EXPLANATORY MEMORANDUM TO

THE AIR NAVIGATION (AMENDMENT) ORDER 2024

2024 No. 990

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instrument.

2. Declaration

2.1 Mike Kane MP, Parliamentary Under Secretary of State, at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

2.2 Jenny Ward, Deputy Director for Aviation Safety, Innovation, and Skills at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Annalise Wicks at the Department for Transport (Telephone: 07877 696682 or email: aviationsafety@dft.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Order amends the Air Navigation Order 2016 (S.I. 2016/765) ("ANO"). It updates the ANO to refer to the most recent version of relevant documents published by the Civil Aviation Authority ("CAA"), each known as a Civil Aviation Publication ("CAP"). It also inserts a requirement into the ANO which makes an aircraft operator responsible for complying with communications requirements in respect of their aircraft. It clarifies that restrictions, prohibitions or conditions made under article 239 of the ANO may be applied to an individual aircraft. It also removes provisions relating to minimum age requirements for remote pilots operating unmanned aircraft systems, removes the requirement for the Secretary of State to undertake regular reviews of the ANO, and amends the definition for Part-21 aircraft. Part-21 aircraft are aircraft types that are regulated under Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation ("the Basic Regulation") and its implementing regulations.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland, and Northern Ireland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland. In addition, insofar as the ANO applies, this Order applies to aircraft registered in the United

Kingdom ("UK") wherever they are located, and on or in the neighbourhood of an offshore installation.

5. Policy Context

What is being done and why?

5.1 This Order uses powers under the Civil Aviation Act 1982 (C. 16) to make amendments to the ANO.

5.2 In doing so, two references to CAP documents are updated to refer to the most up to date versions. These are documents that provide guidance, best practices, and detailed information on aviation safety regulations. The amendments make it a legal obligation to follow the updated versions of the documents.

5.3 Article 3 amends article 37(4) of the ANO. Article 37 of the ANO sets out requirements for certificates of airworthiness for non-Part-21 State aircraft registered in the UK, other than military aircraft. This includes the requirement for those aircraft with a Part-21 certificate issued by the CAA to comply with any UK national requirements for State aircraft in CAP 747: Mandatory Requirements for Airworthiness. The CAA have revised CAP 747, and this Order amends article 37(4) to refer to the revised edition. The CAA have undertaken four revisions to CAP 747. Changes have been made to clarify requirements and which aircraft they apply to, including revised requirements on aircraft painting, maintenance of variable pitch propellors and engine overhaul periods. There have also been revisions to align with the introduction of other applicable aviation legislation (other than the ANO). Updates have also been made to aircraft, engine and propellor products lists used in the UK, arising from changes to UK aircraft register. A number of updates were made to adapt the contents following on European Union ("EU") Exit and to ensure that the UK remained compliant with relevant international obligations once it was no longer part of the EU. There have also been administrative changes, including correcting typographical errors and formatting.

5.4 Article 4 amends article 61(3) of the ANO. Article 61 relates to the approval of continuing airworthiness management organisations ("CAMO"). This is an organisation authorised to schedule and control continuing airworthiness activities on aircraft. To be approved as a CAMO, applicants must submit an airworthiness exposition to the CAA in accordance with CAP 553: BCAR Section A – Airworthiness Procedures where the CAA has Primary Responsibility for Type Approval of the Product (amongst other requirements). The CAA have revised CAP 553, and this Order amends article 61(3) to refer to the revised edition. The revisions which are relevant to article 61(3) make it clearer to organisations holding a particular type of CAMO approval, a British Civil Airworthiness Requirements (BCAR) A8-25 approval, that they can extend their approval privileges to issuing Certificates of Validity ("CoV"). A CoV is issued to aircraft on an annual basis to attest that an aircraft conforms to its approved configuration, is in a condition for safe operation and its records are up to date. There is no material change of policy.

5.5 Article 5 inserts a new article, article 115A, into the ANO, which makes the operator responsible for complying with communication requirements in respect of their aircraft. This responsibility reflects the obligation in the Standardised European Rules of the Air ("SERA") 8035, which sets out the communication requirements to be followed by aircraft in UK airspace (see Section 8 of the Annex to Commission Implementing Regulation (EU) No 923/2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation ("EUR 2012/923")). In some cases, the operator and the pilot are one and the same person,

but the amendment will ensure that in those cases when the operator is not the pilot in command of the aircraft, such as when the operator is an airline, that they are also responsible for ensuring that communication requirements are complied with. The correct adherence to communication requirements when in controlled airspace is vitally important to the safety of aircraft, their passengers and crew, as well as other airspace users and people on the ground. By extending that the requirement to the operator of the aircraft, this measure is therefore aimed at reducing the number of lost communication incidents between ground-based air traffic controllers and pilots operating in UK controlled airspace.

5.6 Article 6 amends article 239 of the ANO to clarify that when the Secretary of State decides it is necessary in the public interest to do so, they may make regulations prohibiting, restricting, or imposing conditions in respect of an individual aircraft.

5.7 Article 7 removes provisions in article 265D of the ANO relating to age restrictions for remote pilots operating unmanned aircraft systems ("UAS"). Some of these provisions cross-refer to other provisions providing age restrictions in Commission Implementing Regulation (EU) 2019/947 on the rules and procedures for the operation of unmanned aircraft ("EUR 2019/947"), which have been revoked. The revocations are made to ensure consistency with cross-referenced legislation, reflecting that age is not necessarily an indicator of competence, and that young people should be given the opportunity to increase their science, technology, engineering, and maths skills through remotely piloting unmanned aircraft.

