

Title:	Opinion and Instruction Document Amending requirements for flight crew competence and training methods and reporting, analysis and follow-up of occurrences in civil aviation
Package Number	0120
Headline Purpose:	To introduce evidence-based training in relation to flight crew competence and training methods to achieve a smooth transition to competency-based training. To make administrative changes and corrections to existing flight crew licensing requirements.
Proposed action:	Amend Commission Regulation (EU) No. 1178/2011 of 3 November 2011 as retained (and amended in UK domestic law) under the European Union (Withdrawal) Act 2018 (" UK Reg (EU) No. 1178/2011 ") to introduce the new training methods and to make minor consequential amendments to the same Regulation.

Objective

To update the flight crew training requirements in [UK Reg \(EU\) No. 1178/2011](#) to improve pilot competencies, to provide additional efficiency in the field of flight crew training and achieve a smooth transition to competency-based training.

The proposed rules contribute to significant improvement in safety by strengthening the competencies of flight crews while providing a cost-efficient framework.

Background

The International Civil Aviation Organisation ("ICAO"), developed a new model for competency-based recurrent assessment and training of flight crew, which is based on evidence ("evidence-based training" ("EBT")). The EBT project is a global safety initiative whose objective is to determine the relevance of existing pilot training according to aircraft generation. The EBT methodology identifies areas for improvement and allows the re-prioritisation of training topics. EBT is intended to improve the confidence and capability of flight crews to operate the aircraft in all flight regimes and to recognise and manage unexpected situations.

The UK influenced and supported the development of Commission Implementing Regulation (EU) 2020/2193 ("[CIR \(EU\) 2020/2193](#)"), which was intended to implement EBT. However, this Regulation was not applicable on 31 Dec 2020, so did not become retained EU law and did not amend [UK Reg \(EU\) No. 1178/2011](#), leaving a gap in the UK rule set covering this subject.

The first phase of EBT was the introduction by EASA of guidance for the conduct of operators' proficiency and licence proficiency checks in 2015. The second phase was subsequently implemented in EU law by Commission Implementing Regulation (EU) 2020/2036 of 9 December 2020 ("[CIR \(EU\) 2020/2036](#)") which amended Commission Regulation (EU) No. 965/2012 ("[CR \(EU\) No. 965/2012](#)") to introduce EBT for commercial air transport operators (and was retained in [UK law](#)). [CIR \(EU\) 2020/2193](#), amending Commission Regulation (EU) No. 1178/2011 ("[CR \(EU\) No. 1178/2011](#)"), introduced EBT for pilot licensing but was not retained in UK law as its application was delayed until 2021.

The amendments to [CR \(EU\) No. 1178/2011](#) made by [CIR \(EU\) 2020/2193](#) entered into force early January 2021 for EASA Member States. It is the CAA's opinion that it is desirable to introduce similar amendments into UK law as they will provide for EBT for operators and will permit the use of non-Part 21 aircraft for Part-FCL pilot training purposes.

However, the CAA needs additional time to prepare for the possible adoption of the Basic Instrument Rating ("BIR") in UK law. It is therefore the CAA's opinion that a delay in implementation of 24 months in respect of these aspects of [CIR \(EU\) 2020/2193](#) is necessary while they are reviewed. Accordingly, the related clauses in Annex I of [CIR \(EU\) 2020/2193](#) are not proposed for adoption at this time as set out more fully in Appendix 1 below.

On 2 March 2021, EASA published Acceptable Means of Compliance (“AMC”) and Guidance Material (“GM”). The CAA intends to review this AMC/GM and, subject to any amendment which the CAA may consider necessary, implement similar UK AMC/GM.

Additionally, it is the CAA’s opinion that further minor amendment is required to [UK Reg \(EU\) No. 1178/2011](#), and that this opportunity to amend the Regulation should be taken to clarify the following minor issues:

- To remove redundant references to balloons and sailplanes as set out in [CIR \(EU\) 2020/2193](#);
- There are a number of outdated references contained within Annex VI (Authority Requirements for Aircrew) which require updating; and
- To amend Annex I (Part-FCL)

What legal powers are being used to achieve the change?

Articles 23 and 27 of Regulation (EU) 2018/1139 as retained (and amended in UK domestic law) under the European Union (Withdrawal) Act 2018 (“[the UK Basic Regulation](#)”).

Consequence of not making these legislative changes

EBT prepares the pilot for the unexpected and mitigates operational risks by moving from task-based training to prioritising the development and assessment of key competencies, leading to a better training outcome. The scenarios recommended in EBT are simply a vehicle and a means to assess and develop competence. Mastering a finite number of competencies should allow a pilot to manage situations in flight that are unforeseen and for which the pilot has not been specifically trained. Incidents and accidents could increase if EBT is not implemented, whilst not offering common guidance and standards to industry and authorities, with a decrease in training standardisation and possible additional costs for operators.

