

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

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 An explanatory memorandum on this subject was first laid on 30 May 2023. This amended explanatory memorandum is being laid to respond to feedback received from the House of Lords Secondary Legislation Scrutiny Committee. The policy background section from paragraphs 7.2 to 7.22 has been expanded.

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 in paragraph 2.1 above – either to comply with ICAO SARPs or to improve the regulation of aviation safety. 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 establishing technical requirements and administrative procedures to ensure 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.

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 for 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 Aviation Safety (Amendment) regulation does not set new aviation safety standards, it amends Regulation (EU) 748/2012 to place a requirement upon organisations involved in the design or production of aeronautical products or parts to implement a Safety Management System (SMS). This requirement is needed to bring the retained regulation up to date and in line with international standards established in Annex 19 to the Chicago Convention and will ensure that the UK is compliant with those standards. As discussed in paragraph 7.4 below, this requirement came into force in 2013, at which point the requirement was on the EU, though there has been

incremental progress towards meeting the requirement prior to EU exit. This final stage in the process will ensure better oversight and continuous improvement of aviation safety by bringing organisations in line with other parts of the aviation sector. An SMS requires a systematic approach to managing safety, including the necessary organisational structures, accountability, responsibilities, policies and procedures. The principles are set out in ICAO Document 9859 (<https://www.icao.int/safety/safetymanagement/pages/guidancematerial.aspx>) and organised into four components:

- Safety Policy;
- Safety Risk Management;
- Safety Assurance; and
- Safety Promotion.

- 7.3 The guidance on these four components helps an organisation to ensure the appropriate policies and procedures are in place setting out general requirements and best practice for consideration.
- 7.4 While the retained EU legislation already sets out requirements for the management systems of these organisations, which ensure a suitable level of safety is in place, these do not fully meet the Annex 19 requirements for SMS, implementation of which could enhance safety oversight and assurance. 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, and due to the need for detailed policy development on this, and given prioritisation of regulatory changes, are bringing this forward now.
- 7.5 Some elements of this amendment will come into force on 1 July 2024 (see table 7.22). This later timeline reflects the fact that the full effective implementation of an SMS takes time and we want the organisations impacted to have enough time to implement the new requirements safely and in a considered manner that meets the organisation’s requirements, and allow time for Civil Aviation Authority (“CAA”) review and approval. Some organisations are already implementing the required standards but will still need to go through the CAA approval process; others who need to implement from scratch will need additional time as it is a significant undertaking.
- 7.6 ICAO recognises that full implementation of all components and elements of the SMS framework may take up to 5 years depending on the organisation’s maturity and complexity. In the first year, the SMS system is only expected to be Present and Suitable. As the system evolves through practice towards excellence, it becomes Operating and Effective. Given this, organisations will be required to be fully compliant with the legislation and the CAA will commence its oversight process from July 2026.

- 7.7 The instrument also makes a number of amendments to the detailed technical requirements of the Regulation to support ICAO compliance or to enhance safety 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 an approved design organisation determines that a part has a negligible impact on safety. This will ensure a more proportionate approach.
 - (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

- 7.8 This Regulation establishes the requirements for the approval of aircraft maintenance organisations and the licensing of aircraft engineers.
- 7.9 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.
- 7.10 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, Part CAO organisations with maintenance privileges will be permitted to maintain and fit such parts onto Part ML aircraft.
- 7.11 The instrument also introduces a definition of maintenance data to ensure consistency with retained Regulation (EU) No 748/2012. Some elements of this amendment will come into force on 21 June 2023 and others on 1 July 2024, see table at 7.22 for details. Where additional time is needed prior to the coming into force date, this is to allow industry time to prepare and implement changes in advance of new regulations being in force.
- 7.12 The Table of Proposed Amendments, published by the CAA alongside the Opinion and Instruction Document relating to this amendment at <http://publicapps.caa.co.uk/docs/33/CAAOID0022withTables.pdf> provides full detail of where later coming into force dates are needed, beyond the level provided in the table in 7.22. To give a high level summary, referring to the ‘Purpose of the Amendment’ section of page 1 of the Table of Proposed Amendments, changes relating to Safety Management Systems, Ageing Aircraft Structures and Eligibility of parts and appliances for installation without a Form 1 (EOPF1) require a later (2024) coming into force date. Conversely, changes relating to Ageing Aircraft Structures, Rationalisation (except where linked to SMS amendments) and Correction do not place new requirements on industry in terms of preparation, so can come into force immediately.
- 7.13 The above-mentioned table gives an expected coming into force date of 1 January 2024, rather than 1 July 2024 as mentioned in the instrument; this was the original date by which the provisions were expected to come into force, based on an SI laying

