

EXPLANATORY MEMORANDUM TO

THE AVIATION SAFETY (AMENDMENT) REGULATIONS 2021

2021 No. 10

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument amends five retained EU Regulations, to make provision in relation to the rules of the air for aircraft flying using visual flight rules (VFR) in Class D, F and G airspace, remove minimum age requirements for remote pilots of unmanned aircraft, and permit the use of a medical self-declaration to operate UK-registered Part-21 light aircraft in the UK.

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 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made cover the entire United Kingdom, and the territorial application of this instrument is not limited by the retained Regulations.

4. Extent and Territorial Application

- 4.1 The territorial application of this instrument is the whole of the UK.
- 4.2 The territorial extent of this instrument is the whole of the UK.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Transport, Robert Courts MP, has made the following statement regarding Human Rights:

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

6. Legislative Context

- 6.1 This instrument is made in exercise of the powers to make regulations contained in the following retained EU legislation:
- a. Article 4 of Regulation (EC) No 551/2004 of the European Parliament and of the Council, in respect of the rules of the air;
 - b. Articles 23(1) and 44(1) of Regulation (EU) 2018/1139 of the European Parliament and of the Council, in respect of pilot medical requirements; and

- c. Article 57 of Regulation (EU) 2018/1139 of the European Parliament and of the Council, in respect of the minimum age for remote pilots operating unmanned aircraft systems.

7. Policy background

What is being done and why?

Rules of the air – Visual Flight Rules

- 7.1 The International Civil Aviation Organization (ICAO) is a UN specialised agency, established by States in 1944. ICAO works with its 193 Member States and industry groups to reach consensus on international civil aviation Standards and Recommended Practices (SARPs) and policies in support of a safe, efficient, secure, economically sustainable and environmentally responsible civil aviation sector. The EU Standardised Rules of the Air (SERA) Regulation (Commission Implementing Regulation (EU) No 923/2012) (“the SERA Regulation”) harmonised the implementation of certain SARPs across EU States.
- 7.2 One of these rules deals with how aircraft should fly in relation to distance from cloud when flying using visual flight rules (VFR) in Class D airspace. Visual flight rules are a set of regulations under which a pilot flies an aircraft in generally clear weather conditions which allow the pilot to see where the aircraft is going. This is opposed to instrument flying rules (IFR) where the pilot relies on instruments on the flight deck to navigate. Aircraft flying under both sets of rules are permitted to fly in Class D airspace subject to clearance from an Air Traffic Controller (ATCO). Class D airspace is controlled airspace around aerodromes where an air traffic control service is provided.
- 7.3 The SERA Regulation, as retained into UK law, requires that aircraft flying using VFR below 3,000 feet above mean sea level in Class D airspace should maintain a minimum vertical distance of 1,000 feet from cloud. Under the previous rules applicable in the UK before the SERA Regulation came into force, aircraft only had to remain clear of cloud (i.e. no mandated minimum distance) when flying below 3,000 feet. The UK maintained an exemption to the EU rule until 2019, at which point this exemption was found not to meet the exemption criteria by the European Aviation Safety Agency (EASA) and so the UK came into compliance with the EU rule. However, the rule is problematic. There are safety concerns from pilots who believe they are forced to fly too low as a result of this rule, and that the airspace available to them is reduced as a result, as well as concerns regarding the complication added to UK airspace arrangements.
- 7.4 At the end of the Transition Period, the SERA Regulation was retained in UK law by the European Union (Withdrawal) Act 2018. At this point in time, the SERA Regulation was also amended by the Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/459) in order to make it operate effectively in UK law. Further, the amended Regulation (EC) 551/2004 and Article 44 of Regulation (EU) 2018/1139 on common rules in the field of civil aviation, as amended by the Aviation Safety (Amendment) (EU Exit) Regulations 2019 (SI 2019/645), include powers for the Secretary of State to make regulations for rules of the air.
- 7.5 This instrument uses these powers to amend the SERA Regulation retained in UK law by returning it to be in line with the previous exemption, in particular by removing the

minimum vertical distance of 1,000 feet from cloud when flying in Class D airspace. Amendments are also made to the rules for aircraft flying using VFR in Class F and G airspace during day, and at an indicated airspeed of 140 knots or less to give adequate opportunity to observe other traffic or any obstacles in time to avoid collision. These amendments are to provide greater clarity in the SERA Regulation on the requirements for those types of flights in Class F and G airspace.

- 7.6 The provisions in this instrument which amend the SERA Regulation as set out above, come into force on 20th May 2021.

