

## EXPLANATORY MEMORANDUM TO

### THE AVIATION SAFETY (AMENDMENT) REGULATIONS 2023

2023 No. 588

#### 1. Introduction

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

#### 2. Purpose of the instrument

- 2.1 The instrument amends four retained EU Regulations, all of which are retained direct minor EU legislation, relating to aviation safety (in particular initial and continuing airworthiness, balloons and sailplanes). The amendments implement revised standards and recommended practices (“SARPs”) adopted by the International Civil Aviation Organization (“ICAO”) in accordance with the Convention on International Civil Aviation (“the Chicago Convention”) and introduce other measures to improve the regulation of aviation safety.

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

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

- 3.1 None.

#### 4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland. In addition, it applies to aircraft registered in the United Kingdom wherever they are.

#### 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 Regulation (EU) No 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency (“the Basic Regulation”) as amended by S.I. 2019/645 establishes a framework and essential requirements in respect of aviation safety regulation. In particular, it provides for the implementation of the SARPs contained in the Annexes (as amended from time to time) to the Chicago Convention.
- 6.2 The Basic Regulation, as retained in UK law, contains regulation making powers for the Secretary of State to make and amend detailed regulations in respect of aviation safety to ensure compliance with the essential requirements set out in the Annexes to the Regulation and to meet the general objectives of the Regulation. This instrument is made in exercise of the regulation making powers set out in Articles 17 and 19

(airworthiness), 23 (pilots), 62 (certification, oversight and enforcement) and 127(3) (regulations) of the Basic Regulation.

- 6.3 Four retained implementing Regulations made under the Basic Regulation (and its predecessor, Regulation (EC) No 216/2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency) need updating to give effect to the purposes stated above. These Regulations are:
- (i) Commission Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations;
  - (ii) Commission Regulation (EU) No 1321/2014 of 26 November 2014 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks;
  - (iii) Commission Regulation (EU) 2018/395 of 13 March 2018 laying down detailed rules for the operation of balloons as well as for the flight crew licensing for balloons; and
  - (iv) Commission Implementing Regulation (EU) 2018/1976 of 14 December 2018 laying down detailed rules for the operation of sailplanes as well as for the flight crew licensing for sailplanes.
- 6.4 In addition to measures in this SI coming into force at the earliest possible opportunity, some measures require a longer implementation period in order to ensure industry have sufficient time to prepare. Consequently, following appropriate consultation, some measures have a later implementation date of 1st July 2024.

## **7. Policy background**

*What is being done and why?*

Regulation (EU) No 748/2012

- 7.1 This Regulation establishes the requirements for the approval of organisations responsible of the design or production of aeronautical products (aircraft, engines or propellers) and parts. It also establishes the type certification (design approval) requirements for products and parts and the release to service of individual products and parts that are newly produced.
- 7.2 The instrument amends the Regulation to require organisations designing or producing products or parts to implement a safety management system (“SMS”). A SMS requires a systematic approach to managing safety, including the necessary organisational structures, accountability, responsibilities, policies and procedures. This implements the international standards established in Annex 19 to the Chicago Convention. While the retained EU legislation already sets out requirements for the management systems of these organisations, these do not fully meet the Annex 19 requirements for SMS. Organisations in most other areas of aviation are already required to have SMS, but the Annex 19 deadline, of November 2013, has been missed in respect of design and production organisations and aircraft maintenance organisations. Prior to EU exit, it was the responsibility of the EU commission to introduce legislation meeting this requirement. The development of amendments to

EU requirements to address the deficiencies was largely complete at the time of EU Exit, but the legislation was not adopted at EU level until late in 2021, and so was not retained in UK law. Since we left the EU, we want to ensure we comply with ICAO standards so have been working to move to compliance on this, but we have had to make prioritisation decisions regarding regulatory changes, so are bringing this forward now.

- 7.3 The instrument also makes a number of amendments to the detailed technical requirements of the Regulation. These are:
- (i) A requirement for the organisation holding a type certificate for a product or part to produce a standardised set of instructions on how it should be maintained to ensure it remains airworthy while in service.
  - (ii) An alleviation from the requirement for all new parts released to service under a CAA Form 1 by an approved production organisation. This will apply where the Civil Aviation Authority (“the CAA”) determine that a part does not have an impact on safety. It will allow replacement parts to be produced or maintained by non-approved organisations and should lower costs for industry without compromising safety.
  - (iii) Alignment of the requirements with provisions designed to ensure the safety of ageing aircraft which were introduced into retained Commission Regulation (EU) 2015/640 on additional airworthiness by the Aviation Safety (Amendment) (No. 2) Regulations 2021 (S.I. 2021/614).

Regulation (EU) No 1321/2014

- 7.4 This Regulation establishes the requirements for the approval of aircraft maintenance organisations and the licensing of aircraft engineers.
- 7.5 The instrument amends this Regulation to require maintenance organisations to implement a SMS. This mirrors the changes set out in paragraph 7.2 above for production and design organisation and implements the international standards established in Annex 19 to the Chicago Convention.
- 7.6 The Regulation is also amended to reflect the changes to Regulation 748/2012 detailed in paragraph 7.3(ii) above. Where parts are no longer required to be released to service under a CAA Form 1, maintenance organisations will be permitted to fit such parts onto aircraft.
- 7.7 The instrument also introduces a definition of maintenance data to ensure consistency with retained Regulation (EU) No 748/2012.

