

**EXPLANATORY MEMORANDUM TO
THE AIR NAVIGATION (OVERSEAS TERRITORIES) (AMENDMENT)
ORDER 2011**

2011 No. 237

1. This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Instrument amends the Air Navigation (Overseas Territories) Order 2007 (SI 2001 No. 3468) (“the 2007 Order”) in order:

(a) to give legal effect in the United Kingdom Overseas Territories to certain International Civil Aviation Organisation (ICAO) standards and recommended practices contained in the Annexes to the Convention on International Civil Aviation signed at Chicago on 7th December 1944 (“the Chicago Convention”);

(b) to clarify or amplify certain provisions of the 2007 Order in the light of experience of its application and implementation;

(c) to give effect to certain recommendations made by ICAO as a result of its safety oversight audit of the United Kingdom and its Overseas Territories conducted in February 2009;

(d) to enhance the regulatory and enforcement capability of the regulatory authorities in the Territories.

2.2 Certain of the amendments are intended to correct purely textual errors in the present 2007 Order.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative context

4.1 This instrument is the latest of a series of Orders and amending Orders designed to keep the civil aviation legislative structure in the Overseas Territories up to date by implementing the latest standards and recommendations of the ICAO, in accordance with the Secretary of State’s Directions given under section 6 of the Civil Aviation Act 1982. This instrument is the second amendment to the 2007 Order.

5. Territorial Extent and Application

5.1 This instrument amends the 2007 Order, which applies to all of the United Kingdom Overseas Territories with the exception of the British Antarctic Territory and Gibraltar. Following amendment by this instrument, the 2007 Order will also apply to the British Antarctic Territory, but only in respect of one provision that repeals earlier legislation.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 The policy objective is to continue to implement in the Overseas Territories the United Kingdom's obligations under the Chicago Convention as elaborated by the work of ICAO with respect to aviation safety, in accordance with the provisions of section 8 of the Civil Aviation Act 1949 as extended to the Overseas Territories by the Civil Aviation Act 1949 (Overseas Territories) Order 1969. Section 8 provides the Crown with the power, by Order in Council, to give effect to the Chicago Convention and any Annex thereto relating to international standards and recommended practices.

7.2 There is a public interest in the continued safety of civil aviation operations in the UK's Overseas Territories or being performed by Territory registered aircraft. However there has been no media interest in the particular changes introduced by this instrument, and there was a relatively low response to the consultation undertaken.

7.3 The changes are legally important, as they ensure that the UK continues to meet its obligations as a Contracting State under the Chicago Convention.

Consolidation

7.4 It is our intention to produce an informal consolidated text of the 2007 Order, as amended, during 2011-2012 and to publish the same on the website of Air Safety Support International (www.airsafety.aero), which will be available to the public free of charge.

8. Consultation outcome

8.1 A formal public consultation was launched at the beginning of November 2009 with a closure date for comments of 7th February 2010. This consultation ran concurrently with a formal consultation on changes to the Operations suite of the Overseas Territories Aviation Requirements (OPS-OTAR). Some elements of the consultation consisted of prior notification of intent to make changes that are in fact being deferred in the light of, or

pending consideration of, responses received to the OPS-OTAR consultation and associated airworthiness revisions.

8.2 Notice of the consultation was published on the above-referenced website and by communication to Governors of Overseas Territories, Directors of Civil Aviation, airport operators and the aviation industry. Some comments were received; however these largely related to the OPS-OTARs, and none necessitated any substantive revision to the proposed amendments.

8.3 Governors of Territories, Directors of Civil Aviation, airport operators and the aviation industry in the affected Territories have all been consulted on the substantive changes introduced by this instrument, which are of a safety regulatory or procedural nature. None of those consulted expressed any discontent with the proposals.

9. Guidance

9.1 Guidance material was incorporated in the consultation documentation and with regard to implementation is contained in Overseas Territories Aviation Circulars (OTAC) published from time to time by Air Safety Support International Limited (ASSI) on its website and in Operations Weekly Briefs distributed by ASSI.

10. Impact

10.1 It is considered that there will be no impact on the charities or voluntary bodies as a result of the proposals.

10.2 It is considered that the impact of the proposals upon the public sector will be minimal and will be confined to publicly owned and operated aerodromes.

10.3 It is considered that the impact of the proposals upon business will be minimal and will be largely confined to minor changes in procedure.

10.4 Accordingly, an Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements upon small firms employing up to 20 people, the approach taken is to ensure that, in the overriding context of safety, the requirements are appropriate and proportionate.

12. Monitoring and review

12.1 All provisions contained in the 2007 Order and the associated OTAR Parts are monitored on an ongoing basis to ensure their continued compliance with the international standards and in the light of feedback from industry and Territory regulators with regard to implementation.

13. Contact

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