

**EXPLANATORY MEMORANDUM TO**  
**THE CIVIL AVIATION (INVESTIGATION OF AIR ACCIDENTS AND**  
**INCIDENTS) REGULATIONS 2018**

**2018 No. 321**

**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.

**2. Purpose of the instrument**

2.1 To change domestic law relating to the investigation of air accidents and incidents, primarily to make it consistent with directly applicable EU law.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

3.1 None.

*Other matters of interest to the House of Commons*

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

4.1 The instrument is being made in order to update domestic law so that it is consistent with Regulation (EU) No 996/2010 of the European Parliament and of the Council on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC (“Regulation 996/2010”). From the date it entered into force, Regulation 996/2010 became binding on, and directly applicable in, the United Kingdom and the other EU Member States.

4.2 The instrument revokes and replaces the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996 (S.I. 1996/2798) and the Civil Aviation (Investigation of Military Air Accidents at Civil Aerodromes) Regulations 2005 (S.I. 2005/2693). The 1996 Regulations implemented Directive 94/56/EC (which was repealed by Regulation 996/2010) as well as Annex 13 (Aircraft Accident and Incident Investigation) to the Convention on International Civil Aviation (“the Chicago Convention”), to which the United Kingdom is a party, and made some additional provisions under domestic powers. The 2005 Regulations created a similar regime for the investigation of accidents involving military aircraft and impacting on civil aviation.

4.3 Following the entry into force of Regulation 996/2010, it became necessary to revoke and replace those two sets of regulations in order to implement aspects of the Regulation, including creating penalties for infringements of its requirements, and to repeal domestic law which duplicated or was inconsistent with its provisions.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom. However, regulation 11 also requires the Chief Inspector of Air Accidents to cause a safety investigation to be conducted, insofar as it is practicable to do so, where an accident or serious incident occurs in or over a country or territory other than the United Kingdom or any other State that is party to the Chicago Convention in the circumstances described in that regulation.

## **6. European Convention on Human Rights**

- 6.1 Baroness Sugg has made the following statement regarding Human Rights:  
“In my view the provisions of the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2018 are compatible with the Convention rights.”

## **7. Policy background**

### *What is being done and why*

- 7.1 The institutional and regulatory framework for the investigation and prevention of civil aviation air accidents and incidents in the EU is now set out in Regulation 996/2010. This instrument changes our domestic law to reflect this.
- 7.2 Because Regulation 996/2010 is directly applicable in the United Kingdom it does not need to be transposed into our domestic laws. However, it requires Member States to set penalties for infringements of its requirements and prohibitions. This is done in Part 2 of the instrument, which sets out the infringements that contravene the regulations and to which section 75(5) of the Civil Aviation Act 1982 will apply. Section 75(5) provides that any person who contravenes air accident regulations commits an offence, which is punishable by a fine (unlimited in England and Wales) or a term of imprisonment (maximum of 3 months). Criminal penalties for breaches of air accident investigation laws are a long established part of UK law and are considered to be an effective, proportionate and dissuasive means of achieving compliance with the law in this area.
- 7.3 Regulation 996/2010 does not apply to safety investigations into accidents and serious incidents involving aircraft engaged in military, customs, police or similar services. And it does not require a safety investigation unless there is an accident or serious incident (both of which are defined in Article 2) involving certain types of aircraft (see Article 5.1. and 5.2). In both cases, Regulation 996/2010 allows Member States to decide otherwise. In the interests of public safety, a policy decision was taken to extend the scope of the Regulation in both respects in relation to air accidents occurring in or over the UK. The instrument empowers (but does not require) the Chief Inspector of Air Accidents to cause a safety investigation to be conducted, in accordance with Regulation 996/2010, where an “incident” (also defined in Article 2), other than a serious incident, occurs involving an aircraft to which the Regulation applies and also where an accident or incident (serious or otherwise) occurs which involves an aircraft to which the Regulation would not otherwise apply. The Chief Inspector may only exercise this power where he expects to draw safety lessons for civil aviation from the investigation.

