EXPLANATORY MEMORANDUM TO

THE AVIATION SECURITY (AMENDMENT) REGULATIONS 2024

2024 No. 590

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 Lord Davies of Gower, Parliamentary Under Secretary of State at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

2.2 Chris Selim, Deputy Director for Aviation Security Strategy & 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 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 6 of the Annex, which sets out detailed requirements for Cargo and Mail, Chapter 8 which sets out requirements for In-flight Supplies, and Chapter 12, which sets out requirements for Security Equipment, as well as making consequential changes as a consequence of revoking chapters 6, 8 and 12. The provisions in Chapters 6, 8 and 12 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").

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 Single Consolidated Direction ("the SCD"), issued to industry under Part 2 of 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 Chapters 6 (cargo and mail), 8 (in-flight supplies) and 12 (security equipment) of the Annex to the Implementing Regulation in their entirety. Once the requirements have been removed from the Implementing Regulation, the Secretary of State will immediately reintroduce them into the SCD, with minor amendments, so that they will continue to be applicable to the organisations on which the requirements are currently placed. 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.

5.2 A similar process has already been undertaken for Chapters 1.3 and 4 of the Annex to 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. 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 Chapter 6 of the Implementing Regulation sets out detailed requirements for the required security controls, screening measures and protection of cargo and mail to be carried by civil aircraft. It also sets out requirements for operators of aircraft carrying cargo and mail into the United Kingdom from other countries.

5.4 Chapter 8 of the Implementing Regulation sets out detailed requirements for the security controls, screening measures, and protection of in-flight supplies. In-flight supplies are items that are intended to be taken on board an aircraft for use, consumption or purchase by passengers or crew during the flight. This includes items such as in-flight meals, duty free goods, blankets, and newspapers.

5.5 Chapter 12 of the Implementing Regulation sets out detailed requirements and standards for equipment used to screen passengers, staff, baggage, cargo and in-flight supplies. As well as specifying the types of equipment that may be used, the Chapter also contains provisions on how equipment should be used in order to meet the required standards.

What was the previous policy, how is this different?

5.6 There has been no significant change in policy, this is a continuation of the policy of consolidation of security regulation by moving Chapters 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 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, 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 security controls applied to cargo and mail; security controls applied to in-flight supplies; and the use of security equipment by airport operators, air carriers and other entities. 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 additional amendments to the Implementing Regulation in consequence of the revocation of Chapters 6, 8 and 12. In Chapter 7 (air carrier mail and air carrier materials), points 7.0 and 7.1.1 made cross-reference to provisions contained in Chapter 6. As Chapter 6 is being revoked by this Instrument, points 7.0 and 7.1.1 are also being revoked and alternative provision will be made in the SCD. Prior to this Instrument, Chapter 8 included definitions of "LAGs" and "STEB[1]". Chapter 9 (airport supplies) also defined those terms, but by cross-reference to the definitions in Chapter 8. Those definitions have therefore been re-inserted into Chapter 9.

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 prepare guidance for industry on the changes in the SCD, primarily the new requirements to be inserted into the SCD regarding cargo and mail, in-flight supplies, and security equipment which will reflect the existing provisions being revoked from the Implementing Regulation. This will be available from 1 June 2024.

[1] LAGs means liquids, aerosols and gels, which include pastes, lotions, mixtures of liquids and solids and the contents of pressurised containers. STEB means a security tamper-evident bag.

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 there will be no significant policy changes. A light-touch appraisal has been undertaken instead, which has identified no material 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 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 Lord Davies 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) 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").