

**EXPLANATORY MEMORANDUM TO
THE CIVIL AVIATION (SAFETY OF THIRD-COUNTRY AIRCRAFT)
REGULATIONS 2006**

2006 No.1384

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

2. Description

2.1 The Regulations require the Secretary of State to ensure that aircraft registered outside the EC (“third-country aircraft”) which use UK airports are inspected if they are suspected by him of non-compliance with international safety standards. The Regulations also requires the Secretary of State to collect relevant information about the safety of third-country aircraft and engage in an exchange of safety information, including inspection reports, with the European Commission and other Member States.

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

3.1 None.

4. Legislative Background

4.1 The Regulations implement Directive 2004/36/EC on the safety of third-country aircraft using Community airports. This requires Member States to inspect aircraft registered outside of the EC if they are suspected of non-compliance with international safety standards.

4.2 Inspections of foreign aircraft (including those from the EC) suspected of non-compliance with international standards are already conducted by the Civil Aviation Authority (CAA) on behalf of the Secretary of State. The CAA has the power to conduct such inspections under article 144 of the Air Navigation Regulation 2005. These Regulations require that the Secretary of State ensures that third-country aircraft suspected of non-compliance are inspected and detained where necessary.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Foreign airlines operating to the UK are required to meet the minimum safety standards established by the International Civil Aviation Organisation (ICAO) in accordance with the Convention on International Civil Aviation (the Chicago Convention 1944). In the early to mid 1990s it became apparent that there were a number of states which were unable to meet their obligations under the Convention and ensure that their airlines were meeting ICAO standards. As a result ICAO established a programme to audit the regulatory authorities of Contracting States to the Chicago Convention to help ensure that all states adequately implemented ICAO standards. To complement the top down approach adopted in the ICAO audit programme the European Civil Aviation Conference (ECAC) established the Safety Assessment of Foreign Aircraft (SAFA) Programme. Under the SAFA Programme foreign aircraft suspected of non compliance with international standards are inspected in accordance with a common procedure and the results of such inspections are shared between all ECAC members.

7.2 The EC Directive is based on the requirements and procedures adopted under the SAFA Programme. However, while the SAFA Programme is voluntary the Directive places specific obligations on Member States and this is reflected in the implementing Regulations. The Regulations will not have any significant impact on the UK programme of inspections on foreign registered aircraft. However, the number of ramp inspections that are conducted each year will be reviewed once the Regulations are in force.

7.3 As the Regulation only places obligations on the Secretary of State and persons authorised under the Regulation no consultation has taken place.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 There is no impact on the public sector.

9. Contact

Duncan Nicholls at the Department for Transport Tel: 020 7944 6377 or e-mail: duncan.nicholls@dft.gsi.gov.uk can answer any queries regarding the instrument.

Transposition Note for Directive 2004/36/CE of the European Parliament and of the Council on the safety of third-country aircraft using Community airports

These Regulations do more than is necessary to implement the Directive in that they apply to a wider range of third-country aircraft and provision is made for effective enforcement.

Article	Objective	UK implementation	Responsibility
1(3)	Sets out the third-country aircraft to which the Directive applies. State aircraft, as defined in the Chicago Convention 1944, are not within the scope of the Directive. Third-country aircraft with a maximum take-off weight of less than 5700 kg that are not engaged in commercial air transport are also excluded.	Regulations 3(1)(b) and 3(2) extend the Regulations to all third-country aircraft, except State aircraft, that are suspected by the Secretary of State of non-compliance with international safety standards.	
3	Requires Member States to collect information that would assist in the effective enforcement of international safety standards in the Community. Information collected should be kept in a standard form.	Regulation 9 imposes a duty on the Secretary of State to collect information that appears to him to be useful for securing the effective enforcement of international safety standards in the Community. Regulation 9 also specifies certain types of information to be collected by the Secretary of State.	Secretary of State
4.1	Requires Member States to put in place means to ensure that third-country aircraft suspected of non-compliance with international safety standards landing at airports open to international traffic undergo ramp inspection. The competent authority implementing the procedures is required to give particular attention to certain evidence of non-compliance.	Regulation 4(a) imposes a duty on the Secretary of State to ensure that any third-country aircraft to which the Regulations applies undergoes a ramp inspection. By virtue of Regulation 3, the Regulations apply to all third-country aircraft, except State aircraft, that are suspected by the Secretary of State of non-compliance with international safety standards and land at an aerodrome in the United Kingdom.	Secretary of State

