

EXPLANATORY MEMORANDUM TO
THE AIR NAVIGATION (CARBON OFFSETTING AND REDUCTION SCHEME
FOR INTERNATIONAL AVIATION) ORDER 2021

2021 No. 534

1. Introduction

- 1.1 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 The purpose of this Order is to implement in the United Kingdom (“UK”) Volume IV of Annex 16 to the Chicago Convention on International Civil Aviation (1944), known as the Carbon Offsetting and Reduction Scheme for International Aviation (“CORSIA”). Agreed by the International Civil Aviation Organisation (“ICAO”) in 2016, CORSIA requires qualifying aeroplane operators to offset their international carbon dioxide (“CO₂”) emissions above 2019 levels by purchasing ICAO approved offset credits. This Order implements the CORSIA provisions related to monitoring, reporting and verification of CO₂ emissions by aeroplane operators that are attributed to the UK and operate international flights.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The power to make an instrument that gives effect to the Chicago Convention is at section 60 of the Civil Aviation Act 1982. That power is exercisable by Her Majesty by an Order in Council (an Air Navigation Order).
6.2 This negative procedure Order will implement CORSIA’s monitoring, reporting and verification provisions in the UK. Key provisions included in this instrument cover:

the application of the scheme; monitoring, reporting and verification of CO₂ emissions from international routes; the roles of the State and regulators in enforcing CORSIA; charges and appeals provisions.

- 6.3 CORSIA's offsetting requirements and its potential interaction with any UK domestic carbon pricing scheme that includes aviation will be the subject of subsequent legislation.
- 6.4 The implementation of CORSIA is intrinsically linked to the UK's Greenhouse Gas Emissions Trading Scheme Order 2020 ("UK ETS Order"), S.I. 2020/1265, which came into force on 1st January 2021. Further secondary legislation is expected to be required to clarify any interaction between the two schemes.
- 6.5 The instrument provides a legal framework with which to apply and enforce CORSIA's monitoring, reporting and verification requirements in the UK as soon as possible in 2021. The planned legislative package, as a whole, is designed to ensure all CORSIA legislation is in force well before the first offsetting deadline of January 2025.

7. Policy background

What is being done and why?

- 7.1 ICAO is the United Nations specialised agency established under the Chicago Convention (1944) to manage the administration and governance of international aviation, which includes responsibility for tackling international aviation emissions, which fall outside States' nationally determined contributions under the 2015 Paris Agreement established within the UN Framework Convention on Climate Change.
- 7.2 The Government believes that emissions from this sector are a global problem requiring a global solution, and it is vital that an international answer is found, rather than simply displacing emissions elsewhere across the world.
- 7.3 The UK plays a key leadership role in ICAO, having successfully negotiated and secured the first ever global market-based measure to tackle emissions in a single sector. The Government is now negotiating for a long-term emissions reduction goal for international aviation.
- 7.4 In October 2016, ICAO agreed on a global market-based measure to address CO₂ emissions from international aviation from 2021, aimed at achieving ICAO's medium-term climate change goal of Carbon Neutral Growth from 2020.
- 7.5 This global scheme, known as the CORSIA, requires qualifying aeroplane operators to offset their growth in international aviation CO₂ emissions covered by the scheme above 2019 levels. The growth in emissions will be offset by these operators purchasing and cancelling emissions units (with one unit equivalent to one tonne of CO₂ equivalent emissions avoided or removed from the atmosphere).
- 7.6 Under the scheme, aeroplane operators will be required to:
 - 7.6.1 monitor emissions on all international routes (subject to exemption thresholds); and
 - 7.6.2 offset the growth above the baseline in emissions from routes between participating States by purchasing eligible emission units generated by projects that reduce emissions in other sectors (e.g. renewable energy).

- 7.7 CORSIA is divided into the following three phases:
- 7.7.1 Pilot Phase (2021-2023),
 - 7.7.2 First Phase (2024-2026), and
 - 7.7.3 Second Phase (2027-2035).
- 7.8 States may volunteer for the Pilot and First Phases, meaning that all qualifying aeroplane operators operating on routes between participating States will be subject to offsetting requirements. The Second Phase will include all ICAO States subject to exemptions.
- 7.9 As committed to in the European Civil Aviation Conference’s Bratislava Declaration of September 2016 and reconfirmed in writing to ICAO in June 2020, the UK plans to participate in CORSIA from the start of the pilot phase. As a contracting State of ICAO, the UK is obliged to adopt the relevant Standards and Recommended Practices (“SARPs”) relating to CORSIA into domestic law.
- 7.10 This instrument implements the first part of CORSIA in the UK, covering the attribution of aeroplane operators to a State, the role of the State in implementing CORSIA and details the monitoring, reporting and verification processes and requirements of CORSIA. The monitoring, reporting and verification of CO₂ emissions produced using CORSIA Eligible Fuels is also covered in detail as well as the penalties and enforcement that aeroplane operators and others will be subject to if they do not comply with the scheme. Where provision is not made in the CORSIA SARPs (such as for charges, penalties, enforcement and some aspects of verification) provisions are based on provisions in the UK ETS Order to promote consistency between schemes within the UK.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 This Order does not amend previous legislation.

10. Consultation outcome

- 10.1 Between 18th January 2021 and 28th February 2021, the Department for Transport ran a public consultation seeking views on draft secondary legislation covering the monitoring, reporting and verification rules of CORSIA. The consultation also sought views on possible options for interaction between CORSIA and the UK ETS.
- 10.2 The public consultation prompted 23 responses, from a range of stakeholders including UK ETS participants and NGOs, with the majority supporting the overall approach taken to the secondary legislation.
- 10.3 Full details of the consultation can be found at:
<https://www.gov.uk/government/consultations/implementing-the-carbon-offsetting-and-reduction-scheme-for-international-aviation>.

11. Guidance

- 11.1 Guidance on CORSIA is regularly published by ICAO, primarily through its website at www.icao.int. In addition, guidance has been issued to UK-administered aeroplane operators by the Environment Agency since 2018 and will continue to be issued regularly.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is minimal. Aeroplane operators are likely to incur small additional administrative costs.
- 12.2 There is no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the impact per business of CORSIA monitoring, reporting and verification provisions are deemed to be minimal.

13. Regulating small business

- 13.1 The instrument does apply to activities that are undertaken by small businesses.
- 13.2 To minimise any disproportionate impact of the CORSIA requirements on small businesses, aeroplane operators with levels of emissions below the threshold levels are not subject to the scheme.

14. Monitoring & review

- 14.1 The instrument does not include a statutory review clause. CORSIA is due to be reviewed by ICAO every three years from 2022. The Government will consider whether this necessitates amendments to this Order.

15. Contact

- 15.1 Holly Greig, Deputy Director for Aviation Decarbonisation at the Department for Transport, telephone number 07825 103220; e-mail Holly.Greig2@dft.gov.uk), can be contacted with any queries regarding the instrument and can confirm that this Explanatory Memorandum meets the required standard.
- 15.2 Robert Courts MP, the Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.