

EXPLANATORY MEMORANDUM TO
THE CIVIL AVIATION (WORKING TIME) (AMENDMENT) REGULATIONS 2010
2010 No. 1226

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 amends the Civil Aviation (Working Time) Regulations 2004 (“the 2004 Regulations”) so as to harmonise them with the Civil Aviation Authority (“the CAA”) flight time limitation guidance document (known as “CAP 371”) in relation to the calculation of certain periods of standby duty for aircrew. This ensures that time spent on standby counts expressly as working time for the purposes of the 2004 Regulations, but also allows standby time to be calculated as less than full working time when certain specified criteria are met.

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

3.1 None

4. Legislative Context

4.1 The 2004 Regulations transposed into UK legislation the provisions of the EU Directive relating to the organisation of working time, for mobile workers in civil aviation. The current instrument amends the 2004 Regulations to ensure that, whilst remaining consistent with the EU Directive, those Regulations will also now be consistent with other UK legislation and requirements relating to aviation safety.

4.2 This instrument harmonises the 2004 Regulations with the recently amended Air Navigation Order 2009 (“the ANO 2009”) and with the CAA's CAP 371 safety guidance with regards to the treatment of time spent on standby duty for air crew.

4.2 This instrument also makes minor amendments to the 2004 Regulations to update a number of definitions and references to bring them in line with the ANO 2009.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 One of the main features of the 2004 Regulations was the establishment of a maximum 2,000 hours annual working time limit for aircrew. Under the 2004 Regulations standby duty, where a crew member is held ready to carry out their duties if called upon to do so by the employer, is considered to be working time whether the crew member is called in for duty or not, and the time spent on standby duty is counted fully against the individual's 2,000 hours annual limit.

7.2 However, the issue of standby duty is also addressed in separate UK aviation safety legislation dealing with the regulation of flight duty periods for the purposes of avoiding fatigue in aircrew. The ANO 2009 requires all operators to establish an appropriate scheme for the regulation of crew duty hours. Such schemes must all be approved by the CAA. In relation to the calculation of cumulative duty hours, the CAA's guidance known as CAP 371 provides that all standby duty should count fully against the individual's cumulative totals unless:

- the period of notice, whilst on standby, given to the crew member by the operator before reporting for duty, is at least treble the specified minimum report time, or
- the standby duty is undertaken at home, or in a suitable accommodation provided by the operator, takes place during the period 2200 to 0800 hours, and the crew member can take undisturbed rest and is not called out for duty.

7.3 Crucially, where either of these conditions is satisfied under CAP 371, the relevant period of standby duty only counts as half the actual time spent on duty for the purposes of the individual's cumulative duty hours. Accordingly, a regulatory mismatch currently exists between the provisions of the Regulations and CAP 371, which has created a potential problem for the provision of the Maritime and Coastguard Agency's (MCA's) civil maritime Search and Rescue services.

8. Consultation outcome

8.1 The Department consulted formally on the proposals over a period of 12 weeks with stakeholders, namely operators, representative bodies, unions and Government bodies. The consultation period began on 18 December 2009 and ended on 12 March 2010. Eight responses were received from stakeholders. Industry is supportive of the proposals and is of the view that the amendment of the 2004 Regulations is a positive step and that this amendment will work to the advantage of their organisations. The industry regulator the CAA is also supportive of the amendment being made; they believe that this will bring clarity to the issue of how the time which air crew spend on standby duty should be calculated and that this amendment will also aid operators in implementing their regulatory requirements in this area. The responses which were received from the trade unions were not supportive of the proposals.

8.2 A more detailed and anonymised analysis of the responses will be made available as soon as possible on the Department for Transport's website.

9. Guidance

9.1 The Department will jointly with the CAA revise the guidance in relation to the Regulations which is has on its website, once the amendment has been made.

10. Impact

10.1 We do not expect the amendment to impact on non-aviation businesses, charities or voluntary bodies

10.2 There is not expected to be any impact on the public sector.

10.3 An impact assessment has been carried out for this instrument. This is attached as an annex to this memorandum.

11. Regulating small business

The legislation applies to all businesses, of whatever size, involved in the provision of air services and who employ mobile workers.

