EXPLANATORY MEMORANDUM TO

THE AIR NAVIGATION (AMENDMENT) ORDER 2014

2014 No. 508

1. This explanatory memorandum has been prepared by the Department for Transport ("DfT") 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 (air worthiness, operation and certification), air crew, passengers, cargo, air traffic services and aerodromes.

2.2 The Order amends the ANO to give power to the Civil Aviation Authority (CAA) to grant permissions under Articles 223 and 225 of the ANO 2009 which are respectively required by certain foreign registered aircraft before they can take on board or discharge passengers or cargo in the UK or to carry out aerial work. Additional amendments to the ANO 2009 have been made in order to give the CAA certain powers to be able to revoke, suspend or vary Article 223 and 225 permissions.

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

3.1 None.

4. **Legislative Context**

4.1 This instrument will bring about amendments to the ANO 2009 relating to the issue of permission for foreign airlines to operate in the United Kingdom. The amendments are necessary in order to enable the CAA to take over (in practice) the bulk of the permissions regime from the Secretary of State.

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 negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Before foreign registered aircraft can take on board or discharge passengers or cargo in the UK, they must obtain the permission of the Secretary of State under Article 223 of the ANO 2009.

The exception to this requirement is that:

(a) aircraft with EU operating licences carrying out internal EU flights; and

(b) aircraft with air operator certificates issued in a British overseas territory (not including Gibraltar),

do not require permission under Article 223.

In addition, aircraft registered other than in the EEA, in a British overseas territory or in the Isle of Man or Bailiwicks of Jersey or Guernsey ,may not carry out aerial work in the UK without permission from the Secretary of State under Article 225 of the ANO 2009.

7.2 The requirement for permission forms part of the UK's aviation safety oversight regime. The UK State Safety Programme identifies foreign aircraft flying to the UK as one of our biggest aviation safety risks, principally because the responsibility for oversight of foreign aircraft rests with the State of registration. The Chicago Convention on International Civil Aviation requires States to acknowledge other States' oversight procedures. Therefore, the UK's permission system provides the UK with the first opportunity to check a foreign operators' compliance with international safety standards before entering the UK. The CAA has primary responsibility for safety in the UK but at present has only an advisory role in relation to the granting of permissions to foreign aircraft.

7.3 It is intended that by giving the CAA powers to decide upon applications for permission under Articles 223 and 225, this will lead to an improvement of safety oversight of foreign registered aircraft operating in the UK.

7.4 This instrument also contributes to wider Coalition Government policy to reduce staff costs in central Departments and transfer front line functions to front line organisations. The transfer to the CAA was agreed in the 2012 Spending Review and will bring savings to the Department for Transport of about £120k per annum by removing 3 posts. It is now intended that all permissions will be administered through the CAA who will charge foreign airlines a processing fee for the application.

7.5 The Secretary of State is retaining powers to grant permission under Article 223 and also to decide, amend or revoke permissions where necessary. There is also provision in the amendments that the Secretary of State will provide guidance to the CAA on when the Secretary of State expects to deal with an application for permission under Article 223.

8. Consultation outcome

8.1 The DfT conducted a formal 12 week written consultation on proposals to transfer the administration of Article 223 and 225 permissions to the CAA and on proposals to end the related Objections Process. The DfT also held a stakeholder event on 5 June 2013.

8.2 Consultation elicited 15 responses in total, comprising 7 UK airlines, 1 charter broker, 2 foreign airlines, 4 airline representative organisations and a central Government Department. A summary of responses to consultation on the proposal to transfer the administration of foreign aircraft permissions to the CAA is appended to this Explanatory Memorandum. The consultation paper and the full summary of responses and the Government's decision can be found at: https://www.gov.uk/government/consultations/foreign-airline-permits-transfer-of-function-to-the-civil-aviation-authority-and-reform-of-the-objections-process.

9. Guidance

9.1 Both the DfT and the CAA will be providing guidance to permission applicants about the new arrangements for submitting applications for Article 223 and 225 permissions.

10. Impact

10.1 There will be a net cost to business because the CAA have said that they will recover their ongoing costs of administering permissions by charging a fee of (initially) £75 per application. This will represent a new cost on business because, to date, the costs of considering applications under Article 223 and 225 have been met by the taxpayer. Since 2010, the volume of permissions sought has fluctuated between 2200 and 2500 a year. Therefore, with the CAA proposing to charge £75 per permission application, the annual cost on business is expected to range from £165k - £187.5k per year.

10.2 Due to the nature of these permissions (which are only required for certain foreign-registered aircraft), the vast majority of businesses incurring the £75 charge will be foreign airlines. However, it is explained in the Impact Assessment that some UK businesses might use non-EEA registered aircraft for aerial work in the UK. Where this is the case, those businesses would incur the £75 permission application charge. The possibility of this charge was raised during consultation earlier this year but did not receive any responses or evidence to quantify the possible impact. Nevertheless, it is anticipated that the overall costs which might be incurred by UK business through the new charges would be very small. This is because, over the last three years, aerial permission applications only accounted for between 6% and 7.5% of total applications. Therefore, the maximum on-going cost to UK businesses should not exceed £9.5k in 2014 and £13k per annum thereafter.

10.3 The DfT will meet the CAA's one-off start up costs of £200k but will recoup this expenditure through staff cost savings of £120k per annum. There is no

impact on the wider public sector. The CAA should not incur any net on-going costs because it will recover the costs of administering the permissions through charges on applicants.

