Commission Regulation (EU) 2018/395 of 13 March 2018 laying down detailed rules for the operation of balloons as well as for the flight crew licensing for balloons pursuant to Regulation (EU) 2018/1139 of the European Parliament and of the Council

[[F1]COMMISSION REGULATION (EU) 2018/395

of 13 March 2018

laying down detailed rules for the operation of balloons as well as for the flight crew licensing for balloons pursuant to Regulation (EU) 2018/1139 of the European Parliament and of the Council**]**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC[(1)], and in particular Article 8(5) thereof,

Whereas:

(1) The Commission is to adopt the necessary implementing rules for establishing the conditions for the safe operation of balloons in accordance with Regulation (EC) No 216/2008, where such aircraft meet the conditions specified in points (b) and (c) of Article 4(1) of that Regulation.

(2) In light of the specific nature of operations with balloons, there is a need for dedicated operational rules, laid down in a self-standing Regulation. Those rules should be based on the general rules for air operations laid down in Commission Regulation (EU) No 965/2012[(2)], but they should be restructured and simplified, so as to ensure that they are proportionate and founded on a risk-based approach, whilst ensuring that balloon operations are carried out safely.

(3) The specific rules for air operations with balloons should not extend, however, to the requirements in respect of oversight of air operations by the competent authorities of the Member States, as those requirements are not specific to any particular air operation activity but apply horizontally in respect of all such activities. As regards oversight, the requirements laid down in Article 3 of Regulation (EU) No 965/2012 and Annex II to that Regulation should therefore continue to apply also with respect to air operations with balloons.

(4) In the interest of safety and with a view to ensuring compliance with the essential requirements laid down in Annex IV to Regulation (EC) No 216/2008, all operators of balloons covered by this Regulation, with the exception of design or production organisations performing certain operations, shall be subject to a set of basic requirements.

Changes to legislation: *There are outstanding changes not yet made to Commission Regulation (EU) 2018/395. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) In order to provide additional protection for balloon passengers, provision should be made for certain additional requirements for operators engaged in commercial operations with balloons which should apply in addition to the basic requirements.

(6) Those additional requirements should take account of the less complex nature of commercial operations with balloons as compared to other forms of commercial aviation, be proportionate and founded on a risk-based approach. Therefore, it is appropriate to replace the requirement of a certificate for commercial operations set out in Article 8(2) of Regulation (EC) No 216/2008 by a requirement to make a prior declaration to the competent authority and to lay down the detailed rules for making such declarations as well as certain other additional requirements.

(7) However, considering the comparatively low level of complexity and in light of a risk-based approach, operators engaged in certain commercial operations with balloons should be exempted from the requirement of certification and from those additional requirements, including the requirement of making a prior declaration. They should instead only be subject to the basic requirements set out in this Regulation which apply to all air operations with balloons covered by this Regulation.

(8) In order to ensure a smooth transition and to avoid as much as possible any disruptions when introducing the new, specific regime for balloon operations laid down in this Regulation, any certificates, authorisations and approvals issued to operators of balloons in accordance with the rules applicable prior to the date of application of this Regulation should continue to be valid and be deemed to constitute a declaration made in accordance with this Regulation for a limited time period. After the expiry of that time period, all operators engaged in commercial operations with balloons should make a declaration in accordance with the provisions of this Regulation.

(9) In order to ensure a smooth transition and to give all parties concerned sufficient time to prepare for the application of that new regime, this Regulation should only apply from an appropriate later date.

(10) The Agency prepared draft implementing rules and submitted them as an opinion[(3)] to the Commission in accordance with point (b) of Article 17(2) and Article 19(1) of Regulation (EC) No 216/2008.

(11) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 65 of Regulation (EC) No 216/2008,

HAS ADOPTED THIS REGULATION:

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) 2020/357 of 4 March 2020 amending Regulation (EU) 2018/395 as regards balloon pilot licences (Text with EEA relevance).

***Changes to legislation:** There are outstanding changes not yet made to Commission Regulation (EU) 2018/395. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Article 1

Subject matter and scope

[[F1]1 This Regulation lays down detailed rules for air operations with balloons as well as for issuing and maintaining pilot licences and associated ratings, privileges and certificates for balloons, where such aircraft meet the conditions laid down in points (b)(i) and (ii) of Article (2)(1) of Regulation (EU) 2018/1139 of the European Parliament and of the Council[(4)].**]**

2 This Regulation does not apply to air operations with tethered gas balloons.

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) 2020/357 of 4 March 2020 amending Regulation (EU) 2018/395 as regards balloon pilot licences (Text with EEA relevance).

Article 2

Definitions

[[F1]For the purpose of this Regulation, the following definitions and, unless terms are defined otherwise in this Article, the definitions of Article 2 of Commission Regulation (EU) No 1178/2011[(5)] apply:**]**

(1) ‘balloon’ means a manned lighter-than-air aircraft which is not power-driven and sustains flight through the use of either a lighter-than-air gas or an airborne heater, including gas balloons, hot-air balloons, mixed balloons and, although power-driven, hot-air airships;

(2) ‘gas balloon’ means a free balloon that derives its lift from a lighter-than-air gas;

(3) ‘tethered gas balloon’ means a gas balloon with a tether system that continuously anchors the balloon to a fixed point during operation;

(4) ‘free balloon’ means a balloon that is not continuously anchored to a fixed point during operation;

(5) ‘hot-air balloon’ means a free balloon that derives its lift from heated air;