		<p>When deciding whether an aircraft is suspected of non-compliance with international safety standards Regulation 6 imposes a duty on the Secretary of State to take into account certain evidence.</p> <p>Regulation 5(1) provides that the Secretary of State may authorise a person to perform a ramp inspection. Such an authorised person is under a duty to perform the inspection at the Secretary of State's request or direction. Regulation 18 sets out the powers available to an authorised person for the purposes of the Regulations.</p>	<p>Secretary of State</p> <p>Secretary of State</p> <p>An authorised person</p>
4.3	<p>Member States must ensure that ramp inspections and other surveillance measures required pursuant to a decision by the relevant committee under Regulation 8(3) of the Directive are carried out.</p>	<p>Regulation 4(b) imposes on the Secretary of State an obligation to ensure that any ramp inspection or other surveillance measures required pursuant to Regulation 8(3) of the Directive are carried out.</p> <p>Regulation 5(1) provides that the Secretary of State may authorise a person to perform other surveillance measures. Such an authorised person is under a duty to perform those measures at the Secretary of State's request or direction. Regulation 18 sets out the powers available to an authorised person for the purposes of the Regulations.</p>	<p>Secretary of State</p> <p>Authorised person</p>
4.4	<p>A ramp inspection must:</p> <ul style="list-style-type: none"> • be performed in accordance with the 	<p>Regulation 7 imposes an obligation on an authorised person to:</p> <ul style="list-style-type: none"> • perform the ramp 	<p>An authorised person</p>

	<p>procedure described in Annex II and</p> <ul style="list-style-type: none"> • be carried out using a ramp inspection report form containing at least the items described in the form set out in Annex II. <p>On completion of the ramp inspection, the commander of the aircraft or a representative of the aircraft operator must be informed of the ramp inspection findings.</p> <p>If significant defects have been found, the ramp inspection report must be sent to the operator of the aircraft and to the competent authorities concerned.</p>	<p>inspection activities described in Annex II</p> <ul style="list-style-type: none"> • prepare a ramp inspection report containing the information specified in Annex II • inform the commander of the aircraft, or a representative of the operator of his findings and • where significant safety deficiencies have been found, to inform the Secretary of State. <p>Where a ramp inspection report has revealed significant safety deficiencies Regulation 8 imposes a duty on the Secretary of State to inform the operator of the aircraft and the competent authority of the State of the operator and, where necessary, of the State in which the aircraft is registered.</p> <p>The European Civil Aviation Conference (“ECAC”) has established the Safety of Foreign Aircraft (“SAFA”) programme to provide for the inspection of foreign aircraft suspected of non-compliance with international safety standards. The inspections and reports accord with a common procedure. On completion of each inspection the results are shared between all ECAC members.</p>	<p>Secretary of State</p>
<p>4.5</p>	<p>The competent authority performing a ramp</p>	<p>Regulation 7(2)(a) obliges an authorised person to</p>	<p>An authorised person</p>

	inspection must make all possible efforts to avoid an unreasonable delay of the aircraft inspected.	make all possible efforts to avoid unreasonable delay to an aircraft as a result of a ramp inspection.	
5.1.	The competent authorities of the Member States must participate in a mutual exchange of information. Such information must, at the request of a competent authority, include a list of airports of the Member State concerned that are open to international air traffic and an indication, for each calendar year, of the number of ramp inspections performed and the number of movements of third-country aircraft at each airport on that list.	The Directive requires that the Secretary of State collects and retains information in a certain form. Regulations 10 and 11 provide for the exchange of that information. Regulation 12 places an obligation on the Secretary of State to provide the competent authority in a Member State with a list of aerodromes in the UK open to international traffic and the number of ramp inspections and third-country aircraft movements at those airports in any year.	Secretary of State
5.2	All standard reports containing the information referred to in Regulation 3 and all ramp inspection reports referred to in Regulation 4(4) must be made available without delay to the Commission and, at their request, to the competent authorities of the Member States and to the European Aviation Safety Agency (EASA).	Regulation 11 obliges the Secretary of State to provide a copy of every report that does not fall within Regulation 10 to the Commission, to the competent authority in a Member State at its request and to EASA at its request. The existing SAFA programme has established procedures for the timely exchange of safety-related information.	Secretary of State
5.3	Whenever a standard report shows the existence of a potential safety threat, or a ramp inspection report shows that an aircraft does not comply with international safety standards and may pose a potential safety threat, the report will be	Regulation 10 places on the Secretary of State an obligation to send to the Commission and to the competent authority in each Member State a copy of any safety report or ramp inspection report that reveals a potential safety threat. The existing	Secretary of State

