EXPLANATORY MEMORANDUM TO

THE TRANSPORT ACT 2000 (AMENDMENT OF SECTION 5(4)) REGULATIONS 2011 No. 205

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

2. Purpose of the instrument

2.1 This instrument implements Article 8(2) of Regulation (EC) No 550/2004 (Regulation 550/2004), as amended by Article 2(4) of Regulation (EC) No 1070/2009 (the amending Regulation).

2.2 Article 8(2) of Regulation 550/2004 requires that a Member State ensures that there are no provisions in its domestic legislation which require a provider of air traffic services to have its registered office in that State.

2.3 This instrument amends section 5(4) of the Transport Act 2000 to ensure that the UK complies with this requirement.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Single European Sky (**SES**) is a European Commission initiative aimed at reforming European air traffic management (**ATM**) to meet future capacity and safety needs. The overall efficiency of the ATM system had suffered through significant fragmentation along the lines of national borders, and disparate and antiquated air traffic systems.

4.2 The legislative basis for SES was laid in April 2004 with the coming into force of the four SES high-level 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**).

4.3 Further implementation measures have flowed from these regulations, including a common charging scheme, common requirements for air navigation service provision, airspace classification and interoperability measures; further measures are under development.

4.4 The European Commission issued a second package of proposals (SES II) in June 2008. This included a legislative proposal to amend the four high level SES regulations to introduce a performance driven approach. This proposal was enacted as **Regulation (EC) No 1070/2009** (**the amending regulation)** and came into effect on 4 December 2009.

4.5 This instrument amends section 5(4) of the Transport Act 2000 which is not compatible with Article 8(2) of the service provision regulation, as amended by Article 2(4) of the amending regulation. Article 8(2) now stipulates that a Member State should remove any provisions in its domestic legislation which allow only domestic organisations to be designated to provide air navigation services in its airspace.

4.6 This is to support one of the key objectives of the SES initiative - to enhance operational efficiency. Air navigation service providers (ANSP) have been restricted to offering services solely in the state where they are registered. The removal of this impediment facilitates the defragmentation of European airspace. It also allows a free market in air navigation service provision across the EU such that ANSP from any EU State, providing it is certified under a set of EU common requirements, can be designated to provide services in any of the other EU States.

4.7 In order to comply with Article 8(2) of Regulation (EC) No 550/2004, this instrument amends section 5(4) of the Transport Act 2000 by deleting a requirement that the holder of a licence to provide air navigation services must be incorporated under the Companies Act 2006.

5. Territorial Extent and Application

5.1 This instrument extends to the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 The Department for Transport Minister of State with responsibility for Aviation matters, Theresa Villiers MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Transport Act 2000 (Amendment of section 5(4)) Regulations 2011 are compatible with the Convention rights".

7. Policy background

- ***What is being done and why?***

7.1 Section 5(4) of the Transport Act 2000 permits only UK-registered companies to be licensed to provide air navigation services in the UK. It is therefore contrary to Article 8(2) which stipulates that every Member State should ensure there are no provisions in its domestic legislation which require a provider of air traffic services to have its registered office in its territory.

7.1.1 Section 5(4) came into effect just over three years before the four high level SES regulations came into force. At the time SES and "*cross-border services*" were not conceived. Under the service provision regulation, an air navigation service provider from any Member State can be designated by any other Member State to provide services in its airspace provided that:

- it is certified in accordance with specified common requirements, and
- the requisite written agreements or other legal arrangements have been concluded between all the Member States involved.

7.1.2 In the UK, the Civil Aviation Authority (**CAA**) has been designated as National Supervisory Authority (NSA) for the purposes of the SES legislation by SI 2004 No. 1958 The Single European Sky (National Supervisory Authority) Regulations 2004. As the NSA, the CAA is delegated to perform the designation function under Article 8(1) of the service provision regulation under SI 2006 No. 3104 The Single European Sky (Functions of the National Supervisory Authority) Regulations 2006.

7.1.3 As a result of the amendment made by this instrument, the CAA will be able to designate a non- UK registered company as an ANSP.

