

Title:	Opinion and Instructions Document Completing implementation of new requirements regarding safety margins for approach and landing performance conditions
Package Number	0006
Headline Purpose:	Incorporation of delayed regulatory changes affecting landing performance calculations and runway surface conditions.
Proposed action:	Amend Regulation (EU) No. 965/2012 as retained (and amended in domestic law) under the European Union (Withdrawal) Act 2018 (“ UK Reg (EU) No. 965/2012 ”) to include the relevant sections of Commission Implementing Regulation (EU) 2019/1387 of 1 August 2019 (“ CIR (EU) 2019/1387 ”) that were not retained in UK law due to the amendment of the applicability date of those sections by Commission Implementing Regulation (EU) 2020/1176 of 7 August 2020 (“ CIR (EU) 2020/1176 ”).

Objective

To achieve harmonisation with ICAO Annex 6 Part 1 and Commission Implementing Regulation (EU) 965/2012 (“[CIR \(EU\) 965/2012](#)”) as amended by the Annex to [CIR \(EU\) 2019/1387](#) at points 4(c), (d), (e), (f), (g), and (n) and (q).

The coming into force of these amendments was delayed by [CIR \(EU\) 2020/1176](#) due to the COVID-19 pandemic. In the absence of this amendment these requirements would have been retained as UK law. It is the CAA’s opinion that these amendments are necessary and desirable in the interests of safety to ensure compliance with the UK’s ICAO requirements and should be reflected in UK law.

Background

ICAO has amended a number of Standards and Recommended Practices (“SARPs”) in Annex 6 (“Annex 6”) to the Convention on International Civil Aviation (“the Chicago Convention”) and has produced extensive accompanying Guidance Material (“GM”). The purpose of those documents is to establish operational provisions on landing performance calculations and runway surface conditions reporting.

[CIR \(EU\) 2019/1387](#) amending [CIR \(EU\) 965/2012](#) was introduced in 2019 with varying applicability dates for sections of the change. In particular, Article 2 detailed an applicability date of 5 November 2020 for the requirements that are the subject of this Opinion. These would have been in force in the UK on 31 December 2020 but, due to the COVID-19 pandemic, [CIR \(EU\) 2020/1176](#) was issued which delayed the particular applicability date of these elements to 12 August 2021. As a result, the changes were not retained in UK law at the end of the Transition Period.

Section 2.1, RMT.0296 (Review of the aeroplane performance requirements for air operations) of [EASA Opinion 02/2019](#) sets out the background and rationale to these changes as follows:

“Investigations of accidents indicate that the standards for runway surface condition assessment and reporting are not harmonised and have recognised this fact as a significant contributing factor to runways excursions, in particular when the runway is wet or contaminated. The standards for aeroplane performance calculations do not cover adequately all conditions on wet and contaminated runways in relation to the method used for assessing and reporting the runway surface condition. ICAO has consequently amended a number of SARPs in several of its annexes, namely Annex 6, 8, 14 and 15, and has produced extensive guidance material in order to establish a globally harmonised reporting format for runway surface condition, airworthiness standards on performance data necessary for the assessment of the landing distance for aeroplanes at the time of landing, and operational provisions for the flight crew on landing performance calculations and runway condition reporting. [UK] Regulation (EU) No 965/2012 needs therefore to be amended to implement the applicable ICAO SARPs on runway surface condition assessment and reporting and aeroplane performance requirements. Furthermore, a

need for operational flexibility has been identified in certain CAT operations with regard to the required landing distance. Certain performance class A and class B aeroplanes are allowed in other regulatory systems to land within 80 % of the landing distance available (LDA) on the intended runway, provided that they are granted a prior approval from the competent authority and that they fulfil a number of risk-mitigating conditions. [UK] Regulation (EU) No 965/2012 needs to be amended in this regard as well to define the conditions under which these operations may be conducted, while attaining a level of safety that is equivalent to that attained by the existing requirements for landing performance.”

In the CAA’s opinion, the rationale expressed by EASA is correct and similar amendments should be introduced into UK law to improve safety and ensure consistency with international standards.

What legal powers are being used to achieve the change?

Article 31(1)(a) 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

Failure to make the changes would result in non-compliance with the amended ICAO SARPs set out at Part 1 of Annex 6, which would put UK operators at a disadvantage.

Affected Law (and, if applicable, UK AMC)

What is the existing UK legal framework which is relevant here?	UK Reg (EU) No. 965/2012 , points CAT.OP.MPA.300 and CAT.POL.A.105 in Annex III (Part CAT).
Identify the law that the CAA proposes be changed.	The addition of new points in Annex III (Part CAT) of UK Reg (EU) No. 965/2012 , namely points CAT.OP.MPS.301/303 and 311 and points CAT.POL.A.255 and 355. Incorporation of delayed regulatory changes as provided in the Annex to CIR (EU) 2019/1387 at Point 4 (c), (d), (e), (f), (g), (n) and (q).
Are any consequential amendments needed to other pieces of law?	No
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 2021/005/R . The CAA will review this AMC/GM and introduce such 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 in 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. As set out above, CIR (EU) 2019/1387 amended the applicability dates within CIR (EU) 965/2012 for sections of the change. In particular, Article 2 detailed an applicability date of 5 November 2020 for the subject elements. This would therefore have been in force in the UK on 31 December 2020 but due to the COVID-19 pandemic, CIR (EU) 2020/1176 was issued, amending CIR (EU) 2019/1387 and delaying the particular applicability date of these elements to 12 August 2021. The proposed changes were therefore not carried across into UK law.
Is there an EU Notice of Proposed Amendment considering the same issue?	EASA issued Notice of Proposed Amendment (NPA 2016-11) as part of the rule making process leading to EASA Opinion 02/2019 and the subsequent

	introduction of CIR (EU) 2019/1387 . Throughout the rule development process, the CAA's opinion has been that the proposed changes were in the interests of safety and should be made. There has been no material change in circumstances since the issue of the CIR and no change in the CAA's opinion.
Does this proposal relate to an international treaty obligation (e.g. an ICAO SARP)?	Yes. As detailed above, the amendments proposed here would ensure UK compliance with the amended ICAO SARPs.
Is a consultation required?	<p>These proposals were fully developed by EASA and were consulted widely upon at the time. The CAA was represented on the performance Rule-Making Group and, together with industry, responded to the consultation. The work resulted in EASA Opinion 02/2019 and associated decisions on AMC/GM. The Opinion was adopted within the EU through CIR (EU) 2019/1387.</p> <p>The amendments now proposed are materially the same as the amendments adopted into EU law. The CAA does not consider that there has been any material change in circumstances since the date of the EASA consultation.</p> <p>As the EASA consultation meets the requirement for consultation under Article 115 of the UK Basic Regulation for the purpose of these proposed amendments, there is no requirement to carry out an additional consultation.</p>
Is an Impact Assessment under the Better Regulation Framework necessary	No. EASA produced an Impact Assessment 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.
When is it intended that these provisions should be brought into force?	On the earliest possible date after the SI is made.
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 in respect of new points CAT.OP.MPA.301/303/311 and CAT.POL.A.255 and 355 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
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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 lawyers. The proposals set out below may therefore not be the final wording in the UK law.

In the CAA’s opinion, the changes detailed the Annex to [CIR \(EU\) 2019/1387](#) at Point 4(c), (d), (e), (f), (g), (n) and (q) should be adopted, subject to any necessary alterations to the drafting in order to be effective in UK law.