EXPLANATORY MEMORANDUM TO

THE AVIATION SECURITY (AMENDMENT) (NO. 2) REGULATIONS 2022

2022 No. 1313

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 Regulation (EU) 2015/1998 of 5 November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security ("the Implementing Regulation"). The amendments revoke parts of the Implementing Regulation, primarily Chapter 4 (which includes Attachment 4-C) of the Annex which sets out screening requirements for passengers and cabin baggage and point 1.3 of the Annex which sets out screening requirements for staff and items carried, as well as make consequential changes. The provisions will be reproduced, with minor amendments, in requirements imposed on industry by directions under Part 2 of the Aviation Security Act 1982 (c. 36) ("the ASA 1982"), and will be applicable to the use of current generation security equipment. New provisions will be included in those directions, applicable to Next Generation Security Checkpoint ("NGSC") equipment, so as to enable the most effective use of NGSC equipment and processes when deployed at UK airports.

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 Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security ("the Common Rules Regulation") sets out basic standards to be applied in the field of aviation security. Article 4(3) of the Common Rules Regulation authorised the Commission to adopt detailed measures for the implementation of the basic standards. The Commission did so through the Implementing Regulation.

6.2 When the Common Rules Regulation was retained at the end of the Implementation Period, following the UK exit from the EU, Article 4(3) was amended by the Aviation Security (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/547). This confers the power to make detailed measures for the implementation of the basic standards on the Secretary of State, exercisable by statutory instrument. This instrument, amending the Implementing Regulation, is made in exercise of that power.

6.3 The Implementing Regulation provides detailed measures for implementing aviation security standards. This includes provisions on the requirements for the screening of passengers and their cabin baggage, as well as staff and items carried, such as mobile phones and staff belongings. These detailed measures are supplemented in the UK by the Single Consolidated Direction (Aviation) (SCD) and other directions issued to industry by the Secretary of State in reliance on Part 2 of the ASA 1982.

6.4 The Implementing Regulation was itself supplemented by Commission Implementing Decision C (2015) 8005 ("the Commission Decision"). This decision set out additional and more detailed aviation security measures which, if made publicly available, would give adversaries or those seeking to cause harm to civil aviation, potential insights into how security measures could be exploited or circumvented. As such, the Commission Decision was made subject to the requirements of Commission Decision (EU, Euratom) 2015/444 which sets out the confidentiality requirements for EU materials with security sensitivities. The Commission Decision was to be distributed only on a "need to know" basis, subject to appropriate security controls. At the end of the Implementation Period, the Commission Decision was revoked by the 2019 Regulations, with the effect that it was not retained in UK law and the consequences that would have for its publication.

6.5 The relevant content of the Commission Decision was instead inserted into the SCD. As with the Commission Decision, publication of the SCD or other directions issued under the ASA 1982 would be contrary to the interests of national security as it would provide hostile actors with information which could be used to undermine or circumvent security measures. In passing the ASA 1982, Parliament recognised the national security implications of the Directions. The ASA 1982 does not require Directions to be published. Instead, it requires (through section 23) the Secretary of State to produce an annual report on the number of Directions issued under the relevant provisions of Part 2 and to lay that report before each House of Parliament, seeking to strike a balance between national security and Parliamentary accountability.

7. Policy background

What is being done and why?

7.1 The current regulatory framework for aviation security screening is split across multiple sources of law including retained EU law, the SCD, the Security Scanners Direction 2016 and a number of specific variation directions. The resulting complexity makes the regulation opaque and difficult to comprehend, including by the 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. The regulated aviation industry is highly supportive of the objective to simplify and consolidate the regulatory framework. An opportunity has arisen with the introduction of new airport screening technology. Airports are introducing new security screening technology,

referred to here as NGSC equipment, which is more effective and provides a more streamlined experience for passengers. Some airports are prepared to fully implement the technology from early 2023. Whilst the Secretary of State has the power to enable this through a Direction, the Implementing Regulation currently takes precedence. Chapter 4 of the Annex to the Implementing Regulation requires airports to treat all new screening technology as trial technology, which is placing an unnecessary burden on airports and on the Government. This SI resolves this issue by revoking Chapter 4 and cross-referenced provisions, which will then be consolidated and reproduced within the SCD.

7.2 NGSC equipment represents a major advancement in airport security screening standards as compared to "current generation" security screening. NGSC equipment has been extensively trialled and has demonstrated a significant increase in threat detection capability, while simultaneously enabling a substantially improved security experience and reducing the time taken for people to pass through security checkpoints.

7.3 UK airports have been directed for some years to introduce NGSC equipment and processes across all of their security lanes. The current date of implementation is June 2024. Despite the 2024 deadline, some airports are ahead of schedule and are ready to bring NGSC equipment fully online in early 2023. It is therefore imperative that, once installed, airports are able to make full use of the improved security outcomes and passenger experience that NGSC equipment offers in order to justify the installation costs.

