

EXPLANATORY MEMORANDUM TO
THE AVIATION SAFETY (AMENDMENT) (NO. 2) REGULATIONS 2021

2021 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport (“the Department”) and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Sifting Committees

2. Purpose of the instrument

- 2.1 The instrument uses powers in the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) to correct deficiencies in EU-derived aviation safety legislation arising as a result of the withdrawal of the United Kingdom from the European Union (“EU”). This will ensure that the legal framework on aviation safety continues to function correctly in UK law.
- 2.2 The instrument also makes technical amendments to retained legislation (Commission Regulation (EU) No 1178/2011 (“Regulation 1178/2011”), to make changes to the licensing requirements for motorised glider aircraft, and aircraft with a single piston engine.

Explanations

What did any relevant EU law do before exit day?

- 2.3 The relevant EU law provides for a comprehensive system of aviation safety in the EU. The Basic Regulation (Regulation 2018/1139, which repealed and replaced Regulation 216/2008), established the European Union Aviation Safety Agency (“EASA”), provided powers to the European Commission (“the Commission”) to give effect to requirements in the Convention on International Civil Aviation (“the Chicago Convention”), and made further provision on the establishment of a comprehensive aviation safety regulatory system in the EU. In particular, the Commission was given the power to adopt and amend Regulations containing technical requirements, and to amend technical detail in the Basic Regulation which is contained primarily in its Annexes. Implementing Regulations adopted by the Commission are subject to qualified majority voting by the Member States.
- 2.4 Under the Basic Regulation, EASA is responsible for preparing proposals for new and amended technical requirements. These form the basis of the technical Implementing Regulations. The Commission has adopted 15 technical Implementing Regulations dealing with different aspects of aviation safety regulation including:
 - (a) the design, construction, maintenance and operation of aircraft;
 - (b) the licensing of flight crew, maintenance engineers and air traffic controllers;
 - (c) the provision of air traffic management and air navigation services;
 - (d) the design and operation of aerodromes.
- 2.5 These technical Regulations were adopted mainly by consensus.

- 2.6 Under EU law, certification and oversight responsibilities are split between EASA and the competent authorities of the Member States. EASA has responsibility for aircraft, engines and propellers (collectively referred to as “products”) which are intended for use as or as part of EU registered aircraft; for the component “parts” of such products; and for organisations responsible for the design of such products and parts. EASA also has responsibility for the oversight of organisations based in countries outside the EU where those organisations are providing services within the scope of the Basic Regulation, for example maintaining products or parts intended for use as or as part of EU registered aircraft. All other certification and oversight activities (including certification and oversight of production organisations) are the responsibility of the Member State in which the individual or organisation is based. The Civil Aviation Authority (“CAA”) undertakes these tasks in the UK.
- 2.7 Most EU Regulations applicable on or before 31 December 2020 were corrected by the Aviation Safety (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/645), the Aviation Safety (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1098) and the Aviation Safety (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1116). However, a further two Commission Regulations were adopted and became applicable before the end of the Implementation Period. The Regulations, which amend the requirements relating to the licensing of pilots and the operation of aircraft, are:
- i) Commission Delegated Regulation (EU) 2020/723 of 4 March 2020 laying down detailed rules with regard to the acceptance of third-country certification of pilots and amending Regulation (EU) No 1178/2011; and
 - ii) Commission Implementing Regulation (EU) 2020/2036 of 9 December 2020 amending Regulation (EU) No 965/2012 as regards the requirements for flight crew competence and training methods and postponing dates of application of certain measures in the context of the COVID-19 pandemic.

Why is it being changed?

- 2.8 The instrument uses powers in the Withdrawal Act to make changes to retained aviation safety legislation to ensure that the law functions effectively now that the UK has left the EU. These changes are necessary because the legislation has functioned on the basis of the UK being part of the EASA/EU system and having certain obligations as an EU Member State. Since the end of the Implementation Period, the UK is no longer part of the EASA system, and provisions need to be in place in the UK’s legal framework for aviation safety for UK bodies to carry out the regulatory activities previously carried out by EASA.

