

**EXPLANATORY MEMORANDUM TO**  
**THE AVIATION SECURITY (AIR CARGO AGENTS) REGULATIONS 2024**

**2024 No. 228**

**1. Introduction**

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

**2. Purpose of the instrument**

2.1 This instrument sets out the requirements and procedures for air cargo agents to apply to be on a statutory list of such agents approved for the purposes of aviation security. It applies provisions of the Aviation Security Act 1982 (c. 36) (“the 1982 Act”) to air cargo agents on that list, including the power of the Secretary of State to issue directions to those air cargo agents for the purposes of aviation security. In addition, it revokes previous Statutory Instruments which made similar provision for the maintenance of a statutory list of air cargo agents, but which applied only to a narrow category of such agents and omits a number of points from Assimilated Law, previously called Retained EU Law, which would otherwise be contradictory.

**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 territorial 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.

**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 Part 2 of the 1982 Act confers on the Secretary of State the power to issue directions to certain parts of the aviation industry. Those powers are limited to making directions for a purpose set out in section 10 of the 1982 Act, namely protecting civil aviation from acts of unlawful interference or violence. The direction making powers in sections 12 and 13 apply only to operators of aircraft operating or registered in the UK and to the operators of airports/aerodromes in the UK and are not relevant to air cargo agents.

6.2 Section 13A provides a direction making power to require searches. Such directions may only be issued to those occupying any land forming part of an aerodrome, or those permitted access to the security restricted area of an aerodrome, for the purposes

of the activities of a business carried on by them. Section 14 is a more general direction making power applicable to: operators of aircraft operating or registered in the UK, operators of aerodromes, those occupying land forming part of an aerodrome and those permitted access to the security restricted of an aerodrome for the purposes of the activities of a business carried on by them.

- 6.3 Section 21F enables the Secretary of State to make regulations in relation to air cargo agents, defined as “persons [...] who carry on a business of handling cargo which is to be delivered (whether by them or another person) to the operator of any aircraft for carriage from any aerodrome in the UK by a civil aircraft.”. Section 21F(2)(b) provides that such regulations may provide that any provision of Part 2 of the 1982 Act which applies in relation to persons permitted access to the security restricted area of an aerodrome for the purposes of activities of a business shall also apply, with such modification as specified in the regulations, in relation to air cargo agents.
- 6.4 The Aviation Security (Air Cargo Agents) Regulations 1993 (S.I. 1993/1073) (“the 1993 Regulations”) first set out the criteria for air cargo agents to be maintained on a list, called the “list of security approved air cargo agents” and applied the relevant aspects of Part 2 of the 1982 Act to those on the list with suitable modification. However, the 1993 Regulations were drafted so as to only apply to “Regulated Agents”, one category of air cargo agent. Other categories of air cargo agent, such as “Regulated Suppliers”, who supply security-controlled supplies for use onboard aircraft, were out of scope.
- 6.5 The direction making powers in Part 2 of the 1982 Act are therefore currently only fully applicable to one category of air cargo agent, namely Regulated Agents who are on the statutory list maintained under the 1993 Regulations. Other categories of air cargo agents, such as Known Consignors (who produce cargo at source and apply the necessary security controls prior to dispatch so as not to require screening prior to loading on to an aircraft) and Regulated Suppliers, may not be directed or may only be directed as regards limited parts of their operation (as described in paragraph 6.2 of this Explanatory Memorandum, certain direction making powers apply to a party if they have access to the Security Restricted Area of an airport as part of their business).
- 6.6 Known Consignors and Regulated Suppliers are instead currently regulated by assimilated law, in particular Regulation (EU) 2015/1998 laying down detailed measures for the implementation of the basic standards on aviation security (“the Implementing Regulation”). The Implementing Regulation also established a “list” of Known Consignors and Regulated Suppliers, called the “UK Database on Supply Chain Security”, and set out the requirements for applying for, being added to and removed from the list. However, as this list is founded in assimilated law and not in regulations made under section 21F of the 1982 Act, the direction making powers in the 1982 Act do not apply to those on the list. The Implementing Regulation also provides for Regulated Agents to be included on the UK Database on Supply Chain Security, creating regulatory duplication.
- 6.7 The Department is in the process of revoking provisions of assimilated law relating to aviation security on a chapter-by-chapter basis and making alternative provision for industry via directions issued under the 1982 Act. However, the Department is unable to revoke any provisions of the Implementing Regulation which provide detailed requirements for Known Consignors or Regulated Suppliers until such point as they are on a list maintained by the Secretary of State under section 21F of the 1982 Act

