

Title:	<p>Opinion and Instruction Document</p> <p>To introduce technical and administrative requirements for Ramp inspections, alcohol testing, psychoactive substances and support programme</p>
Package Number	0007
Headline Purpose:	<p>To introduce technical and administrative requirements related to the implementation of:</p> <ul style="list-style-type: none"> • A non-punitive support programme for flight crew; • the carrying out of unannounced alcohol testing on flight and cabin crew members as part of the Ramp Inspection Programme; and • A policy and procedures by operators to prevent and detect cases of misuse of psychoactive substances by flight crew, cabin crew members and other safety-sensitive personnel under their direct control.
Proposed action:	<p>To amend Regulation (EU) No. 965/2012 as retained (and amended in UK domestic law) under the European Union (Withdrawal Act) 2018 ("UK Reg (EU) No. 965/2012") to introduce such requirements.</p>

Objective

In order to address identified safety risks, it is the CAA's opinion that regulatory changes are required for the implementation of a support programme for flight crew, the carrying-out of random alcohol testing on flight and cabin crew members, and the requirement for operators to develop a policy and procedures to prevent and detect the misuse of psychoactive substances by flight and cabin crew members and other safety-sensitive personnel under their direct control.

The CAA's intention is to introduce the right tools to safeguard the mental fitness of commercial air transport flight crew and positively promote and support their whole health and wellbeing to ensure that the safety of the aircraft or its occupants are assured as far as reasonably practical.

Background

Following the tragic accident of the Germanwings Flight 9525, the EU Commission and EASA, together with a dedicated task force, conducted a review of the matters surrounding the event and, in particular, the medical and psychological conditions of flight crews. From this work, EASA issued [Opinion 14/2016](#) which led to the adoption of Commission Regulation (EU) 2018/1042 of 23 July 2018 ("[CR \(EU\) 2018/1042](#)"). The UK was generally supportive of the proposals.

[CR \(EU\) 2018/1042](#) amended [CR \(EU\) No. 965/2012](#) by introducing several new requirements:

- all Commercial Air Transport ("CAT") operators are to implement a Support Programme ("SP") for flight crew which is designed to put in place systems of peer support to directly support colleagues and signpost them to appropriate resources to provide assistance and information relating to their wellbeing and arising mental health issues.
- all CAT operators are to develop a policy on the detection and prevention of misuse of psychoactive substances by cabin and flight crew and other safety sensitive personnel under their direct control to ensure the aircraft and its occupants are not endangered.
- the introduction of alcohol testing of flight and cabin crew during Ramp inspections, with an option to conduct testing for other psychoactive substances too.

While certain elements of the amendments made by [CR \(EU\) 2018/1042](#) came into effect in the UK on 14 August 2018, the coming into force date for the elements listed above was set as 14 August 2020. Due to the COVID-19 pandemic a delay was introduced by Commission Implementing Regulation (EU) 2020/745 (“[CIR \(EU\) 2020/745](#)”), putting this back to 14 February 2021. As a result, these elements of [CR \(EU\) 2018/1042](#) were not in force on 31 December 2020 and so were not retained in UK law at the end of the Transition Period.

The UK supported the changes when [CR \(EU\) 2018/1042](#) was adopted in June 2018, and it is the CAA’s opinion that, with the exception of the changes to CAT.GEN.MPA.175 (Endangering safety), which introduced into Europe the psychological assessment of flight crew by operators (because the CAA does not consider there is a sufficient scientific or medical evidence base to impose such requirements), similar changes should now be made to the equivalent UK Regulation.

However, the CAA agrees with the principle that there should be some form of psychological assessment regime, and this will be subject to further review by the CAA in consultation with industry, with an aim to provide an equivalent level of safety by alternative means. Such means could include the development of specific Acceptable Means of Compliance (“AMC”) and/or Guidance Material (“GM”) for the psychological assessment of flight crew by operators under the current Regulation, or potentially future proposals to change the law.

What legal powers are being used to achieve the change?

Articles 23 and 31 of Regulation (EU) 2018/1139 as retained (and amended in UK domestic law) under the European Union (Withdrawal) Act 2019 (“[the UK Basic Regulation](#)”).

Consequence of not making these legislative changes

If the proposed amendments were not introduced, there would be:

- A reduced opportunity for prevention of events such as those leading to the tragic Germanwings accident. This is particularly relevant in the current climate where the extent and effects of the COVID-19 pandemic on flight crew mental wellbeing are still being assessed;
- No opportunity to realise the benefits to flight safety that the proposed amendments would provide (together with updates to the mental health assessment regulations in Part-MED), in addressing a potential safety issue resulting from a decrease in flight crew medical fitness;
- No opportunity to achieve the benefits to flight safety and the reduction of risk by introducing powers for the CAA to conduct random alcohol testing on flight and cabin crew;
- A loss of the ability to participate in the EU Ramp Inspection Programme. In the CAA’s opinion, continuing participation in the EU Ramp Inspection Programme is desirable to maintain a high uniform level of civil aviation safety and ensure a harmonised approach to facilitate the enforcement of International Safety Standards.

