

EXPLANATORY MEMORANDUM TO
THE AIR NAVIGATION (AMENDMENT) ORDER 2009

2009 No. 1742

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 Statutory Instrument transposes the provisions of Council Directive 2006/23/EC, on a community air traffic controller licence, into UK legislation through an amendment to Part 10 (Licensing of Air Traffic Controllers) and Schedule 11 (Air Traffic Controllers - Licences, Ratings, Endorsements and Maintenance of Licence Privileges) of the Air Navigation Order 2005 (ANO). The effect will be to establish the framework for a common, basic air traffic controller licence recognised in all EU Member States.

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

None

4. Legislative Context

4.1 The Statutory Instrument is being made in order to comply with the UK's obligation to transpose the provisions of Council Directive 2006/23/EC into national legislation. The Directive itself incorporates the existing safety requirements set out in the European Organisation for the Safety of Air Navigation (Eurocontrol)'s Safety Regulatory Requirement No 5 (ESARR 5), with new provisions in respect of the educational standards required of potential student ATCOs, an increased minimum age limit for ATCO licence holders, the establishment of an English language proficiency assessment and revised medical standards. As noted, these will be incorporated into UK legislation through an amendment to Part 10 and Schedule 11 of the ANO. A transposition note is annexed to this Explanatory Memorandum.

4.2 The European Commission's proposal for the Directive was the subject of Explanatory Memorandum (EM) 11484/04, submitted by the Department for Transport to the UK Parliament on 28 July 2004. The House of Lords Select Committee on the European Union referred the EM to sub-Committee B at its 1190th sif on 7 September 2004. Sub-Committee B considered the EM on 13 September 2004, and the Chairman wrote to the Minister maintaining the Committee's scrutiny reserve on the proposal pending further developments. A Supplementary Explanatory Memorandum (SEM) was submitted by the Department for Transport on 26 October 2004. The House of Lords Select Committee on the European Union referred the SEM to sub-Committee B at its 1195th sif on 2 November 2004. The Chairman wrote to the Minister on 10 November 2004, lifting the Committee's scrutiny reserve on the document.

4.3 The House of Commons European Scrutiny Committee considered the EM and the SEM on 3 November 2004. The Committee recommended that the document was of political importance and did not lift its scrutiny reserve on the document, pending progress in negotiations (35th Report, Session 2003/04).

4.4 Ministerial letters were sent to both Scrutiny Committees on 21 December 2004, reporting on the outcome of Ministerial discussions at Transport Council. The House of Commons European Scrutiny Committee considered the letter and lifted its scrutiny reserve on the proposal on 12 January 2005 (3rd Report, Session 2004/05). The House of Lords Committee Chairman replied to the Minister on 20 January 2005 noting the progress made. Further Ministerial letters were sent to both Scrutiny Committees on 4 April 2005, reporting on the outcome of the European Parliament's first reading of the proposal.

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 The rise in air traffic-related delays in the late 1990s prompted the European Commission to examine what should be done to overcome this growing problem. The result was the Single European Sky initiative. To assist the Commission in defining the actions required, a high-level group of experts from the Member States was convened, and one of the issues it considered was the effect of a lack of a common air traffic controller licence in Europe. In its report, the group concluded there was a need to harmonise air traffic controller licences in order to ensure common safety and training standards, and to boost the low mobility level of controllers.

7.2 During the subsequent negotiations on the Single European Sky package it was recognised that a common licence for air traffic controllers in Europe should be considered. The Commission explained that it was preparing a directive on a common licence and thus it was decided not to include such a requirement in the Single European Sky regulations. The Single European Sky Air Navigation Service regulation did, however, place a requirement on the Commission to present a proposal on the licensing of controllers.

7.3 As a consequence, European Council Directive 2006/23/EC was developed to provide the framework for a common Community Air Traffic Controller licence with the purpose of increasing safety standards and improving the operations of the Community air traffic control system. The objective is to produce a more efficient organisation of the labour market for air traffic controllers and make freedom of movement more effective by removing the current discretion Member States have with regard to mutual recognition.

7.4. The Directive includes the safety requirements set out in ESARR5, together with a number of additional provisions covering educational requirements for student ATCOs, minimum age limits for licence holders, language proficiency assessments and revised medical requirements.

7.5 Specifically, the Directive requires that student ATCOs must hold "at least a secondary education diploma or a diploma granting access to university or equivalent". The Statutory Instrument equates a secondary education diploma to a General Certificate of Secondary Education (GCSE) or equivalent. However, where the applicant does not meet the minimum educational standard, the Directive allows, and the ANO provides for, the CAA to evaluate the educational standard of the applicant and issue a student licence if it is satisfied that the applicant's education and experience would give him a reasonable prospect of completing air traffic control training.

7.6 With regard to minimum age limits, the Directive requires ATCOs to be at least 21 years old (student ATCOs must be at least 18). However, discretion is given for Member States to lower the minimum age limit for ATCOs in "duly justified cases". The Statutory Instrument provides for the CAA to issue ATCO licenses to those who are at least 20 years old, where the circumstances so justify.

7.7 Article 8 of the Directive introduces a new English language proficiency requirement for all ATCOs, although this is not required to be brought into force until 17 May 2010. As English is

the first language of the overwhelming majority of UK ATCOs the Statutory Instrument aims to bring forward the introduction of this requirement at the same time as the rest of the Directive's provisions. The Department for Transport specifically raised this issue during consultation with Air Navigation Service providers, and received broad agreement to its proposal.

