

EXPLANATORY MEMORANDUM TO
THE AIR NAVIGATION (AMENDMENT) ORDER 2020
2020 No. 1555

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends the Air Navigation Order 2016 (S.I. 2016/765) (“the 2016 Order”) so that provisions in the 2016 Order that relate to unmanned aircraft including small unmanned aircraft, are aligned with requirements in Commission Implementing Regulation (EU) 2019/947 on the rules and procedures for the operation of unmanned aircraft (“the Implementing Regulation”), which becomes applicable on 31 December 2020. It also creates criminal offences for breaches of requirements in the Implementing Regulation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Department regrets that this instrument breaches the 21-day rule. The Department had intended to rely on a bespoke regulation-making power in the Air Traffic Management and Unmanned Aircraft Bill to create the criminal offences provided for in this instrument. As that Bill is still progressing through Parliament the instrument is now being made by way of an Order in Council. The instrument must come into force on 31 December 2020 to align with the date on which the Implementing Regulation becomes applicable. Delaying the commencement of the instrument to meet the rule would mean overlapping and inconsistent requirements in relation to unmanned aircraft would apply in the intervening period and the offences relating to requirements of the Implementing Regulation regulating unlawful use of unmanned aircraft could not be enforced during that time.

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 (by virtue of article 17 of the 2016 Order) on or in the neighbourhood of an offshore installation.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Until the end of the transition period at 23:00 on 31 December 2020, EU regulations continue to apply directly to the UK. The Implementing Regulation becomes applicable at the start of 31 December 2020 and will be retained in UK law after the end of the transition period.
- 6.2 To create offences for breaches of the requirements of the Implementing Regulation this instrument uses the power in section 2(2) of the repealed European Communities Act 1972, as saved by section 1A of the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”). This instrument is also made in the exercise of the powers in sections 60, 61 and 101 of, and Schedule 13 to, the Civil Aviation Act 1982 insofar as it creates offences related to tethered small unmanned aircraft, amends provisions specific to unmanned aircraft and makes consequential amendments to provisions of general application in the 2016 Order.
- 6.3 This Order complements a separate set of regulations, the Unmanned Aircraft (Amendment) (EU Exit) Regulations 2020 (“the 2020 Regulations”), which have been laid before Parliament in draft using powers in the Withdrawal Act. Those Regulations amend deficiencies in the Implementing Regulation and Delegated Regulation (EU) 2019/945 on unmanned aircraft systems and on third-country operators of unmanned aircraft systems (“the Delegated Regulation”) that arise as a result of EU exit, ensuring that both continue to function correctly once the transition period has come to an end.

7. Policy background

What is being done and why?

- 7.1 The Implementing Regulation establishes a framework for the operation of unmanned aircraft to ensure that they are used safely. In this framework are three risk-based categories of operation: “open”, “specific” and “certified”. The Implementing Regulation, among other things, covers requirements for registration and competency testing, provisions relating to operational authorisations for higher risk flights, and makes provision for Member States to create geographical zones in which the use of unmanned aircraft may be permitted or restricted, for safety, security, privacy or environmental reasons. The Implementing Regulation also provides for unmanned aircraft operations in the framework of model aircraft clubs and associations under a bespoke authorisation. Many of these provisions supersede requirements already in the 2016 Order, and the changes being made to the 2016 Order in this instrument ensure the two sets of legislative provisions interact correctly, without duplication or contradiction.
- 7.2 This instrument omits most articles imposing substantive requirement in relation to unmanned aircraft from Part 5 of the 2016 Order, because equivalent requirements are imposed in the Implementing Regulation. So, for example, requirements relating to registration of operators of unmanned aircraft and competency of remote pilots are now dealt with in the Implementing Regulation. The omission of article 94C means

that the Air Navigation (Minimum Age for Operators of Small Unmanned Aircraft) Regulations 2019 (S.I. 2019/1286) cease to have effect.