and therefore within scope of the direction making powers. Revoking the provisions of the Implementing Regulation without having first ensured that existing air cargo agents are listed in accordance with regulations under section 21F of the 1982 would mean air cargo agents would be effectively unregulated.

- 6.8 This instrument therefore revokes the 1993 Regulations and their subsequent amending regulations, omits the provisions from the Implementing Regulation which made alternative provision for the inclusion of air cargo agents on the UK Database of Supply Chain Security and creates a new list of air cargo agents, divided into Regulated Agents, Known Consignors and Regulated Suppliers, to whom the direction making powers in the 1982 Act are then applied. This instrument also makes transitional provision to ensure that Regulated Agents on the list maintained under the 1993 Regulations immediately before they are revoked and Known Consignors and Regulated Suppliers on the UK Database of Supply Chain Security immediately before the relevant provisions of the Implementing Regulation are omitted, are automatically added to the new list without the need for further applications.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Government policy is to revoke the aviation security provisions from assimilated law and replace them with directions under the 1982 Act; in order to do so we must make sure that all the relevant parties are able to be directed, this SI is needed to achieve this purpose.
- 7.2 The current regulatory framework for aviation security is split across multiple sources of law including assimilated law and directions issued to industry by the Secretary of State under Part 2 of the 1982 Act. The resulting complexity makes the regulation opaque and difficult to comprehend, including by regulated industry. Simplifying and consolidating the aviation security regulatory framework as and when opportunities arise is a policy objective and will make the regulations easier to understand, implement and enforce.
- 7.3 A key part of this simplification and consolidation programme is the chapter-by-chapter revocation of provisions currently contained in assimilated law, in particular the detailed security requirements contained in the Implementing Regulation, with replacement provision being made via directions under the 1982 Act. This process is already underway, for example via the Aviation Security (Amendment) (No. 2) Regulations 2022 (S.I. 2022/1313), which omitted Chapter 4 (passengers and cabin baggage) from the Implementing Regulation.
- 7.4 Around 60% of air cargo and mail is carried in the belly-hold of commercial passenger aircraft. Regulated Agents, handle secure cargo (or screen it to make it secure) which is delivered, by themselves or someone else, to the operator of an aircraft for carriage from a UK airport. The Regulated Agent applies the regulatory security controls to the cargo at their cargo handling sites, including declaring the security status, before it is transported to the aircraft. Such secure cargo does not require rescreening before entering the security restricted area at the airport or before being loaded onto the aircraft.
- 7.5 Known Consignors make cargo secure at the point of manufacture or packing, avoiding the need for it to be security screened by a Regulated Agent. Known Consignors are permitted to deliver cargo directly to an aircraft for loading, but this is

uncommon; most often Known Consignor cargo is delivered to a Regulated Agent for consolidating onto a flight with other cargo, but due to already being declared 'secure' (along with the necessary paperwork to prove this) it does not require screening by the Regulated Agent. Known Consignors, though producing some air cargo, do not produce air cargo as a primary function e.g., a pharmaceutical company may produce a product with only 5% of this transported by air.