7.8 Article 12 of the Directive introduces new medical standards for ATCOs, consistent with the provisions of Annex 1 to the Chicago Convention on International Civil Aviation and the requirements of the European Class 3 Medical Certification of Air Traffic Controllers laid down by Eurocontrol. The new medical requirements are broadly similar to the standards currently in place, although in certain areas the frequency of reassessment is changed.

7.9 Finally, attention is drawn to the transitional arrangements set out in article 1(2) of the amending Statutory Instrument and the proposed amendment of article 116 of the ANO in respect of the prohibition against a student ATCO exercising the privileges of his licence whilst under the influence of drink or drugs. Article 1(2) provides for a transitional period of up to one year during which time the CAA will reissue all existing UK issued licences (approximately 2300) as a free standing exercise. At the end of this period all licences will have been issued in accordance with the provisions of the Directive.

7.10 New article 116(1) of the ANO makes it an offence for a student air traffic controller to be under the influence of drink or a drug to the extent that this would impair his or her capacity to act as such. A similar offence already exists at article 116 of the ANO, although that applies equally to all air traffic controllers, not just students.

7.11 Under section 92(1) of the Railways and Transport Safety Act 2003 it is an offence for a person to perform an aviation function, or an activity which is ancillary to an aviation function, at a time when his ability to perform the function is impaired because of drink or drugs. Section 94(1) (g) defines an aviation function as including acting as an air traffic control officer (ATCO) in pursuance of a licence granted or by virtue of an enactment (other than a licence granted to a student). Student controllers can only exercise the privileges of their licences whilst under the supervision of a fully qualified controller.

7.12 In view of section 92 of the Railways and Transport Safety Act it is unnecessary to retain the existing offence in the ANO in respect of the holders of full air traffic controller licences. However, as section 92(1) does not apply in respect of the holder of a student air traffic controller licence, the ANO prohibition against student controllers performing their duties whilst impaired through drink or drugs is retained. This places responsibility for compliance with the student concerned rather than the supervising controller.

- ***Consolidation***

7.13 This is the fifth amendment of the ANO and as such the Department intends to consolidate the Order later this year. A draft Consolidated Order is currently being prepared with the aim of its being presented to Parliament in the autumn.

8. Consultation outcome

8.1 The Department for Transport launched a consultation document, based on an earlier, but largely similar, version of the draft Statutory Instrument, on 12 December 2007. Copies were sent directly to all UK Air Navigation Service Providers (ANSP) and ATCO Training Colleges, the Airport Operator's Association, the Guild of Air Traffic Control Officers, Prospect (the Union), the CAA, MOD, Small Business Service, CBI and the Devolved Administrations. The consultation ran for a period of 14 weeks.

8.2 By the close of the consultation on 19 March 2008, five responses had been received, including those from NATS, the largest UK ANSP and Prospect. All respondents were supportive of the Government's approach.

9. Guidance

9.1 Guidance on the changes to the ANO requirements is being promulgated through the updating of the CAA's Civil Aviation Publications (CAP) 584 - Requirements for Initial Air Traffic Control Training, and 744 - United Kingdom Manual of Personnel Licensing - Air Traffic Controllers. In addition, the CAA will be issuing an Air Traffic Services Information Note (ATSIN), advising industry of the amendment to the ANO and the reissuing of the CAPs.

9.2 The CAA wrote to all air traffic control units in February 2008 advising them of the forthcoming changes to CAP744, and briefed industry representatives at the CAA's standing "Advisory Committee" meeting on 23 April. Details of the new medical requirements will be included in the CAA's ATSIN, placed on the CAA's medical website and set out in a newsletter to Aeronautical Medical Examiners.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negative in monetised terms, but significant non-monetised benefits, including compliance with EU law, greater workforce mobility and the opportunity for UK air traffic service providers to compete for contracts in the wider European market are expected to outweigh the monetised costs. Further details are set out in the accompanying Impact Assessment.

10.2 The impact on the CAA, which is a public corporation, is also detailed in the Impact Assessment attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 All air traffic service providers and air traffic controller training providers will be required to comply with the appropriate parts of the EU Directive. There are currently 39 providers of air traffic services in the UK. Of these, 2 fall within the small business category. There are also 6 organisations that provide controllers for special events, which also fall into this category. Of the three Training Centres, two are classified as small businesses. The introduction of certification requirements will only entail minimal changes to the current requirements. All of these companies were included in the consultation process.

11.3 The basis for the final decision on what action to take to assist small business was based on the fact that the provisions of the Directive are required to be applied to all service and training providers.

12. Monitoring & review

12.1 Transposition of Council Directives is part of the UK's community obligations. A copy of the amending Statutory Instrument will be supplied to the Commission, once finalised, who will review the same. Any deficiencies will be brought to the attention of the UK Government for immediate correction.

