

EXPLANATORY MEMORANDUM TO
THE AIR NAVIGATION (AMENDMENT) ORDER 2015

2015 No. 1768

1. This explanatory memorandum has been prepared by the Department for Transport (“the Department”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order amends the Air Navigation Order 2009 (S.I. 2009/3015) (“the ANO”) to give effect to the requirements in Regulation (EU) 376/2014 of the European Parliament and of the Council of 3rd April 2014 on the reporting, analysis and follow up of occurrences in civil aviation (“Regulation 376/2014”) which applies from 15th November 2015.

2.2 This Order removes provision in the ANO relating to the reporting of occurrences involving civil aircraft in (and civil aircraft registered in the United Kingdom but which are outside) the United Kingdom, provides that the Civil Aviation Authority (“the CAA”) is the competent authority in the United Kingdom for the purposes of Regulation 376/2014 and makes it an offence not to report an occurrence.

2.3 This Order also updates certain references in the ANO to military flying regulations and orders.

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

3.1 None

4. Legislative Context

4.1 Regulation 376/2014 applies from 15th November 2015, and requires specified categories of person to make a report if there is an accident or incident involving an aircraft registered in a Member State or operated by a person whose activities are overseen by a Member State. It requires each Member State to take certain steps to establish a mandatory reporting system to facilitate the collection of details of occurrences.

4.2 Prior to Regulation 376/2014 taking effect, the CAA oversaw the mandatory occurrence reporting system in the United Kingdom in accordance with articles 226 and 227 of the ANO. Regulation 376/2014 requires each Member State to designate a competent authority and by virtue of article 21 requires each Member State to make provision for appropriate penalties for failure to comply with the reporting obligations. Article 6 of this Order, therefore, designates the CAA as the competent authority for the purposes of

Regulation 376/2014 and article 9 makes it an offence not to report an occurrence in accordance with article 4 of Regulation 376/2014.

4.3 The ANO makes provision to relieve the operator or pilot of a civil aircraft from the requirement to comply with the Rules of the Air¹ if the operator or pilot is acting in accordance with Military Flying Regulations (Joint Service Publication 550) or Flying Orders to Contractors (Aviation Publication 67), and also requires a civil pilot of a military aircraft to comply with certain specified provisions of the ANO unless the operator or pilot is acting in accordance with Military Flying Regulations (Joint Service Publication 550) or Flying Orders to Contractors (Aviation Publication 67). Those Regulations and Orders no longer exist and have been superseded by the MAA01: Military Aviation Authority Regulatory Policy (Issue 4) and Regulatory Articles 2000 Series Flying Regulations (as published on 11th November 2014 and updated on 15th January 2015). Articles 10 and 11 of this Order make provision to update these references.

5. Territorial Extent and Application

5.1 This Order extends to the United Kingdom and applies to aircraft registered in the United Kingdom wherever the aircraft are situated.

6. European Convention on Human Rights

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

7. Policy background

7.1 Occurrence reporting helps ensure that safety issues are identified and that corrective action is taken before an accident occurs. In recognition of this, international standards established by the International Civil Aviation Organisation in accordance with the provisions of the Convention on International Civil Aviation (the Chicago Convention) require contracting states to establish a mandatory incident reporting system.

7.2 The United Kingdom has a longstanding mandatory occurrence reporting scheme which is administered by the CAA. The current EU Directive (2003/42/EC) on Occurrence Reporting was largely based on the United Kingdom's requirements.

7.3 The European Commission was concerned that implementation of the EU Directive has been inconsistent amongst Member States and that the sharing of information from occurrence reports among the Member States was inadequate. The measure which became the EU Regulation was therefore

¹ These are prescribed in the Rules of the Air Regulations 2015 (S.I. 2015/840) made under article 160(1) of the ANO.

proposed to strengthen occurrence reporting and the sharing of data across the EU while providing appropriate protection to those reporting an occurrence. The Regulation was supported by the United Kingdom as it will maintain and enhance the existing high level of aviation safety in the EU.

8. Consultation outcome

8.1. The Department did not carry out a consultation.

9. Guidance

9.1 No guidance is necessary in respect of the amendments. However, guidance relating to the requirements of Regulation 376/2014 can be provided to users by the CAA in its role as the industry regulator if asked to do so.

10. Impact

10.1 There is estimated to be no additional cost to business from the implementation of Regulation 376/2014. The provision made by this Order imposes no cost on industry and an Impact Assessment has not been completed.

10.2 There is no impact on charities and voluntary bodies.

10.3 The impact on the public sector is negligible.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the CAA provides advice to small business where possible in respect of new aviation regulations which are likely to increase their costs.

11.3 The basis for the final decision on what action to take to assist small business has been left to the judgement of the CAA as the industry regulator.

12. Monitoring & review

12.1 The CAA will monitor the United Kingdom aviation industry to ensure compliance with the requirements which are set out in the ANO and relevant European legislation.

12.2 The ANO has been amended a number of times due to the large amount of EU legislation that has been adopted. A consolidation of the ANO is planned for 2016 after the current EU rulemaking programme has been

completed. The consolidation will also take account of a more general review of the ANO being undertaken by the CAA.

13. Contact

13.1 Duncan Nicholls at the Department for Transport Tel: 020 7944 6377, email: Duncan.nicholls@dft.gsi.gov.uk, can answer any queries regarding the instrument.