EXPLANATORY MEMORANDUM TO

THE AVIATION SECURITY (AMENDMENT) (NO. 2) REGULATIONS 2024

2024 No. 1293

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Mike Kane, Parliamentary Under Secretary of State, Minister for Aviation, Maritime and Security at the Department for Transport, confirms that this Explanatory Memorandum meets the required standard.

2.2 Chris Selim, Deputy Director for Aviation Security Strategy and Policy, at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Jack Davies at the Department for Transport, Telephone: 07890 968906 or email: jack.davies@dft.gov.uk can be contacted with any queries regarding the Instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Instrument amends the Annex to Regulation (EU) 2015/1998 of 5 November 2015 laying down detailed measures for the implementation of the basic standards on aviation security ("the Implementing Regulation"). References to Chapters in this Explanatory Memorandum are to Chapters in the Annex to the Implementing Regulation. The amendments revoke parts of the Implementing Regulation, primarily Chapter 1, which sets out detailed requirements for airport security, and Chapter 5, which sets out detailed requirements for hold baggage. They also make a necessary change to resolve a cross-referencing issue as a consequence of revoking Chapter 1. We will make alternative provision in the Single Consolidated Direction ("the SCD") which, while imposing regulatory requirements which are similar to industry and largely replicate the outcome of the revoked provisions, will be structured in a way which is more accessible to regulated industry.

Where does the legislation extend to, and apply?

4.2 The extent of this Instrument (that is, the jurisdictions which the Instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.3 The territorial application of this Instrument (that is, where the Instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 The current regulatory framework for aviation security is split across multiple sources of law including assimilated law and the SCD. The SCD is issued to industry under Part 2 of the Aviation Security Act 1982 (c. 36) ("the ASA 1982"). The resulting complexity makes regulation opaque and difficult to comprehend, including by regulated industry. There is a general policy intention to consolidate and simplify the regulatory framework to make regulations easier to understand, implement and enforce. Accordingly, the Instrument revokes Chapter 1 (airport security) and Chapter 5 (hold baggage) of the Implementing Regulation in their entirety. The substantive legal requirements previously set out in Chapters 1 and 5 of the Implementing Regulation will continue to be applicable to the organisations on which the requirements are currently placed but will instead be located in the SCD. Consolidating the regulatory requirements for aviation security into the SCD will also ensure that the Secretary of State is able to rapidly respond to changing threats and circumstances. As detailed in section 6 of this Explanatory Memorandum, amendments to the SCD can be drafted and issued to industry extremely quickly if a situation or threat so requires.

5.2 A similar process has already been undertaken for Chapters 1.3 (screening of persons other than passengers and items carried) and 4 of the Implementing Regulation via the Aviation Security (Amendment) (No. 2) Regulations 2022 (S.I. 2022/1313) in relation to screening of staff and items carried, and passengers and cabin baggage, and Chapters 6, 8 and 12 via the Aviation Security (Amendment) Regulations 2024 (S.I. 2024/590) in relation to cargo and mail, in-flight supplies, and security equipment. The intention is to repeat this process for each of the remaining Chapters of the Implementing Regulation on a chapter-by-chapter basis.

5.3 The remaining parts of Chapter 1 of the Implementing Regulation set out detailed airport security planning requirements. These include requirements for establishing landside and airside areas, including security restricted areas, and protecting boundaries from unauthorised access through access control, examination of vehicles, surveillance and patrols and other physical controls.

5.4 Chapter 5 of the Implementing Regulation sets out detailed requirements relating to hold baggage. This includes the screening and protection of hold baggage, and baggage reconciliation. Baggage reconciliation is a system used at airports to ensure and record that all passenger hold bags have been subject to the appropriate security procedures and are authorised to be loaded onto an aircraft.

What was the previous policy, how is this different?

5.5 There has been no significant change in policy, this is a continuation of the policy of consolidation of security regulation by moving requirements of the Implementing Regulation into the SCD.

6. Legislative and Legal Context

How has the law changed?

6.1 Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on rules in the field of civil aviation security sets out basic standards to be applied in the field of aviation security ("the Basic Standards Regulation"). Article 4(3) of the Basic Standards 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 Basic Standards Regulation was retained at the end of the Implementation Period, Article 4(3) was amended by the Aviation Security (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/547) to confer 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 airport security and security controls applied to hold baggage. These detailed measures are supplemented in the UK by the SCD, and other directions issued to industry by the Secretary of State in reliance on Part 2 of the ASA 1982.

6.4 The SCD already contains substantial additional detail on security controls and requirements that the UK aviation industry must implement in the field of aviation security, building on the relevant provisions of the Implementing Regulation. 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.

6.5 The Instrument makes an additional amendment to the Implementing Regulation in consequence of the revocation of Chapter 1. In Chapter 9 (airport supplies), point 9.0.4 made cross-reference to provisions contained in Chapter 1, so is being revoked with alternative provision being made in the SCD.

Why was this approach taken to change the law?

6.6 This is the only possible approach to meet the two desired policy outcomes of consolidating the regulatory requirements for aviation security and ensuring the flexibility to rapidly respond to changing threats and circumstances.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Department has not consulted on this Instrument, as there will be no significant changes to the substantive content of the regulation applicable to industry.

8. Applicable Guidance

8.1 The Civil Aviation Authority ("the CAA") will update the existing guidance for industry on Chapters 1 and 5, to reflect the regulatory content being moved from the Implementing Regulation to the SCD. The substantive requirements of regulation remain unchanged. This will be available from 31 January 2025.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this Instrument because industry will not be required to make any changes, as this Instrument makes no significant policy changes. A light-touch appraisal has been undertaken instead, which has identified no material economic costs.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because there will be no significant changes to the substantive content of the regulation applicable to industry.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because there will be no significant changes to the substantive content of the regulation applicable to industry.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is the Department, along with the CAA, will monitor the impact of the changes through engagement with industry and compliance activities to ensure that the legislation continues to support the policy objective.

10.2 The Instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Mike Kane, Parliamentary Under Secretary of State, Minister for Aviation, Maritime and Security has made the following statement:

"In my view, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the provisions of the Aviation Security (Amendment) (No. 2) Regulations 2024 are such that a statutory review clause would be inappropriate, for proportionality reasons, given the costs associated with such a review and the limited scope for change."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the Instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This Instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").