- ***Consolidation***

7.2 No consolidation of the Transport Act 2000 and the amendments to it is currently planned.

8. Consultation outcome

8.1 The Department published a consultation on 25 July 2008 in order to inform the negotiations to be held at European level on the draft version of the amending Regulation. The draft consulted on included the amended Article 8(2) of the service provision regulation. In addition, a formal consultation event was held in the Department on 2 September 2008 to further explain the proposals to stakeholders and to take on board any views and issues which would be used to inform the UK's negotiating position.

8.2 Seventeen aviation-related organisations[1] submitted responses. Overall, respondents expressed their continuing support for SES, and registered their approval in principle to the performance-driven approach proposed under SES II aimed at expediting the delivery of SES and its benefits. None of the replies raised any issues related to the proposed new wording of Article 8(2) of the draft service provision regulation and this text remains the same in the final published version.

8.3 The most appropriate method of implementing Article 8(2) of the service provision regulation consistently with section 2(2) of the European Communities Act 1972 is a simple amendment of section 5(4) of the Transport Act 2000. A draft of the instrument was circulated to the CAA and NATS (En Route) Ltd **(NERL)**, to whom the amendment is most immediately relevant because NERL is currently the only air traffic service provider that holds a licence under the Transport Act 2000, whilst the CAA is responsible for the modification and enforcement of licences, and their comments have been taken into account.

9. Guidance

9.1 It is not necessary to issue any guidance in relation to this instrument, which is self-explanatory. All aviation stakeholders are kept updated on the SES at meetings of the UK European Air Traffic Management Stakeholder Forum and are aware of the cross-border implications of the amending regulation.

10. Impact

10.1 No impact on business, charities or voluntary bodies is foreseen.

11.2 No impact on the public sector is foreseen.

11.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk

11. Regulating small business

11.1 The legislation applies to small business but no impact is foreseen.

12. Monitoring & review

12.1 No monitoring or review is considered necessary.

13. Contact

13.1 Caroline Wall at the Department for Transport; Tel: 020 7944 6243, or email: caroline.wall@dft.gsi.gov.uk can answer any queries regarding the instrument.

[1]Airport Operators Association, BAA, Blackpool International Airport, bmi, British Airways, British Business and General Aviation Association, European Low Fares Airlines Association, Exeter International Airport, General Aviation Alliance, International Air Transport Association, Manchester Airports Group, Monarch Airlines, NATS, The Airline Group, Virgin Atlantic Airways, and two respondents who requested anonymity.

Title:	Impact Assessment (IA)
THE TRANSPORT ACT 2000 (AMENDMENT OF SECTION 5(4)) REGULATIONS 2011 **Lead department or agency:** Department for Transport **Other departments or agencies:**	**IA No:** DfT00021 **Date: 26/01/11** **Stage:** Enactment **Source of intervention:** EU **Type of measure:** Secondary legislation **Contact for enquiries:** Caroline Wall 0207944 6243 caroline.wall@dft.gsi.gov.uk

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The Single European Sky (SES) programme is a European Commission initiative designed to reform European air traffic management (ATM) to meet future capacity and safety needs, in particular to tackle problems of fragmentation and to improve operational efficiency. In order to encourage competition and drive efficiency Member States have agreed to remove national obstacles to these objectives, specifically the requirement that air navigation service providers (ANSPs) may offer services only in the state where they are registered.

Government intervention is necessary to remove a provision in the Transport Act 2000 which imposes this requirement on air service providers, in order to ensure compliance with EU law.

What are the policy objectives and the intended effects?

SES is aimed at reforming European ATM in order to meet future capacity and safety needs and to improve the performance and sustainability of the European aviation system. Removing the restriction that ANSPs may offer services only in the state where they are registered is intended to permit the liberalisation of the air service provision market; permitting ANSPs to compete for that market in any EU state. This is designed to encourage competition, drive efficiency and improve performance. Under existing SES legislation any designated providers must be certified under a set of European common requirements.

This statutory instrument has been produced to implement a provision of EU legislation and should be laid before Parliament to ensure compliance with EU law.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

The legislative basis of SES was laid in 2004, and updated in 2009 when Member States agreed upon further measures to improve the performance and sustainability of the European aviation system. Member States agreed that the eventual liberalisation of the air services market would best serve SES objectives, and accordingly a provision was adopted to remove obstacles to the liberalisation of that market.

