

EXPLANATORY MEMORANDUM TO
THE AIR NAVIGATION (AMENDMENT) ORDER 2022

2022 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes amendments to the Air Navigation Order 2016 (S.I. 2016/765) (“the Order”). In a number of places the Order cites various provisions of “the Basic Regulation” which is defined in Schedule 1 of the Order with reference to Regulation (EC) No 216/2008.
- 2.2 However, Regulation (EC) 216/2008 (referred to in this memorandum as “the old Basic Regulation”) was repealed and replaced by Regulation (EU) 2018/1139 (referred to in this memorandum as “the new Basic Regulation”). The new Basic Regulation was retained in domestic law at the end of the Transition Period, as amended by S.I. 2019/645.
- 2.3 The present instrument is therefore required to ensure that the Order accurately reflects the law as it now stands by referring to the new Basic Regulation and the relevant articles of that Regulation throughout the Order.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument makes amendments to provisions of the Order which were made using powers which included section 2(2) of the European Communities Act 1972. It therefore engages the procedural and publication requirements of paragraphs 14 and 15 of Schedule 8 to the European Union (Withdrawal) Act 2018 (“the 2018 Act”), which have been complied with.

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 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 The new Basic Regulation sets out common rules in the field of civil aviation across the EU as did the old Basic Regulation which it repealed and replaced.
- 6.2 At the end of the Transition Period, the new Basic Regulation was retained in domestic law, as amended by S.I. 2019/645. This ensured that the new Basic Regulation could continue to work within the UK in a self-contained way, independently from the EU aviation safety framework.
- 6.3 The Order implements the UK's obligations under the Convention on International Civil Aviation and regulates aspects of aviation safety that are not otherwise covered by the retained EU aviation safety legislation. It does however provide regulatory and enforcement powers for the Civil Aviation Agency ("CAA"), including those needed in respect of the Basic Regulation (as defined in the Order) and other retained EU aviation safety legislation.

7. Policy background

What is being done and why?

- 7.1 This instrument is being made to reflect the repeal and replacement of the old Basic Regulation by the new Basic Regulation. The instrument therefore updates the definition of the "Basic Regulation", and substitutes cross-references within the Order where needed.
- 7.2 The provisions introduced by this instrument are minor in nature and do not make any substantive changes to policy. The amendments ensure that the Order operates correctly by accurately citing the retained EU current law.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under powers contained in the 2018 Act, but relates to the withdrawal of the United Kingdom from the European Union because it amends articles of the Order which were made under section 2(2) of the European Communities Act 1972. The procedures and processes referred to in paragraphs 14 and 15 of Schedule 8 to the 2018 Act therefore apply.
- 8.2 In accordance with the requirements of the 2018 Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 There is no intention to consolidate the relevant legislation at this time.

10. Consultation outcome

- 10.1 No consultation on the proposed amendments took place, as the provisions introduced by this instrument simply reflect minor legislative updates and do not change policy or have impact on stakeholders.

11. Guidance

- 11.1 No guidance will be produced for this instrument. However, the CAA will communicate the changes introduced by this instrument to stakeholders.

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 because it introduces minor amendments to ensure the operability of domestic legislation and does not have an impact on regulated individuals and organisations.

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 the impact of the requirements on small businesses, as no such impact is foreseen following the introduction of the present instrument.

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 Article 275 of the Order requires the Secretary of State to review it and publish a report within five years after it comes into force and within every five years after that. This includes reviewing provisions which are amended or inserted by this instrument. Following a review it will fall to the Secretary of State to consider whether provisions in the Order should remain as they are, or be revoked or amended.

15. Contact

- 15.1 Ana Tudose at the Department for Transport Telephone: 07814068127 or email: ana.tudose@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 MP, 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 and the European Union (Future Relationship) Act 2020

Part 1A

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) or 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
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 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) or 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) or 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) or 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 IP completion 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) or	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or 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 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament 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.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion 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 IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 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

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Part 2

Statements required under the European Union (Withdrawal) Act 2018

1. **Scrutiny statement where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972**

- 1.1 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following scrutiny statement in accordance with paragraph 14(4) of the European Union (Withdrawal) Act 2018:

“I have taken the following steps to make the draft instrument published in accordance with paragraph 14(2) of Schedule 8 to the European Union (Withdrawal) Act 2018 available to each House of Parliament: a draft of the Air Navigation (Amendment) Order 2022 was published on the gov.uk website on [dd/mm/yy] and a Written Ministerial Statement was tabled in the House of Commons on [dd/mm/yy]. Copies of the draft instrument were also deposited in the libraries of both Houses of Parliament on [dd/mm/yy]. The clerks to the European Scrutiny Committee, the Transport Select Committee and the House of Lords Secondary Legislation Committee were also notified of the publication of the draft of the instrument.

- 1.2 [The following recommendations and representations were received and responded to as follows...].”

2. **Explanations where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972**

- 2.1 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following statement in accordance with paragraph 15(3) of Schedule 8 to the European Union (Withdrawal) Act 2018:

“Paragraph 15(3)(a): the law which is relevant to the amendment or revocation

The Air Navigation Order 2016 (S.I. 2016/765) (“the Order”) implements the UK’s obligations under the Chicago Convention on International Civil Aviation and makes provision for the regulation of air navigation generally. The Order also includes provisions regarding the enforcement of retained EU legislation, establishing offences and penalties for the breach of rules contained in a range of retained EU aviation safety Regulations.

One such Regulation referred to in the Order is Regulation (EC) 216/2008 on common rules in the field of civil aviation (and referred to in the Order as the “Basic Regulation”). At an EU level, the Basic Regulation was repealed and replaced by Regulation (EU) 2018/1139. At a domestic level, Regulation (EU) 2018/1139 was subsequently retained and amended by S.I. 2019/645.

The Order makes reference in several places to various articles within the Basic Regulation. These cross references therefore need to be updated to ensure that the Order correctly refers to the most recent version of the Basic Regulation.

Paragraph 15(3)(b): the effect of the amendment or revocation on retained EU law

This amendment has no effect on retained EU law, but does ensure that the enforcement provisions in the Order which reference the Basic Regulation can be properly applied.”.

3. Good reasons

3.1 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following statement in accordance with paragraph 15(2) of Schedule 8 to the European Union (Withdrawal) Act 2018:

“In my opinion there are good reasons for this instrument. The instrument ensures that the Air Navigation Order 2016 correctly refers to the relevant provisions in the most recent version of the Basic Regulation as retained and amended, thus ensuring that the legislative framework operates as intended and consequently the making of this instrument is a reasonable course of action.”.

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