- 7.3 Article 94A of the 2016 Order is amended so that it will continue to require additional permissions for flights by unmanned aircraft over or near certain aerodromes, and this will apply to all sizes of unmanned aircraft except those subject to certification.
- 7.4 Articles 265A and 265B create criminal offences that apply where operators and remote pilots of unmanned aircraft breach requirements in the Implementing Regulation. Two broad offences prohibit the unmanned aircraft system operator (“UAS operator”) causing or permitting an unmanned aircraft be flown or a remote pilot from flying of unmanned aircraft outside of the framework of risk-based categories laid down by the Implementing Regulation. Two further offences apply to the breach of the specific individual requirements of the category, and in some instances subcategory, of flight in which the unmanned aircraft is used. For example, an operator not updating the information in the geo-awareness system of an unmanned aircraft being flown in the open category or a remote pilot not complying with the operator’s procedures when flying an unmanned aircraft in the specific category are individual requirements to which the relevant offences apply.
- 7.5 Article 265C makes it an offence for the owner of an unmanned aircraft in the certified category to cause or permit that aircraft to be flown without first having registered. Article 9 of the Implementing Regulation permits the lowering of the minimum age for remote pilots. Article 265D gives effect to the decision of the UK Government to lower the minimum age to 12 in the open category and 14 in the specific category. Article 265D also makes it an offence for a UAS operator to cause or permit an unmanned aircraft to be flown by a remote pilot who does not meet the applicable minimum age requirement. This offence will only have effect while the Implementing Regulation is directly applicable under EU law. The Government’s intention is to remove the requirement for a minimum age for remote pilots in 2021. Article 265D(5) requires UAS operators to be 18 years of age.
- 7.6 The new Article 265E applies certain provisions of the Implementing Regulation to tethered small unmanned aircraft which would otherwise not be subject to any regulation because they are excluded from the application of the relevant EU instrument, Regulation (EU) 2018/1139 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency (EASA), and therefore from the Implementing Regulation.
- 7.7 Article 265F sets out the maximum penalties for each criminal offence. All offences are triable summarily and the maximum penalty is a fine. Minor breaches (e.g. failure to carry evidence of competence) have a maximum penalty of level 2 on the standard scale. Many of the requirements that apply before or after a flight for UAS operators and remote pilots are punishable by a fine of up to level 3 on the standard scale. Generally, breaches of requirements that apply during a flight and may present a danger to safety are punishable by a fine up to level 4 on the standard scale. Finally, the offences relating to flights conducted outside of the framework are punishable by an unlimited fine in England and Wales and a fine up to the statutory maximum in Scotland and Northern Ireland. This ensures that proportionate penalties can be applied where unmanned aircraft are operated intentionally outside of the Implementing Regulation risk-based framework. For example, a larger fine may be appropriate where an individual uses a large unmanned aircraft or overflies assemblies of people without prior authorisation or certification. It also ensures that someone who

operates an unmanned aircraft outside of the framework entirely can receive a greater penalty than someone who breaches multiple requirements of the category that they were operating in.