This statutory instrument has been produced to implement this provision of EU legislation.

The UK has two options:

Do nothing - If the Government does not implement this SI, the UK will be in breach of its obligations under EU law.

Implement the SI - This will ensure compatibility with EU law and remove a barrier to the liberalisation of the market for air service provision as well as permitting collective, more efficient management of traffic flows

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will not be reviewed N/A
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	No

Ministerial Sign-off For enactment stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: Theresa Villiers ..... Date: 31st January 2011 .....

Summary: Analysis and Evidence

Policy Option 1

Description:

Implement the statutory instrument which removes the requirement that air service providers must have their registered office in the UK

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate	N/A		N/A	**N/A**

Description and scale of key monetised costs by 'main affected groups'

No anticipated monetised costs (see evidence base).
The statutory instrument introduces no new requirements. It imposes no costs on Government or industry.

Other key non-monetised costs by 'main affected groups'

No anticipated non-monetised costs (see evidence base).

The statutory instrument introduces no new requirements. It imposes no costs on Government or industry.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate	N/A		N/A	**N/A**

Description and scale of key monetised benefits by 'main affected groups'

This policy is designed to remove a barrier to competition. As the evidence base highlights, this provision only affects the UK's single en route ANSP, which is appropriately price regulated. We consulted with those affected who shared the view that it would be spurious to extrapolate a monetised impact and that the UK market is already sufficiently liberalised (or else appropriately regulated) meaning the impact in the UK would be negligible. Our central estimate therefore is valued at £0.

Other key non-monetised benefits by 'main affected groups'

This policy is designed to enable competition. As the evidence base highlights, this provision only affects the UK's single en route ANSP, which is appropriately price regulated. We consulted with those affected who shared the view that it would be spurious to extrapolate a monetised impact as it is not clear at this stage whether UK businesses would expand activities abroad (see evidence base), meaning the immediate impact in the UK would be negligible.

Key assumptions/sensitivities/risks **Discount rate (%)** N/A

The relevant EU legislation came into force on 4 December 2009. If the statutory instrument is not introduced, the UK will be in breach of its obligations under EU law. This could result in the UK facing infraction charges involving a lump sum fine of £7,928,000 and a daily fine that could vary between £961 and £57,688 (see evidence base). This policy is based on the assumption that competition drives improvements in performance and efficiency, and that all Member States will comply with EU obligations. The statutory equailty duties impact test has been completed, and this proposal has no direct impact on any equality groups. A competition asssessment has been completed, and this proposal has no adverse impact on competition. See evidence base.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB: None	AB savings: None	Net: None	Policy cost savings:	Yes

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			31/01/2011		
Which organisation(s) will enforce the policy?			Department for Transport		
What is the annual change in enforcement cost (£m)?			None		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			Yes		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** N/A	**Benefits:** N/A	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro** N/A	**< 20** N/A	**Small** N/A	**Medium** N/A	**Large** N/A
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[1] Statutory Equality Duties Impact Test guidance	No	11
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	8
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[1] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Assessment of contestability under Annex 1 of the Air Navigation Services Charging Regulation (EC) No 1794/2006 produced by the CAA (Annex 3)
2	Performance Scheme: Initial EU-wide target proposals. Consultation document (Annex 4)
3	ATM Cost-Effectiveness (ACE) 2008 Benchmarking Report, June 2010 (Annex 5)
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Problem under consideration

The Single European Sky (SES) programme is a European Commission initiative designed to reform European air traffic management (ATM) to meet future capacity and safety needs. The legislative basis of SES was laid in 2004 (SES I), and updated in 2009 when Member States agreed upon further measures to improve the performance and sustainability of the European aviation system (SES II).