10.4 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to all businesses which want to use a foreign registered aircraft to carry or discharge passengers or cargo or conduct aerial work in the UK. However, this instrument is transferring the administration of existing regulatory requirements to the CAA without increasing the overall regulatory regime.

12. Monitoring & review

12.1 The statutory instrument amending the ANO 2009 to enable the CAA to administer Article 223 and 225 permissions does not contain a sunset or review clause because the amendments received fast track status by the RPC for being low cost measures and are therefore outside the scope of requiring a sunset clause. However, DfT will be retaining overall policy lead on foreign airline permissions and will work closely with the CAA to keep the effectiveness of the new permissions administration system under continuous review.

13. Contact

Jeremy Ketley at the Department for Transport Tel 020 7944 5114 or email: Jeremy.ketley@dft.gsi.gov.uk can answer any queries regarding the instrument.

Appendix

Summary of Consultation Responses and the Government's response

Four respondents to our consultation supported the principle of transferring the administration to the CAA without caveat. Four other respondents (all UK airlines) also said that they saw merit in the CAA doing the work. Overall, however, they did not support the proposed transfer of the administration of foreign aircraft permissions to the CAA if it also meant the removal of the Objections Process.

As mentioned in our consultation, the CAA intends to charge foreign airlines a fee for the administration involved in issuing permission. The two foreign registered carriers who responded to the consultation were concerned about the direct costs they would face and wanted further clarity and dialogue with the CAA. The Government notes that, in preparation for taking on the work from 6 April 2014, the CAA is consulting on a proposed charge of £75 per permission, irrespective of the number of flights within a single application, which should, to a large extent, address these respondents' desire for clarity on costs.

Some UK carriers raised concern that if the CAA started charging for the administrative costs of issuing permissions, other countries might follow suit and therefore there would be indirect impact on their respective businesses. However, there are several countries that already levy a similar charge, generally higher than that proposed by the CAA, and if other countries were to follow suit then they could not single the UK out but would have to apply charges across all airlines. As discussed in the consultation paper, the Government believes that such charging is consistent with the user pays principle and that the costs of aviation should be borne by the aviation industry, and ultimately end consumers, rather than by taxpayers.

Two respondents raised concern about separating the administration of permissions from the negotiation of Air Services Agreements.

Overall, the Government believes that it is appropriate for the CAA to embed the administration of permissions within its existing safety and insurance functions and will amend the Air Navigation Order to give the CAA powers to grant Article 223 permissions and Article 225 (aerial work) permissions from 6 April 2014. However, the Secretary of State will be retaining overall policy for foreign airline permissions and will agree criteria for when the CAA may issue Article 223 permissions and retain powers to decide, amend or revoke permissions where necessary.

Whilst UK airlines would no longer be able to object to an individual application, they would be able to track all applications made and make representations to the DfT where, for example, they identify abuse of a relevant Air Services Agreement or where there is lack of reciprocal market access. The DfT will then be able to address such issues through bilateral discussions with the country concerned. This approach will enable the CAA to introduce a new streamlined online process and enhance oversight of foreign registered aircraft operating into and out of the UK. At the same time, we believe it will strengthen our intelligence and negotiating position.

Summary of responses to consultation questions

Q9 Do you agree that the administration of permissions to foreign registered aircraft should be transferred to the CAA? If not, please explain your reasoning.

Four respondents supported the principle of transferring the administration function to the CAA.

In addition, four UK airlines said that they saw merit in the CAA doing the work, but opposed the proposed transfer of the administration of foreign aircraft permissions to the CAA if it meant the removal of the Objections Process.

One foreign airline said that it could not support the proposed transfer without more detail on the CAA's process and charges for administration costs. They also had concerns about loss of contact with an account manager, automation of the process and paying fees by credit card.

A couple of UK airlines did not support transfer to the CAA because the CAA proposed to charge applicants a fee to cover the administrative costs which may encourage other countries to start charging for permissions. They argued that UK operators may therefore face increased costs overall as result of the transfer. A fear was also expressed that, if an overseas operator was refused permission because they have not paid the fee, UK airlines may face retaliatory action, risking delays and cancellations to their operations.

A couple of respondents were also concerned about the separation of the administration of permission applications from negotiation of traffic rights. One said that it could lead to foreign operators being granted permissions whilst UK airlines have their permissions refused or delayed. One representative organisation said its UK Members were satisfied overall with the current arrangements, and thought that the DfT can ensure that carriers applying for permissions comply with their Air Service Agreements.

Q10 What impacts, either positive or negative, would there be for your business or organisation as a result of a transfer of the permissions process to the CAA?

<u>Benefits</u>

Four respondents thought there would be safety and operational benefits of the CAA taking on the administration of the foreign airline permissions function.

<u>Costs</u>

One foreign airline was concerned that the CAA planned to recover its administration costs through charges, which were forecast to be £200-£250,000 per annum, compared to the DfT's current costs of £120k per annum. They also thought the estimated £100 charge per permission would provide an unfair advantage to UK competitors. They estimate that this may lead to additional costs of £1,500 a year. Another foreign airline said it wanted dialogue on the level of charges the CAA proposed to set.

One representative organisation argued that only ongoing CAA costs of administering permission applications through a highly efficient service could potentially be agreed by its members.

Four UK carriers thought that they may face an overall increase in operating costs if other countries follow the CAA's planned approach and start charging to cover their administration costs.