date in 2022. As these changes took longer to finalise than expected, they are now being made in 2023, and the coming into force date was correspondingly changed to 1 July 2024. This is to ensure industry has sufficient time to prepare for the effect of these changes, and is not expected to have a significant impact on safety.

Regulation (EU) 395/2018

- 7.14 This Regulation establishes the requirements for the operation of balloons and the licensing of balloon pilots.
- 7.15 The Regulation includes a deadline whereby balloon pilots with licences issued under the Air Navigation Order 2016 (“the ANO”) have to hold a licence under this Regulation. Originally, holders of legacy ballooning licenses had to transfer to the new system (inherited from EASA) before 31 December 2023. This had been retained under the provisions of the Brexit Withdrawal agreement.
- 7.16 However, the CAA is undertaking a post-EU Exit review of private pilot licensing which may result in significant changes to private pilot licensing requirements, including for balloon licenses. This was initiated after a consultation on “opportunities for General Aviation”. More detail is available here: <https://consultations.caa.co.uk/ga/uk-general-aviation-opportunities-after-easa/>
- 7.17 Given the ongoing work on this licensing review, to align with the outcome of the review (which is due to complete in 2025), this instrument amends the Regulation to extend and establish a new deadline of 31 December 2025 for obtaining a licence issued under the Regulation.
- 7.18 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. We do not anticipate any safety impact as legacy systems of licensing for both sailplanes and balloons remain in place during the transition period.

Regulation (EU) 1976/2018

- 7.19 This Regulation establishes the requirements for the operation of sailplanes (gliders) and the licensing of sailplane pilots.
- 7.20 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 7.14-7.18 regarding the amendment to Regulation 395/2018. As with that Regulation, the deadline is being extended from 31 December 2023 to 31 December 2025.

Implementation timelines

- 7.21 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 – in particular to develop effective Safety Management Systems. Consequently, following appropriate consultation, some measures have a later implementation date of 1 July 2024.
- 7.22 The various coming into force dates are set out in the table below.

UK Regulation Number	UK Regulation Name	Relevant SI Regulation	Coming into force

748/2012	UK Initial Airworthiness Regulation	1, 2, 5, 6(1), 6(3)(a, (c) and (f), 6(4)(a), (c), and (d), 6(8)(a), (c)(i) and (e)(i), 6(9)(j)(ii), 6(11)(a) to (c), 6(13)(a), 8 to 11	21 June 2023
		3, 4, 6(2), 6(3)(b), (d) and (e), 6(4)(b), (e) and (f), 6(5), 6(6), 6(7), 6(8)(b), (c)(ii), (d) and (e)(ii), 6(9)(a) to (i), 6(9)(j)(iii), 6(10), 6(11)(d) and (e), 6(12), 6(13)(b) to (d), 7	1 July 2024
1321/2014	UK Continuing Airworthiness Regulation	12, 13, 15(1) and (2), 16, 17(1), (2)(a) and (3), 18, 20, 21, 22(1), and (17), 25 to 28, 29(1) and (5), 30 and 31	21 June 2023
		14, 15(3), 17(2)(b), 19, 22(2) to (16) and (18) to (21), 23, 24, 29(2) to (4)	1 July 2024
2018/395	UK Balloons Regulation	32	21 June 2023
2018/1976	UK Sailplanes Regulation	33	21 June 2023

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 7.14 to 7.20, 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 7.14 to 7.20 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 satisfy these 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 Safety, Sponsorship, Skills and General Aviation at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Vere of Norbiton at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.