In order to meet these objectives, and in line with EU principles of fair competition, Member States have agreed to remove national obstacles to competition and efficiency. In particular, Member States have agreed to remove provisions in national legislation that declare air navigation service providers may offer services only in the state where they are registered. Member States agreed that:

> "*For the provision of cross-border services, Member States shall ensure that compliance with this Article and Article 10(3) is not prevented by their national legal system requiring that air traffic service providers providing services in the airspace under the responsibility of that Member State:*
>
> *(a) be owned directly or through a majority holding by that Member State or its nationals;*
>
> *(b) have their principal place of operation or registered office in the territory of that Member State, or*
>
> *(c) use only facilities in that Member State."*

For this purpose, "cross-border services" are defined as "*any situation where air navigation services are provided in one Member State by a service provider certified in another Member State."* SES II legislation defines air navigation services as air traffic services; the two are used interchangeably, and have been reproduced verbatim in the definitions above.

Policy objective

Air Navigation Services

Airspace in the UK can broadly be divided into terminal control airspace and en-route airspace. Air navigation services are provided by air navigation service providers (ANSPs).

Terminal

Terminal air navigation services broadly relate to the services provided for airspace around a particular airport. There are a number of ANSPs in the UK that offer services for airports. Airports award contracts to ANSPs, usually for a period of 5-10 years, which are periodically renewed, thus allowing for an airport to change providers if they choose. In practice the Airport Operator offset all costs (including air navigation provision costs) against Airport Revenues (which include retail and parking revenue) to arrive at a single competitive fee for airlines to pay for use of the airport.

En route

For reasons of safety and operational efficiency, the provision of en route air traffic services across a state has traditionally been provided by a single ANSP, in most cases State-owned. En route ANSPs therefore operate as a monopoly provider once a contract has been awarded, thus organisations compete for, but not within, the market. Given the monopolistic character of the market for en route air service provision, minimum safe standards of operation have been set at EU level. Under existing SES legislation, an ANSP must be certified under a set of European common requirements. The Civil Aviation Authority (CAA), as UK National Supervisory Authority (NSA) for the purposes of the SES legislation, now certifies ANSPs in the UK in accordance with the EU requirements (as they have superseded similar requirements in UK domestic legislation).

In the UK, NATS (En Route) Limited (NERL) is the sole provider of en route services. In order to regulate its monopoly power, NERL's activities are economically regulated by the CAA.

SES

The SES programme is designed to tackle the problems of fragmentation and to improve operational efficiency. In order to meet these objectives, Member States have agreed, in accordance with EU fair competition principles, to remove national obstacles to enable competition. In particular, Member States have agreed to remove provisions in national legislation that declare ANSPs may offer services only in the state where they are registered. In doing so, Member States were seeking to promote competition in attempt to drive improvements in performance, demonstrated through improvements in cost-efficiency, flight efficiency, safety, capacity and a reduction in delays.

Section 5(4) of the Transport Act 2000 currently requires that licensed air service providers may only offer services in the UK if they are registered in the UK. This contravenes EU law. A statutory instrument has been prepared to amend section 5(4) of the Transport Act 2000 in order to ensure compliance with EU law.

Rationale for intervention

Government intervention is necessary to remove a provision in the Transport Act 2000 which imposes a requirement on air navigation service providers that is now incompatible with EU law.

Who is affected

The provision set out in EU law will impact upon the UK's en route ANSP (NERL) and the CAA, as the UK's aviation regulator. The statutory instrument has been prepared to amend section 5(4) of the Transport Act 2000. Section 5(4) of the Transport Act 2000 applies to those UK ANSPs that are required to hold a licence for operations. Under the Air Traffic Services (Exemption) Order 2001, terminal ANSPs are not required to have a licence and are therefore not affected by this provision.

All interested parties were closely consulted during the negotiation of the SES II package and none raised objections to the provision. In fact, all stakeholders were generally supportive of the proposals presented in the SES II package. An assessment on the impact of competition in the UK can be found below.

Options

On 4 December 2009 Regulation (EC) No 1070/2009 came into force. Article 2.4 of the Regulation requires that Member States remove any provisions in national law which limit the provision of air services to organisations only registered in that Member State.

The UK has two options:

(1) Do nothing. If the UK does not implement the statutory instrument, it will be in breach of its obligations under EU law.

(2) Implement the statutory instrument which has been prepared to ensure compliance with EU law.