(6) ‘mixed balloon’ means a free balloon that derives its lift from a combination of heated air and a lighter-than–air, non-flammable gas;

(7) ‘hot-air airship’ means a power-driven hot-air balloon, whereby the engine does not create any portion of lift;

(7a) **[**[F2]‘commercial operation’ means any operation of a balloon, in return for remuneration or other valuable consideration, which is available for the public or, when not made available to the public, is performed under a contract between an operator and a customer, where the latter has no control over the operator;**]**

(8) ‘competition flight’ means any air operation with a balloon performed for the purposes of participating in air races or contests, including practising for such an operation and flying to and from air races or contests;

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(9) 'flying display' means any air operation with a balloon performed for the purposes of providing an exhibition or entertainment at an advertised event open to the public, including practising for such an operation and flying to and from the advertised event;

(10) **[**[F1]'introductory flight' means any air operation, against remuneration or other valuable consideration, that consists of an air tour of short duration for the purpose of attracting new trainees or new members, performed either by a training organisation referred to in Article 10a of Regulation (EU) No 1178/2011 or by an organisation established with the aim of promoting aerial sport or leisure aviation;**]**

(11) 'principal place of business' means the head office or registered office of the operator of the balloon within which the principal financial functions and operational control of the activities referred to in this Regulation are exercised;

(12) **[**[F1]'dry lease agreement' means an agreement between undertakings pursuant to which the balloon is operated under the responsibility of the lessee;**]**

(13) **[**[F2]'national licence' means a pilot licence issued by a Member State in accordance with national legislation before the date of application of Annex III (Part-BFCL) to this Regulation or of Annex I (Part-FCL) to Regulation (EU) No 1178/2011;

(14) 'Part-BFCL licence' means a flight crew licence which complies with the requirements of Annex III (Part-BFCL) to this Regulation;

(15) 'conversion report' means a report on the basis of which a licence may be converted into a Part-BFCL licence.**]**

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) 2020/357 of 4 March 2020 amending Regulation (EU) 2018/395 as regards balloon pilot licences (Text with EEA relevance).

F2 Inserted by Commission Implementing Regulation (EU) 2020/357 of 4 March 2020 amending Regulation (EU) 2018/395 as regards balloon pilot licences (Text with EEA relevance).

Article 3

Air operations

1 Operators of balloons shall operate the balloon in accordance with the requirements set out in Subpart BAS of Annex II.

However, the first subparagraph shall not apply to design or production organisations which are compliant with Articles 8 and 9, respectively, of Commission Regulation (EU) No 748/2012[(6)] and which operate the balloon, within the scope of their privileges, for the purposes of the introduction or modification of balloon types.

[[F1]2 Operators of balloons shall engage in commercial operations only after having declared to the competent authority their capacity and means to discharge the responsibilities associated with the operation of the balloon.**]**

[[F3]. . . . .**]**

[[F1]The first subparagraph shall not apply to the following operations with balloons:**]**

a cost-shared operations by four individuals or less, including the pilot, provided that the direct costs of the flight of the balloon and a proportionate part of the annual costs

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incurred for the storage, insurance and maintenance of the balloon are shared by all those individuals;

b competition flights or flying displays, provided that the remuneration or any other valuable consideration for such flights is limited to the recovery of the direct costs of the flight of the balloon and a proportionate part of the annual costs incurred for the storage, insurance and maintenance of the balloon and that any prizes gained do not exceed the value specified by the competent authority;

[[F1]c introductory flights with four individuals or less, including the pilot, and flights for the purposes of parachute dropping, performed either by a training organisation referred to in Article 10a of Regulation (EU) No 1178/2011 that has its principal place of business in a Member State, or by an organisation created for the purposes of promoting aerial sport or leisure aviation, provided that the organisation operates the balloon on the basis of either ownership or a dry lease agreement and provided that the flight does not generate profits distributed outside the organisation and that such flights represent only a marginal activity of the organisation;

d training flights performed by a training organisation referred to in Article 10a of Regulation (EU) No 1178/2011 that has its principal place of business in a Member State.**]**

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) 2020/357 of 4 March 2020 amending Regulation (EU) 2018/395 as regards balloon pilot licences (Text with EEA relevance).

F3 Deleted by Commission Implementing Regulation (EU) 2020/357 of 4 March 2020 amending Regulation (EU) 2018/395 as regards balloon pilot licences (Text with EEA relevance).

[F2 Article 3a

Pilot licences and medical certification

1 Without prejudice to Commission Delegated Regulation (EU)[(7)], pilots of aircraft referred to in Article 1(1) of this Regulation shall comply with the technical requirements and administrative procedures laid down in Annex III (Part-BFCL) to this Regulation and in Annex IV (Part-MED) to Regulation (EU) No 1178/2011.

2 As an exception to the privileges of the holders of licences as defined in Annex III (Part-BFCL) to this Regulation, holders of such licences may carry out flights referred to in Article 3(2)(a) to (d) without complying with point BFCL.215 of Annex III (Part-BFCL) to this Regulation.

3 A Member State may authorise student pilots who follow a balloon pilot licence (‘BPL’) training course to exercise limited privileges without supervision before they meet all the requirements that are necessary for the issue of a BPL in accordance with Annex III (Part-BFCL), subject to all of the following conditions:

a the scope of the privileges granted shall be based on a safety risk assessment carried out by the Member State, taking into account the extent of training necessary for the intended level of pilot competence to be achieved;

b the privileges shall be limited to the following:

(i) the whole or part of the national territory of the authorising Member State;

(ii) balloons that are registered in the authorising Member State;