EXPLANATORY MEMORANDUM TO

THE AVIATION SECURITY (AIR CARGO AGENTS) (AMENDMENT) REGULATIONS 2023

2023 No. 727

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 amends the Aviation Security (Air Cargo Agents) Regulations 1993 (S.I. 1993/1073) ("the 1993 Regulations"). In particular it amends regulation 11(2) of the 1993 Regulations to ensure that, where necessary for the purposes of aviation security, the Secretary of State can direct an air cargo agent in respect of its activities regardless of where those activities are carried out. At present the 1993 Regulations only permit a direction to be made in respect of activities taking place at a location where air cargo is handled.

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 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 Part 2 of the Aviation Security Act 1982 (c. 36) ("the ASA 1982") 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 the operators of aircraft operating or registered in the UK and to the operators of airports/aerodromes in the UK and are not relevant for present purposes.

6.2 Section 13A provides a direction making power to require searches. Such directions may 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 area 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 ASA 1982 which applies in relation to persons permitted access to the security restricted area of an aerodrome for the purposes of the activities of a business shall also apply, with such modification as specified in the regulations, in relation to air cargo agents.

6.4 The 1993 Regulations, as amended, do so. In particular regulation 11 of the 1993 Regulations applies to air cargo agents any provision of Part 2 of the ASA 1982 which applies to a person permitted access to the security restricted area of an aerodrome for the purposes of a business. For direction making purposes, this is sections 13A and 14 of the ASA 1982, as outlined in paragraph 7.2. However, in the application of section 14, the direction making power is modified so as to be limited to *"[…]such activities as are specified in the direction and are carried on by that person at any premises where relevant air cargo is handled by him"*.

6.5 This instrument removes the limitation on the existing direction making power by removing the requirement that the direction must relate only to activities at locations where cargo is handled.

7. Policy background

What is being done and why?

7.1 Around 70% of air cargo and mail is carried in the belly-hold of commercial passenger aircraft. Air cargo agents, commonly referred to as "Regulated Agents" (RAs), 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. Most RAs operate from sites located outside the airport footprint and their staff do not routinely require an airport access pass (although those who transport secure cargo into the airport do). The air cargo agent will apply the regulatory security controls to the cargo at their cargo handling sites before it is transported to the aircraft. It will not require rescreening before entering the security restricted area at the airport or before being loaded onto the aircraft.

7.2 A number of RA companies operate from multiple sites. Those sites where cargo is handled are already within scope of the existing direction making powers and suitable provision can therefore be made to ensure adequate security arrangements and requirements. However, there are those who may have security-facing or security sensitive roles who do not work where cargo screening is undertaken, for example at an air cargo agent's head office. These staff can have privileged knowledge and can potentially commit or facilitate criminal or terrorists acts yet, due to the limitation imposed by regulation 11 of the 1993 Regulations, are currently outside the scope of the direction making power. An employee at an air cargo agent's head office may be required to carry out the background checks required for another employee to have access to the cargo handling site. However, we are unable to direct that the employee

based at the head office themselves undergoes a background check, introducing a potential security vulnerability into the process. For this reason, this instrument removes the current restriction in the 1993 Regulations to enable the Secretary of State to issue a direction to an air cargo agent in relation to their activities, regardless of whether those activities take place at a location where cargo is handled. Any such direction remains limited to the purposes set out in section 10 of the ASA 1982, for the purposes of safeguarding the security of civil aviation.

7.3 The proposed amendment intends to address the identified gap in the regulation by expanding the Secretary of State's powers to cover all RA sites, whether cargo is handled on site or not.

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 There are currently no plans to consolidate the legislation that this instrument amends.

10. Consultation outcome

10.1 The Department has consulted industry on this instrument. The consultation opened on 24 March 2023, and closed on 12 May 2023.

10.2 Section 21F(3) of the Aviation Security Act 1982 requires the Secretary of State to consult organisations appearing to him to represent persons affected by the proposed regulations. The Secretary of State has done so through engagement with the Cargo Issues Working Group, an industry stakeholder group consisting of entities and representatives from the air cargo sector. In addition, a formal consultation paper on the proposed legislative amendment was sent to all UK RAs. 27 responses were received in response to the consultation, 26 of which raised no objections nor identified any financial or resource implications for their businesses as a consequence of the legislative amendment.

10.3 One respondent raised a concern and questioned whether the changes would require more sites to be regulated and whether that would incur additional costs. However, the SI only removes a limitation on the Secretary of State's existing powers to direct RAs. Those powers only apply to air cargo agents on the approved list. The instrument does not itself impose any additional burdens on directed parties. Any use of the direction making power will be assessed for its impact on industry before any such direction is issued.

10.4 There are around 464 RA sites in the UK (16 May 2023), however this number regularly fluctuates as RA designations expire and new sites open/close. The response to the consultation constitutes 27 responses covering 70 individual sites, meaning 15.08% of the overall sites were represented in the response.

10.5 The responses noted no objections nor offered any comments on the amendment, though discussions in the Cargo Issues Working Group (CIWG), a representative body of Air Cargo Agents and Carriers from across the UK, offered further opportunity for industry to engage. Feedback from these sessions confirmed that industry understand the need for the changes.

10.6 Of all the RA sites, 58 sites in the UK are "office only" operations and therefore handle no cargo directly. Of these sites, the consultation responses cover at least 6 "office only" sites, meaning around 10.34% of the directly impacted sites. All the other sites that handle cargo are already within scope of the existing direction making power.

10.7 Having considered the consultation responses the Secretary of State considers it proportionate, in the interests of the security of civil aviation, to remove the existing limitation in the 1993 Regulations to ensure that adequate direction can be made for RAs, regardless of whether the activities are taking place at a site where cargo is handled.

11. Guidance

11.1 No guidance will be issued in relation to this instrument as it is simply removing an existing limitation on the Secretary of State's direction making powers. The Department, working with the Civil Aviation Authority, will consider whether any guidance to industry is necessary to accompany any directions which may be issued in the future.

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 amendments do not place additional obligations on industry and so the instrument is expected to have an annual net impact of less than £5 million.

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 any concerns.

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), **Baroness Vere of Norbiton** 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 **Baroness Vere of Norbiton,** Parliamentary Under Secretary of State, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.