[UK Reg \(EU\) No. 965/2012](#), as amended by UK Reg (EU) No. 2020/2036, provides the necessary framework that permits EBT from the operating perspective. The CAA’s proposed amendments to [UK Reg \(EU\) No. 1178/2011](#), to reflect [CIR \(EU\) 2020/2193](#), will complement that existing framework from the licensing perspective.

The first phase of EBT implementation was completed in 2015 via [ED Decision 2015/027/R](#) with the provision of GM to implement a mixed EBT which maintained the Operators Proficiency Check (“OPC”) and Licence Proficiency Checks (“LPC”).

The CAA’s proposed amendment to [UK Reg \(EU\) No. 1178/2011](#) is part of the second phase of EBT implementation permitting the use of baseline EBT to replace the OPC and LPC.

Affected Law (and, if applicable, UK AMC)

What is the existing UK legal framework which is relevant here?	UK Reg (EU) No. 1178/2011
Identify the law that the CAA proposes be changed	Amend UK Reg (EU) No. 1178/2011 to replicate Annexes 1 and 2 of CIR (EU) 2020/2193 in UK law , including EBT requirements (other than the red highlighted parts set out in Appendix 1 to this document (below), which primarily relate to BIR and are not being adopted for the reasons already described). Minor amendments are also proposed to UK Reg (EU) No. 1178/2011 to update certain dates and references as set out more fully herein.

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. AMC and GM to Part-FCL and Part-ARA of UK Reg (EU) No. 1178/2011. The CAA will be taking the necessary steps to adopt associated AMC and GM.
Is this proposal related to changes the EU have made that are not retained EU law (e.g. EU law that was in force but did not come across under the terms of the Withdrawal Act), or EU law changes since End of Transition?	Yes. As detailed above, these changes did not come into effect before the end of the Transition Period and so have not been retained in UK law.
Is there an EU Notice of Proposed Amendment considering the same issue?	A Notice of Proposed Amendment (“NPA”) in relation to these proposed changes was issued by EASA in 2018. Throughout the process which resulted in the NPA and the introduction of these new requirements, the CAA’s opinion was that the proposed changes were generally necessary and desirable. It is CAA’s view that there has been no material change in circumstances since the issue of the NPA.
Does this proposal relate to an international treaty or obligation (e.g. an ICAO SARP)?	No. Although ICAO published Doc 9995 AN/497 ‘Manual of evidence-based training’ in 2013, this is a guidance document for authorities, training organisations and operators. EBT is optional. When choosing to implement EBT in their regulatory framework, Doc 9995 AN/497 provides that States shall ensure that operators and training organisations apply the principles of Doc 9995 when developing and implementing such recurrent training programmes. The amendments now proposed reflect those principles.
Is a consultation required?	No. The amendments proposed are materially the same as amendments adopted into EU law. EASA carried out a consultation prior to publishing its Opinion No 08/2019 and prior to the adoption of the new EU law. Throughout that process, it was the CAA’s position that the proposed changes were generally necessary and desirable. There has in CAA’s view been no material change in circumstances since the consultation was carried out. Accordingly, the EASA consultation meets the requirement contained in Article 115 of the Basic Regulation for consultation for the purpose of these proposed amendments.

Is an Impact Assessment under the Better Regulation Framework necessary?	EASA carried out an Impact Assessment prior to publishing its Opinion No 08/2019 and prior to the adoption of the new EU law. The Impact Assessment appears at pages 13 to 52 of EASA's Notice of Proposed Amendment 2018-07(A) . There has in the CAA's view been no material change in circumstances since the Impact Assessment was carried out, and therefore a further impact assessment is not needed.
When is it intended that these provisions should be brought into force?	The earliest possible date 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 are 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? If so, what are they?	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 lawyers. The proposals set out below may therefore not be the final wording in the UK law.

Appendix 1 below sets out the proposed changes to be made to Annex 1 of [UK Reg \(EU\) No. 1178/2011](#) to bring in EBT, as set out in [CIR \(EU\) 2020/2193](#).

There are no plans at this stage to amend [UK Reg \(EU\) No. 1178/2011](#) to introduce a BIR as this will be subject of further consideration by the CAA in due course as detailed above. The words highlighted in red in Annex 1 below therefore **do not** form part of the changes proposed.

Appendix 2 below sets out proposed changes to Annex I of [UK Reg \(EU\) No. 1178/2011](#), as set out in Annex II of [CIR \(EU\) 2020/2193](#). The words highlighted in red in Appendix 2 below relate to amendments to Annex VI of [UK Reg \(EU\) No. 1178/2011](#) and therefore **do not** form part of the changes proposed.