Affected Law (and, if applicable, UK AMC)

What is the existing UK legal framework which is relevant here?	UK Reg (EU) No. 965/2012
Identify the law that the CAA proposes be changed.	<p>UK Reg (EU) No. 965/2012 which is to be amended to reflect changes made in:</p> <ul style="list-style-type: none"> • Point 1 of Article 1, • Annex 1 definitions amended by points 1(b) and (c); • Annex II Subpart Ramp ARO.RAMP.106 Alcohol testing is introduced;

	<ul style="list-style-type: none"> Annex IV CAT.GEN.MPA.100 and CAT.GEN.MPA.170 Psychoactive substances are amended and CAT.GEN.MPA.215 Support programme is introduced and CAT.GEN.MPA.100 is amended as a consequence; of the Annex to CR (EU) 2018/1042 .
Are any consequential amendments needed to other pieces of law?	A review of the ANO will be undertaken to determine whether any consequential amendments are necessary.
If the change proposed is to retained EU Implementing Rules made under the UK Basic Regulation is there any UK Acceptable Means of Compliance (“AMC”), Guidance Material (“GM”) or Certification Specification (“CS”) that will be changed/newly adopted as a consequence?	Yes. EASA has produced AMC/GM under ED Decision 2018/012/R . One consequential amendment to AMC/GM was made on 2 September 2021 , to come into force in March 2022. The CAA will review UK AMC/GM and introduce any additional UK AMC/GM as may be considered relevant and appropriate.
Is this proposal related to changes the EU have made that are not retained EU law (e.g. EU law that was published but not in force and so did not come across under the terms of the Withdrawal Act), or EU law changes since End of Transition?	Yes. The proposed amendments would have been in force and applicable in the UK on 14 August 2020, but EASA postponed implementation by six months under CIR (EU) 2020/745 to 14 February 2021 due to the COVID-19 pandemic. In the CAA’s opinion, it is desirable to introduce similar changes to UK law as it will improve safety for the reasons already set out.
Is there an EU Notice of Proposed Amendment considering the same issue?	No. Rather than conduct a Notice of Proposed Amendment process, after the Germanwings task force reached its conclusions, EASA conducted a series of engagement activities and events with interested parties and National Aviation Authorities (“NAAs”). As the UK’s NAA, the CAA fully participated in this process. There has been no material change in circumstances since that process, and no change in the CAA’s opinion.
Does this proposal relate to an international treaty or obligation (e.g. an ICAO SARP)?	No
Is a consultation required?	The EU commissioned a review into the Germanwings accident and an EASA-led Task Force addressed the issue : The Task Force’s recommendations were fully developed by EASA and were consulted upon at the time. The work resulted in EASA Opinion 14/2016 , which was an opinion the CAA broadly shared. Furthermore, the CAA has conducted detailed consultation with UK industry from August 2018 to date, including:

	<ul style="list-style-type: none"> • Publication of CAP 1695 and SN 2020/09 (now withdrawn / superseded), SN 2021/04 and CAP 1938; • Workshops on Support Programmes and Endangering Safety; and • Discussions within the Crew Health and Wellbeing sub-group of the Flight Operations Liaison Group. <p>These consultations meet the requirement for consultation under Article 115 of the Basic Regulation.</p>
Is an Impact Assessment under the Better Regulation Framework necessary?	No. EASA produced an Impact Assessment within Opinion 14/2016 in respect of these proposed changes. The CAA does not consider that there has been any material change in circumstances since the date of the EASA Impact Assessment and there is accordingly no need for a further Impact Assessment in respect of the changes introduced at this time.
When is it intended that these provisions should be brought into force?	In respect of all proposed amendments, except the Support Programme proposals: on the earliest possible date after the Statutory Instrument enters into force In respect of the Support Programme elements: 90 days after the Statutory Instrument enters into force.
Has an SI “slot” been agreed with the Department for Transport?	October 2021
Will there be any criminal offences?	The Department for Transport is looking for the earliest parliamentary opportunity to grant the Secretary of State the power to make a breach of requirements to retained EU aviation safety law an offence. It is therefore anticipated that offences will be created once such powers are available.
If so, is a Justice Impact Test required?	Once the power to impose criminal sanctions has been granted, the question of a Justice Impact Test will be considered by the CAA in collaboration with the Department for Transport.
What is the intended extent of the provision?	The UK
Are there any devolved issues?	No
Are any transitional provisions needed?	No

Suggested Changes to existing wording of Law

As set out above, the substance of the amendments detailed below have already been the subject of consultation. These proposals are therefore published for information purposes only. It should be noted that the amendments set out in this section constitute the CAA’s initial opinion on possible amendments to the relevant legislation. While it is anticipated that any amendments ultimately enacted will broadly reflect the CAA’s proposals, all amendments to legislation are subject to an iterative legislation drafting process by Government. The proposals set out below may therefore not be the final wording in the UK law.