13. Contact

David Shephard at the Department for Transport Tel: 020 7944 5881 or email: david.shephard@dft.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Department for Transport	Title: Impact Assessment of the transposition of Council Directive 2006/23/EC on a Community Air Traffic Controller Licence	
Stage: Final	Version: 1	Date: 09 July 2008
Related Publications:		

Available to view or download at:

<http://www.dft.gov.uk>

Contact for enquiries: David Shephard

Telephone: 020 7944 5881

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

Council Directive 2006/23/EC, establishing a Community Air Traffic Control Officer (ATCO) licence, has been introduced to increase safety standards and improve the operations of the Community air traffic control system. The aim of the Directive is to bring about a more efficient organisation of the labour market for air traffic controllers and make freedom of movement more effective by removing the current discretion which some Member States take with regard to the recognition of licenses issued by other Member States.

Government intervention is necessary in order to transpose the provisions of the Directive into UK legislation in accordance with our Community membership obligations.

What are the policy objectives and the intended effects?

The objective is to transpose the provisions of the EU Directive into UK domestic legislation with the minimum necessary changes to existing licensing processes, procedures and costs.

The effect of transposing the provisions of the Directive will be the establishment of minimum educational standards for student ATCOs, an increase in the minimum age for ATCOs (from 20 to 21), the introduction of a new English language proficiency requirement and revised medical certification standards. This will contribute towards the harmonisation of air traffic control (ATC) standards across Europe and facilitate the free movement of air traffic controllers between Member States.

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

Option 1. Implementation of all of the provisions of the EU Directive, including the language proficiency requirements at the same time. This is the Government's preferred option as it obviates the need to make further administrative changes in two years time. English is the first language of the vast majority of UK licensed Air Traffic Control Officers (ATCO) and so accommodating the new language proficiency requirements earlier than required by the Directive should not be a significant issue.

Option 2. Transpose the Directive into UK legislation in accordance with the Commission's timetable with the bulk of the provisions entering into force in May 2008, but the language proficiency requirements introduced in May 2010.

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 Final Proposal 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 ClarkDate: 1st July 2009

Summary: Analysis & Evidence

Policy Option: 1	Description: Implement all of the provisions of the Directive by 17 May 2008
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' The CAA - one-off administrative costs of £120,000 and annual costs of £10,000 in respect of the licensing and reapproval of personnel and training providers. ATC Training Organisations - one-off costs of £120,000 to apply for Training Certificates and annual costs of £4,750 to assess the language proficiency of annual intake of new students. Air Navigation Service Providers (ANSPs) - one-off costs of £10,000 for assessing existing ATCOs for English language proficiency and annual costs of £2,250 for reassessing those ATCOs not meeting the highest level of language proficiency. Further annual costs of £15,000 in respect of the renewal of Examiner endorsements.				
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; border-bottom: 1px solid black;">One-off (Transition)</td> <td style="width: 5%; text-align: center;">Yrs</td> </tr> <tr> <td style="border-bottom: 1px solid black;">£ 250,000</td> <td style="text-align: center;">1</td> </tr> </table>		One-off (Transition)	Yrs	£ 250,000	1
	One-off (Transition)		Yrs			
	£ 250,000		1			
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; border-bottom: 1px solid black;">Average Annual Cost (excluding one-off)</td> <td style="width: 5%;"></td> </tr> <tr> <td style="border-bottom: 1px solid black;">£ 32,000</td> <td style="text-align: center;">10</td> </tr> </table>	Average Annual Cost (excluding one-off)		£ 32,000	10		
Average Annual Cost (excluding one-off)						
£ 32,000	10					
Total Cost (PV) £ 535,446						

Other **key non-monetised costs** by 'main affected groups' Nil

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Negligible				
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; border-bottom: 1px solid black;">One-off</td> <td style="width: 5%; text-align: center;">Yrs</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Negligible</td> <td></td> </tr> </table>		One-off	Yrs	Negligible	
	One-off		Yrs			
	Negligible					
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; border-bottom: 1px solid black;">Average Annual Benefit (excluding one-off)</td> <td style="width: 5%;"></td> </tr> <tr> <td style="border-bottom: 1px solid black;">Negligible</td> <td></td> </tr> </table>	Average Annual Benefit (excluding one-off)		Negligible			
Average Annual Benefit (excluding one-off)						
Negligible						
Total Benefit (PV) £ Nil						

Other **key non-monetised benefits** by 'main affected groups' Transposition will avoid Commission infraction proceedings that might result in significant recurring penalties. In addition, greater labour mobility and mutual recognition of licenses and training certificates will create greater competition in the air traffic control and training market across Europe.

Key Assumptions/Sensitivities/Risks CAA costs for the certification of ATC training providers is dependant on the number of new entrants to UK market. Costs for amending regulatory documentation at ATC units should be contained within normal amendment cycle.