12. Monitoring & review

12.1 The Department will monitor the impact of the instrument once this has been made.

13. Contact

Craig Griffiths at the Department for Transport, Great Minster House, 76 Marsham Street, London SW1P 4DR (Tel: 020 7944 3246 or email: craig.griffiths@dft.gsi.gov.uk) can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Department for Transport	Title: Impact Assessment of harmonisation of the treatment of Standby Duty under UK aviation legislation	
Stage: Consultation	Version: 1	Date: 30 November 2009
Related Publications: CAP 371 The Avoidance of Fatigue in Air Crews		

Available to view or download at:

<http://www.caa.co.uk/docs/33/CAP371>

Contact for enquiries: Craig Griffiths

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

CAP 371, the avoidance of fatigue in air crews allows some standby duty to be counted at 50% of the number of hours spent doing this under certain specified conditions. However the Civil Aviation (Working Time) Regulations do not currently allow working time to be recorded in this way, meaning that crew often reach their 2000 hour annual working hours limit due to lengthy periods of standby duty, when often they have not been required to report for duty. Government intervention is now needed to harmonise the Regulations with CAP 371 to allow some standby time to be recorded in this way.

What are the policy objectives and the intended effects?

The objective of harmonising the Regulations with CAP 371 is to enable some time spent on standby duty to be counted as less than full working time. The effect will be that there is a cost saving for operators, particularly of Search And Rescue services, who will be able to deploy their staff more effectively without them reaching their annual working time limit. This would also lead to less burdensome record keeping, as most operators currently maintain two different sets of records about the working time of their crews, to meet the obligations of both the current Regulations and CAP 371.

What policy options have been considered? Please justify any preferred option.

Option 1: Harmonise the Regulations with CAP 371 guidance so that certain periods of standby duty can be counted at 50% of the total time spent on standby for working time purposes. This is the preferred option.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? It is proposed to undertake a review of the actual costs and quantifiable benefits, as well as the achievement of the desired effects after 5 years of initial implementation.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Paul Clark

.....Date: 8th April 2010

Summary: Analysis & Evidence

Policy Option: 1	Description: Harmonisation of the treatment of Standby duty under UK Aviation legislation
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Nil
	One-off (Transition) Yrs	
	£ 0	
	Average Annual Cost (excluding one-off)	
	£ 0	Total Cost (PV) £ 0
Other key non-monetised costs by 'main affected groups' Businesses may incur small administrative costs if existing crew rosters were to be changed. However, these costs would be off-set by savings made as a result of the harmonisation of the recording of working time and crew duty hours under a common system.		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' The current regulations are costing the MCA £700,000 a year in additional pilots and crewmen at 3 sites. Therefore there is an annual benefit of £6.3m across the 9 sites from not having to employ extra staff. This will accrue to the operators.
	One-off Yrs	
	£ 0	
	Average Annual Benefit (excluding one-off)	
	£ 6.3m	Total Benefit (PV) £ 110m
Other key non-monetised benefits by 'main affected groups' There are additional benefits for operators in terms of administrative savings resulting from allowing operators to move to a single system for recording data relating to crew working hours.		

Key Assumptions/Sensitivities/Risks

Sensitivity tests have been conducted around the benefits figures as they were provided by the MCA and are not entirely transparent as to where the benefits are coming from. This is a key risk but as harmonisation creates only minimal costs the net benefits are likely to remain strongly positive.

Price Base Year 2009	Time Period Years 25	Net Benefit Range (NPV) £ £77m- £143m	NET BENEFIT (NPV Best estimate) £ 110m
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What is the geographic coverage of the policy/option?	United Kingdom
On what date will the policy be implemented?	October 2010
Which organisation(s) will enforce the policy?	Employment Tribunal
What is the total annual cost of enforcement for these organisations?	£ Not known
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	Yes
What is the value of the proposed offsetting measure per year?	£ N/A
What is the value of changes in greenhouse gas emissions?	£ N/A
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £	Decrease of £	Net Impact £

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Title of Proposal:

Harmonisation of the treatment of standby duty under UK aviation legislation.

Purpose and intended effect of measure:

Objective

To ensure that standby duty for aircrew is dealt with consistently under UK aviation legislation. In particular, to harmonise the Civil Aviation (Working Time) Regulations 2004 ("the Regulations") with the Civil Aviation Authority's (CAA) published guidance on the avoidance of fatigue in aircrew ("CAP 371"), in the way that standby duty is apportioned against total annual working time and cumulative duty hours respectively.

