EXPLANATORY MEMORANDUM TO

THE SPACE INDUSTRY (LICENCE EXEMPTION FOR MILITARY ACTIVITIES OF ALLIES) REGULATIONS 2025

2025 No. 222

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.

2. Declaration

2.1 Mike Kane MP, Parliamentary Under Secretary of State at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

2.2 Jenny Ward, 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 The Space Team at the Department for Transport, email: spaceteam@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 The Space Industry Act 2018 ("the 2018 Act") created the high-level legal framework to enable commercial spaceflight and associated activities to be carried out from the UK. It contains delegated powers to make secondary legislation.

4.2 The 2018 Act prohibits any person from carrying out spaceflight activities without a licence. This means that the armed forces of the UK's allies, their contractors or agents, personnel of a member or official of a foreign government or a part of a foreign government, or an official of an agency or authority of such a government, and international military organisations (IMOs), collectively referred to as "authorised persons" in this instrument, would need the authorisation of a licence to carry out defence-related spaceflight activities from a UK spaceport or a Ministry of Defence (MOD) owned and/or operated firing site.

4.3 This instrument exempts authorised persons from the prohibition under the 2018 Act when they carry out specified defence-related spaceflight activities. It further exempts contractors of the MOD from the prohibition of carrying out range control services without a licence in relation to the same specified defence-related spaceflight activities. Range control services cover the overseeing, clearing for hazard, and other controls of the zone or flightpath of a rocket or other craft ("the range") to make spaceflight activities safer. These services include tracking, notification, surveillance and identification of hazard areas, and co-ordination between relevant parties.

Where does the legislation extend to, and apply?

4.4 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.

4.5 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 UK legal and regulatory framework sets out that spaceflight and associated activities require a licence under the 2018 Act. These include spaceport, operator, range control and return licences. Under the 2018 Act, the term "operator licence" covers a broad range of spaceflight activities – including the launch of a spacecraft, operation of a spacecraft in orbit (for example, operation of a satellite), and the return (landing) of a spacecraft. Spacecraft is defined in section 2(6) of the 2018 Act. Under this exemption, Allied Forces will be launching sub-orbital rockets to test against ballistic targets. A "range control licence" allows a person or organisation to provide range control services in support of licensed spaceflight activities at a designated range.

5.2 The 2018 Act also contains powers for the Secretary of State ("SoS") to make regulations exempting persons or activities from the requirement to hold an operator or range control licence.

5.3 These exemptions would be granted only if the SoS is satisfied that the relevant conditions set out in section 4(2)(a) – (c) and section 7(4)(a) – (c) of the 2018 Act have been met. The conditions include that the SoS must be satisfied that the requirement to hold an operator licence or range control licence is not necessary to secure public safety, the health and safety of spaceflight participants and compliance with the UK's international obligations. The element of securing the health and safety of spaceflight participants is not applicable to this instrument, because the carrying of crew or passengers are excluded from permitted activities allowed by the instrument.

5.4 There are some activities that the MOD is able to carry out, outside of the 2018 Act. For example, it can test launches of rockets and other craft (as defined in section 1(5) of the 2018 Act), that are capable of operating above the stratosphere for the purposes of defending against ballistic missiles. This is as a result of the presumption that an Act (in this case the 2018 Act) does not bind the Crown (thereafter referred to as "Crown Immunity" for convenience).

5.5 However, defence activities (especially development, test, and trials) may include elements that are delivered by other bodies that are not within the scope of Crown Immunity. These include the armed forces of the UK's allies and their contractors or agents, members or officials of a foreign government or a part of a foreign government, and officials of an agency or authority of such a government and international military organisations.

5.6 The instrument exempts authorised persons from the need to hold an operator licence in order to carry out sub-orbital launch activities, using the powers set out in section 4(2) of the 2018 Act. A sub-orbital spaceflight is one in which a rocket may reach outer space, but it does not complete one orbital revolution of the planet, nor will it reach escape velocity.

5.7 Contractors or agents carrying out range control services directly for the Crown are covered by Crown Immunity. The SoS is also specifically empowered by section 7(1) of the 2018 Act to provide range control services. Crown Immunity does not extend to range control services carried out in the UK for or on behalf of authorised persons. Therefore, this instrument also, using powers under section 7(4) of the 2018 Act enables MOD contractors to provide range control services at MOD firing sites to authorised persons without the need for a range control licence.

5.8 The Civil Aviation Authority ("CAA"), as the regulator appointed under the 2018 Act, has considered the respective legislative and regulatory frameworks regulating the activities that are covered by the instrument, comparing the military system to its civilian equivalent. The conclusion reached by the CAA was that the relevant safety frameworks achieve equivalent safety outcomes. The CAA's conclusions are available in report form, which is available on request. The SoS has reviewed and considered the CAA's analysis and is satisfied that the military regulatory bodies – the Defence Safety Authority (DSA) and the Defence Ordnance, Munitions and Explosives Safety Regulator (DOSR) – which have a long track record of maintaining public safety, should continue to do so for activities that would be in scope of the proposed exemption. The SoS is satisfied that a SIA licence is therefore not necessary to secure public safety for those activities

5.9 All exempt activities will be regulated by the DSA and DOSR through a series of internal MOD regulations and codes of practice. The CAA retains residual powers under the 2018 Act for monitoring and enforcement in relation to the exempt activities.

5.10 The DSA/DOSR internal regulations require that a Safety and Environmental Management System be in place. As part of putting the system in place, a legal review was conducted to secure UK's compliance with international law, and UK legislation, and any relevant standards.

5.11 Through equivalent public safety standards in internal regulations / codes of practice set out in DSA/DOSR regulations, the MOD has demonstrated to the SoS that there is an appropriate system in place of policies, regulations and procedures to secure compliance with the international obligations of the UK.