What will it now do?

- 2.9 Since the end of the Implementation Period, aviation safety legislation works in a self-contained way within the UK, independent of the EASA system, with the CAA as the UK regulator. Prior to the end of the Implementation Period, the CAA already undertook the majority of certification and oversight tasks required by retained EU legislation. The UK continues to have the same technical requirements and standards as the EASA system following IP completion day, as none of the changes made by the instrument affects the substance of the technical requirements and standards established by retained EU legislation. Further detail on the corrections made by this instrument is set out in section 7 of this memorandum.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees]

3.1 The instrument is being laid for sifting by the Sifting Committees

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument is is England and Wales, Scotland and Northern Ireland, and it also has extra-territorial effect in certain circumstances (as explained in paragraph 4.3).

4.3 This instrument also has extra-territorial effect outside the United Kingdom insofar as the Regulations that it amends have such effects. In particular, as explained in the Explanatory Memorandum to S.I. 2019/645, provisions of retained EU law about the licensing of aircrew were amended by that S.I. so as to apply to all aircraft which are registered in the UK, or which are registered elsewhere but operated by an operator established in the UK, wherever they may be.

5. European Convention on Human Rights

5.1 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 This instrument is made in exercise of powers in section 8(1) of, and paragraph 21 of Schedule 7 to, the Withdrawal Act and Article 23 of Regulation 2018/1139.

6.2 The Withdrawal Act makes provision for repealing the European Communities Act 1972 and preserves EU law, as it stood immediately before the end of the Implementation Period, in UK law. It enables the creation of a new body of domestic legislation by bringing the texts of directly applicable EU legislation into domestic legislation, as well as saving EU-derived domestic legislation which was made to implement the UK's obligations as a member of the EU. The Act also contains temporary power to make secondary legislation to enable Ministers and the devolved administrations to deal with deficiencies in retained EU law, to ensure the UK's legal system continues to function properly outside the EU.

6.3 Regulation 2018/1139 as corrected by S.I. 2019/645 makes provision for the Secretary of State to make regulations laying down detailed provisions concerning pilot licensing.

7. Policy background

What is being done and why?

- 7.1 The instrument corrects retained EU aviation safety legislation as follows.
- 7.2 Regulations 2 and 3 correct the following regulations:
- (a) Regulation (EU) No 965/2012 (as amended by Commission Implementing Regulation (EU) 2020/2036 as regards the requirements for flight crew competence and training methods and postponing dates of application of certain measures in the context of the COVID-19 pandemic); and
 - (a) Delegated Regulation (EU) 2020/723 of 4 March 2020 laying down detailed rules with regard to the acceptance of third-country certification of pilots and amending Regulation (EU) No 1178/2011.
- 7.3 Corrections made include:
- (a) assigning to the CAA responsibilities and functions currently given to competent authorities; and
 - (b) replacing EU terminology where this would not be appropriate after the end of the Implementation Period.
- 7.4 Regulation 4 of the instrument amends Regulation 1178/2011 to allow the holders of licences issued under the Air Navigation Order 2016 (“the ANO”) to fly Part-21 aircraft (i.e. those aircraft within the scope of Regulation 2018/1139) that are within the following classes:
- (a) simple single engine aircraft (SSEA);
 - (b) single engine piston (SEP);
 - (c) touring motor glider (TMG); and
 - (d) self-launching motor glider (SLMG).
- 7.5 To take advantage of this change, licence holders must hold the appropriate class rating for the aircraft being flown and be undertaking a private flight.
- 7.6 Currently only the holders of licences issued under Regulation 1178/2011 may fly such aircraft. Now that the UK is no longer bound by EU legislation the long-term intention is to move to a single set of requirements applying to all aircraft. In the meantime this amendment will provide greater flexibility for the holders of licences issued under the ANO without having any impact on safety.
- 7.7 Article 4(8) of Regulation 1178/2011 is also amended to allow the CAA to continue to issue restricted instrument ratings after 8 September 2021. The end date was related to the harmonisation of instrument rating requirements in the EU and is no longer relevant.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the

Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

- 8.2 Alongside the EU (Withdrawal) Act 2018 powers the instrument is also being made under Article 23 of Regulation 2018/1139 to amend retained Implementing Regulation 2011/1178 regarding pilot licensing requirements

9. Consolidation

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

10. Consultation outcome

- 10.1 Department for Transport Ministers and officials have regular engagement with the aviation industry, aerospace industry, travel industry and consumer representatives. Through specific meetings and workshops on EU exit, and at long-established stakeholder forums, a number of issues related to the UK's withdrawal from the EU were addressed. This included plans for making secondary legislation to ensure that the statute book continues to function. The Department also works closely with the CAA on all aviation matters. Stakeholders broadly favoured retaining EU aviation safety legislation, which affords stability, and they support the transfer of relevant functions to the CAA.

- 10.2 The amendments to Regulation 1178/2011 have not been subject to specific consultation but implement some of the changes requested by the General Aviation community, including as part of the recent "UK General Aviation opportunities after leaving EASA" consultation undertaken by the CAA, which can be found at the following link: <https://publicapps.caa.co.uk/cap1985>.

11. Guidance

- 11.1 Where the CAA considers it appropriate to do so, the CAA will provide information, on how it will discharge new responsibilities that it takes over from EASA, for example through publications on its website. The Department for Transport is not producing any specific guidance on the amendments provided for in 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 An Impact Assessment has not been prepared for this instrument because the costs and benefits to business are minor.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to ensure the continued operation of the legislation being amended now that the UK has left the EU. Therefore, the instrument is expected to have no, or no significant, impact compared to the present situation.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is for it to be monitored in the course of normal departmental business.
- 14.2 No review clause is required for those parts of this instrument that are made under the EU Withdrawal Act 2018. As the changes to Regulation 1178/2011 do not impose any regulatory requirements, a review clause is not necessary. However, these will be reviewed as part of general review of pilot licensing requirements that the CAA intends to undertake.

15. Contact

- 15.1 At the Department for Transport, Duncan Nicholls, telephone: 07825 263 416 or email: duncan.nicholls@dft.gov.uk or Jonathan Barlow, 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 CAA at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Robert Courts, Parliamentary Under Secretary of State, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority’s response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State, Robert Courts, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Aviation Safety (Amendment) (No. 2) Regulations 2021 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because the instrument only uses such powers to correct deficiencies and failures in law that have arisen as a result of the UK leaving the EU and leaves the technical requirements unchanged. It does not create any criminal offences or the power to make regulations or raise fees. Other powers used to make the instrument are subject to the negative procedure.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State, Robert Courts, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Aviation Safety (Amendment) (No. 2) Regulations 2021 does no more than is appropriate”.

- 2.2 This is the case because this instrument only uses powers in the European Union(Withdrawal) Act 2018 to correct deficiencies and failures in law that have arisen as a result of the UK leaving the EU. These changes are necessary to ensure that the legislation relating to aviation safety functions correctly after the UK has left the EU. It leaves technical requirements unchanged and only makes changes to the legislative and regulatory framework which are necessary for the legislation to operate effectively.:

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State, Robert Courts, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 These are:

- (a) ensuring that the legislation governing aviation safety in the UK continues to function correctly once the UK has left the EU;
- (b) enabling the UK to continue to comply with its obligations under the Chicago Convention; and

- (c) maintaining the existing regulatory framework and technical requirements for aviation safety, minimising disruption to industry and recreational flyers.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State, Robert Courts, has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

- 4.2 The Parliamentary Under Secretary of State, Robert Courts, has made the following statement regarding the use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Robert Courts, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.