EXPLANATORY MEMORANDUM TO

THE AVIATION SAFETY (AMENDMENT) REGULATIONS 2026

2026 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 His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Keir Mather MP, Parliamentary Under Secretary of State for Aviation, Maritime and Decarbonisation at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

2.2 Ajita Hathlia, Deputy Director for Aviation Safety, Innovation and Skills, at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Emily Lee at the Department for Transport can be contacted by email at the following address with any queries regarding the instrument: aviationsafety@dft.gov.uk. Alternatively, the department can be contacted by telephone: 0300 330 3000.

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) 2018/1139 ("the Basic Regulation") to update the requirements the UK Civil Aviation Authority ("CAA") must meet before it can issue exemptions to industry from most of the laws covered by the Basic Regulation (see paragraph 5.1-5.6).This instrument also removes a criminal sanction that has never been used from the Air Navigation Order 2016 ("the ANO"). This criminal sanction was related to flight operations rule contained in Commission Regulation (EU) No 965/2012 ("the Air Operations Regulation").

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) 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. In addition, it applies to aircraft registered in the UK wherever they are.

5. Policy Context

What is being done and why?

Article 71 of the Basic Regulation

5.1 This instrument amends Article 71 of the Basic Regulation. The Basic Regulation forms the foundation for UK aviation safety rules. It covers:

- Safety standards for aircraft design, maintenance, and operations;
- Licensing and certification of pilots, engineers, and organisations;
- Environmental requirements like noise and emissions; and
- Oversight responsibilities handled by the CAA.

5.2 The Basic Regulation is the top-level framework, and underneath it sits a series of Implementing Rules (IRs) that provide the detailed requirements for different areas of aviation safety e.g. air operations, airworthiness and aerodromes.

5.3 Article 71 of the Basic Regulation sets out the process the CAA must follow in order to issue exemptions to industry from the majority of IRs under the Basic Regulations. The CAA cannot issue exemptions from the essential safety requirements, set out in Chapter 3 of the Basic Regulation, which must be met under all circumstances. For example, there is an essential airworthiness requirement that aircraft must not have design features or details that are known to be hazardous.

5.4 Currently, the CAA can only exempt industry in the event of urgent unforeseeable circumstances or where there is urgent operational need and subject to additional conditions. For example, the CAA issues exemptions on the basis of urgent operational need if the Government needs to carry weapons on non-military planes to an overseas destination. The current conditions limit industry's research and development of electric vertical take-off and landing/advanced air mobility aircraft, uncrewed aircraft systems and alternative fuels. The current conditions also prevent practices that could improve safety when those practices do not fully meet all the detailed requirements in the IRs (for example, temporary air traffic control at an event with a large number of helicopters transporting attendees) (see paragraph 5.5).

5.5 This instrument will remove the current conditions, allowing the CAA to issue exemptions in more circumstances, for example to trial new technology or enable day-to-day activities which the CAA know to be safe but cannot currently facilitate under the existing legislation. Examples of this include:

- Trialling new types of aircraft;
- Testing unmanned aircraft, new fuel types, or new technology that is yet to be developed or conceptualised by industry;
- Enabling limited air traffic support for one-off major events (e.g. Royal Ascot) where there are numerous arrivals on private or chartered helicopters. This activity is not usually controlled by local Air Navigation Service Providers (ANSPs) or other Air Traffic Control (ATC) services because complying with the relevant requirements in assimilated law is onerous and disproportionate for one-off events. Currently, the CAA cannot exempt ANSPs or ATC from the requirements because the need is not eligible under the conditions. Removing the conditions would allow ANSPs/ATC to provide radio assistance or weather reports to helicopters landing at one-off major events, improving safety.

5.6 This amendment will align Article 71 of the Basic Regulation with Article 266 of the ANO where there are no conditions. It is important to note that the CAA does not

intend to use these powers to regulate by exemption and the granting of exemptions will continue to be exceptional - the CAA will continue to regulate as normal but can issue exemptions in more circumstances.

5.7 The CAA consulted on a draft policy framework on its proposed use of the amended exemption power. The framework details when the CAA may and may not grant an exemption, the principles applied when granting an exemption, requirements for applicants, and additional CAA powers and processes. For example, when granting an exemption, the CAA must ensure that the scope and duration of the exemption is clear with an identified end date. When applying for an exemption, applicants must also provide a robust safety risk assessment demonstrating that high standards of safety can be maintained. All responses to the consultation were in favour of the proposals (see paragraph 7.2).

