

EXPLANATORY MEMORANDUM TO
THE AIR TRAFFIC MANAGEMENT AND UNMANNED AIRCRAFT ACT 2021
(AIRSPACE CHANGE DIRECTIONS) (DETERMINATION OF TURNOVER FOR
PENALTIES) REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport (“the Department”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 Part 1 of the Air Traffic Management and Unmanned Aircraft Act 2021 (“the Act”) enables directions to be given to persons involved in airspace change (i.e. an air navigation service provider, an airport operator, or another person with functions relating to air navigation) to progress or co-operate with an airspace change proposal where this assists in the delivery of the Civil Aviation Authority’s (“CAA”) airspace strategy (“Airspace Modernisation Strategy”).
- 2.2 If the directed party does not comply with a direction, the CAA can issue them with a contravention notice, followed by an enforcement order. If that enforcement order is contravened this may result in the imposition of a financial penalty consisting of a fixed amount (not exceeding 10% of the person’s turnover) and/or a daily amount (not exceeding 0.1% of the person’s turnover) pursuant to paragraphs 7 and 8 of Schedule 2 to the Act.
- 2.3 These Regulations set out how a person’s turnover is to be determined for the purposes of calculating the amount of penalty.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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.

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 Air Traffic Management and Unmanned Aircraft Act 2021 (Airspace Change Directions) (Determination of Turnover for Penalties) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is being made to ensure that failure to comply with directions given under sections 2 and 3 of the Act in relation to airspace change proposals can be effectively enforced.
- 6.2 This is the first use of the power in paragraph 12 of Schedule 2 to the Act.

7. Policy background

What is being done and why?

- 7.1 These Regulations set out how a person's turnover is to be determined for the purposes of calculating the amount of penalty that may be imposed by the CAA if it has determined that the person has contravened an enforcement order, which may be given following non-compliance with a direction to progress or co-operate in an airspace change proposal and the relevant contravention notice.
- 7.2 Free airspace is the volume of space above ground level, extending as far as aircraft can fly. Airspace has to be managed so it can be used safely and efficiently. The United Kingdom's ("UK") airspace structure is set out in the UK's Aeronautical Information Publication,¹ with there currently being five classes of airspace: A, C, D and E (which are controlled airspace, requiring clearance or special equipment to enter) and G (which is uncontrolled airspace). Airspace changes can include proposals, for example, to amend airport flightpaths, to change the classification of particular airspace or to alter high-level flightpaths.
- 7.3 The CAA has published its Airspace Modernisation Strategy which sets out the ways, means and ends of modernising airspace.² The programme of airspace modernisation is underway and includes the redesign of the UK airspace to deliver quicker, quieter and cleaner journeys, and more capacity, for the benefit of those who use and are affected by UK airspace. It is being delivered by the aviation industry, with support from the CAA and the Department, who provide joint leadership and oversight of governance as co-sponsors of the programme.
- 7.4 The Airspace Change Organising Group ("ACOG") has been commissioned by the CAA and the Department to create a single, co-ordinated implementation plan – or masterplan – for airspace change proposals in the UK. The purpose of the masterplan is to identify where airspace changes are needed to support the delivery of the CAA's Airspace Modernisation Strategy. We are expecting sponsors to bring forward coordinated airspace change proposals, including consultation, in the coming years. Indeed, many sponsors have already begun their airspace change proposals, with ACOG performing its programme coordination role. Public consultation on some of the airspace change proposals is likely to commence in 2022.
- 7.5 Previously, where an airport or Air Navigation Service Provider ("ANSP") declined to participate in an airspace modernisation programme on a voluntary basis, neither the Department nor the CAA had power to ensure co-operation and co-ordination. This

¹ Available at <https://nats-uk.ead-it.com/cms-nats/opencms/en/Publications/AIP/>. Members of the public may also obtain this publication in printed form (or DVD) by writing to Aeronautical Information Service (AIS), NATS Swanwick, Room 3115, Sopwith Way, Southampton, Hants, SO31 7AY.

² Available at <https://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=8960>.

meant that one airport or ANSP could hold up another or several others, thereby delaying the modernisation programme and the benefits associated with it.

- 7.6 Part 1 of the Act now provides new powers for the Secretary of State (delegable to the CAA) to direct airports and other entities with functions relating to air navigation to progress and cooperate in airspace change proposals. This is linked to the CAA's Airspace Modernisation Strategy. These Regulations are required to enable a person's turnover to be calculated for the purposes of issuing a penalty for contravention of an enforcement order in the event of non-compliance with a direction to progress or co-operate in an airspace change proposal.