Minimum age requirements for remote pilots operating unmanned aircraft systems

- 7.7 Civil aviation safety is largely governed by the requirements of Regulation (EU) 2018/1139 and the implementing rules made under it. This instrument amends four of the implementing Regulations retained in UK law, with these amendments to come into force on 28th January 2021.
- 7.8 Firstly, this instrument amends the retained version of Commission Implementing Regulation (EU) No 2019/947. This Regulation covers the rules and procedures for the operation of unmanned aircraft. The amendment omits Article 9 of the Regulation, which stipulates a minimum age for remote pilots. This is being done in line with the UK Government policy of not having a minimum age for those flying unmanned aircraft. This is because it is Government's view that age is not necessarily an indicator of competence and that young people should be given the opportunity to increase their science, technology, engineering and maths (STEM) skills through remotely piloting unmanned aircraft. In consequence of this change, Article 9A, which provided a procedure for varying the age within limits imposed under EU law, is also being omitted as it is no longer necessary.
- 7.9 Using this instrument to make these changes means that there will only be a short period of time during which a minimum age will apply, before the legal position as it stood before 31 December 2020, of not having a minimum age for remote pilots, will be restored.

Pilot medical certificates

- 7.10 Secondly this instrument amends the retained version of Commission Regulation (EU) No 1178/2011, laying down technical requirements and administrative procedures related to civil aviation aircrew. That Regulation sets the rules for licensing of pilots of aircraft within the scope of Regulation (EU) 2018/1139. This includes most aircraft, but aircraft such as historic aircraft, homebuilt aircraft, experimental aircraft and two seater aircraft with a maximum take-off mass below 450kg continue to be regulated under the Air Navigation Order 2016 ("the ANO").
- 7.11 Regulation 1178/2011 requires pilots to hold a medical certificate. However, the pilots of certain aircraft regulated under the ANO are permitted to make a medical declaration rather than have to undergo medical certification. This instrument amends Regulation 1178/2011 to allow pilots who have made a medical declaration in line with the ANO to fly sailplanes, balloons and single piston engine aircraft under 2,000kg maximum take of mass without obtaining a medical certificate.
- 7.12 This instrument also makes similar amendments to Commission Regulations 2018/395 and 2018/1976 which contain the licensing requirements for the pilots of balloons and

gliders respectively. The medical requirements for such pilots remain in Regulation 1178/2011 and these are amended accordingly.

8. European Union (Withdrawal) Act 2018/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 legislation covered by this instrument.

10. Consultation outcome

10.1 The Department's Ministers and officials have regular engagement with the aviation industry, ANSPs and airspace users. The relevant stakeholders, the Civil Aviation Authority (CAA) and NATS (formerly known as National Air Traffic Services) have been consulted on the aspects of this instrument which relate to the rules of the air in the SERA Regulation.

10.2 The Department for Transport has not consulted formally on amending the retained version of Commission Implementing Regulation (EU) No 2019/947 to omit the articles relating to minimum age requirements for remote pilots of unmanned aircraft. This is because omitting the articles is in line with UK Government policy of not having a minimum age and will simply restore the legal position as it stood before 31 December 2020. The Government confirmed its position regarding remote pilot minimum ages in its response to the consultation [Taking Flight: The Future of Drones in the UK](#), which ran from July to September 2018. As this policy has not changed since that point in time, the Government has not re-consulted on reinstating the legal position as it stood before 31 December 2020.

10.3 A consultation by the CAA in 2015 on the introduction of pilot medical declaration for aircraft regulated under the ANO was supported by the general aviation community. Extending the ability to make medical declarations to Part-FCL licence holders has not been subject to a separate consultation but is widely supported. The Department has actively engaged with the CAA to ensure its views have been reflected in this instrument throughout the drafting process.

11. Guidance

11.1 The Department is not producing any specific guidance on the amendments provided for in this instrument.

12. Impact

12.1 The impact on business, charities or voluntary bodies is limited to minor familiarisation costs.

12.2 There is no, or no significant impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because the costs and benefits to business are minor. As this instrument is not making any changes to technical requirements, the main costs arising from the instrument relate to the need for industry to familiarise themselves with the regulatory regime.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that the impact on businesses, charities or voluntary bodies in respect of the changes to these retained Regulations are limited to minor familiarisation costs.

14. Monitoring & review

- 14.1 The 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, Robert Courts MP, has made the following statement:

“In my view, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the provisions of the Aviation Safety (Amendment) Regulations 2021 are such that a statutory review clause would be inappropriate, for proportionality reasons, given the high costs of undertaking such a review, with limited scope for change.”

15. Contact

- 15.1 Elie Howe at the Department for Transport (Telephone: 07779 554719 or email: Elie.Howe@dft.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Ian Elston, Deputy Director for Aviation Policy, 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.