

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 as defined in Section 7(6) of the European Union (Withdrawal) Act 2018. In this case, the regulations concerned have the status of retained direct minor EU legislation due to having been EU tertiary legislation immediately before exit day.
- 2.2 These four regulations relate to aviation safety. They set requirements for initial and continuing airworthiness of aircraft, and for the operation of 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. Overall, the purpose of the instrument is to deliver incremental improvements to safety standards, in line with international best practice.

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. An amended explanatory memorandum was laid on 19 June to respond to feedback received from the House of Lords Secondary Legislation Scrutiny Committee and to expand the policy background section in that explanatory memorandum, which now forms paragraphs 7.2 to 7.23.
- 3.2 This explanatory memorandum is being re-laid following the House of Lords Motion of Regret debated on 4 July 2023. Changes are made to address points made in that debate; to correct factual errors regarding the implementation dates related to Regulations (EU) No 2018/395 and Regulation (EU) No 2018/1976 concerning balloons and sailplanes licencing requirements; and to correct the regulation references in the table contained in paragraph 7.23.

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 located.

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 Statutory Instrument 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 to the Chicago Convention (as amended from time to time).

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 Basic Regulation and to meet the general objectives of the Basic Regulation. This instrument uses 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 2.2 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 the approval of organisations and personnel involved in these tasks;
- (iii) Commission Regulation (EU) No 2018/395 of 13 March 2018 laying down detailed rules for the operation of balloons as well as for the licensing of flight crew for balloons; and
- (iv) Commission Implementing Regulation (EU) No 2018/1976 of 14 December 2018 laying down detailed rules for the operation of sailplanes as well as for the licensing of flight crew 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 by the Civil Aviation Authority (CAA) 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 into service of individual products and parts that are newly produced.
- 7.2 The Aviation Safety (Amendment) Regulations 2023 do not set new aviation safety standards, but amend Regulation (EU) No 748/2012 to place a requirement on organisations involved in the design or production of aeronautical products or parts to implement a Safety Management System (SMS) to ensure that existing aviation safety standards are met. 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 9859¹ and organised into four components:
- Safety Policy;
 - Safety Risk Management;
 - Safety Assurance; and
 - Safety Promotion.
- 7.3 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 ensure that the UK is compliant with those standards. This final stage in the process of meeting international standards will ensure better oversight and continuous improvement of aviation safety by bringing these organisations in line with other parts of the aviation sector.
- 7.4 The guidance on the four components above is intended to help an organisation to ensure the appropriate policies and procedures are in place, setting out general requirements and best practice for consideration.
- 7.5 These changes meet requirements that have been in place since 2013. When that initial deadline, of November 2013, passed, it was the responsibility of the EU Commission to introduce legislation. It did so, but did not fully meet requirements until 2021, which meant that amendments were not retained in UK law. Since the UK left the EU, work has been ongoing to achieve full compliance. Due to the need for detailed policy development at UK level, this represents the first opportunity to bring forward the necessary changes.
- 7.6 Some elements of this amendment will come into force on 1 July 2024 (see table at 7.23). This later date, as opposed to immediate implementation, reflects the fact that the effective implementation of an SMS takes time, and organisations require time to implement the new requirements safely and in a considered manner that meets their requirements, and allows time for CAA review and approval. Some of the impacted 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

¹ <https://www.icao.int/safety/safetymanagement/pages/guidancematerial.aspx>

need additional time, as it is a significant undertaking to ensure an orderly transition to the enhanced system.

- 7.7 ICAO recognises that the maturity of all components and elements of the SMS framework may take several years to become effective. In the first year, the SMS system is expected to be in place and, recognising the need for orderly transition, organisations are expected to be compliant with the legislation from 1 July 2024 when the requirement comes into force. Until 1 July 2026, where CAA audits (to be conducted from 1 July 2024) of affected organisations' SMS reveal non-conformances, organisations will have until 1 July 2026 to correct these. Any uncorrected findings after that date will result in that organisation's approval certificate being either revoked, limited or suspended in whole or part.
- 7.8 The instrument also makes a number of amendments to the detailed technical requirements of the Regulation to support compliance with international (ICAO) standards 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 to be 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 represents a more proportionate approach for industry.
 - (iii) Alignment of the requirements with provisions designed to ensure the safety of ageing aircraft which were introduced into retained Commission Regulation (EU) No 2015/640 on additional airworthiness by the Aviation Safety (Amendment) (No. 2) Regulations 2021 (S.I. 2021 No. 614).

Regulation (EU) No 1321/2014

- 7.9 This Regulation establishes the requirements for the approval of aircraft maintenance organisations and the licensing of aircraft engineers.
- 7.10 The instrument amends this Regulation to require maintenance organisations to implement an SMS. This mirrors the changes set out in paragraph 7.2 above for production and design organisations and implements the international standards established in Annex 19 to the Chicago Convention.
- 7.11 The Regulation is also amended to reflect the changes to Regulation (EU) No 748/2012 detailed in paragraph 7.8(ii) above. Where parts are no longer required to be released to service under a CAA Form 1, Part CAO organisations (continuous airworthiness organisations that carry out maintenance) with maintenance privileges will be permitted to maintain and fit such parts onto Part ML aircraft (i.e. 'Light Aircraft' in General Aviation). In practice, this means light General Aviation aircraft will be subject to a more proportionate oversight approach, given the lower risk profile associated with them.
- 7.12 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 7.23 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 – to ensure an orderly transition to the new system.