- 7.6 In-flight supplies are items that are intended to be taken on board an aircraft for use, consumption or purchase by passengers or crew during the flight. This includes items such as in-flight meals, duty free goods, blankets, and newspapers. Regulated Suppliers are responsible for ensuring that supplies are screened or subjected to security controls and thereafter protected from unlawful interference until delivered to the aircraft. Similar to air cargo, secure in-flight supplies do not require rescreening before entering the security restricted area at the airport or before being loaded onto the aircraft.
- 7.7 For the reasons set out in paragraphs 6.4 to 6.6 of this Explanatory Memorandum, the Secretary of State is currently unable to direct all Known Consignors and Regulated Suppliers because the statutory lists that they are included on are maintained under assimilated law and not under regulations made under section 21F of the 1982 Act. The purpose of this instrument is therefore to move all categories of air cargo agent onto a single list maintained by the Secretary of State in accordance with section 21F of the 1982, with the Secretary of State's direction making powers under the 1982 applicable to all those on the list.
- 7.8 This will enable the Department to continue its programme of revoking assimilated law on a chapter-by-chapter basis and making alternative provision via direction. Once this programme of work is completed, the regulation of aviation security will sit within a single instrument, providing clarity and certainty for industry.
- 7.9 This instrument therefore revokes the 1993 Regulations and the three subsequent instruments that amended them. It also omits a number of points from the Annex to the Implementing Regulation which established an alternative basis for the maintenance of statutory lists of air cargo agents.
- 7.10 A new list of security approved air cargo agents is created by regulation 3, to be maintained by the Secretary of State. Regulation 3 provides that Regulated Agents, Known Consignors, or Regulated Suppliers must be listed under separate categories. This will ensure clarity for industry in terms of which air cargo agents have been approved for a particular purpose.
- 7.11 Regulation 4 sets out the requirements for an application, both for new listings and for renewals. In particular, it requires that an application must be made for each individual site that handles cargo. Many air cargo agents have multiple regulated sites. If applications were made for all sites collectively and one site fails to meet the necessary security standards, the application would need to be rejected in its entirety. By requiring applications to be made for individual cargo handling sites, decisions can be made on the adequacy of the arrangements on a site-specific basis and the refusal of an application for approval of one site will not prevent the continuation of the air cargo agent's business at the compliant sites. The information that is to be provided alongside an application is largely the same as the information required under the 1993 Regulations but updated as appropriate. For example, the 1993 Regulations

required the provision of a fax numbers. This has been replaced in the new instrument with a requirement for the provision of an email address.

- 7.12 Regulation 5 sets out the conditions that the Secretary of State must be satisfied as to in order to approve an application. These conditions largely reflect existing requirements, drawn from both the 1993 Regulations and the Implementing Regulation.
- 7.13 Regulation 6 requires the Secretary of State to give notice to the applicant of a decision to approve their application for listing or renewal. By virtue of regulation 10(1), Part 2 of the 1982 Act applies to an air cargo agent on the list of security approved air cargo agents as it does to someone with access to the security restricted area of an airport for the purposes of a business. This means that section 24 of the 1982 Act, which sets out the requirements for the service of notices and other documents, will apply to notices under this regulation.
- 7.14 Regulation 7 requires the Secretary of State to give notice to an applicant of a proposal to refuse an application for inclusion on the list or for renewal of an existing application. The applicant is then afforded 28 days to make written representations to the Secretary of State, which must be considered before a final determination is made. This is intended to achieve the same outcome as the equivalent provision under the 1993 Regulations.
- 7.15 Regulation 8 requires an air cargo agent on the statutory list to give notice to the Secretary of State of any change of circumstance which renders the information required as part of their application for listing inaccurate. Such information includes the contact details for the air cargo agent and relevant convictions of those who form part of the application.
- 7.16 Regulation 9 sets out the grounds on which the Secretary of State may remove an air cargo agent from the list. These largely reflect the grounds for removal set out in the 1993 Regulations. However, Regulation 9(2) provides that if the Secretary of State is satisfied that a ground for removal applies only to a specific site handling cargo, then the Secretary of State may only remove that site from the list. Where the grounds for removing an air cargo agent or a site from the list apply to multiple sites, then all such sites may be removed. The policy intention is the same as for the requirement to apply for listing of sites on an individual basis (see paragraph 7.10 of this Explanatory Memorandum). It ensures that local compliance issues at a specific site do not require the removal of all an air cargo agent's sites where those sites remain compliant.
- 7.17 Regulation 10 applies the provisions of Part 2 of the 1982 Act that apply to those with access to the security restricted area of an airport as part of their business, to air cargo agents on the statutory list. As regards the application of section 14 of the 1982 (a general power of direction), regulation 10 modifies the power to clarify its applicability to air cargo agents.
- 7.18 Regulation 11 revokes the 1993 Regulations and the subsequent amending instruments. The relevant points from the Annex to the Implementing Regulation are then omitted.
- 7.19 Regulation 12 makes transitional provision to ensure that Regulated Agents who were included on the list of security approved air cargo agents under the 1993 Regulations immediately prior to their revocation, and Known Consignors and Regulated Suppliers on the UK Database of Supply Chain Security under points 6.4.1 and 8.1.3 of the Annex to the Implementing Regulation immediately before their omission, are