Price Base Year 2007	Time Period Years 10	Net Benefit Range (NPV) £ - 535,446	NET BENEFIT (NPV Best estimate) £ - 535,446
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What is the geographic coverage of the policy/option?	United Kingdom			
On what date will the policy be implemented?	6 November 2008			
Which organisation(s) will enforce the policy?	CAA			
What is the total annual cost of enforcement for these organisations?	£ 0			
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 0	Small 0	Medium 0	Large 0
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of £ 0	Decrease of £ 0	Net Impact	£ 0

Key: Annual costs and benefits: Constant Prices

Policy Option: 2	Description: Transpose the bulk of the Directive with the language requirements
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' CAA - Year 0, one-off admin costs of £120,000 and annual costs thereafter of £10,000 in respect of the licensing and re-approval of personnel and training providers. In Year 2, an additional £10,000 in admin costs in respect of the new language requirements. <i>ATC Training Organisation</i> - Year 0, one-off costs of around £120,000 to apply for Training Certificates and thereafter annual costs of around £4,750 to assess the language proficiency of annual intake of new students. <i>ANSPs</i> - From Year 0, annual costs of £15,000 for the periodic re-assessment of Examiners. In Year 2, one-off costs of £10,000 to get existing ATCOs assessed for language proficiency and thereafter, annual costs of £2,250 for reassessing those controllers not achieving the highest level of language proficiency.
	One-off (Transition)	Yrs	
	£ 265,000	2	
	Average Annual Cost (excluding one-off)		
£ 32,000		Total Cost (PV) £ 541,108	

Other **key non-monetised costs** by 'main affected groups' Nil

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Negligible
	One-off	Yrs	
	£ Negligible		
	Average Annual Benefit (excluding one-off)		
£ Negligible		Total Benefit (PV) £ Negligible	

Other **key non-monetised benefits** by 'main affected groups' Transposition will avoid Commission infraction proceedings that might result in significant recurring penalties. In addition, greater labour mobility and mutual recognition of licenses and training certificates will create greater competition in the air traffic control and training market across Europe.

Key Assumptions/Sensitivities/Risks CAA costs for the certification of ATC training providers is dependant on the number of new entrants to the UK market. Costs for amending regulatory documentation at ATC units should be contained within normal amendment cycle.

Price Base Year 2007	Time Period Years 10	Net Benefit Range (NPV) £ - 541,108	NET BENEFIT (NPV Best estimate) £ - 541,108
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What is the geographic coverage of the policy/option?		United Kingdom	
On what date will the policy be implemented?		In full - 17 May 2010	
Which organisation(s) will enforce the policy?		CAA	
What is the total annual cost of enforcement for these organisations?		£ 0	
Does enforcement comply with Hampton principles?		Yes	
Will implementation go beyond minimum EU requirements?		No	
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 0	Small 0	Medium 0
Are any of these organisations exempt?	No	No	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of £ 0	Decrease of £ 0	Net Impact	£ 0

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.]

1. Scope of the Impact Assessment

1.1 This Impact Assessment (IA) assesses which of two options the Government should pursue when transposing the provisions of Council Directive 2006/23/EC into UK domestic legislation. Member States are obliged to give effect to the provisions of Council Directives or risk infraction from the European Commission. The Government consulted on its proposals at the end of 2007. The consultation paper was accompanied by an initial IA, and industry stakeholders were invited to comment on, or provide further information to update, the IA. No substantial amendments were suggested in respect of the initial IA, although two respondents provided some further information on the breakdown of costs, which have now been incorporated into the final IA.

1.2 The Directive draws heavily on the work of the European Organisation for the Safety of Air Navigation (Eurocontrol) and particularly Eurocontrol Safety Regulatory Requirement 5 (ESARR5), the key foundation block of which is the development of training requirements for air traffic controllers. These requirements are referenced within the Directive, as are the medical requirements developed under ESARR5.

1.3 The majority of the requirements set out in the Directive reflect those contained in ESARR5 and have already been assimilated into UK legislation through an amendment to the Air Navigation Order 2005 (ANO) made in December 2003. Nevertheless, certain requirements of the Directive go beyond the scope of ESARR5 and it is these that the UK is now addressing. The key measures being transposed into the ANO by the current proposed amendment centre on the establishment of a minimum educational requirement for student ATCOs, the raising of the minimum age for ATCOs from 20 to 21, introduction of an English language proficiency requirement and the adoption of revised medical standards consistent with those set out in Annex 1 of the Convention on International Civil Aviation and Eurocontrol's Class 3 medical certification for ATCOs.

1.4 The IA assumes that the UK will comply with its obligations to the European Union and transpose the provisions of the Directive into UK legislation. However, the options identified below seek to present, as far as possible, an assessment of the potential impacts of transposing the Directive to the Commission's timetable, or to bring forward the introduction of the language proficiency requirements alongside the entry into force of the other Directive provisions as a single, one-off ANO amendment.

1.5 The main groups affected by the Directive will be the Civil Aviation Authority (CAA) the UK's civil aviation regulator, ANSPs - approximately 40 companies providing air navigation services to civil aviation ranging in size from NATS, the UK's en route service provider, to individual airport control units, ATCOs - the controllers themselves, approximately 2000 in number, and the three UK air traffic control training providers/colleges, who enrol approximately 190 new students each year.

2. Options Analysis

2.1 BASE CASE

DESCRIPTION

2.1.1 The Department for Transport WebTAG Guidance requires that all options are assessed relative to a common “base case”, sometimes referred to as the “do-nothing” scenario. The “base case” is defined over the appropriate appraisal period of the relevant “do-something” options. The base case is that the UK does not transpose the provisions of the Directive into UK legislation. Although many of the provisions of the Directive reflect those contained in ESARR5 and have therefore already been adopted into UK legislation, there are a number of provisions that go beyond ESARR5 and would therefore not be applied in respect of the licensing of UK ATCOs in the base case. These include the establishment of minimum educational requirements for student ATCOs, revised medical standards, a new English language proficiency requirement and amended minimum age limits for ATCO licence holders.