- 7.13 The Table of Proposed Amendments, published by the CAA alongside the Opinion and Instruction Document (beginning on page 5)² relating to this amendment, provides full detail of where later coming into force dates are needed (beyond the level provided in the table in 7.23). To give a summary, referring to the “Purpose of the Amendment” section of page 1 of the Table of Proposed Amendments, the changes relating to Safety Management Systems and eligibility of parts and appliances for installation without a Form 1 (EOPF1) require a later coming into force date of 1 July 2024 to ensure there is time for industry to prepare and to ensure an orderly transition. The 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.
- 7.14 The above-mentioned table gives an expected coming into force date of 1 January 2024, rather than the actual coming into force date of 1 July 2024. 1 January was the original date by which the provisions were expected to come into force, based on plans for this instrument being laid in 2022. As these changes took longer to finalise than expected, the current instrument was laid later than originally planned. The coming into force date has been moved correspondingly later. 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) No 2018/395

- 7.15 This Regulation establishes the requirements for the operation of balloons and the licensing of balloon pilots, and ensures an effective regulatory framework is in place for the safe operation of balloons.
- 7.16 The Regulation includes a deadline whereby balloon pilots with licences issued under previous legislation (the Air Navigation Order 2016 (“the ANO”)) need to acquire a licence under this Regulation. Originally, holders of legacy ballooning licenses had to transfer to the new system (inherited from the European Union Aviation Safety Agency (EASA)) before 8 December 2023. This date had been retained under the provisions of the EU Withdrawal Agreement.
- 7.17 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 after leaving EASA” and will consider opportunities to simplify and rationalise the current licensing system whilst maintaining the appropriate level of safety.³
- 7.18 This instrument therefore amends the Regulation to extend and establish a new deadline of 30 September 2025 for obtaining a licence issued under the Regulation in order to align the deadline with outcomes from the CAA review.
- 7.19 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. No safety impact is anticipated, as the legacy system for licensing of balloons remains in place during the transition period, which ensures effective regulation is in place for the safe operation of balloons. Any changes made in light of the review will be subject to further consideration, including to ensure there is no impact on safety

² <http://publicapps.caa.co.uk/docs/33/CAAOID0022withTables.pdf>

³ <https://consultations.caa.co.uk/ga/uk-general-aviation-opportunities-after-easa/>

and to ensure there is appropriate transition to any new system. While this measure comes into force immediately, its effect is to establish the later licence transfer deadline of 30 September 2025.

Regulation (EU) No 2018/1976

- 7.20 This Regulation establishes the requirements for the operation of sailplanes (gliders) and the licensing of sailplane pilots, and ensures an effective regulatory framework is in place for the safe operation of sailplanes.
- 7.21 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 7.15-7.19 regarding the amendment to Regulation 2018/395. As with that Regulation, the deadline is being extended from 8 December 2023 to 30 September 2025. No safety impact is anticipated, as the legacy system for licensing of sailplanes remains in place during the transition period, which ensures effective regulation is in place for the safe operation of sailplanes. Any changes made in light of the review will be subject to further consideration including to ensure there is no impact on safety and to ensure there is appropriate transition to any new system. As per para 7.19, while this measure comes into force immediately, its effect is to establish the later licence transfer deadline of 30 September 2025.

Implementation timelines

- 7.22 While some of the measures in this instrument come into force at the earliest possible opportunity, some of the measures require a longer implementation period to ensure industry have sufficient time to prepare and to ensure an orderly transition – in particular, to develop effective Safety Management Systems. Consequently, following appropriate consultation with industry, some measures have a later coming into force date of 1 July 2024.
- 7.23 The various coming into force dates and additional information on compliance are set out in the table below.

UK Regulation Number	UK Regulation Name	Relevant SI Regulation	Coming into force	Additional information on compliance
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	n/a
		3, 4, 6(2), 6(3)(b), (d) and (e), 6(4)(b), (e)	1 July 2024	Any findings of non-compliance from 1 July 2024 (as part of CAA auditing processes) must

		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)(i) and (iii), 6(10), 6(11)(d) and (e), 6(12), 6(13)(b) to (d), 6(14), 7		be addressed by 1 st July 2026
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	n/a
		14, 15(3), 17(2)(b), 19, 22(2) to (16) and (18) to (21), 23, 24, 29(2) to (4)	1 July 2024	Any findings of non-compliance from 1 July 2024 (as part of CAA auditing processes) must be addressed by 1 July 2026
2018/395	UK Balloons Regulation	32	21 June 2023	Licence transfer deadline moved (as of 21 June 2023) to 30 September 2025
2018/1976	UK Sailplanes Regulation	33	21 June 2023	Licence transfer deadline moved (as of 21 June 2023) to 30 September 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 7.15 to 7.21, 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 online on the EASA website.⁴
- 10.3 The changes outlined in paragraphs 7.15 to 7.21 have not been subject to consultation. However, the CAA has consulted on the principle of simplifying the private pilot licensing system, including balloon and sailplane pilot licensing and this is generally supported. The report of that consultation can be found online on the CAA website.⁵

11. Guidance

- 11.1 Guidance will be produced by the CAA and published on its 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 required under the conditions of their third-party European approvals. For the remaining organisations, the policy is estimated to have 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.

⁴ <https://www.easa.europa.eu/en/document-library/notices-of-proposed-amendment/npa-2019-05>

⁵ <https://consultations.caa.co.uk/corporate-communications/ga-pilot-licensing-training-phase-1/>

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 CAA will keep this legislation under review as part of its 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 at the Department 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, Parliamentary Under Secretary of State at the Department for Transport can confirm that this explanatory memorandum meets the required standard.