Costs and benefits

(1) Do nothing. This option would not impose costs on the UK as it would maintain the status quo. However if the UK does not implement the statutory instrument it risks facing infraction proceedings (see below under Risks and Assumptions).

Risks and assumptions

(1) If the UK does not implement the statutory instrument, it will be in breach of its obligations under EU law and risks infraction proceedings :

In applying to the ECJ under Article 228 EC, the Commission would recommend a financial sanction in the form of either a periodic penalty payment or a lump sum, or both, to be imposed in accordance with guidance set out in its Communication SEC (2005)1658. This guidance remains current although an amending Communication adopted on 20 July has updated and amended slightly the financial sanction figures. Whilst the calculation is complicated, in summary the UK is at risk of a minimum lump sum fine of about €10 million based upon the UK's GDP which could be increased for seriousness or delay and a substantial daily fine for continuing failure to comply with an ECJ judgment. The Commission will recommend to the ECJ a lump sum payment as a penalty for failing to comply with the first ECJ judgment up to the date of the second ECJ judgment and a penalty payment as a daily fine continuing from the date of the second judgment until compliance. The lump sum payment will be the minimum level set for the UK at €9,666,000 (£7,947,057 using the conversion rate of €1=£0.82, as at 31/08/2010). In the event that the Commission formula for calculating the lump sum payment exceeds the minimum, the higher amount will be recommended. The formula is the multiple of:

Basic flat rate lump sum payment (€210 per day) x coefficient for seriousness (on a scale 1 to 20) x 'n' factor (18.31 for the UK, based on capacity of the MS to pay and the number of votes it has in the Council) x number of days of infringement.

For penalty payment, the formula for the daily fine from the date of the second ECJ judgment is the multiple of:

Basic flat rate penalty payment (€640 per day) x coefficient for seriousness (on a scale 1 to 20) x coefficient for duration (1 to 3 calculated at a rate of 0.1 per month from the date of the first judgment to the second) x 'n' factor (18.31 for the UK).

This means the daily rate could vary between €1,171 and €70,310 (£963 and £57,813 using the conversion rate of €1=£0.82, as at 31/08/2010).
There would be no change to existing law.

(2) Implement the statutory instrument. If implemented, the statutory instrument will permit the liberalisation of the market for air service provision. A competition assessment has been completed (see below) and it has been determined that there are no costs to the Government or to UK businesses. No new requirements are imposed on industry. This policy, agreed at EU level, is designed to enable competition in order to improve operational efficiency and performance. Implementation of the statutory instrument will ensure compliance with EU law.

Impact on competition:

The minimum standard of the service offered will not be adversely affected by competition pressures as air service providers must be certified under a common set of EU standards.

En route ANSPs
Given the objectives of safety and operational efficiency, it is preferable that en route air traffic services for a particular flight region are provided by a single provider. And in order to ensure standardisation of services, existing SES legislation requires that ANSPs be certified under a set of common European standards.

As set out above, NERL is the UK's sole provider of en route traffic services. Previously, NERL could only offer services in the UK where it could, theoretically, face competition for the market only from UK registered companies. In reality, however, no other UK organisation currently has the capacity to compete with NERL. Consequently, the CAA economically regulates NERL's activities to monitor price control. EU law calls for the removal of national barriers preventing NERL from competing for the market in any EU state, and reciprocally from ANSPs in any EU state from competing for the market in the UK.

The CAA's contestability assessment (Annex 3) focused on the provision of terminal control air navigation services in the UK and determined that the liberalisation of the market for ANSPs is unlikely to have a negative impact on UK businesses. There is no reason why the findings cannot be applied more broadly to the provision of all air navigation services (not just at terminals); the UK has an open market approach and is consequently likely to be well positioned to benefit from the liberalisation of the market for ANSPs.

The UK's view has been that where contestability exists, a lower level of regulatory oversight is required. Thus, should the liberalisation of the market for the provision of air services foster competition, the CAA may decide that less economic regulation is required for an en route ANSP.

Possible outcomes
There are three possible outcomes of the policy for UK business:

- No effect. It is possible that the liberalisation of the market will not encourage competition. This situation will be monitored in the UK by the CAA, which will continue to be responsible for the economic regulation of ANSPs where it deems appropriate. If the liberalisation of the market has no effect on current activity, there will be no cost and no benefit to the UK.

