity, alongside a package of other amendments. That amendment will provide the CAA with identical powers to those contained within this SI. However, an SI relying on section 2(2) of the European Communities Act 1972 is preferred over making an immediate amendment to the ANO because it is less time-consuming. Amendments to the ANO may only be made by way of Order in Council and given that Regulation 805/2011 changes the legal basis of several articles within the ANO, this SI represents an interim solution before greater consideration can be given to wider amendments made to the ANO by way of an Order in Council in the usual way.

7.6 The importance of making the amendment without delay lies in the fact that the CAA does not currently have the powers to issue ATCO Licences under Regulation 805/2011. The CAA has informed the Department that a number of trainee ATCOs are currently awaiting their Licences. This number will increase during the coming weeks. Until the amendment has been made the CAA will issue Licences by way of an exemption made under Article 14 of Regulation (EC) No. 216/2008. If the amendment is not made swiftly, there is a risk that ATCOs in the UK will be disadvantaged as a result.

7.7 Licences issued under an exemption rather than Regulation 805/2011 do not qualify the holder for mutual recognition of their qualification across the European Union. This could particularly affect overseas students who have studied to become ATCOs in the UK with the intention of practising the profession in another EU Member State.

7.8 Once the CAA has been designated as the national supervisory authority and the competent authority for the purposes of Regulation 805/2011 it will issue new licences free of charge to the holders of licences issued under the exemption.

7.9 The CAA is confident that other Commission measures which are subject to the fast-tracking process will not cause a similar problem in the future. The other requirements under consideration cover areas which have not previously been subject to EU legislation and will have appropriate transitional periods allowing sufficient time to appoint the CAA as the competent authority. The possibility of introducing a generic provision appointing the CAA as the national supervisory authority and competent authority for all requirements established under Regulation (EC) No 216/2008 is also under consideration.

8. Consultation outcome

8.1 No consultation has been carried out. The need to make this statutory instrument has arisen due to an earlier than expected change in European legislation, but essentially this does not alter the way in which ATCO licences will be issued by the CAA. This statutory instrument merely changes the legal basis for issuing such Licences in accordance with Regulation 805/2011.

9. Guidance

9.1 This statutory instrument changes the way in which the CAA is designated as the authority responsible for issuing ATCO licences in the UK. Guidance is therefore not required. ATCOs issued with a licence under an exemption (see paragraph 7) before the coming into force of this statutory instrument should contact the CAA for advice.

10. Impact

10.1 An Impact Assessment has not been produced as the statutory instrument creates no additional burden on industry and as a result no clearance has been required from the Regulatory Policy Committee (RPC). In addition, the Reducing Regulation Committee (RRC) does not need to clear this instrument as there is no impact on business and essentially no change in the way in which the CAA will perform its existing duty of issuing ATCO licences once the appointment has been made.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The CAA will continue to monitor the way in which it issues ATCO Licences. The statutory instrument will not change the way in which Licences are issued, so no change in the operation of the system for issuing licences is anticipated. An amendment to the ANO 2009 will be made before the expiry of this statutory instrument, appointing the CAA as competent authority and national supervisory authority for the purposes of Regulation 805/2011

13. Contact

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