Background

On 22 March 2000, the Association of European Airlines, the European Transport Workers' Federation, the European Cockpit Association, the European Regions Airline Association and the International Air Carrier Association ("the social partners") reached an Agreement on the organisation of working time of mobile staff in civil aviation. The Agreement covered various social measures including the establishment of maximum total annual working time, minimum numbers of rest days, minimum entitlements to paid annual leave and provisions on health and safety. The Agreement included a request to the European Commission to propose to the Council of Ministers that its terms be implemented by means of a Council Decision.

The Commission responded to this initiative from the social partners by bringing forward Council Directive 2000/79 (the "Aviation Working Time Directive"), which was duly adopted by Ministers. The provisions of the Aviation Working Time Directive were transposed into UK legislation by the Regulations with effect from 13 April 2004.

One of the main features of the legislation was the establishment of a 2000 hour maximum annual working time limit for aircrew. Under the Regulations, time spent on standby duty, where aircrew are held ready to carry out their duties if called upon to do so by their employer, is considered to form part of an individual's working time and accordingly counts fully against his or her annual limit, whether spent at home, in a crew room at an aerodrome or elsewhere. By contrast, the provisions of the Air Navigation Order 2000 ("the ANO") dealing with the regulation of flight duty for the purposes of avoiding fatigue among aircrew, treats time spent on standby duty slightly differently. Article 72 of the ANO requires all UK operators to establish an appropriate scheme, approved by the CAA, for the regulation of the flight times of their aircrew. To assist operators in the formulation of an acceptable scheme, the CAA published CAP 371 in 1975. This provided that all standby duty should count fully against the individual's duty hours **except** where,

1. the period of notice of the standby duty given to the crew member by the operator before reporting for duty, is treble or more the specified minimum report time, or

2. the standby duty is undertaken at home, or in a suitable accommodation provided by the operator, takes place during the period 2200 to 0800 hrs, and the crew member can take undisturbed rest and is not called out for duty.

In either of the above limited circumstances, the relevant period of standby duty only counts as half the actual time spent on such duty for the purposes of the individual's cumulative duty hours.

In view of the requirements of article 72 of the ANO most UK operators have understandably based their aircrew rostering systems on CAP 371. Accordingly, the mismatch between the way in which standby duty is treated under the Regulations, as opposed to CAP 371, has created difficulties for those operators whose aircrew spend large parts of their working time on standby duty. This is particularly the case for helicopter crews involved in emergency service operations such as civil maritime Search and Rescue (SAR).

SAR Operations in the UK

The Maritime and Coastguard Agency (MCA), through HM Coastguard, is responsible for the initiation and co-ordination of civil maritime SAR. Helicopter operations form a key element of UK SAR provision. The current SAR helicopter capability is delivered by a combination of MCA, Royal Air Force (RAF) and Royal Navy (RN) assets at geographically dispersed sites around the UK mainland. The MCA operate from 4 locations, at Lee on Solent, Portland, Shetland and Stornoway. In order to provide this service the MCA contracts trained civilian helicopter crews from an established helicopter company. The MCA crews are subject to the provisions of the Regulations and in particular the 2000 hour annual working time limit. The operation at Portland is limited to daytime hours, but at Lee-on-Solent, Stornoway and Shetland the service runs 24 hours a day, 7 days a week. Outside daylight hours at these bases, operational crews usually spend their time at home from where they are called out, if required.

Other emergency service aircrew

Police helicopter assets also provide a 24 hour service but crews are typically rostered on an equal time on/time off basis. Accordingly, the duty roster provides that the total duty hours worked per annum is unlikely to exceed 2000 hours in any given 12 month period. The mismatch between the Regulations and CAP 371 with regard to standby duty is therefore unlikely to adversely impact the police helicopter service.

Air ambulance operations generally operate a daylight only service, with crew duty hours calculated in accordance with CAP 371. The proposed alignment of the standby duty provisions of the Regulations with those in CAP 371 would therefore be unlikely to have any material effect on air ambulance services.

Risk assessment

A previous review of the working/duty hours of the helicopter crews working at the MCA's Shetland, Lee-on-Solent and Stornoway SAR bases, has suggested that aircrew are likely to exceed the 2000 hour working time limit by up to 25% per annum.

The MCA are in the process of negotiating and agreeing a new long term (25 year) contract for the provision of SAR operations at the UK bases referred to above. In order to comply with the Regulations, the MCA will be faced with a choice between the contractor employing additional crew or reducing the current level of SAR cover provided.

