EXPLANATORY MEMORANDUM TO

THE SINGLE EUROPEAN SKY (NATIONAL SUPERVISORY AUTHORITY) (AMENDMENT) REGULATIONS 2018

2018 No. 1331

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends a schedule in the Single European Sky (National Supervisory Authority) Regulations 2013 ("2013 Regulations") to enable the Civil Aviation Authority (CAA) to enforce new implementing rules for interoperability that have been introduced since the 2013 Regulation came into force. These amendments are necessary following a statutory review of the 2013 Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Schedule to this instrument includes references to EU implementing regulations and decisions, with specific amendments associated with some references. This approach was taken in order to specify exactly which version of each regulation or decision was incorporated into the 2013 Regulations and enable Parliament to scrutinise the enforcement provisions being introduced through the action of EU regulations. The inclusion of ambulatory referencing, i.e., "as amended from time to time", would undermine Parliament's ability to scrutinise future amendments.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

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 This instrument amends existing domestic legislation that was introduced to support the EU's Single European Sky (SES) initiative. It will ensure that the legal framework remains up-to-date and relevant.

6.2 The EU legislative basis for the SES was laid in April F with four high-level EU Regulations ("EU SES Regulations"):

- Regulation (EC) No 549/2004 laying down the framework for the creation of the Single European Sky (the Framework Regulation),
- Regulation (EC) No 550/2004 on the provision of air navigation services in the Single European Sky (the Service Provision Regulation),
- Regulation (EC) No 551/2004 on the organisation and use of the airspace in the Single European Sky (the Airspace Regulation), and
- Regulation (EC) No 552/2004 on the interoperability of the European Air Traffic Management network (the Interoperability Regulation).

6.3 The EU SES Regulations include powers delegated to the EU Commission to make Implementing Regulations (IRs). The EU SES Regulations and the IRs made under them are binding in their entirety and directly applicable in the UK, however, the EU SES Regulations still require Member States to make provisions in their national law to fulfil certain specific obligations.

6.4 One requirement under the Framework Regulation is for Member States to designate a National Supervisory Authority (NSA) for the purpose of carrying out the tasks and functions assigned to such an authority under the EU SES legislation. The UK's Single European Sky (National Supervisory Authority) Regulations 2004 ("2004 Regulations") designated the Civil Aviation Authority (CAA) as the NSA in the UK. This designation continued when the 2004 Regulations was superseded by the 2013 Regulations.

6.5 As NSA, the CAA is required to perform the tasks and functions in and arising under Article 3 of the Interoperability Regulation. The IRs made under Article 3 that are enforceable by the CAA are those listed in Schedule 2 of the 2013 Regulation. However, this schedule now needs to be amended to include new IRs that have been introduced since the 2013 Regulations came into force.

7. Policy background

What is being done and why?

7.1 In the late 1990s, with air traffic related delays increasing, the EU embarked on work to consider how EU competence could help ensure that the Air Traffic Management (ATM) system responded to the challenge of traffic growth. The Commission has previously estimated that inefficiencies in the European ATM system cost airlines approximately 4 billion euros per annum in comparison to the US system. Currently circa. 40% of all departure delays across the EU are still attributed to ATM. The objective of the SES initiative was to deliver a seamless, safe, sustainable, interoperable, cost-effective, operationally efficient, and modern European Air Traffic Management Network able to meet future capacity demands and benefit air carriers and passengers.

7.2 The EU SES Regulations were introduced in 2004 and they required Member States to appoint an NSA for the purpose of carrying out the tasks and functions assigned to NSAs under the EU SES Regulations. This was originally implemented in the UK through the 2004 Regulations, and the Single European Sky (Functions of the National Supervisory Authority) Regulations 2006 ("2006 Regulations").

7.3 The 2004 EU SES Regulations were amended in 2009 by Regulation EC 1070/2009 as part of the second package of Single European Sky initiative whereby the CAA was designated the NSA for a number of new functions (see 7.4). The EU SES Regulation, as amended in 2009, therefore required the UK to bring forward new domestic law that would support the EU SES Regulations.