(Amendments proposed are to UK Reg (EU) No. 956/2012. Changes from CR (EU) 2018/1042 already applied in the UK as from 14 August 2018 are not included).

1. Article 4 is replaced by the following:

Article 4

Ramp inspections

- (1) Ramp inspections of aircraft operators under the safety oversight of a third country must be carried out in accordance with Subpart Ramp of Annex II.
- (2) The CAA must ensure that alcohol testing of flight crew members and cabin crew members is carried out with regard to operators under their own oversight as well as with regard to operators under the oversight of a third country.
- (3) Alcohol testing referred to in paragraph (2) must be performed by ramp inspectors within the framework of the ramp inspection programme of Subpart RAMP of Annex II.
- (4) Results of tests carried out under paragraph (2) must be included in the EASA centralised database in accordance with point (b) of ARO.RAMP.145.”.

2. Annex I is amended as follows:

- (i) the following point (98a) is inserted:
(98a) “psychoactive substances” means alcohol, opioids, cannabinoids, sedatives, hypnotics, cocaine, other psychostimulants, hallucinogens or volatile solvents.;
- (ii) the following point (105a) is inserted:
(105a) “safety-sensitive personnel” means persons who, if they fail to perform their duties or functions properly, may endanger the safety of an aircraft or its occupants.

3. Annex II (Part-ARO) is amended by inserting ARO.RAMP.106 in the following terms:

ARO.RAMP.106 Alcohol testing

- (a) The CAA’s programme of ramp inspections shall include arrangements for alcohol testing on flight crew members and cabin crew members, based on random selection or on reasonable suspicion that the individual is under the influence or in excess of the prescribed limit of alcohol.
- (b) The procedures for alcohol testing shall meet recognised quality standards that ensure accurate testing results and these procedures and quality standards shall be detailed in guidance published by the CAA.
- (c) A flight crew member or cabin crew member:
 - (i) who refuses to cooperate with alcohol testing; or
 - (ii) whose alcohol test produces a reading in excess of the prescribed limit of alcohol,shall not be allowed to continue their duties on the flight in question.
- (d) When, in accordance with point (b) of ARO.RAMP.145, alcohol test data is included in the EASA centralised database, the CAA shall ensure that any personal data of the crew member is excluded.
- (e) “prescribed limit of alcohol” means:

- (i) in the case of breath, 9 microgrammes of alcohol in 100 millilitres,
- (ii) in the case of blood, 20 milligrammes of alcohol in 100 millilitres, and
- (iii) in the case of urine, 27 milligrammes of alcohol in 100 millilitres.”

4. Annex IV (Part-CAT) is amended as follows:

- (i) in point CAT.GEN.MPA.100, point (c)(1) omit the words “or alcohol”.
- (ii) for point CAT.GEN.MPA.170 substitute:

CAT.GEN.MPA.170 Psychoactive substances

- (a) The operator shall take all reasonable measures to prevent a person boarding an aircraft or being on board an aircraft when that person is under the influence of a psychoactive substance and is behaving in such a way as to risk endangering the safety of the aircraft or of another person on board of the aircraft.
- (b) The operator shall develop and implement a policy on the prevention and detection of misuse of psychoactive substances by flight crew members and cabin crew members and by other safety-sensitive personnel under its direct control, in order to ensure that the safety of the aircraft or its occupants is not endangered.
- (c) The operator shall develop and implement an objective, transparent and non-discriminatory procedure for the prevention and detection of cases of misuse of psychoactive substances by its flight crew members and cabin crew members and other safety-sensitive personnel under its direct control.
- (d) The operator shall inform the CAA of any case of misuse of psychoactive substances by any person to whom the procedure in point (c) applies as soon as reasonably practicable.”;

(iii) after point CAT.GEN.MPA.210, insert:

CAT.GEN.MPA.215 Support programme

- (a) The operator shall make available to and ensure, enable and facilitate access to a proactive and no-punitive support programme for flight crew members that will assist those persons recognise, cope with and overcome any problem which could negatively affect their ability to safely exercise the privileges of their licence.
- (b) The operator shall ensure the protection and confidentiality of personal data contained within the support programme.