COSTS

2.1.2 The first and possibly most significant cost to the UK of not transposing the provisions of the Directive into UK legislation would be the risk of infraction from the European Commission. Where Member States fail to implement or apply fully or correctly the Regulations, Directives or Decisions adopted by the European Parliament, the Council of Ministers and the Commission in respect of EU policies, the Commission may seek a judgement from the European Court of Justice (ECJ) that the Member State is in breach of its obligations under Community law. If the Member State still fails to transpose the provisions of a Directive, the Commission may apply to the ECJ for the imposition of penalty payments or lump sums against the Member State for failure to comply with the earlier ECJ judgement (the Article 228 procedure).

2.1.3 Following a recent judgement of the ECJ¹ the Commission has stated that in the future, applications to the ECJ under the Article 228 of the EC Treaty, will seek,

- i) a penalty by day of delay after the delivery of the judgement under Article 228, and
- ii) a lump sum penalising the continuation of the infringement between the judgement on non-compliance and the judgement delivered under Article 228.

The level of the penalty payment is a matter for the court, but is calculated on the basis of a standard flat rate of €600, multiplied by a co-efficient (on a scale of 1-20) for seriousness and a co-efficient (from 1-3) for duration. This figure is then multiplied by a “national” factor, taking into account the capacity of the Member State to pay and the number of votes it has in the Council. The UK’s national factor is currently 21.99. Using this formula, and assuming the median for the two co-efficients (10 and 2 respectively), the penalty for the UK might be €263,880 per day (or approximately £203,000 at an exchange rate of 1.30 euros to the pound) until such time that the Directive is fully and correctly transposed into UK legislation.

2.1.4 In addition to the daily penalty, the Court may impose a minimum lump sum fine, which again is weighted according to the Member State’s ability to pay and influence in Council. For the UK, the current minimum lump sum penalty is €10,995,000 (or £8.46m).

¹ C-304/02, Commission v French Republic

2.1.5 Aside from the direct costs of infraction, maintaining the current status quo would mean that UK issued ATCO licences and training organisation authorisations would not be automatically recognised by other EU Member States. This in turn would restrict the mobility of UK licensed controllers in the labour market outside the United Kingdom and restrict the ability of UK ANSPs from taking advantage of European based initiatives, such as Functional Airspace Blocks, developed under Single European Sky to improve the efficiency of the air traffic navigation system across Europe. Further, UK air traffic control training providers might be placed at a competitive disadvantage when competing for training contracts from ANSPs based in other Member States.

BENEFITS

2.1.6 Nil.

2.2 OPTION 1

DESCRIPTION

2.2.1 Transpose the Directive in full, in a single amendment. This would include not only the new educational requirement for student ATCOs, increasing the minimum age of ATCOs from 20 to 21 and the adoption of revised medical standards, but also the English language proficiency assessments that are not *required* to be brought into force until May 2010.

COSTS

j) Monetised costs

2.2.2 The CAA would incur one off costs of around £20,000 in connection with the upgrading of existing IT systems and the administrative costs of re-issuing Directive compliant ATCO licenses. In addition, the CAA would incur costs associated with the gathering and assessing of information to confirm ATCO Training Provider Organisations meet the certification requirements plus administrative costs of issuing certificates. This will be in the region of £100,000, based on approximately 40 organisations with an average cost to the CAA of £2,500.

2.2.3 In terms of annual costs, the CAA would incur administrative costs associated with the re-issuing of “on-the-job-training” Instructor and Examiner endorsements. On the basis of an estimated 400 re-issues per annum at a cost of £25 each, this would amount to annual CAA costs of approximately £10,000.

2.2.4 ANSPs will incur one-off costs in the region of £10,000 in order to assess all 2000 (approximately) current UK ATCO licence holders for English language proficiency. A small minority will not achieve the highest level of proficiency and will need to be periodically re-assessed, either every three or six years depending on the level of linguistic proficiency demonstrated. This is likely to be carried out by specially trained language assessors from one of the ATCO training colleges. Costs will be incurred in respect of the assessment itself, the

travelling expenses of the examiner or ATCO, and the time spent away from other core duties. If the costs of reassessing approximately 15 ATCOs were spread over the reassessment cycle at an average cost of £150 per ATCO per year, this would result in additional annual costs in the region of £2,250.

2.2.5 ANSPs would also incur annual costs associated with the requirement to reassess the competence of Examiners every 3 years. With approximately 100 assessments carried out each year at a cost of £150 each, this would amount to total annual costs to the organisations of £15,000.

2.2.6 Air Traffic Controller Training Organisations are likely to incur one-off costs of around £3,000 each, on average, in preparing and submitting information to the CAA in order to obtain certification. Again, with approximately 40 organisations, the one-off costs would be in the region of £120,000.

2.2.7 All new student ATCOs would need to be assessed for English language proficiency. Assuming around 190 new students enrol each year at the UK's three ATCO training colleges, with average assessment costs of £25 each - assuming economies of scale and the usual basing of the language assessors at the training colleges themselves - this would result in annual costs to the training colleges of around £4,750.