7.4 The UK met its obligations through the 2013 Regulations, which consolidated the 2004 Regulations and 2006 Regulations into a single instrument, and designated the CAA as the NSA for specific functions as set out in the original 2004 EU SES Regulations, and as amended in 2009 for the newer functions. These included but were not limited to, administrating the ATM system, being responsible for the economic regulation of the UK's Air Navigation Service Provider (i.e. NATS), oversight of performance and charging, ATM safety, air traffic flow management and the monitoring of operational efficiencies in the UK. The 2013 Regulations also set a provision for periodic review.

7.5 A Post Implementation Review (PIR) of the 2013 Regulations has been prepared, the outcome of which illustrates that the 2013 Regulation has met its policy objectives. The intention was to publish the PIR prior to the making of this instrument, but it will now be published at the earliest available opportunity.

7.6 To the Government's knowledge, and the knowledge of the CAA, the 2013 Regulations has not brought about any unintended direct or in-direct consequences for the CAA as regulator, or to businesses. The CAA has also agreed with our assessment, that the UK has not "gold plated" its implementation, and that the Regulation has not placed UK businesses at a disadvantage against other EU competitors.

7.7 In accordance with obligations set out in Article 3 of the Interoperability Regulation, Schedule 2 of the 2013 Regulations now needs to be amended to include new IRs that have been introduced since the 2013 Regulations came into force. The specifics of those implementing regulations are as set out below:

- Commission Regulation (EU) No 283/2011 of 22 March 2011 amending Regulation (EC) No 633/2007 as regards the transitional arrangements referred to in Article 7;
- Commission Implementing Decision of 9 December 2011 on exemptions under Article 14 of Commission Regulation (EC) N° 29/2009;
- Commission Implementing Regulation (EU) No 1028/2014 of 26 September 2014 amending Commission Implementing Regulation (EC) No 1207/2011 laying down requirements for the performance and the interoperability of surveillance for the single European sky;
- Commission Implementing Regulation (EU) No 1029/2014 of 26 September 2014 amending Regulation (EC) No 73/2010 laying down requirements on the quality of aeronautical data and aeronautical information for the single European sky;

- Commission Implementing Regulation (EU) No 2015/310 of 26 February 2015 amending Regulation (EC) No 29/2009 laying down requirements on data link services for the single European sky and repealing Implementing Regulation (EU) No 441/2014;
- Commission Implementing Regulation (EU) 2016/2120 of 2 December 2016 amending (EC) No 1033/2006 as regards the provisions referred to in Article 3(1).
- Commission Implementing Regulation (EU) 2016/2345 of 14 December 2016 amending Regulation (EC) No 262/2009 and Implementing Regulation (EU) No 1079/2012 as regards references to ICAO provisions; and
- Commission Implementing Regulation (EU) 2017/386 of 6 March 2017 amending Implementing Regulation (EU) No 1207/2011 laying down requirements for the performance and the interoperability of surveillance for the single European sky".
- Commission Implementing Regulation (EU) 2017/2160 of 20 November 2017 amending Implementing Regulation (EU) No 1079/2012 as regards certain references to ICAO provisions.
- Commission Implementing Regulation (EU) 2018/139 of 29 January 2018 amending Regulation (EC) No 1033/2006 as regards references to ICAO provisions.

7.8 There has been no public interest in the policy.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union and does not trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans to consolidate the legislation covered by this instrument.

10. Consultation outcome

10.1 No public consultation was required as this instrument amends and amends a schedule to reflect new responsibilities under EU law which are directly applicable. We have, however, consulted the CAA, and their assessment as regulator is that this regulation will continue to support their ongoing works as NSA, and that it will not place any additional cost burdens on them or industry.

11. Guidance

11.1 None.

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 An Impact Assessment has not been prepared for this instrument because it only amends a schedule to reflect new responsibilities under EU law which are directly applicable.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 This instrument does not include a statutory review clause, however, the 2013 Regulations will continue to have a review clause stating that it will be subject to periodic review.

15. Contact

15.1 Jonathan Friel, Senior Policy Advisor, at the Department for Transport Tel: 07469 441 832 or email: jonathan.friel@dft.gsi.gov.uk can answer any queries regarding the instrument.

15.2 Sarah Bishop, Deputy Director for the Aviation Policy Directorate at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Baroness Sugg, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.