In the wider commercial fixed wing sector, many airlines use computer based programmes to calculate aircrew duty rosters for the purposes of article 72 of the ANO. In many cases, due to the very limited circumstances in which standby duty can be reduced to half the actual time spent on duty under CAP 371, all standby duty is fully counted against the individual's

cumulative duty hours. In these circumstances, the impact on the airlines of this proposal would, if the Regulations rather than CAP 371 were amended, be neutral. However, for those operators currently recording standby duty strictly according to CAP 371, harmonisation of the apportionment of standby duty as between the Regulations and CAP 371 would ensure that the recording of duty and working hours could be achieved under a common system, and reduce the regulatory impact on businesses. This would be particularly helpful to airlines in the current economic climate.

Consultation

The proposed amendment to the Regulations has been consulted on previously. This process was originally initiated by representations from the industry, concerned about the regulatory mismatch over the treatment of standby duty under the Regulations with that of existing aviation safety legislation. Informal consultation has continued to be undertaken with the CAA, the MCA, industry and union representatives since the previous consultation took place. The desire to harmonise the Regulations in relation to the calculation of standby duty with the provisions of CAP 371 has remained strong and has recently received fresh impetus because of the current situation with regards to the new long term SAR contract. We are now undertaking a new formal consultation into this proposal.

Options:

An option could be to 'do nothing' and leave the Regulations as they are currently. This would mean that standby duty would continue to be recorded as being full working time under the existing Regulations.

However, as highlighted above, the mismatch between the Regulations and against duty time under CAP 371 has a particular significance on those operations where crew spend lengthy periods of their time on standby. Accordingly, one main option has been identified for consideration.

Option 1: Amend the Regulations to follow CAP 371 in allowing standby duty, in certain specified circumstances, to count as only half the actual time spent on duty for the purposes of calculating annual working time.

Costs and Benefits:

Business sectors affected

Any amendment to the Regulations or CAP 371 would affect undertakings established in the UK, employing crew members on board civil aircraft flying for the purposes of public transport.

Benefits

Option 1: This option would benefit those operators whose aircrew spend periods of their working time on standby duty, particularly 24 hour emergency service operations. Under the current Regulations, the provider of helicopter crews to the MCA's SAR operation has projected that the 2000 annual working time limit for workers would be exceeded. The estimated cost saving to the MCA if the Regulations are amended as proposed is in the order of £157.5m over the life of the contract (25 years). This option would also ensure continued compliance with existing aviation safety standards.

The risk of not deciding on this option by maintaining the status quo would ensure that all standby duty continues to be counted fully against a crewman's annual working time. For aircrew whose employers currently calculate duty rosters in accordance with CAP 371, a risk is

that this could lead to a reduction in the number of hours rostered for work over a 12 month period, particularly for crew whose work currently includes a large amount of standby duty. There would be no significant benefits for employers in the air transport sector.

For other commercial operators this option would simplify the calculation of cumulative duty hours and working time under a common recording system, and obviate the need for separate records to be kept for working time and cumulative duty hours. Crew members would not derive any significant new benefits from this option but would similarly not be unfairly affected by the amendment. This option would impose a tighter restriction on working hours under the Regulations.

Costs

Option 1: Aligning the Regulations with the provisions of CAP 371 would reduce the regulatory burden on operators of maintaining separate working/duty time records.

MCA SAR helicopter crews complied with the provisions of CAP 371, which was the basis of the service provider's original assumption with regards to required pilot and crew numbers and which were submitted at the bid stage for the existing SAR contract and accepted by the Department. Following concerns raised by the British Airline Pilots' Association (BALPA), the main Trades Union for SAR Pilots and Crews and the perceived threat of legal action towards the contractor for not complying with the 2000 hour limit imposed by the Regulations, the contractor recruited additional Pilots and Crew. The contractor then presented the additional costs to the MCA in the form of a variation to the contract during late 2008. Upon taking legal advice, the MCA agreed to vary the contract with a stipulation which states that the contractor will take proactive steps to reduce the numbers of crew were an amendment to the Regulations passed.