2.2.8 The costs relating to the amendment of safety regulatory documentation, including those held at ATC units, would be contained within those associated with a normal amendment cycle.

ii) Non-monetised costs

2.2.9 Nil

BENEFITS

i) Monetised benefits

2.2.10 Negligible

ii) Non-monetised benefits

2.2.11 This option would ensure that the UK complied with EC law and therefore avoided the risk of infraction proceedings and the resulting potential fines for non-compliance outlined in the base case option. It would also ensure that the UK was included in the harmonisation and integration of ATCO licensing and ATC training certification process across the EU. The establishment of a common EU air traffic controllers' licence will contribute to European aviation safety as competence levels will be harmonised, contributing to a more efficient and safer interface between service providers. It will also enable greater mobility of ATCOs within EU Member States.

2.2.12 ANSPs would be able to take advantage of changes in the provision of air traffic control services across Europe developed under the Single European Sky initiative, such as the functional blocks of airspace concept. UK air traffic control training providers would also be able to compete for training contracts from the ANSPs of other Member States.

2.2.13 This option goes beyond the strict requirement of the Directive by bringing into force the new English language proficiency assessment requirement two years early. This would broadly coincide with the introduction by the International Civil Aviation Organisation of its own language proficiency requirements for pilots and air traffic controllers in March 2008. As English is the first language of most of the UK licensed ATCOs, early implementation of the language proficiency requirement should have little practical impact on UK ATS providers and would eliminate the administrative burden of introducing a second change to the ATCO licensing provisions, in May 2010.

2.2.14 This is the preferred option.

NET IMPACT

2.2.15 The quantified net present value of this measure is negative to the order of £535,446 over 10 year appraisal period and with 3.5% discount rate. However this option has identified significant non-monetised benefits including compliance with EU law, greater workforce mobility and the opportunity for UK ATM service providers to compete for contracts in the wider European market. We would expect the unquantified benefits of this option to outweigh the monetised costs.

KEY ASSUMPTIONS

2.2.16 That the costs associated with amending safety regulatory documentation, including those held at ATC units, will be contained within those associated with the normal amendment cycle.

SENSITIVITIES

2.2.17 The CAA's future costs associated with the certification of ATS training providers will be dependant on the number of new entrants to the ATS training provider market. No new entrants are expected to the UK ATCO training market as a direct result of the ATCO Directive in the short term. However, it does allow the possibility for organisations from other Member States to provide ATCO training in the UK, subject to certification. Initial certification costs for training provision in the UK are likely to be born by the National Supervisory Authority of the State in which the training provider organisation has its principal place of operation. This is not expected to be significant.

RISKS

2.2.18 To facilitate future SES developments, particularly in respect of the functional airspace block concept, the training and competence standards of ATCOs must be harmonised within Europe. The implementation of Eurocontrol's ESARR5 in Member States has played a major

part in achieving this and will continue to do so. The implementation of the EU Directive has given the ESARR requirements relevant to ATCOs the force of European law and thus legal enforceability. Failure to transpose the provisions of the EU Directive to the given implementation timetable would mean that the UK would not be part of the harmonisation and integration of ATC service provision across Europe.

2.3 OPTION 2

DESCRIPTION

2.3.1 As Option 1, but with the language proficiency requirement deferred to May 2010.

COSTS

i) Monetised costs

2.3.2 In Year 0 the **CAA** would incur one off costs of around £20,000 in connection with the upgrading of existing IT systems and the administrative costs of re-issuing Directive compliant ATCO licenses. In addition, the CAA would incur costs associated with the gathering and assessing of information to confirm ATCO Training Provider Organisations meet the certification requirements plus administrative costs of issuing certificates. This will be in the region of £100,000, based on approximately 40 organisations with an average cost to the CAA of £2,500 each.

2.3.3 In 2010, the CAA would incur additional one-off administrative and IT costs, of around £10,000, in preparing and issuing English language proficiency endorsement pages for existing ATCO licences.

2.3.4 In terms of annual costs, the CAA would incur administrative costs associated with the reissuing of “on-the-job-training” Instructor and Examiner endorsements. On the basis of an estimated 400 re-issues per annum at a cost of £25 each, this would amount to annual CAA costs of approximately £10,000.

2.3.5 **ANSPs** would incur one-off costs of around £10,000 in connection with the assessment of all existing ATCOs for English language proficiency. This is based on the assessment of approximately 2000 ATCO licence holders by specially trained language assessors, at an average cost of £5 per person, assuming significant economies of scale.

2.3.6 ANSPs would incur annual costs associated with the requirement to reassess the competence of Examiners every 3 years. With approximately 100 assessments carried out each year at an average cost of £150 each, this would amount to total annual costs to the organisations of £15,000. Further annual costs would be incurred, from 2010, in connection with the periodic reassessment, every three or six years depending on the level of linguistic ability demonstrated, of those ATCOs not achieving the highest level of English language proficiency. It is assumed that re-assessment would be carried out by specially trained language assessors from one of the three ATCO training colleges. Costs will be incurred in respect of the assessment itself, the travelling and subsistence expenses of the examiner or ATCO, as well as

time away from other core duties. If the cost of reassessing approximately 15 ATCOs were spread over the reassessment cycle at an average cost of £150 per ATCO per year, this would result in additional costs in the region of £2,250 per year.

2.3.7 Air Traffic Controller Training Organisations are likely to incur one-off costs of around £3,000 each, on average, in preparing and submitting information to the CAA in order to obtain certification. Again, with approximately 40 organisations, the total one-off costs would be in the region of £120,000.