	communicated without delay to each competent authority of the Member States and the Commission.	SAFA alerting function will be used to draw attention to urgent safety issues.	
6.1	Member States must take the necessary measures to ensure appropriate confidentiality of the information received by them under Regulation 5. Member States must use information received pursuant to Regulation 5 solely for the purpose of this Directive.	Regulation 13 places a restriction on the disclosure by the Secretary of State of any safety report or ramp inspection report from the competent authority in a Member State. Such a report may only be disclosed to the Civil Aviation Authority or an authorised person and only for the purposes of the Regulations and the Directive. The recipients of information disclosed by the Secretary of State may not pass the information to any other person.	Secretary of State
6.4	Whenever information concerning aircraft deficiencies is given voluntarily, the ramp inspection report must not reveal the source of that information.	Regulation 7(3) requires that a ramp inspection report prepared by an authorised person shall not reveal the identity of an individual who has provided information voluntarily.	An authorised person
7.1	Where an aircraft does not comply with international safety standards and is hazardous to flight safety the competent authority performing a ramp inspection must ground the aircraft if it not satisfied that corrective action will be carried out before a flight. The authority must ground the aircraft until the hazard is removed and must immediately inform the competent authorities of the operator concerned and of the State of registration of the aircraft.	Regulation 15 makes changes to the Air Navigation Order 2005. An obligation is placed on an authorised person to prevent a third-country aircraft from taking off where it does not comply with international safety standards, would be hazardous to flight safety and is intended or is likely to be flown without corrective action having been taken.	An authorised person

<p>7.2</p>	<p>In coordination with the State responsible for the operation of the aircraft concerned or the State of registration of the aircraft the competent authority performing a ramp inspection may prescribe conditions under which the aircraft may fly to an airport at which the deficiencies can be corrected. If the deficiency affects the validity of the certificate of airworthiness for the aircraft, the grounding may only be lifted if the operator obtains permission from the State or States which will be overflown on that flight.</p>	<p>Where:</p> <ul style="list-style-type: none"> • an aircraft has been prohibited from taking off pursuant to article 144A of the Air Navigation Order 2005 (inserted by the Regulations), • the safety deficiency affects the certificate of airworthiness of the aircraft, and • the Civil Aviation Authority has issued an exemption from the requirement that the aircraft has an airworthiness certificate <p>article 144C of the Air Navigation Order 2005 requires that an authorised person should not allow the aircraft to take-off issued unless he is satisfied that the aircraft operator has obtained permission for the intended flight from all States which will be overflown.</p>	<p>An authorised person</p>
<p>9</p>	<p>If a Member State decides to ban from its airports or impose conditions on the operation of a specific operator or operators of a specific third country pending the adoption by the competent authority of that third country of satisfactory arrangements for corrective measures:</p> <p>(a) that Member State shall notify the Commission of the measures taken, and the Commission shall transmit the information to the other Member States;</p> <p>(b) the Commission, acting</p>	<p>No provision is required because the requirement has been revoked by Regulation (EC) 2111/2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing of air transport passengers on the identity of the operating air carrier, and repealing Regulation 9 of Directive 2004/36/CE</p>	

	<p>in accordance with the procedure referred to in Regulation 10(3), may issue such recommendations and take such actions as it considers necessary; it may, moreover, extend the measures notified under (a) to the whole Community following the submission of a draft of the measures to be taken in accordance with the procedure referred to in Regulation 10(2).</p>		
		<p>In order to secure effective enforcement, the Regulations make amendments to the Air Navigation Order 2005. It is an offence for a person to fail to comply with a direction given to him under article 144A of the Order. The penalties are set out in Schedule 14 to the Air Navigation Order 2005, as amended.</p>	