placed on the new list without being required to make further applications to the Secretary of State. It all ensures that any pending application for listing or renewal at the time of commencement of these regulations will be considered against the rules applicable at the time the application was made. This ensures continuity for those existing air cargo agents who have already sought or been granted approval. The grounds contained in the new regulations on which the Secretary of State may remove an air cargo agent from the list shall apply.

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

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

## **9. Consolidation**

- 9.1 This instrument revokes the 1993 Regulations as well as the subsequent three instruments which amended the 1993 Regulations. This instrument consolidates the content of those four instruments, with appropriate amendment and expansion, into a single set of regulations.

## **10. Consultation outcome**

- 10.1 A six-week consultation was completed ending on 29th October 2023. This was sent to all Regulated Agents, Known Consignors, and Regulated Suppliers. This consultation resulted in 12 responses. 7 were from Known Consignors, with the remaining 5 all from Regulated Agents. The Department received no responses from Regulated Suppliers. The received responses covered 7 Known Consignor sites which is representative of 1.7% of all (414) UK Known Consignors sites, and 7 Regulated Agent sites which is representative of 1.5% of all (457) UK Regulated Agent sites (as of 26 October 2023).
- 10.2 The proposed changes are expected to have little impact on Regulated Agents and Regulated Suppliers but do represent a change for Known Consignors. Whereas there are little to no noticeable day-to-day changes for Regulated Agents and Regulated Suppliers, the main change brought about by this SI is the capability of the Secretary of State to serve Directions on Known Consignors, and the need for these organisations to comply with the Directions once served. Therefore, in addition to the consultation and in conjunction with the Civil Aviation Authority (“the CAA”), the Department held a ‘town hall’ meeting, to which all Known Consignors were invited. This meeting was well attended and gave Known Consignors the chance to ask any questions to provide clarity, including some of those raised in responses to the consultation.
- 10.3 The majority of responses to the consultation raised no concerns.
- 10.4 One respondent indicated they were concerned that Known Consignors would have increased complexity and difficulty if the detailed regulatory requirements currently contained in directions under Part 2 of the 1982 and applicable to Regulated Agents were also applied to Known Consignors. This will not be the case as Known Consignors and Regulated Agents operate on significantly different models. Once all types of air cargo agents are on the new list and subject to the Secretary of State’s direction making powers under the 1982 Act, the programme of repealing assimilated law on a chapter-by-chapter basis and moving the content into directions can

continue. At present the Department's intention is not to significantly alter the content or burden of that regulatory detail.