2.3.8 All new student ATCOs would need to be assessed for language proficiency from 2010 onwards. Assuming around 190 new students enrol each year at the UK's three ATCO training colleges, with an average assessment cost of £25 per head - taking into account smaller economies of scale than for the assessment of all current ATCOs - this would result in additional annual costs of around £4,750.

2.3.9 The costs relating to the amendment of safety regulatory documentation, including those held at ATC units, would be contained within those associated with a normal amendment cycle.

ii) Non-monetised costs

2.3.10 Nil

BENEFITS

i) Monetised benefits

2.3.11 Nil

ii) Non-monetised benefits

2.3.12 As Option 1 above, this option would ensure that the UK was compliant with EU law, avoiding the risk of infraction proceedings and the potential fines outlined in the base case. It would also ensure that the UK was included in the harmonisation of ATCO licensing and training certification process across the EU, allowing UK training providers to compete on a level playing field against continental competitors. Directive compliant UK ATCO licences would also allow greater mobility in the workplace.

2.3.13 ANSPs would be able to take advantage of changes in the provision of air traffic control services across Europe developed under the Single European Sky initiative, such as the functional airspace block concept.

2.3.14 This option would also comply with the implementation timetable set out in the Directive.

NET IMPACT

2.3.15 As with Option 1, the quantified net present value of this option would be negative to the order of £541,108 over 10 year appraisal period and with 3.5% discount rate. Again, significant non-monetised benefits such as the avoidance of infraction proceedings, greater workforce mobility and the opportunity for UK ATM service providers to compete for contracts in the wider European market have been identified. We would expect the unquantified benefits of this option would to outweigh the monetised costs, although due to the additional administrative costs of the two stage nature of this option, the net benefit might be expected to be slightly lower than option 1.

KEY ASSUMPTIONS

2.3.16 If not introduced, the UK would need to formally file a “difference” with ICAO in respect of the new International language requirement for ATCOs, which entered into force, separately, in March this year.

2.3.17 The costs associated with amending safety regulatory documentation, including those held at ATC units, will be contained within those associated with the normal amendment cycle.

SENSITIVITIES

2.3.18 The CAA’s future costs associated with the certification of ATS training providers will be dependant on the number of new entrants to the ATS training provider market. No new entrants are expected to the UK ATCO training market as a direct result of the ATCO Directive in the short term. However, it does allow the possibility for organisations from other Member States to provide training in the UK, subject to certification. Initial certification costs for training provision in the UK are likely to be born by the National Supervisory Authority of the State in which the training provider organisation has its principal place of operation. This is not expected to be significant.

RISKS

2.3.19 As for Option 1 above

3. Implementation

3.1 Both options would be implemented by way of a Statutory Instrument amending Part 10 and Schedule 11 of the Air Navigation Order 2005 [S.I. 2005 No. 1970], along with any consequential amendments. The Air Navigation Order, amongst other matters, provides for the manner and conditions of the issue, validation, renewal, extension or variation of any certificate, licence or other document required by the Order, including ATCO licenses.

4. Enforcement

4.1 The CAA conducts periodic on-site audits of all Air Navigation Service Providers including those that provide an air traffic control service and therefore employ ATCOs. These audits will include checking the training and licensing of ATCOs. The CAA will also audit those organisations that provide the initial ATCO training, the “colleges”. Unit endorsements are renewed in the main by the Air Navigation Service Providers’ own approved Examiners, every year and the renewal must be reported to the CAA.

4.2 Penalties for non-compliance with the licensing provisions of ATCOs already exist in the Air Navigation Order 2005. Sanctions can include the revocation, suspension or variation of endorsements or ratings found in an ATCO’s licence.

5. Competition Assessment

5.1 It is not necessary to conduct a formal competition Assessment. Compared to the base case of ‘do nothing’ this new legislation will not directly or indirectly limit the number or range of suppliers. Nor will this legislation limit the ability of suppliers to compete. For ATS training providers the new legislation may actually increase competition as we are widening the market i.e. a training provider could relocate from Germany to the U.K., or vice versa. Furthermore the new legislation will not reduce suppliers’ incentives to compete vigorously.

6. Small Firms Impact Test

6.1 All air traffic service providers and ATC Training providers will be required to comply with the appropriate parts of the EU Directive. There are currently 39 providers of air traffic services in the UK. Of these, the CAA has identified 2 that fall into the small business category. There are also 6 organisations that provide controllers for special events, which also fall into this category. Of the three Training Centres, two are classified as small businesses. The introduction of certification requirements will only entail minimal changes to the current requirements.

7. Race, Gender and Disability Equality

7.1 It is considered that the transposition of the provisions of the Directive will not adversely impact on race, gender or disability equality. Physical and mental fitness tests already apply in respect of the granting of an ATCO licence, and these will not fundamentally change. The minimum educational standards required for student ATCOs are established by the Directive.