- 7.8 Article 270 of the 2016 Order is amended to appoint the Civil Aviation Authority (CAA) as the competent authority for the purposes of the Delegated Regulation, which is of relevance for Articles 40 and 41 of that Regulation, and for the purposes of the Implementing Regulation. The amendments to Article 270 will only have effect while these two Regulations are directly applicable under EU law. Amendments made by the 2020 Regulations ensure the CAA is the competent authority after the end of the transition period.
- 7.9 The other amendments made are consequential to the changes referred to in paragraphs 7.2 to 7.8. Article 7 of the 2016 Order defines “commercial operation” in relation to manned and unmanned aircraft. References to commercial operations in the context of unmanned aircraft are made redundant by the revocation of Article 94(5). The Implementing Regulation draws no distinction between commercial and recreational flights.
- 7.10 Article 23 of the 2016 Order disapplies most provisions of the 2016 Order from specified types of aircraft, including unmanned aircraft. Other provisions are applied to those aircraft exceptionally. Article 23 is amended by this instrument to remove reference to those provisions which are being revoked, to ensure the new provisions inserted by this instrument apply to unmanned aircraft, and to ensure that unmanned aircraft subject to certification (the highest risk category) are subject to the provisions of the 2016 Order that apply more generally to manned aircraft.
- 7.11 Definitions necessary for the new provisions have been inserted into Schedule 1 to the 2016 Order, including a definition of the Implementing Regulation itself which is referred to in shorthand as the “Unmanned Aircraft Implementing Regulation”. Redundant definitions (e.g. “small unmanned aircraft”) are removed and the article 94G is revoked as the amended definition of “remote pilot” and definition of “UAS operator” are found in Schedule 1. Article 20 has been amended to reflect the revised terminology.
- 7.12 Schedule 13 of the 2016 Order is amended to remove the penalty provisions relating to requirements in Part 5 which have been revoked by this instrument and to amend the subject matter in relation to the entry for article 94A in light of other changes made by this instrument.

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 There are no plans to consolidate the 2016 Order.

10. Consultation outcome

- 10.1 The Implementing Regulation and Delegated Regulation were developed by the EU following a public consultation run by EASA in the form of [Advance Notice of Proposed Amendment 2015-10: Introduction of a regulatory framework for the operation of drones](#) which was open from 31 August 2015 to 29 September 2015. A

full public consultation has not been carried out for this instrument; however, some of the topics covered by the Implementing Regulation, such as registration requirements for UAS operators and competency requirements for remote pilots, were considered in the following consultations: [Unlocking the UK's High Tech Economy: Consultation on the Safe Use of Drones in the UK](#), which ran from December 2016 to March 2017, and [Taking Flight: The Future of Drones in the UK](#), which ran from July to September 2018.

- 10.2 The Department for Transport and the CAA have also had ongoing engagement with a number of organisations within the unmanned aircraft sector, including manufacturers, trade associations and model aircraft associations, regarding the changes that the Implementing Regulation will be bringing in.

11. Guidance

- 11.1 The CAA has produced guidance on the Implementing Regulation for those using unmanned aircraft. The guidance is available [here](#). Guidance in relation to this instrument will be published on the CAA website in due course.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies under the De Minimis threshold of £5m. Those impacted by the amendments to this legislation will be required to familiarise themselves with the changes in the law; however, this will be achieved well below the £5m threshold. Operators wishing to operate under the specific and certified category may face additional cost in obtaining the correct operational authorisation or certification unless existing authorisations are sufficient. Some operators may also benefit from time savings if their unmanned aircraft operations fall under the open category, where prior authorisation is not required.
- 12.2 The additional impact on the public sector is expected to be minimal and will involve familiarisation costs for the CAA, an arm's length body of the Department for Transport, as well as minor additional regulatory costs for the CAA to authorise and monitor higher risk unmanned aircraft.
- 12.3 A full Impact Assessment has not been prepared for this instrument because the equivalent annual net direct cost to business (EANDCB) is below £5m and the total impact on businesses and the public sector is expected to be limited.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 In the transition from requirements imposed by the 2016 Order to the requirements of the Implementing Regulation, the CAA is replicating its existing processes as closely as possible to minimise the burden on businesses and individuals.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is for it to take place in the course of normal departmental business.
- 14.2 Article 275 of the 2016 Order requires the Secretary of State to review it and publish a report within five years after it comes into force and within every five years after that. This includes reviewing provisions which are amended or inserted by this instrument.

Following a review it will fall to the Secretary of State to consider whether provisions in the ANO 2016 should remain as they are, or be revoked or amended.

15. Contact

- 15.1 Hannah Nicoll at the Department for Transport (Telephone: 07785 696843 or email: hannah.nicoll@dft.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Lola Fadina, Deputy Director for Aviation Strategy, Airlines and Consumers, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Robert Courts MP, Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.