

**EXPLANATORY MEMORANDUM TO**  
**THE AIR TRAFFIC SERVICES (EXEMPTION) ORDER 2019**  
**2019 No. 1130**

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 This instrument grants a fresh exemption authorising the provision of certain non-en route air traffic services in UK. It allows such services to be provided by air navigation service providers (ANSPs), of which there are currently around 60 in the UK within the scope of this instrument, without the need for the Civil Aviation Authority (CAA) to establish and implement an ANSP licensing scheme.

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

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

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom and to areas outside the UK for which the UK has undertaken under international arrangements to provide air traffic services.

**5. European Convention on Human Rights**

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

**6. Legislative Context**

- 6.1 Section 3 of the Transport Act 2000 (“the Act”) states that a person commits an offence if they provide air traffic services in respect of a “managed area” unless they are authorised to do so by an exemption granted under section 4 of the Act or by a licence granted under section 5. The expression “managed area” is defined at section 40(3) of the Act as “the United Kingdom” or “any area which is outside the United Kingdom but in respect of which the United Kingdom has undertaken under international arrangements to provide air traffic services”.

- 6.2 The Air Traffic Services (Exemption) Order 2001 (S.I. 2001/287) provided a general exemption authorising the provision of air traffic services, except for area control services provided from an area control centre. The effect of S.I. 2001/287 was to remove the need for the CAA to license air traffic services provided from airports and aerodromes. As the exemption was due to expire on 31st March 2011, the Air Traffic Services (Exemption) Order 2011 (S.I. 2011/425) was made which extended the exemption from 1st April 2011 until 31st December 2019.
- 6.3 Articles 3(1) and 4 of this instrument grant a fresh exemption to 31st December 2029, so as to coincide with the end of the fourth reference period under the Single European Sky (SES). This is the European Commission's initiative to drive forward Europe wide improvements in the provision of air navigation services. Each member state is required to submit periodic National Performance Plans setting out how each state will contribute to the achievement of agreed EU wide targets. Whether the authorisation for ANSPs should apply after that date, and in what form, can be reviewed in the context of the requirements of the fifth reference period, and the requirements that imposes on the provision of air traffic services.
- 6.4 An extension of 10 years has been chosen since this is considered proportionate and consistent with the approach taken for the last two exemptions. There is also no evidence to suggest that there will be significant changes in the regulatory framework at the end of reference period 3 in December 2024 indicating the need for an earlier expiry date.
- 6.5 Article 3(2) of this instrument does not authorise the provision of an area control service from an area control centre. This is because for practical reasons area control services may only be provided by a single provider and section 5 of the Act enables the CAA to issue licences for this purpose. Currently, NATS En Route Ltd (NERL) has been granted a licence to provide services under section 5 of the Act. This instrument has no effect therefore on the need to license the services provided by NERL.

## **7. Policy background**

### *What is being done and why?*

- 7.1 When National Air Traffic Services was subject to a public-private partnership in 2001, it was split into two separate entities: NERL and NATS Services Ltd (NSL).
- 7.2 NERL was established to provide services which, due to their monopoly like nature, need to be regulated by the CAA to ensure a fair deal for users of these services. The main regulated service is the en-route air navigation service where, for safety and operational efficiency, it is desirable for a single organisation to provide a unified service across UK airspace. Other regulated services include a centralised London Approach service and a service for helicopters operating between oil rigs in the North Sea and the mainland.
- 7.3 NSL was established as a fully commercial organisation to compete for business in the unregulated air traffic service markets both in the UK and abroad. The principal UK market is the provision of air navigation services at airports (i.e. the handling of aircraft on approach to the airport, and their actual landing and take-off). With the exception of approach services in the London area, mentioned in paragraph 7.2 above, airports in the UK are free to self-provide air traffic services, or contract out to an outside supplier. There are currently around 60 ANSPs in the UK which are in the

scope of section 4 of the Act. NSL is the UK's major supplier of airport air traffic services and it currently provides such services at 14 UK airports.

- 7.4 To date, the CAA only licenses NERL's regulated services. The CAA does not license ANSPs under section 5 of the Act as it considers the UK has a contestable market for the provision of air traffic services and, consequently, there is no need for a licensing scheme for non-regulated air traffic services in the UK.
- 7.5 S.I. 2001/287 removed the need for the CAA to license air traffic services provided by, or on behalf of, airports. This was a time limited exemption for a period of ten years. S.I. 2011/425 provided a further period of exemption which will expire on 31st December 2019. If the exemption is not extended for a further period, the CAA would be required to establish a new licensing scheme for around 60 UK ANSPs to enable them to legally operate from that date. The Department estimates a new licensing scheme would have a start-up cost of £1.49m and ongoing annual costs of £410k. Ultimately, these costs would be passed on to airlines, and hence impact on the cost of air tickets and freight carriage.
- 7.6 This instrument avoids the costs associated with starting up and running a new licensing scheme by extending the exemption for a further period.
- 7.7 The CAA keeps under review the contestability of the market for the provision of air traffic services, and is content that the exemption should be extended. If in the future, the CAA determines that the UK no longer has a contestable market for the provision of air traffic services, the Secretary of State will be able to revoke this exemption. In such a situation, the CAA would then need to establish a licensing scheme for the provision of unregulated air traffic services in the UK.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

- 9.1 This instrument does not consolidate any other instrument.

## **10. Consultation outcome**

- 10.1 Section 103(7) of the Transport Act 2000 requires consultation with the CAA before the power to make an order under section 4 can be exercised.
- 10.2 Department for Transport officials have consulted the CAA on this matter. The CAA has advised that there has not been any material change to justify the licensing of airport ANSPs, and is therefore content for the exemption to continue.

## **11. Guidance**

- 11.1 Guidance is not considered necessary.

## **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. The Order grants a fresh exemption authorising the provision of air traffic services. Unless the exemption is extended for a further period, the CAA would be required to establish a new licensing

scheme for around 60 UK ANSPs at an estimated start-up cost of £1.49m and ongoing annual costs of £410k.

- 12.3 An Impact Assessment has not been prepared for this instrument because the amounts involved fall below the threshold for producing one.

### **13. Regulating small business**

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

### **14. Monitoring & review**

- 14.1 The approach to monitoring this legislation is handled by both the CAA, which will keep under review the market for the provision of air traffic services, and also the Department, which will continue to review whether the exemption remains necessary.
- 14.2 This instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Parliamentary Under Secretary of State for Transport, Baroness Vere, has made the following statement:

“Having had regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 and the Statutory Review Guidance for Departments published under section 31(3) of that Act, I have decided that it is not appropriate to make provision for review in this instrument because it would be disproportionate taking into account the economic impact of the Order. This is because the expected net impacts on business are less than £5 million net annualised cost.”

### **15. Contact**

- 15.1 Matthew Bentley at the Department for Transport. Telephone: 07977 422380 or email: [matthew.bentley@dft.gov.uk](mailto:matthew.bentley@dft.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Sarah Bishop, Deputy Director for Aviation Policy, at Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Vere, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.