The variation to contract reflects MCA's liability. The initial additional cost to MCA was in the region of £1.1m. This reflected the costs incurred by the contractor to increase crew numbers through recruitment and subsequent training. The subsequent yearly cost increases for SAR services are in the region of £2m per annum. The proposal contained within this Impact Assessment would not allow the MCA to claim back costs incurred by the Agency as a result of the variation to contract. Some savings are feasible for the remainder of the current search and rescue contract with the MCA where the contractor is able to reduce crew numbers should the Regulations be harmonised.

The true savings can be found within the contract due to be let in 2012 by the MCA in collaboration with the MOD for search and rescue helicopter cover across the UK's 12 search and rescue helicopter bases. Unless the regulations are harmonised, the contractor will be required to operate with additional crews across nine 24 hour search and rescue bases. The new contract has been let for 25 years and so the financial implications in not harmonising these regulations are significant and are reflected in the summary of this impact assessment.

An alternative to amending the Regulations would be to reduce the level of SAR cover at the UK SAR bases currently operating a 24 hour service, but this is not considered to be a viable option, and would lead to an unsatisfactory level of provision of vital search and rescue services.

Non Monetised Costs

A non monetised cost of an amendment being made to the Regulations would be that air crews who undertake lengthy periods of standby duty could potentially spend longer amounts of their working time flying than they do currently. This would come about because certain periods which they spend on standby duty over the course of a working year would be treated as counting as less than full working time. This would benefit operators.

Equity and Fairness:

The proposal seeks to harmonise the treatment of standby duty between the Regulations and CAP 371 and as such should not disproportionately affect any particular group currently subject to the respective pieces of legislation. The main beneficiaries will be those operators whose crews working patterns involve lengthy periods of standby duty, principally emergency service operations. No competition exists for the provision of such services in a given geographical area. Competition for the provision of assets to the bodies undertaking such services may exist, but this should be unaffected by the proposal.

Small Business Services:

A proportion of airlines holding air operating licences might be described as small businesses, particularly emergency service helicopter operations, and would therefore be affected by the proposal.

Option 1: would reduce the regulatory burden on all operators, including small businesses. The additional costs savings to emergency helicopter operations are set out above.

Maintaining the current wording of the Regulations would perpetuate the need to calculate working time (under the Regulations) and cumulative duty hours (under CAP 371), separately. This approach therefore would maintain a continuing administrative cost to small businesses. In addition, the impact of this on the MCA SAR service is set out above.

Competition Assessment:

The proposal is unlikely to distort competition since it affects all companies to whom the Regulations and the ANO/CAP 371 apply.

Enforcement, sanctions, monitoring and review:

This proposal will not add any additional enforcement, sanction, monitoring or review function to that already provided for under existing legislation

Implementation and delivery plan.

Option 1 would require the preparation of a suitable amending Statutory Instrument. The proposed amendment would seek to ease the Regulatory burden on businesses and so it is proposed to bring any change into force at the earliest opportunity. The soonest that this could be achieved would be 21 days after the Statutory Instrument is first laid before Parliament under the negative resolution procedure.

Under this option businesses may incur small administrative costs if existing crew rosters were to be changed. However, these costs would be off-set by savings made as a result of the harmonisation of the recording of working time and crew duty hours under a common system. This option would be likely to reduce the need for employing additional aircrew to maintain existing levels of service. Existing DfT guidance on the Regulations would be amended to reflect any change that is made.

Summary and recommendation:

The Regulations place a clear responsibility on operators to ensure that aircrews do not exceed the 2000 hour annual working time limit. Similarly, the ANO requires operators to put in place a

scheme to regulate the duty hours of aircrew for safety reasons. This latter requirement is generally satisfied where the operator's scheme complies with CAP 371.

The mismatch in the apportionment of standby duty between the Regulations and CAP 371 has created certain difficulties for those operators where the nature of the work involves significant periods of standby duty.

Keeping the Regulations as they currently are would retain the existing mismatch between the Regulations and CAP 371, necessitating the maintenance of separate records of working time and cumulative duty hours for aircrew. This approach would also, in addition, require considerable additional annual expenditure to be incurred to ensure that SAR aircrews keep their working hours below the required 2000 hour limit.

In view of the above, it is recommended that the option to amend the Regulations to harmonise these with CAP 371 be taken forward. This would enable the consolidation of duty/working time records under one recording system and hence reduce the regulatory burden of the Regulations on all UK operators. This option would not be inconsistent with ECJ rulings on working time or undermine the UK's existing aviation safety regime.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	No	No
Rural Proofing	No	No

Annexes