Extended Diversion Time Operations

5.8 This instrument also removes a criminal sanction from the ANO regarding a flight operations rule contained in the Air Operations Regulation. The flight operations rule is related to the threshold distances from emergency aerodromes for two-engine aeroplanes, and the requirement to obtain operational approval to exceed the threshold distances. The offence has never been prosecuted by the CAA, and the CAA has assessed that it is highly unlikely such criminal enforcement will ever occur because of the CAA's ability to use regulatory enforcement powers (e.g. taking away relevant licences), which are sufficient to ensure compliance with this rule without the need for the criminal sanction. The removal of the criminal sanction is required so the forthcoming new extended diversion time operations provisions included in the Aviation Safety (Amendment) (No. 2) Regulations 2026, due to be laid in summer 2026, can go ahead.

What was the previous policy, how is this different?

Article 71 of the Basic Regulation

5.9 The previous policy limited the situations where the CAA could use Article 71 of the Basic Regulation to exempt regulated entities from requirements under the Basic Regulation (apart from essential requirements in Chapter 3) to only in the event of urgent unforeseeable circumstances or where there was an urgent operational need. This instrument removes those requirements, broadening the range of appropriate circumstances the CAA can issue exemptions under Article 71.

Extended Diversion Time Operations

5.10 The previous policy allowed the CAA to prosecute pilots and operators of twin-engine aeroplanes who breached the threshold distance from emergency aerodromes without obtaining the relevant operational approval – a rule contained in the Air Operations Regulations. Under the new policy, the CAA can no longer prosecute individuals who breach this rule. However, this offence has never been prosecuted by the CAA previously, and it is highly unlikely such criminal enforcement will be needed in the future. Furthermore, the CAA already has sufficient regulatory enforcement powers in place to ensure compliance with this rule, without the need to prosecute.

6. Legislative and Legal Context

How has the law changed?

6.1 Regulation 2 amends assimilated provisions in Schedule 13 of the ANO to remove a criminal sanction from the ANO regarding a flight operations rule contained in the Air Operations Regulation.

6.2 Regulation 3 amends article 71 of the Basic Regulation to remove conditions that must be met before the CAA may grant an exemption from all but essential requirements of the Regulation and permits the CAA to attach such conditions as it considers appropriate before granting such an exemption.

6.3 Section 14(5) of the 2023 Act requires that any changes made to secondary assimilated law under section 14 of that Act must not increase the overall regulatory burden in that area (including changes made previously under section 14).

6.4 The amendments to Article 71 of the Basic Regulation reduce the regulatory burden as they will enable industry to approach the CAA for an exemption from the requirements in more circumstances than before, alleviating a regulatory burden in cases where the CAA considers it appropriate to issue an exemption. The process for applications will not change and the CAA do not expect the number of exemptions granted to increase significantly.

6.5 The amendments to repeal the criminal offence associated with the Air Operations regulation reduces the regulatory burden as the effect of the change is to remove a criminal sanction for non-compliance.

Why was this approach taken to change the law?

6.6 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

Article 71 of the Basic Regulation

7.1 The CAA consulted on the proposed amendments to article 71 between August 2025 and September 2025 and published both the consultation and consultation response document on the CAA website[1]. The CAA received 51 responses from both individuals and organisations. The majority were in favour of the proposed changes to the legislation, with 82% of respondents agreeing with the proposals. Nine respondents raised concerns around safety, governance, transparency, and the potential for exemptions to be used routinely rather than exceptionally. These amendments are intended to enable industry to approach the CAA for an exemption from the requirements in more circumstances than before. However, it is important to note that the CAA does not intend to use these powers to regulate by exemption and the granting of exemptions will continue to be exceptional. The CAA is committed to maintaining high standards of safety while exercising its functions as the independent aviation regulator. The CAA will ensure that it has the necessary expertise and resources to assess exemption applications rigorously and consistently. The consultation response document has been published on the CAA's website.

7.2 To address concerns raised by respondents in the first consultation, the CAA commissioned a second consultation to address the policy framework they follow

[1] Basic Regulation Article 71 amendment - Civil Aviation Authority - Citizen Space

when issuing exemptions under article 71. The CAA received 11 responses from both individuals and organisations, and all responses were in favour of the proposed policy except for one that proposed certain changes to the content and wording of the policy. The CAA considered these proposed changes and decided they were either already sufficiently included or otherwise did not meet the objective of the proposed change. The consultation and consultation response document can be found on the CAA website.[2]

Extended Diversion Time Operations

7.3 No consultation was undertaken specifically on the removal of the criminal sanction. However, the CAA consulted industry on the wider proposed amendments in the Aviation Safety (Amendment) (No. 2) Regulations 2026 between April – May 2025. The consultation can be found on the CAA website.[3] The consultation response document will be published before the Aviation Safety (Amendment) (No 2) Regulations 2026 is laid in summer 2026.

