

2013 No. 2874

CIVIL AVIATION

**The Air Navigation (Single European Sky) (Penalties)
(Amendment) Order 2013**

Made - - - - - *6th November 2013*
Laid before Parliament *13th November 2013*
Coming into force - - - *12th December 2013*

At the Court at Buckingham Palace, the 6th day of November 2013

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 2(2) of the European Communities Act 1972(a) and sections 60(1), (2), (3)(h), (4), and 61 of the Civil Aviation Act 1982(b), is pleased, by and with the advice of Her Privy Council, to order as follows.

Citation and commencement

1. This Order may be cited as the Air Navigation (Single European Sky) (Penalties) (Amendment) Order 2013 and comes into force on 12th December 2013.

Preliminary

2. The Air Navigation (Single European Sky) (Penalties) Order 2009(c) is amended as follows.

Interpretation

3. In article 2(1) (interpretation)—

(a) before the definition of “authorised person”, insert—

““air traffic flow management regulation” means Commission Regulation (EU) No 255/2010(d) laying down common rules on air traffic flow management;”;

(a) 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment of section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183).

(b) 1982 c.16. Sections 60 and 61 were amended by section 83(5) of and Schedule 6 Part II to the Airports Act 1986 (c. 31). Section 60 was further amended by sections 47 and 53(2) of and Schedule 4 to the Aviation and Maritime Security Act 1990 (c. 31).

(c) S.I. 2009/1735.

(d) OJ L 80, 26.3.2010, p.10.

- (b) in the definition of “the common requirements regulation” for “Commission Regulation (EC) No 2096/2005 laying down common requirements for the provision of air navigation services” substitute “Commission Implementing Regulation (EU) No 1035/2011(a) laying down common requirements for the provision of air navigation services and amending Regulations (EC) No 482/2008 and (EU) No 691/2010”.

Compliance monitoring

- 4. In article 8(2), for “6” substitute “7”.

Offences in relation to documents, records and explanations etc

- 5. In article 9(1)(e), for “6” substitute “7”.

Penalties

- 6. In article 11—
 - (a) in paragraph (1)(c), for “5.1 or 5.2” substitute “6.1 or 6.2”;
 - (b) in paragraph (1)(d), for “5.4” substitute “6.3”;
 - (c) after paragraph (4)(a), insert—
 - “(aa) by articles 6, 7, 8, 9.2, 10.2, 11.2 or 11.5 of the air traffic flow management regulation,”;
 - (d) in paragraph (4)(d), omit “or”;
 - (e) in paragraph (4)(e), after “the said article 6.2,” insert “or”;
 - (f) after paragraph (4)(e), insert—
 - “(f) by an implementing rule drawn up under article 3 of the interoperability regulation and listed in Schedule 2 to the Single European Sky (National Supervisory Authority) Regulations 2013(b),”.
 - (g) after paragraph (4), insert—
 - “(4A) Any local air traffic flow management unit who, when requested by an airport slot coordinator or a managing body of a coordinated airport, fails to provide to the person making the request the accepted flight plan of a flight operating at that airport, before that flight takes place, is guilty of an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.”.

Defence

- 7. In article 12, for “(4)(a) or (b)” substitute “(4)(a), (aa), (b), or (f), or (4A)”.

Review

- 8. After article 13 insert—

“Review

- 14.—(1) The Secretary of State must from time to time—
 - (a) carry out a review of The Air Navigation (Single European Sky) (Penalties) Order 2009,
 - (b) set out the conclusions of the review in a report, and

(a) OJ L 271, 18.10.2011, p.23.
(b) S.I. 2013/2620

(c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the air traffic flow management regulation, the service provision regulation, the interoperability regulation, Commission Implementing Regulation (EU) No 1035/2011 of 17 October 2011 laying down common requirements for the provision of air navigation services and amending Regulations (EC) No 482/2008 and (EU) No 691/2010, and Commission Regulation (EC) No 1794/2006 of December 2006 laying down a common charging scheme for air navigation services are implemented in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by those regulations,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before 11th December 2018.

(5) Reports under this Order are afterwards to be published at intervals not exceeding five years.”.

Richard Tilbrook
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Air Navigation (Single European Sky) (Penalties) Order 2009 (S.I. 2009/1735) (the 2009 Order) by adding provisions making it an offence:

- (a) to fail to comply with Articles 6, 7, 8, 9.2, 10.2, 11.2 or 11.5 of Commission Regulation (EU) No 255/2010 (OJ L 80, 26.3.2010, p.10) laying down common rules on air traffic flow management which concern obligations on air traffic service units, operators, and airport managing bodies, obligations concerning critical events, consistency between flight plans and airport slots, and monitoring of compliance to air traffic flow management measures;
- (b) for a local air traffic flow management unit, when requested by an airport slot coordinator or a managing body of a coordinated airport, to fail to provide the accepted flight plan of a flight operating at that airport, before that flight takes place; and
- (c) to fail to comply with an obligation imposed by an implementing rule drawn up under Article 3 of the interoperability regulation (Regulation (EC) No 552/2004; OJ L 96, 31.3.2004, p.26) and listed in Schedule 2 to the Single European Sky (National Supervisory Authority) Regulations 2013 (S.I. 2013/2620).

A person guilty of the offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

In addition, this Order replaces reference to Commission Regulation (EC) No 2096/2005 with reference to the superceding Commission Implementing Regulation (EU) No 1035/2011 and updates the numbering in the 2009 Order accordingly.

Article 8 requires the Secretary of State to review the operation and effect of the 2009 Order and publish a report within five years after this Order comes into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Order should remain as it is, or be revoked or be amended. A further instrument would be needed to revoke the Order or to amend it.

A regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Transport, Great Minster House, 33 Horseferry Road, London, SW1P 4DR and is annexed to the Explanatory Memorandum which is available alongside this instrument at <http://www.legislation.gov.uk>.

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