- 10.5 Another response questioned whether Known Consignors would need to reapply for listing once the instrument was in force, regardless of any remaining approval period. The instrument makes transitional provision requiring the Secretary of State to add all Known Consignors on the UK Database on Supply Chain Security immediately before the commencement of the instrument, to the new list maintained under the instrument without any requirement for an additional application. They also queried whether they would need to separately inform the Secretary of State of any changes to their programme, which they noted is currently done through the CAA. The regulatory changes do not represent a change in how that process is currently completed.
- 10.6 Some responses suggested that Known Consignors should be subject to the same 5-year maximum listing period as Regulated Agents, or another longer period than the 18 months set out in this instrument. Another recommended that Regulated Agents should have their maximum listing period reduced from 5 years as they are the "gatekeepers to the aircraft". The maximum listing periods were also discussed in the Known Consignor 'townhall' meeting, where the Department made clear that both the present and proposed listing periods set out in the regulations are maximum periods, and individual approvals are given based on risk. Not all Regulated Agents therefore currently receive a full five-year listing. The risk involved with Regulated Agents in comparison to Known Consignors is different and therefore the maximum listing periods were determined to be suitable at the time of their inception; it is possible that the department will review the listing periods of Known Consignors in future. However, we will need to gather data on whether compliance with direction supports this across the sector.
- 10.7 One of the most consistent questions across the townhall and consultation was whether there would be additional costs added to Known Consignors. The Department does not anticipate additional costs. Regulated Agents, Known Consignors and Regulated Suppliers are all currently required to be on statutory lists maintained by the Secretary of State. The instrument places those lists on the same statutory footing (i.e. in the case of Known Consignors and Regulated Suppliers, "moving" their list from a statutory basis in assimilated law to a statutory basis in regulations made under section 21F of the 1982 Act). The process for listing and associated applications will not substantially change.
- 10.8 One respondent indicated that they were concerned about the proposals blurring the lines between Known Consignors, Regulated Agents, and Regulated Suppliers. As explained above, the proposals are to alter the statutory basis on which Known Consignors and Regulated Suppliers are "listed" to ensure that the Secretary of State's direction making powers are equally applicable to all categories of air cargo agents. This will ensure that the Secretary of State maintains sufficient regulatory powers once detailed regulation is removed from assimilated law. There are no proposals to change the substance of the regulatory content currently applicable to any category of air cargo agent, or to in any way diminish the existing distinctions between Regulated Agents, Known Consignors, and Regulated Suppliers.

## **11. Guidance**

- 11.1 The CAA website has a set of published guidance for the application to be a Regulated Agent, Known Consignor, or Regulated Supplier of in-flight supplies on

the UK's Secure Supply Chain, including direction to the application forms and the necessary regulations where these are published publicly. The relevant changes to the application forms, as well as the published guidance will need to be amended in line with the changes made by the instrument.

## **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 A full Impact Assessment has not been prepared for this instrument as the instrument is expected to have an annual net impact of less than £5 million. A light-touch appraisal has been undertaken, which has identified familiarisation and transition costs totalling £0.05m across all Regulated Agents, Known Consignors, Regulated Suppliers and the CAA.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To understand the impact of the requirements on small businesses (employing up to 50 people), we have actively consulted with the whole of industry as well as representative bodies to ensure that any concerns were addressed. No small business raised significant concerns that they face financial or operating challenges.

## **14. Monitoring & review**

- 14.1 The Department, along with the CAA, will monitor the impact of the changes to ensure that the legislation continues to support the policy objective.
- 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 (c. 26), Lord Davies of Gower at the Department for Transport, has made the following statement:

“It would not be appropriate in the circumstances to make provision for a review. A review would be disproportionate taking into account that the changes made are expected to have an annual net impact of less than £5 million.”

## **15. Contact**

- 15.1 Simon Townley at the Department for Transport, Telephone: 07816 089 032 or email: Simon.Townley@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Chris Selim, Deputy Director for Aviation Security Strategy & Policy, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Davies of Gower at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.