In addition, the following minor correction to [UK Reg \(EU\) No. 1178/2011](#) will be made. Amendments are shown in strikethrough (for deletions) and red (for additions):

Annex VI (Authority Requirements for Aircrew)

ARA.GEN.135 (a) should be amended as follows:

*Without prejudice to ~~Directive 2003/42/EC of the European Parliament and of the Council~~ **UK Regulation (EU) No. 376/2014** the [CAA] shall implement a system to appropriately collect, analyse and disseminate safety information.*

Appendix 1

ANNEX I

Annexes I, VI and VII of Regulation (EU) No 1178/2011 are amended as follows:

- (1) Annex I (Part-FCL) is amended as follows:
 - (a) in point FCL.010, the following definitions are inserted:
 - (i) “Evidence based training (EBT) operator” means an organisation that is holding an air operator certificate (AOC) in accordance with Annex III (Part-ORO) to Regulation (EU) No 965/2012 and that has implemented an EBT programme approved by the competent authority, in accordance with the provisions of that Regulation.’;
 - (ii) “EBT practical assessment” means a method for assessing performance that serves to verify the integrated performance of competencies. It takes place in either a simulated or an operational environment.’;
 - (iii) “EBT programme” means a pilot assessment and training programme in accordance with point ORO.FC.231 of Annex III (Part-ORO) to Regulation (EU) No 965/2012.’;
 - (iv) “Mixed EBT programme” means an operator’s recurrent training and checking programme provided for in point ORO.FC.230 of Annex III (Part-ORO) to Regulation (EU) No 965/2012, a portion of which is dedicated to the application of EBT but which does not replace proficiency checks provided for in Appendix 9 to this Annex.’;
 - (b) in point FCL.015, the following point (g) is added:
 - (g) Training completed in aircraft or in FSTDs in accordance with Annex III (Part-ORO) to Regulation (EU) No 965/2012 shall be taken into account for the experience and revalidation requirements established in this Annex (Part-FCL).;
 - (c) in point FCL.035(a), the following point (4) is added:
 - (4) All hours flown in aeroplanes or TMGs that are subject to a decision of a Member State taken in accordance with points (a) or (c) of Article 2(8) of Regulation (EU) 2018/1139 or that fall within the scope of Annex I to that Regulation shall be credited in full towards fulfilling the flight time requirements of point FCL.140.A(a)(1) and point FCL.740.A(b)(1)(ii) of this Annex, provided that the following conditions are met:
 - (i) the aeroplane or TMG concerned is of the same category and class as the Part-FCL aircraft in respect of which the hours flown are to be credited;
 - (ii) in case of training flights with an instructor, the aeroplane or TMG used is subject to an authorisation specified in point ORA.ATO.135 of Annex VII (Part-ORA) or point DTO.GEN.240 of Annex VIII (Part-DTO).;
 - (d) in point FCL.235, point (a) is replaced by the following:

- (a) Through the completion of a skill test, applicants for a PPL shall demonstrate the ability to perform as PIC on the appropriate aircraft category the relevant procedures and manoeuvres with the competency appropriate to the privileges granted.;
- (e) point FCL.625 is amended as follows:
 - (i) in point (b), the following point (4) is added:
 - (4) Applicants for the revalidation of an IR shall receive full credits for the proficiency check as required in this Subpart when they complete EBT practical assessment in accordance with Appendix 10 related to the IR at an EBT operator.;
 - (ii) point (c) is replaced by the following:
 - (c) **Renewal**
 If an IR has expired, in order to renew their privileges, applicants shall comply with all of the following:
 - (1) in order to determine whether refresher training is necessary for the applicant to reach the level of proficiency needed to pass the instrument element of the skill test in accordance with Appendix 9, they shall undergo an assessment at either of the following organisations:
 - (i) at an ATO;
 - (ii) at an EBT operator that is specifically approved for such refresher training;
 - (2) if deemed necessary by the organisation providing the assessment in accordance with point (1), they shall complete refresher training at that organisation;
 - (3) after complying with point (1) and, as applicable, point (2), they shall pass a proficiency check in accordance with Appendix 9 or complete EBT practical assessment in accordance with Appendix 10 in the relevant aircraft category. That EBT practical assessment may be combined with the refresher training specified in point (2);
 - (4) they shall hold the relevant class or type rating unless specified otherwise in this Annex.;
 - (iii) points (e) and (f) are replaced by the following:
 - (e) Holders of a valid IR on a pilot licence issued by a third country in accordance with Annex 1 to the Chicago Convention shall be exempted from complying with the requirements in points (c)(1), (c)(2) and (d) when