Regulation (EU) 395/2018

- 7.8 This Regulation establishes the requirements for the operation of balloons and the licensing of balloon pilots.
- 7.9 The instrument amends the Regulation to extend the deadline by which balloon pilots with licences issued under the Air Navigation Order 2016 (“the ANO”) have to hold a Balloon Pilot Licence issued under the Regulation. The CAA is undertaking a post-EU Exit review of private pilot licensing which may result in significant changes to licensing requirements. Delaying the applicability of the requirement will remove the possibility of existing licence holders having to change their licences several times within a short space of time. In light of this, the instrument amends the Regulation to

establish a new deadline of 31st December 2025 for obtaining a licence issued under the Regulation.

Regulation (EU) 1976/2018

7.10 This Regulation establishes the requirements for the operation of sailplanes (gliders) and the licensing of sailplane pilots.

7.11 The instrument amends the Regulation to extend the deadline by which sailplane pilots will have to hold a Sailplane Pilot Licence issued under the Regulation. This is for the same reasons set out in paragraph 7.9 regarding the amendment to Regulation 395/2018. As with that Regulation, the deadline is being extended to 31st December 2025.

## **8. European Union Withdrawal and Future Relationship**

8.1 This instrument does not relate to withdrawal from the European Union/trigger the statements required under the European Union (Withdrawal) Act.

## **9. Consolidation**

9.1 There are no plans to consolidate the legislation covered by this instrument.

## **10. Consultation outcome**

10.1 The changes made by this instrument, other than the minor changes set out in paragraphs 7.8 to 7.11, arise from work on the implementation of ICAO SARPs and general safety enhancements undertaken by EASA while the UK was a member of the EU. This involved two rounds of consultation. The UK fully participated in the development of the requirements and supported the position reached after the consultation had taken place. A consultation on the changes to the retained legislation has not taken place as the views of the aviation industry, which are generally supportive, were already known through the EASA consultation.

10.2 The EASA consultations can be found at <https://www.easa.europa.eu/en/document-library/notices-of-proposed-amendment/npa-2019-05>.

10.3 The changes outlined in paragraphs 7.8 to 7.11 have not been subject to consultation. However, the CAA has consulted on the principle of simplifying the private pilot licensing system, including balloon and glider pilot licensing and this is generally supported. The report of that consultation can be found at <https://consultations.caa.co.uk/corporate-communications/ga-pilot-licensing-training-phase-1/>.

## **11. Guidance**

11.1 Guidance will be produced by the CAA and published on their website.

## **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.

12.3 The Department for Transport (DfT) has not published an impact assessment in relation to the introduction of safety management systems in Regulation (EU) No 748/2012 and Regulation (EU) No 1321/2014. This is because the direct impacts on

business have been assessed at under £5m per year and light-touch internal analysis has been conducted instead, the findings of which are presented below.

- 12.4 It is estimated that the changes mentioned in the paragraph above have an Equivalent Annual Net Direct Cost to Businesses (EANDCB) of £0.04 million. It has been assessed that businesses will face transition costs as a result of the need to provide initial training to all employees, provide further training to nominated postholders, and undertake Exposition/Handbook updates. Ongoing costs for businesses will result from the additional work hours required to comply with SMS requirements. Government will face ongoing costs as a result of the requirement to fund the CAA's oversight of SMS. Over a 10-year appraisal period, a total net present cost of £2.8 million is estimated.
- 12.5 In relation to the other requirements introduced by the amendments to Regulation (EU) No 748/2012 and to Regulation (EU) No 1321/2014, which set out the requirements for the continued airworthiness of aircraft and aeronautical products, DfT has not published an impact assessment, as the direct impacts on business have been assessed at under £5m per year. Many of the potentially affected organisations already satisfy the requirements of the policy, as they are required to under the conditions of their third-party European approvals. For the remaining organisations, we estimate that the policy has an EANDCB of £0.21 million and therefore falls within the £5 million De Minimis Threshold. There is deemed to be no material risk of the realised cost exceeding the threshold, as the identified costs are substantially below this level, and there are no areas of uncertainty that could cause these costs to fluctuate by the orders of magnitude required.

### **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 instrument will not impose significant regulatory burdens on small businesses.

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

- 14.1 The approach to monitoring of this legislation is for it to be kept under review by the CAA as part of their ongoing oversight responsibilities.
- 14.2 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, Baroness Vere of Norbiton, 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 2023 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 Jonathan Barlow at the Department for Transport (telephone: 07977 418563 or email: jonathan.barlow@dft.gov.uk) can be contacted with any queries regarding the instrument.

- 15.2 David Harding, Deputy Director for General Aviation, Safety, Skills and the CAA, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Vere of Norbiton, Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.