- Increased opportunities. Previously UK ANSPs could only provide en-route services in the UK. EU law calls for the removal of national barriers preventing providers from competing for the market in any EU state. This presents new opportunities to UK businesses. NERL, previously only able to offer en-route services in the UK, may in future compete for the market in any EU state. NATS Services Ltd (NSL) NERL's sister company which currently provides ANS at 16 UK airports, could also bid for terminal ANS contracts in other EU States, as could other UK terminal ANS providers, if the provision of terminal ANS was competitively tendered.

- Increased competition pressures. There is a risk that opening the UK market to EU providers will increase competition pressures on the UK's ANSPs. Although NERL has exercised monopoly power over the provision of en route services, it is widely perceived to be leading the way in air navigation services and is therefore likely to respond well to competition pressures (see page 144 of Annex 4).

In consultation, the UK's ANSPs raised no objections to the liberalisation of the market; rather, interested parties were generally supportive of the SES II legislation. In addition, any increase in competitive pressures should stimulate greater innovation, performance and cost-efficiency, which should in turn benefit the end user of aviation services – passengers and freight operators.

- Facilitates cross-border collaboration between States to more efficiently manage traffic in their collective airspace so that route-ings can be aligned to actual traffic flows rather than being constrained by national borders. More direct route-ings as well as increasing operational efficiency also reduce fuelburn leading to lower emissions and costs.

The Department for Transport has consulted with those affected by this statutory instrument, and they have agreed that, at this stage, it would be spurious to extrapolate a monetised impact. However, they shared the view that the UK air navigation service provision market is already sufficiently liberalised and that UK air navigation businesses should not be adversely affected by this provision. In consultation, NERL indicated that it does not currently have any plans for expansion of activities abroad. In the longer term it is difficult to determine whether NERL will take advantage of the opportunity to expand activities abroad: firstly, EU Member States must demonstrate compliance with EU law before NERL can confidently assess any potential expansion activity; and secondly, for NERL to signify that it has intends to compete for a larger share of the market would be to jeopardise any commercial advantage the business may have.

Using information that is publicly available, the Eurocontrol Report "ATM Cost-Effectiveness (ACE) 2008 Benchmarking Report, June 2010" sets out the revenue of 36 ANSPs across the EU (which broadly constitutes the whole market). Using these figures, the revenue value of the market held by these 36 ANSPS is valued at €6,854,880,000 (£5,637,876,000 using the conversion rate of €1=£0.82, as at 31/08/2010), of which NERL controls 9.2% (€630,128,000 / £518,244,000). Assuming that all EU Member States uniformly implement this provision of EU law, and that NERL is able to respond positively to competition pressures, it is theoretically possible that NERL would be able to compete for a section, of any size of the remaining 90.8% of the market. If NERL was able to increase its market share by 1% for example, it would increase its annual revenue by €68,549,000 / £56,378,000.

However, given that it is not yet clear whether NERL will seek to expand its activities abroad and that those consulted are of the view that it would be spurious at this stage to extrapolate a monetised impact, our central estimate is that the value of benefits to UK industry would be £0.

Even though the removal of this and other similar restrictive provisions across Europe theoretically permits competition, it is unlikely that a competitive market in En Route ANS provision will be able to operate for at least 5 to 10 years. To date no competitive market has existed anywhere in the world for these services and it is not possible therefore to make a meaningful assessment of the impact.

Although small and medium businesses are not exempt from the policy, the policy will only impact upon large businesses due to the technological costs involved in the provision of air navigation services.

(1) Does the proposal directly limit the number or range of suppliers?

The proposal does not introduce any new costs or requirements on industry. The proposal does not impact upon the common EU requirements; it does not affect the standardisation of the provision of air services and therefore does not impact upon the range of suppliers.

(2) Does the proposal indirectly limit the number or range of suppliers?

The proposal does not introduce any new costs or requirements on industry. The proposal does not impact upon the common EU requirements; it does not affect the standardisation of the provision of air services and therefore has no indirect impact on the range of suppliers.

(3) Does the proposal limit the ability of suppliers to compete?