8. Applicable Guidance

8.1 To help and guide industry with changes to aviation safety legislation, the CAA is required to publish Acceptable Means of Compliance (AMC), Guidance Material (GM) and, where appropriate, Certification Standards (CS). These flow from, and are consistent with, the language and requirements of the aviation safety regulations they accompany. AMC also refers closely to the regulations, and the numbering reflects that of the amended requirements. The CAA can therefore only finalise the AMC shortly before the instrument is made, despite preparations beginning far in advance, and therefore aim to publish guidance as close to the laying date of the SI as possible but before the first coming into force date of 1st October 2026. All approved and published UK civil aviation safety regulations and AMC/GM/CS are stored on the CAA website.[4]

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 there is no significant impact anticipated on businesses. Instead, two De Minimis Assessments have been published alongside this instrument to measure the impact of the amendments to Article 71 of the Basic Regulation and the removal of the criminal sanction from the ANO. Overall, the amendments to Article 71 are expected to have a positive impact. There are likely to be minimal transition costs for the CAA and aviation businesses, which will be outweighed by long-term reductions in CAA administrative costs and innovation benefits experienced by businesses. Negligible business impacts are anticipated as a result of the removal of the criminal sanction from the ANO because the criminal sanction has never been used and the CAA can continue using alternative regulatory enforcement powers to secure compliance. There is a positive non-monetised impact anticipated, which is harmonisation with international partners and a continuation of the UK's strong aviation safety record.

[2] Consultation on CAA Exemptions Policy in support of Basic Regulation Article 71 amendment (UK Regulation (EU) 2018/1139) - Civil Aviation Authority - Citizen Space
[3] Extended Diversion Time Operations (EDTO) - Civil Aviation Authority - Citizen Space
[4] UK Regulations | UK Civil Aviation Authority

Impact on businesses, charities and voluntary bodies

9.2 There is no significant impact on business, charities or voluntary bodies from the amendments to article 71 because the process of industry applying for exemptions and the CAA issuing exemptions to industry will remain the same. Removing the criminal sanction from the ANO will also have a low impact on business as it has never been used.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no impact on the public sector because there are no public sector financial costs associated with any of the changes to the regulations.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that aviation safety legislation is subject to regular review. The regular review takes place on a much more frequent basis than the five-year interval required under the Post Implementation Review clause. Necessary and appropriate amendments are identified through a process of ongoing review of aviation safety legislation necessitated by being a part of an international system and being required to regularly consider, update and align with international standards and developments in aviation safety.

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, Keir Mather MP, Parliamentary Under Secretary of State, 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 Safety (Amendment) Regulations 2026 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 This instrument was laid in draft for sifting before the Transport Select Committee ("TSC) and the Secondary Legislation Scrutiny Committee ("SLSC") on 21 January 2026. The sifting period ended on 9 February 2026.

11.2 Both Committees recommended that the instrument be upgraded to the affirmative procedure.

11.3 In the Sixth Report of Session 2024-26[5], the TSC said that:

"…the changes proposed by this instrument could represent a significant diminution of existing regulatory protections. On that basis we believe that it is appropriate for this instrument to be considered under the affirmative procedure, which would give the House the opportunity to scrutinise the proposed changes in more depth."

11.4 In the 50th Report of Session 2024-26, the SLSC said that:

[5] Sifting of proposed negative statutory instruments

"In law, the instrument would appear to reduce regulatory protections. In practice, while it may contribute to improved safety, there are questions over whether the use of the exemption would continue to be exceptional. As such, the House may wish to debate this instrument to seek further assurances from the Minister regarding the use of exemptions. We therefore recommend that the instrument should be subject to the affirmative procedure."

11.5 Following sift, paragraph 5.7 of this Explanatory Memorandum was added to provide further information on the framework the CAA must follow when considering whether to issue an exemption.

12. European Convention on Human Rights

12.1 Keir Mather MP, Parliamentary Under Secretary of State at the Department for Transport has made the following statement regarding Human Rights:

"In my view the provisions of the Aviation Safety (Amendment) Regulations 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is made under sections 14(1), 14(2) and 14(4)(b) of the 2023 Act and therefore relates to the reform of assimilated law and was subject to the sifting process.