- 7.4 That policy decision had the consequence that the Civil Aviation (Investigation of Military Air Accidents at Civil Aerodromes) Regulations 2005 (S.I. 2005/2693) were no longer required and so they have been revoked by this instrument.
- 7.5 The instrument also confers supplemental powers on the Inspectors of Air Accidents in order to enable them to conduct safety investigations effectively (see regulations 12 to 14).
- 7.6 Regulation 996/2010 and Annex 13 to the Chicago Convention broadly mirror each other in most significant respects. Therefore, it is no longer necessary to implement Annex 13 other than in respect of the two Annex 13 provisions that do not have an equivalent in Regulation 996/2010; namely, (a) the recommendation in paragraph 5.2 of Annex 13 that the State of Registry (or, failing that, the State of the Operator, the state of Design or the State of Manufacture) should endeavour to conduct a safety investigation in circumstances where an accident or serious incident occurs outside the Chicago Convention States and the State in which it occurs does not intend to conduct an investigation; and (b) the requirement in paragraph 5.13 of Annex 13 on the State which has conducted a safety investigation to reopen it in the circumstances specified. In relation to (a), it should be noted that the extent of any investigation undertaken pursuant to Annex 13 and the procedure to be followed are to be determined by the accident investigation authority, depending on the lessons it expects to draw for the improvement of safety (see paragraph 5.4 of Annex 13 – and there is an equivalent provision in Article 5.3 of Regulation 996/2010). These provisions are implemented in regulations 11 and 18 of the instrument respectively.
- 7.7 As noted in the Explanatory Note to the instrument, Annex 13 is only available to the public via the website of the International Civil Aviation Organization on payment of a charge. The text of the relevant Annex 13 provisions is, therefore, set out below:

***“State of Registry***

**5.2 Recommendation.—** *When the accident or the serious incident has occurred in the territory of a non-Contracting State which does not intend to conduct an investigation in accordance with Annex 13, the State of Registry or, failing that, the State of the Operator, the State of Design or the State of Manufacture should endeavour to institute and conduct an investigation in cooperation with the State of Occurrence but, failing such cooperation, should itself conduct an investigation with such information as is available.”*

***“Reopening of investigation***

**5.13** If, after the investigation has been closed, new and significant evidence becomes available, the State which conducted the investigation shall reopen it. However, when the State which conducted the investigation did not institute it, that State shall first obtain the consent of the State which instituted the investigation.

*Note.— Where an aircraft which was considered missing following an official search is subsequently located, consideration may be given to reopening the investigation.”*

**Chapter 1. Definitions**

***“State of Design.*** The State having jurisdiction over the organization responsible for the type design.

***State of Manufacture.*** The State having jurisdiction over the organization responsible for the final assembly of the aircraft, engine or propeller.

**State of Occurrence.** The State in the territory of which an accident or incident occurs.

**State of the Operator.** The State in which the operator's principal place of business is located or, if there is no such place of business, the operator's permanent residence.

**State of Registry.** The State on whose register the aircraft is entered.”

- 7.8 The instrument also makes two additional domestic provisions. Firstly, in the interests of fairness, it re-enacts (see regulation 16) a long standing provision that prohibits the investigating inspector from publishing the final investigation report before he has served notice of it on any person whose reputation may be adversely affected by it (e.g. a pilot) (or, where that person has died, on the person who appears to best represent his/her interests in that matter). It requires the investigator to make appropriate changes to the report after considering any representations made within the specified timescale. Secondly, it includes a new provision (see regulation 15) which requires the owner of any aircraft, its contents or wreckage which is being held at an Air Accidents Investigation Branch (AAIB) facility in connection with a safety investigation to collect that property on being notified by the AAIB of its release. A failure to collect the property will allow the Chief Inspector to make arrangements for its disposal/destruction and to recover the reasonable costs of such disposal/destruction from the owner as a debt (through the courts if necessary). This provision was considered necessary in order to ensure that AAIB's facilities are available for the storage and examination of evidence relating to ongoing/future investigations.

#### **Consolidation**

- 7.9 Not applicable.

### **8. Consultation outcome**

- 8.1 Given that the primary purpose of the instrument is to change domestic law in order to make it consistent with directly applicable EU law, a consultation was considered to be unnecessary.

### **9. Guidance**

- 9.1 The Department has worked closely with the Inspectors of Air Accidents in the production of this instrument. The AAIB are already very familiar with Regulation 996/2010 and have been working in accordance with the Regulation since its entry into force.
- 9.2 On the laying of the instrument before Parliament, the AAIB will place an update on their website informing interested parties of the change in legislation, with a link to the instrument, Regulation 996/2010 and this Memorandum.

### **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector. Safety investigations have been conducted in accordance with Regulation 996/2010 since it entered into force.
- 10.3 An Impact Assessment has not been prepared for this instrument.

**11. Regulating small business**

11.1 The legislation does not apply to activities that are undertaken by small businesses.

**12. Monitoring & review**

12.1 A review provision is not included as the instrument does not regulate business. There are no specific plans to monitor or review the instrument because its main purpose is to make domestic law consistent with directly applicable EU law.

**13. Contact**

13.1 Paul Smale at the Department for Transport (Telephone: 07798 798433 or email: paul.smale@dft.gsi.gov.uk) can answer any queries regarding the instrument.