The proposal does not introduce any new costs or requirements on industry, not does it impact upon the common EU requirements. The proposal does not limit scope for innovation nor the geographic area in which a supplier can operate. Rather, the proposal removes the restriction that ANSPs can offer services only in the state where they are registered; it removes limitations imposed by national borders and opens the EU market to service providers.

The proposed liberalisation of the market for air service provision does not limit the ability of suppliers to compete.

(4) Does the proposal reduce suppliers' incentives to compete vigorously?

The proposal does not reduce incentives for competition. In fact the proposal is designed to enable competition for the market. It increases opportunities for ANSPs by opening up EU markets previously inaccessible, thereby introducing new incentives to compete effectively. In consultation, the UK's ANSPs raised no objections to the liberalisation of the market; rather interested parties were generally supportive of the SES II legislation.

Summary and preferred option with description of implementation plan

In summary, the preferred option is to introduce the statutory instrument to ensure compliance with EU law. The UK has been closely engaged in the development of the SES programme and is generally supportive of the Commission's continued work on the initiatives of the programme. The UK has consulted closely with interested parties during the negotiation of SES legislation, and interested parties have been generally supportive of the legislation, raising no objections to the liberalisation of the market for ANSPs.

In order to implement this option, a statutory instrument has been prepared and should be laid before Parliament.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];
Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]
Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]
Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]
Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]
Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]
Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here] There is no plan to review the implementation of the statutory instrument as it has been prepared to implement a provision of EU law. If the EU legislation is reviewed, the UK will assess its implementation of the legislation. The statutory instrument will permit ANSPs to compete for the market in the UK. This market is regulated by the CAA. The CAA will therefore continue to monitor the market for air navigation services and determine whether economic regulation is required, or whether there is sufficient competition to allow the market to encourage efficiencies. The Department for Transport is currently in the process of ensuring that the CAA has sufficient powers to gather the relevant data to monitor ANSP activity.

Add annexes here.

Annex 2
EqIA Screening Proforma

Name of the function, policy or strategy - The Transport Act 2000 (Amendment of Section 5(4)) Regulations 2010 Current or Proposed: Proposed							
Person completing the assessment: Kerry Bailey Date of assessment: 02/08/2010							
Purpose of the function, policy or strategy: Amendment to Transport Act 2000 to remove a provision which imposes a requirement on air service providers, in order to ensure compliance with EU law.							
Questions - Indicate Yes, No or Not Known for each group	**Gender**	**Religion or Belief**	**Age**	**Disability**	**Ethnicity and Race**	**Sexual Orientation**	**Transgender**
Is there any indication or evidence that different groups have different needs, experiences, issues or priorities in relation to the particular policy?	No	No	No	No	No	No	No
Is there potential for, or evidence that, this policy may adversely affect equality of opportunity for all and may harm good relations between different groups?	No	No	No	No	No	No	No
Is there any potential for, or evidence that, any part of the proposed policy could discriminate, directly or indirectly? (Consider those who implement it on a day to day basis)?	No	No	No	No	No	No	No
Is there any stakeholder (staff, public, unions) concern in the policy area about actual, perceived or potential discrimination against a particular group(s)?	No	No	No	No	No	No	No
Is there an opportunity to better promote equality of opportunity or better community relations by altering the policy or working with other government departments or the wider community?	No	No	No	No	No	No	No
Is there any evidence or indication of higher or lower uptake by different groups?	No	No	No	No	No	No	No
Do people have the same levels of access? Are there social or physical barriers to participation (e.g. language, format, physical access/proximity)?	No	No	No	No	No	No	No

If you have answered **"no"** to all the questions, an EqIA is not required.

Annex 3

Assessment of contestability under Annex 1 of the Air Navigation Services Charging Regulation (EC) No 1794/2006


Adobe Acrobat Document

(please double-click icon to open)

Annex 4

Performance Scheme: Initial EU-wide target proposals. Consultation document


Adobe Acrobat Document

(please double-click icon to open)

Annex 5

ATM Cost-Effectiveness (ACE) 2008 Benchmarking Report, June 2010

Separate document


Adobe Acrobat Document

(please double-click to open)