- 7.7 Turnover is limited to the sum of all amounts received in the course of a person's business (i.e. whether they are an airport operator, an air navigation service provider, or another person with functions relating to air navigation) and excludes capital receipts and loans made by a third party. Only one year of turnover is used in the calculation. Where the most recent available turnover does not equal 12 months, turnover is calculated on a pro-rata basis. Furthermore, the turnover period to be used in determining the level of penalty is decided according to the compliance date for the relevant requirement in the enforcement order.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 The issue of consolidation does not arise as this instrument does not amend any legislation.

10. Consultation outcome

- 10.1 The Department has not undertaken a formal consultation on this instrument but consulted on the policy principle behind the new powers for the Secretary of State (delegable to the CAA) to compel airspace changes in 2019.³
- 10.2 The Department has also engaged with the CAA on the text of these Regulations.

11. Guidance

- 11.1 The CAA are required to prepare and publish a statement of policy on penalties, under paragraph 11 of Schedule 2 to the Act. The CAA intends to publish this in draft on 8 December 2021 and consult with relevant stakeholders.

12. Impact

- 12.1 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 In line with the Better Regulation Framework, a full impact assessment has not been prepared for this instrument as the net annual direct costs to business will be less than £5m. The Department has produced a de minimis assessment in order to inform

³ [Consultation Response on Legislation for Enforcing the Development of Airspace Change Proposals](#) (October 2019).

Ministerial decision making and verify that the net impact to business is under £5m per year.

- 12.4 The main non-monetised benefit is that these Regulations enable the CAA to enforce directions effectively, through imposition of a penalty, by setting out how a person's turnover is to be calculated according to individual circumstances. This will help ensure that incentives for compliance are proportionate in cases where a person's turnover is unusual for some reason, such as in the case of a newly established body. Maintaining proportionate incentives for all organisations will support ACPs to take place in a coordinated manner, which will help contribute towards a more effective airspace modernisation programme.
- 12.5 Whilst the CAA is responsible for issuing any penalties, it is expected that other organisations (i.e. an air navigation service provider, an airport operator, or another person with functions relating to air navigation) who might be subject to airspace change directions will also face additional minor costs to familiarise themselves with the legislation. For the purposes of estimating these additional costs, we have utilised the CAA's 2018 planned audits of certified ANSPs, and we estimate there to be 71 organisations (i.e. airports and their ANSPs) that could possibly face additional costs of familiarisation. Given the high level of knowledge of the programme in general (industry has been deeply engaged with the programme since its inception in 2018, with the Airspace Modernisation Strategy having been subject to consultation, and ACOG proactively engaging with industry stakeholders when developing each iteration of its masterplan), it is assumed that only one hour is required for each organisation and the CAA to undertake this task. Across the 72 organisations affected the total cost of familiarisation is estimated to be £1,333. This legislation does impose minor additional familiarisation costs on the CAA. However, given the extremely low value of this cost, it is not considered to be significant.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is due to the size of the businesses affected by this legislation. While all businesses are in scope of the legislation, no commercial airports currently operating are deemed to be small or micro businesses. ANSP services are typically delivered by a unit within an airport organisation, or by larger dedicated ANSPs serving multiple airports. Therefore, we do not expect any of these to fall under the small or micro business category either. As noted above, this legislation does impose minor additional familiarisation costs on the CAA, which will ultimately be recouped from the industry, including small and micro businesses. However, given the extremely low value of this cost, it is not considered to be significant.

14. Monitoring & review

- 14.1 The approach to monitoring this legislation is that this will be conducted by the Department with the CAA to ensure that the legislation continues to support the policy objective.
- 14.2 The instrument does not include a statutory review clause and in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Robert

Courts MP, Parliamentary Under Secretary of State at the Department for Transport, has made the following statement:

“It would not be appropriate in the circumstances to make provision for a review as a review would be disproportionate taking into account that the direction making powers and enforcement action are expected to be used only as a last resort and are expected to have an annual net impact of less than £5 million.”

15. Contact

- 15.1 Oliwia Chrzanowska at the Department for Transport Telephone: 07977 023010 or email: oliwia.chrzanowska@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Ian Elston, Deputy Director for Airspace Modernisation, 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.