EXPLANATORY MEMORANDUM TO

THE AIR NAVIGATION (AMENDMENT) ORDER 2013

2013 No. 3169

1. Introduction

1.1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1. The Air Navigation Order 2009 ("the ANO 2009") (S.I. No. 2009/3015) is a substantial piece of secondary legislation by which aviation safety standards are implemented and air navigation is regulated. The ANO 2009 is wide-ranging, relating to aircraft (airworthiness, operation and certification), air crew, passengers, cargo, air traffic services and aerodromes.

2.2. This Order amends the ANO 2009 in four ways. The amendments are in relation to an exception from flight crew licensing requirements for a person with an appropriate medical declaration or medical certificate undertaking solo flying training; to provide a penalty in relation to offering commercial transport and public transport flights in an uncertificated aircraft; a minor change in relation to the meaning of "in flight" for the purposes of the flying log book of helicopter pilots; and the designation of the Civil Aviation Authority ("the CAA") as the competent authority for the purposes of EU Regulation 965/2012 laying down technical requirements and administrative procedures related to air operations ("the EASA Air Operations Regulation").

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

3.1. None.

4. Legislative Context

4.1. This instrument will bring about various amendments to the ANO 2009 relating to four unrelated topics. The amendments are necessary or desirable changes to domestic legislation, some of which are related to European legislation and its subject matter.

5. Territorial Extent and Application

5.1. This instrument extends to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1. Flight crew licence requirement – exception for solo flying training – medical declaration

7.1.1. The Order amends article 52 of the ANO 2009 so that student pilots may fly solo in reliance on an appropriate medical declaration or on a medical certificate issued under the so-called European Aviation Safety Agency (EASA) Aircrew Regulation. This permission is subject to other conditions.

7.1.2. The concept of a medical declaration was introduced in 2012 to the 2009 Order for certain classes of UK licence.

7.2. Flight crew licensing – Personal flying log book – Helicopters

7.2.1. This is a minor amendment to article 79(5) of the ANO 2009 (which provides the meaning of ”in flight” for helicopters in relation to the entries to be made by a pilot in his flying log book under that article). It amends this provision so that it aligns with the definition in European legislation in the EASA Aircrew Regulation for the purposes of the recording of flight-time in helicopters. The difference from the current definition lies in the time the flight-time begins: under the European definition it starts when the rotor blades start rotating whilst under the current ANO definition, it starts when the helicopter first moves under its own power for the purpose of taking off. The difference is marginal but it is felt it makes sense to have the same definition for all aircraft for this purpose.

7.3. Offering commercial air transport and public transport flights - penalties

7.3.1. Article 14 of the Air Navigation Order in 2009 prohibits a person from holding anyone out as being someone who may offer flights in an aircraft registered in the UK for the purpose of public transport or commercial air transport unless the person who was being so held out held an air operator’s certificate. Unfortunately, a corresponding enforcement provision was overlooked in 2009 and so an amendment to Schedule 13 (Penalties) of the ANO 2009 is required. The amendment in this Order inserts an entry into Section 1 of Part C of Schedule 13 (Penalties), so as to make a breach of Article 14 a criminal offence. The omission of such an offence was identified by the CAA in 2012 during the course of an investigation and they estimate that about six prosecutions might have been undertaken had such an offence been in existence. The CAA has sought to ensure compliance through engagement with those concerned and does not consider that there have been public safety concerns.

7.4. **Designation of the CAA as the competent authority for the purposes of the EASA Air Operations Regulation**

7.4.1. The final amendment designates the CAA as the competent authority for the purposes of the EASA Air Operations Regulation. The Regulation (and the requirement for a competent authority) is currently in effect but will only have practical relevance from 28th October 2014 when Annexes I to V first apply in relation to the United Kingdom.

8. Consultation outcome

8.1. A formal consultation was carried out by the CAA for the first of the changes (in relation to solo flying in reliance on a medical declaration or European medical certificate) made by the Order as outlined below.

8.2. The changes to be made as regards licensing were identified early in 2011 and were consulted upon via the CAA website. The consultation lasted for 3 months, beginning in June 2011. During the consultation period 28 relevant comments were received. There were no objections to the amendment.

9. Guidance

9.1. Guidance relating to all of the amendments contained within this amendment to the ANO 2009 can be provided to users by the CAA in its role as the industry regulator with respect to such matters if asked to do so.

10. Impact

10.1. Subject to paragraph 10.3, the impact on business, charities and voluntary bodies of this Order is negligible.

10.2. The impact on the public sector is negligible.

10.3. An Impact Assessment was carried out in relation to the creation of the prohibition on a person from holding out anyone as being someone who may offer flights in an aircraft registered in the UK for the purpose of public transport or commercial air transport unless the person held out had an air operator's certificate. This Assessment analysed the creation of an offence for breach of this prohibition, albeit the creation of such an offence was overlooked when the prohibition was enacted. That Assessment is attached as an Annex to this memorandum

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 assistance and 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 UK aviation industry to ensure compliance with the standards which are set out in the ANO 2009 and European legislation.

12.2. The ANO is regularly reviewed and updated by the CAA and amended as necessary, particularly to bring it into line with changes to European aviation legislation. The ANO will be consolidated to remove any provisions which are no longer required as soon as the opportunity arises.

13. Contact

12.3. Paul Cremin at the Department for Transport Tel: 020 7944 5882 or email: paul.cremin@dft.gsi.gov.uk can answer any queries regarding the instrument.