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

TRANSPPOSITION NOTE

DIRECTIVE 2006/23/EC of the European Parliament and of the Council of 5 April 2006 on a Community air traffic control licence. The Air Navigation (Amendment) Order 2009 transposes the Directive by amending Articles 145(1), 148, 155(1), 167 and Schedule 14 of the Air Navigation Order 2005 (“ANO”) and by substituting a new Part 10 and Schedule 11 into Order. The principal articles requiring transposition are as follows:

Article	Objectives	Implementation	Responsibility
1.3	Provision of air traffic control services to general air traffic by air navigation service providers which offer their services primarily to aircraft movements other than general air traffic.	A review of current military air traffic control practices and procedures has been undertaken. We are satisfied that while the bulk of these procedures are consistent with the provisions of the Directive, where there are differences the level of safety and the quality of the services provided to general air traffic is at least equivalent to the level resulting from the application of the provisions of the Directive.	
2	Definitions	Article 3 (which substitutes a new Part 10) sets out new definitions in Article 120. In addition, Article 6 which substitutes and adds new definitions into Article 155 of the ANO.	
3.1	Places a requirement on Member States to nominate or establish a National Supervisory Authority	Article 6 which amends Article 167 of the ANO	The Secretary of State appoints the CAA as the National Supervisory Authority

4.1	Places a requirement on Member States to ensure that air traffic control services are provided by licensed air traffic controllers	Article 107 and 107A of substituted Part 10	
4.2	Sets out requirements for applicants for a licence	Articles 108 (1), (2), (3) and (5) and Article 108A of substituted Part 10	
4.3	Licence particulars	Article 108D (4) of substituted Part 10	
4.4	Suspension and revocation of Licence	Article 92 of the existing ANO	
4.5	Requirements relating to a student air traffic control Licence	Article 109(2) of substituted Part 10 and Schedule 11, Part A, Article 2(2)	
4.8	Air traffic controllers to be trained in safety, security and crisis management	Article 108 (5) of substituted Part 10	
5.1	Conditions for student air traffic control licence	Article 108(2), (3) and (5), Article 108B and Article 113 of substituted Part 10 and substituted Schedule 11, Part A, Article 2(1).	
5.2	Conditions for air traffic controllers licence	Article 108A, and Article 108(2) of substituted Part 10 and substituted Schedule 11, Part A, Article 1(1).	
5.3	Conditions for Instructor Endorsement	Article 108D(6) of substituted Part 10	

6 and 7	Air traffic controller ratings and rating endorsements	Substituted Schedule 11, Part B, Article 3	
8.1 and 8.3	Language requirements for air traffic controllers	Article 108(2)(a) of Substituted Part 10.	
8.4	Higher requirements in certain operational circumstances	Article 108B(1) of substituted Part 10.	
8.5	Language certificate	Article B(2) of substituted Part 10.	
9	Instructor endorsement	The definition of "on-the-job training instructor endorsement" set out in Article 120 of substituted Part 10.	

10	Unit endorsement	Substituted Schedule 11, Part B, Article 4(c).	
11.1	Requirements relating to validity of unit endorsement	Article 110 (3)(4) and (5) of substituted Part 10	
11.2	Re-validation of endorsement	Article 110(6) of substituted Part 10	
11.3	Validity of endorsement following gap in service	Article 110(7) of substituted Part 10	
11.4	Evaluation of language proficiency of applicant	Article 108C of substituted Part 10	
11.5	Validity of instructor endorsement	Substituted Schedule 11, Part B, Article 4 (b).	

12.1	Issue of medical certificates	Article 113(1) of substituted Part 10	CAA, or medical examiner approved by them
12.2	Consistency with international provisions	Article 113(2) of substituted Part 10	
12.3	Validity of certificates	Article 113(4) and Article 114 of substituted Part 10, and Article 92 of the existing ANO.	
12.4	Review or appeal procedures	CAA medical appeals procedure (details attached)	
12.5	Decrease in medical fitness, influence of psychoactive substances	Articles 114, 115 and 116(2) of substituted Part 10	
13.1	Certification of training providers	Article 119A(1) of substituted Part 10	CAA
13.2	Requirements for certification	Article 119A(3) of substituted Part 10	
13.3	Applications for certification	Article 119A(2), (3) and (4) of substituted Part 10	
13.4	Information in certificates	Article 119A(4) of substituted Part 10	
13.5	Compliance with requirements of certificate	Article 119B of substituted Part 10, Article 92 of the existing ANO and the Secretary of State's power of direction to the CAA under section 6 of the Civil Aviation Act 1982.	
13.6	Mutual recognition of certificates issued in another	Article 120 of substituted Part 10	

	Member State	- see definition of "certified training provider"	
14.1	Compliance with competence standards by monitoring training	Articles 108, 108A, 108D(5) and (6), 110(2), 119, 119A (3) and 119C (4) of substituted Part 10, Article 92 of the existing ANO and Regulation 6 of the Civil Aviation Regulations 1991.	CAA
14.4	Approval of competence examiners	Article 119 of the substituted Part 10 and substituted Schedule 11, Part B, Article 4(a)	
14.5	Auditing of training providers	The Secretary of State's power of Direction to the CAA under section 6 of the Civil Aviation Act 1982, combined with article 4 which amends existing Article 145(1) of the ANO and article 119B of the substituted Part 10.	

15.1	Mutual recognition of Licences issued in another Member State	119C(1), (2) and (3) of substituted Part 10	CAA
15.2	Right to exchange licence	119C(4) of substituted Part 10	
15.3	Conditions associated with unit endorsement	119C(5) and (7) of substituted Part 10	
15.4	Training for applicant	119C(6) of substituted Part 10	
18	Penalties	Article 5 which amends article 148 of the ANO.	