What was the previous policy, how is this different?

5.12 There are no changes to any policy by this instrument. This instrument grants exemption from some of the 2018 Act's licensing requirements, using the powers in sections 4(2) and 7(4) of the 2018 Act, as set out in paragraphs 5.2 – 5.3.

6. Legislative and Legal Context

How has the law changed?

6.1 The 2018 Act prohibits a person from carrying out spaceflight activities in the UK without the authority of a licence. The type of licence required by the 2018 Act for carrying out spaceflight activities is an operator licence. Range control services may only be provided under the 2018 Act by the SoS, or a person authorised to provide them by a range control licence. The 2018 Act confers on the SoS the powers to exempt, by regulations, a person from the requirement to hold an operator licence and the prohibition from providing range control services without a licence. Regulations making provision for the exemptions may only be made if certain conditions as set out in sections 4(2) and 7(4) of 2018 Act are satisfied.

6.2 This instrument exempts authorised persons from the requirement to hold an operator licence when carrying out certain defence-related suborbital activities for national security purposes. A person who provides range control services in connection with the exempt activities is equally exempted from the prohibition from providing range control services without a range control licence. The instrument also makes an amendment to the Space Industry Regulations 2021 ("SIR"), to set out that references to a "space site" in the SIR do not include references to a ship from which permitted activities are carried out by authorised persons.

Why was this approach taken to change the law?

6.3 An alternative approach to changing the law would be to amend the 2018 Act. Changing the law through this instrument is a more efficient use of Parliamentary time to achieve the policy objective set out at paragraph 5.

7. Consultation

Summary of consultation outcome and methodology

7.1 The SoS is required by section 68(7) of the 2018 Act to conduct a public consultation before making regulations to which section 68(6) of the 2018 Act applies. A 4-week public consultation[1] on the policy proposals was carried out between 16 September 2024 and 13 October 2024.

7.2 The consultation invited engagement from members of the public, although the Department specifically brought it to the attention of space industry stakeholders such as UK spaceports, several UK launch providers, QinetiQ (a UK defence contractor that operates MOD's Test & Evaluation firing sites under contract to MOD), and UKspace (the official trade association of the UK space industry, representing and promoting space to government and other key stakeholders nationally and internationally). We also alerted the Department for Science, Innovation and Technology, the UK Space Agency and the Department for Business and Trade, along with the Territorial Offices (TOs), to ask for their comments.

7.3 There were four responses. One was from a licensed UK spaceport, suggesting their preference for exempt activities to take place from a licensed spaceport. However, section 12(4) of the 2018 Act states that spaceports' licences may allow the spaceport licence holder to carry out from their spaceport, spaceflight activities of their own or make their spaceport available for spaceflight activities by persons licensed to engage in the activities. As such, a licensed spaceport is not able to make their spaceport available for activities exempt under section 4(2) of the Act, at this time. The Department is however engaged in ongoing discussions with other government departments to explore the possibility of involving commercial spaceports in potential military activity going forward. Such possible involvement would require changes to the Space Industry Act 2018.

7.4 Two of the responses were from members of the public, who disagreed with the proposals, with most of their comments focused on the conflicts in Israel and Yemen, and their views about trust of government, rather than specifically about the proposed exemptions. The fourth response was assessed as entirely spam.

[1] The consultation and government response on "Draft policy proposals for exempting defence-related activities from the Space Industry Act 2018" can be found at https://www.gov.uk/government/consultations/draft-policy-proposals-for-exempting-defence-related-activities-from-the-space-industry-act-2018/draft-policy-proposals-for-exempting-defence-related-activities-from-the-space-industry-act-2018.

7.5 Although defence is a reserved matter, the Government engaged with the TOs on the policy proposals, prior to the consultation being launched, and alerted them to the launch of the consultation, seeking their views. The TOs did not raise any objections.

7.6 Given that the comments received do not offer any implementable ways to change the policy, the proposals as consulted on have been put forward in the draft affirmative statutory instrument.

7.7 We have provided the Government response to the consultation as the statutory report of the Secretary of State on the consultation to accompany the instrument.

8. Applicable Guidance

8.1 The Department for Transport is not producing any specific guidance on this instrument.

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 on businesses. A light touch appraisal has been undertaken, which identified marginal cost savings to the CAA, and defence benefits to the MOD and the UK associated with removing an inadvertent impediment to defence-related rocket launches and associated activities in the UK.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the instrument relates to defence matters.

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 the instrument relates to defence matters.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The exemptions granted by this instrument are to remove particular defence-related matters from particular licensing requirements of the 2018 Act. DfT will explore whether amendments are needed to the 2018 Act in relation to all military activities, in order to ensure there are no further unintended impacts.

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 MP, Parliamentary Under Secretary of State at the Department for Transport has made the following statement:

"It is not appropriate in the circumstances to include review provisions because there is an exceptionally high need for certainty around defence-related activity that the Armed Forces of UK Allies and other persons exempted by the instrument, are permitted to carry out in the UK in the longer term."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 If approved by Parliament this instrument will come into force less than 21 days after it is made as there is a pressing need to have the draft instrument become law in January / February 2025. This is due to the need to have a legal basis for the next Formidable Shield exercise with Allied Forces in May 2025, which is a fixed date exercise (which can have a high impact on airspace over the Atlantic). Should the instrument not be made before then, there would be a high risk of reputational damage and a negative diplomatic impact to the UK. The instrument does not impose duties on people that are significantly more onerous than before, and it does not require people to adopt different patterns of behaviour.

12. European Convention on Human Rights

12.1 Mike Kane 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 Space Industry (Licence Exemption for Military Activities of Allies) Regulations 2025 are compatible with the Convention rights".

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").