7.4 Chapter 4 of the Implementing Regulation sets out the detailed requirements for the screening of passengers and cabin baggage. However, the existing requirements were designed for current generation security checkpoints. While these requirements would not necessarily prevent the use of NGSC equipment, the new security screening equipment that has already been mandated could not be used effectively within the existing regulatory framework. New detailed requirements need to be set down to ensure that both security objectives and an optimum passenger experience can be delivered. Early visibility of the detail of the new regulatory regime will also greatly assist airports in their planning for the introduction of NGSC equipment and processes, including decisions on procurement, operational configuration, recruitment, and training.

7.5 Whilst provisions for the operation of NGSC equipment will be made in the SCD, due to the superior legal status of retained EU law, any such direction must be compatible with the non-NGSC equipment specific and inflexible requirements as set out in the Implementing Regulation. Airports cannot operate NGSC equipment and processes as business as usual in this framework, instead needing to operate NGSC equipment under trial conditions only. This means that currently, if airports wish to operate NGSC equipment, they need to submit an application to the Department and, if approved, they need to submit monthly trial data reports. This process would be simpler if it were able to operate outside trial conditions.

7.6 The Instrument will enable the implementation of parallel security regimes – one based on the current Chapter 4 of retained EU law, and one to allow full operation of NGSC equipment – via the SCD. This will allow airports to transition between security regimes if and when they are ready to implement NGSC equipment and processes early, without the need to seek permission to run trials.

7.7 The Instrument therefore revokes Chapter 4 of the Annex to the Implementing Regulation in its entirety. Once the passenger and cabin baggage screening requirements have been removed from the Implementing Regulation, the Secretary of State will reintroduce them into the SCD but in such a way as to only be applicable to current generation screening equipment. New regulatory requirements will simultaneously be introduced into the SCD to provide the regulatory framework specific for the use of NGSC equipment. This means that where current generation screening equipment is being used, the regulatory requirements will seamlessly continue. As and when NGSC equipment is brought online at any given airport, the new requirements will automatically apply, permitting that equipment to be used to its full potential.

Cross references

7.8 The Instrument makes additional amendments to the Implementing Regulation in consequence of the revocation of Chapter 4. In particular, point 1.3 of the Annex which set out the screening requirements for staff and items carried at airports, and did so in part by cross-reference to Chapter 4. Point 1.3 has been revoked as part of this instrument and, as with the revocation of Chapter 4, provision will be made in the SCD. A small number of other provisions within the Implementing Regulation cross-referred to provisions within Chapter 4. These have been revoked and will be replaced with new provisions in the SCD, which can cross-refer to the relevant provisions within the SCD on passenger and cabin baggage screening.

Definitions

7.9 Chapter 4 of the Annex to the Implementing Regulation also included definitions of "liquids, aerosols and gels (LAGs)", "security tamper-evident bag (STEB)", and "liquid explosive detection systems (LEDS) equipment". In revoking Chapter 4, those definitions have been revoked. This instrument reinserts those definitions in appropriate positions within the Implementing Regulation. The Instrument has taken the opportunity to provide some additional clarity in the drafting, to simply the definitions where possible and to ensure consistency with UK drafting practice.

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 Aviation security regulation is currently split between retained EU law, primarily the Implementing Regulation, and UK measures contained in the SCD. The Department aims to consolidate this regulation into the SCD, so as to provide a single source of regulation for industry. However, due to the extent of existing regulation, it is necessary to conduct this consolidation in stages. The introduction of NGSC equipment and the revocation of Chapter 4 of the Annex to the Implementing Regulation made by this Instrument begin this process.

10. Consultation outcome

10.1 The Department has not consulted on this instrument. Industry have been widely consulted on the changes that will take place as part of the NGSC equipment upgrades and industry are supportive of the introduction of this new screening technology. The

purpose of this instrument is to revoke the parts of the Implementing Regulation which form a barrier to the effective use of NGSC equipment. Provision would then be introduced into the SCD to provide effective regulation for non-NGSC equipment, while allowing the use of NGSC equipment outside of trial conditions.

11. Guidance

11.1 The Civil Aviation Authority ("CAA") will prepare guidance for industry on the changes in the SCD, primarily the new requirements to be inserted into the SCD regarding the use of NGSC equipment.

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. The requirement to implement the NGSC equipment upgrades is already contained in the SCD, and this instrument simply revokes the parts of the Implementing Regulation that would prove a barrier to their effective use. Alternative provision will be made in the SCD. The requirement on industry as regards the use of non-NGSC equipment will remain the same.

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. The amendments being made by this legislation do not impose additional regulation or burdens.

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 of consolidating and simplifying the Implementing Regulation, whilst supporting the use of NGSC equipment outside trial conditions.

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 Ann Davey at the Department for Transport, Telephone: 020 7944 2530 or email: Ann.Davey@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sarah Nacey, 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 at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.