

**EXPLANATORY MEMORANDUM TO THE
THE AIR NAVIGATION (OVERSEAS TERRITORIES) ORDER 2013**

2013 No. 2870

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 repeals the Air Navigation (Overseas Territories) Order 2007 (S.I. 2007/3468) (“the 2007 Order”) as amended by the Air Navigation (Overseas Territories) (Amendment) Order 2008 (S.I. 2008/3125) and the Air Navigation (Overseas Territories) (Amendment) Order 2011 (S.I. 2011/237).

2.2 Under Directions from the Secretary of State dated January 2003 pursuant to section 6 of the Civil Aviation Act 1982, Air Safety Support International Limited (“ASSI”) was established as a subsidiary of the Civil Aviation Authority to provide civil aviation safety oversight of the UK’s Overseas Territories.

2.3 Included in ASSI’s remit under the Directions is responsibility for maintaining the legislation, being the Air Navigation (Overseas Territories) Orders, and for developing a full package of Overseas Territories Aviation Requirements (“OTARs”) that are compliant with the Annexes to the Convention on International Civil Aviation signed at Chicago on 7th December 1944 (“the Chicago Convention”). For the past ten years ASSI has been developing a full complement of OTARs that address all of the Standards contained in the said Annexes so that they now comprise a comprehensive regulatory code in accordance with the Convention.

2.4 Part of the work associated with the development of the OTARs has involved identifying those elements of the Air Navigation (Overseas Territories) Orders that can be relocated into the OTARs for ease of future maintenance without diminution of their legal enforceability. The above approach was endorsed by the International Civil Aviation Organisation (“ICAO”) during its audit of the UK in 2009. That work is now complete and the Order now presented is a consolidation of the previous Orders that is designed to provide the legal basis for the continuing application of the OTARs as the regulatory code.

2.5 The purpose of the instrument is:

(a) to give full legal effect in the United Kingdom Overseas Territories to the ICAO standards and recommended practices contained in the Annexes to the Chicago Convention;

(b) to clarify, correct or amplify certain provisions of the 2007 Order (as amended) 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;

(e) to modernise the language and structure of the legislation; and

(f) to apply Statutory Instrument drafting practice in relation to the use of gender-neutral terms and the replacement of the term “shall” by the term “must” when referring to obligations or mandatory requirements.

2.6 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 that are 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), in accordance with the Secretary of State’s Directions given under section 6 of the Civil Aviation Act 1982. This instrument is the latest amendment that consolidates and repeals the previous Orders.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom Overseas Territories with the exception of the British Antarctic Territory and Gibraltar.

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

7.1 The policy objective is 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 (now reproduced in section 60 of the Civil Aviation Act 1982) requires the Crown, by Order in Council, to give effect to the Chicago

Convention and any Annex thereto relating to international standards and recommended practices.

7.2 The public interest is in the continued safety of civil aviation operations in the UK's Overseas Territories or by being performed by Territory registered aircraft. The changes are legally important as they ensure that the UK continues to meet its obligations as a Contracting State under the Chicago Convention.

7.3 It is the intention that this Order should pertain for the long term and should not require further amendment in the foreseeable future.

8. Consultation outcome

8.1 Preliminary consultations on the proposals took place between July and October 2011 when views were sought from the Overseas Territories and their industries on issues of principle.

8.2 A formal public consultation was launched on the 16th of October 2012 with a closure date for comments of 1st February 2013. This consultation ran concurrently with a formal consultation on changes to the Operations suite of the Overseas Territories Aviation Requirements (OPS-OTAR).

8.3 Notice of the consultation was published on the ASSI website and by communication to Governors of Overseas Territories, Directors of Civil Aviation, airport operators and the aviation industry. A significant number of comments were received, some of which necessitated substantive revision to the proposed amendments.

9. Guidance

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

10. Impact

10.1 The substantive changes are of a safety regulatory or procedural nature. Governors of Territories, Directors of Civil Aviation, airport operators and the aviation industry in the Territories have all been consulted on the substantive changes and have expressed no discontent with the proposals.

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

10.3 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.

10.4 It is considered that the impact of the proposals upon business will be minimal and will be largely confined to procedures.

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 Order and the associated OTAR 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

Margaret Purdasy at the Foreign and Commonwealth Office telephone 0207 008 3124 or email Margaret.Purdasy@fco.gov.uk can answer any queries regarding the instrument.

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