

EXPLANATORY MEMORANDUM TO
THE AIR NAVIGATION (OVERSEAS TERRITORIES) (AMENDMENT)
ORDER 2008

2008 No. 3125

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**

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 recommendations;
- (b) to clarify, correct or amplify certain provisions of the 2007 Order in the light of experience of implementation;
- (c) to enhance the regulatory and enforcement capability of the regulatory authorities in the Overseas Territories.

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

None.

4. **Legislative content**

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 International Civil Aviation Organisation (ICAO). This instrument is the first amendment to the 2007 Order.

5. **Territorial Extent and Application**

This instrument amends the 2007 Order, which applies to all of the United Kingdom Overseas Territories with the exception of British Antarctic Territory and Gibraltar.

6. **European Convention on Human Rights**

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

7. **Policy background**

The policy objective is to implement in the Overseas Territories the United Kingdom's obligations under the Chicago Convention on International Civil Aviation as elaborated by the work of ICAO with respect to aviation safety.

Certain of the amendments are intended to correct purely textual errors in the present 2007 Order. The substantive changes comprise principally the following:

(a) Articles 64 and 135 of the Order are supplemented by new provisions introducing a prohibition against the advertising of flights for the purpose of commercial air transport unless the advertiser, or the operator on whose behalf the advertisement is placed, holds either an air operators certificate issued by the Governor under article 64 or a foreign aircraft permit issued by the Secretary of State under article 135. The two articles already contain a prohibition against the operation of such flights in the absence of a certificate or permit.

(b) In article 73, paragraph (8) is deleted as there is no longer a requirement to specify the performance limitations of certain categories of helicopter as these are detailed in the relevant parts of the Overseas Territories Aviation Requirements.

(c) Article 74 is replaced by a revised article to provide a clearer definition of the prohibition on the use of a single engine aeroplane for the purpose of commercial air transport at night or in instrument meteorological conditions and to align the prohibition more precisely with the performance criteria established in respect of such aircraft.

(d) The amendment to article 104 is intended to correctly align the conditions for the use of a notified Government aerodrome with the categories of aircraft operations set out in article 103(2). The insertion of the additional paragraph in article 105 is intended to enable a Governor to stipulate the level of rescue and fire fighting services available at an aerodrome that is not subject to certification under the provisions of paragraph 105(2) of the same article. This latter omission was identified by a number of the aerodrome operators and regulatory authorities in the Overseas Territories.

(e) The insertion of the additional paragraph in article 107 is for the purpose of providing a definition of an aerodrome licensed for public use.

(f) The amendment to article 141 is for the purpose of separating out from the safety-related grounds the ability to ground a foreign aircraft that does not have a permit issued by the Secretary of State.

(g) The amendment to article 155 is to enable the Governor to publish his requirements in respect of the provision of a meteorology service or the provision of an aeronautical information service, for the publication of charts and in respect of arrangements for undertaking search and rescue activities.

(h) The amendment to the definition of "authorised person" in article 156 is intended to include persons designated by the Governor and the Secretary of State. This amendment also aligns with the changes to article 141 referred to above.

8. Consultation outcome

Formal public consultation on the new provisions for an “advertising ban” (item 7(a) above) was conducted from 27 June to 19 September 2008. No comments in response to the consultation were received.

Governors of some of the Overseas Territories, Directors of Civil Aviation,, certain Territory Law Officers, airport operators and the aviation industry have been consulted, particularly in those Overseas Territories with no resident Director of Civil Aviation, during the period August to October 2008 on the changes to the definition of “authorised person” (item 7(h) above) and are supportive of the changes.

The changes in relation to aerodromes (items 7(d) and (e) above) resulted from requests received from aerodrome operators in certain Overseas Territories for clarification and amplification of practice in relation to the regulatory oversight of aerodrome operations and reflect the already existing practice applied. The changes were discussed with those interested parties over the period from March to September 2008 and considered by the Policy Objectives Group of Air Safety Support International (ASSI) at its September meeting.

The remaining changes detailed in paragraph 7 above have not been consulted on but reflect opinions of technical specialists on the practical implementation of the regulatory requirements.

9. Guidance

Changes to the Order and the operational requirements to support its various provisions are promulgated in the Overseas Territories Aviation Requirements (that are published by Governors in the Government Gazettes in the Overseas Territories) and more detailed guidance in the implementation thereof is provided via Overseas Territories Aviation Circulars and Information Leaflets all of which are published on the website of ASSI. Furthermore, email alerts are sent to all of those of have requested to be kept informed of changes to the legislation and regulations.

10. Impact

10.1 No impact on business, charities or voluntary bodies in the Overseas Territories is foreseen.

10.2 No impact on the public sector in the Overseas Territories is foreseen.

10.3 An impact assessment has not been prepared for this instrument. This is because the instrument is primarily concerned with the implementation of air safety standards, and an impact on the private or voluntary sector is not foreseen. The impact of this Order will only be in the Overseas Territories.

11. Regulating small business

- 11.1 The legislation applies to small businesses. The provisions are safety-related and therefore are applied to all operators and service providers.
- 11.2 To minimize the impact of the requirements on firms employing up to 20 people, the approach taken is that in general safety requirements are scaled to take account of aircraft size and complexity so that the onus on operators of smaller aircraft, including small businesses, is proportionate.
- 11.3 The basis for the final decision on what action to take to assist small businesses is as follows. The ability of small aircraft and aerodrome operators to meet all of the international standards in every respect is taken into account both by the International Civil Aviation Organisation in setting the standards and by the regulatory authorities in applying the standards in a manner appropriate to the Overseas Territories' operating environment, i.e. isolated island communities.

12. Monitoring and review

Monitoring and review of the provisions of the Order are carried out through routine regulatory activity and evaluation of comments from Governors, regulators and the industry in the Overseas Territories. A formal review seeking the views of such stakeholders on the working of the Order and the Overseas Territories Aviation Requirements, which as noted above (paragraph 9) support the provisions of the Order, is scheduled to begin in the second half of 2009. This review will also take account of any changes made by the International Civil Aviation Organisation to the standards contained in the Annexes to the Chicago Convention.

13. Contact

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