5.8 Article 8 revokes article 275 of the ANO, which requires the Secretary of State to undertake a post implementation review ("PIR") of the ANO from time to time and to set out the conclusions in a published report. Reports must be published at intervals of no more than five years.

5.9 The requirement for a PIR is not in line with practice elsewhere in civil aviation legislation, including in implementing rules ("IRs") made under the Basic Regulation. The Basic Regulation is an important piece of assimilated aviation safety legislation that establishes a framework and essential requirements in respect of aviation safety regulation. The Basic Regulation applies to most aircraft; the types of aircraft that fall outside of it are primarily smaller recreational aircraft which are regulated separately. It allows for the domestic implementation of the Standards and Recommended Practices ("SARPs") adopted by the International Civil Aviation Organization ("ICAO") under the Convention on International Civil Aviation ("the Chicago Convention") (as amended from time to time).

5.10 It is desirable that aviation safety legislation is reviewed regularly and updated in line with best practice. However, this is achieved through the Aviation Legislation and Policy Development ("ALPs") Programme between the Department for Transport and the CAA, which identifies necessary regulatory changes and updates to such legislation, considering a variety of drivers including updates to SARPs, as well as industry input. The ALPs Programme Board meets multiple times each year to consider potential legislative developments. A PIR of the ANO would add little value as it would duplicate work already done by the Department for Transport and the CAA and would also place a disproportionate burden on teams working on live policy issues. Therefore, this provision should be revoked.

5.11 Article 9 adds two definitions to the ANO, to ensure consistency with terminology used in EUR 2012/923 in relation to communication requirements. It also amends the definition of a Part-21 aircraft. This definition referred to aircraft required to hold a Part-21 certificate of airworthiness, a Part-21 restricted certificate or airworthiness or a Part-21 permit to fly under the Basic Regulation, and any IRs adopted by the

Commission in accordance with the Basic Regulation. This legislation is assimilated law, and IRs may be adopted by the Secretary of State. The amendment ensures that the definition will still cover all relevant aircraft, should the Secretary of State decide to adopt IRs in future.

5.12 Article 10 amends Schedule 13 of the ANO to provide a penalty for failing to comply with the communications requirements for operators. On summary conviction, the penalty is a fine in England and Wales, or a fine not exceeding the statutory maximum in Northern Ireland. On conviction on indictment, the penalty is a fine or a term of imprisonment not exceeding two years. This penalty is consistent with the penalty for a breach of the existing obligation in the SERA 8035.

What was the previous policy, how is this different?

5.13 There has been no significant change in policy in articles 3 and 4. There have been updates to CAP 747 and CAP 553 as described in paragraph 5.3 and 5.4 above respectively, however these do not represent significant changes of policy. The underlying requirement for certain State aircraft to comply with any UK national requirements for State aircraft in CAP 747, as set out in article 37 of the ANO, remains the same. The organisations which can issue CoVs, as set out in article 61 of the ANO, remain the same.

5.14 The changes to article 5 and associated new definitions in article 9 and penalties in article 10 are minor changes intended to make clear that responsibility lies equally with the pilot and the operator of the aircraft. The communications requirements that are set out in SERA 8035 apply to the aircraft. The operator is generally responsible for ensuring i) the communication equipment is in working order, ii) its pilots are properly trained and iii) its organisational culture supports compliance with the requirement, so it is appropriate that the operator shares responsibility for compliance.

5.15 There has been no policy change regarding the powers of the Secretary of State under article 239 the ANO to restrict, prohibit or impose conditions regarding aircraft. The amendment simply clarifies the current position to provide legal certainty that the powers can be applied to individual aircraft.

5.16 There has been no change in policy regarding the removal of some of the provisions in article 265D. This is a continuation of UK Government policy not to have age restrictions for those flying unmanned aircraft.

5.17 The Department for Transport has not been able to establish a clear policy reason for initially including a PIR clause in this instrument. However, the Department's view is that to have a PIR clause included in the ANO is not appropriate. To conduct such a review would be of no safety benefit for the reasons explained above. The impact of any changes to regulatory measures, or the introduction of new ones, is also considered as part of the continuous review process described above. The previous inclusion of this requirement was not in line with other practice elsewhere in civil aviation legislation.

5.18 The amendment of the definition for Part-21 aircraft is not a policy change. It simply reflects that the Secretary of State may now undertake certain actions which were previously undertaken by the Commission, which include adopting implementing rules.

6. Legislative and Legal Context

How has the law changed?

6.1 The ANO is an Order in Council which was partly made using powers in the Civil Aviation Act 1982. This Order amends the ANO using powers under that Act. The ANO is a large piece of legislation touching upon a number of different areas of aviation. This Order amends a small number of provisions within the ANO and inserts one new provision.

6.2 Articles 3 and 4 of this Order amend article 37(4) and 61(3) of the ANO so that they refer to the most recently amended version of relevant documents published by the CAA. Article 3 relates to CAP 747 and article 4 relates to CAP 553. The amendments mean that where there is an obligation to comply with those documents under those articles, the obligation will be to comply with the most recently amended version.

6.3 Article 5 inserts a new article, article 115A, into the ANO. This article means there is a legal obligation on the operator to ensure compliance with communications requirements in respect of their aircraft.

6.4 Article 6 amends article 239 of the ANO to clarify that a restriction, prohibition or conditions may be applied to an individual aircraft.

6.5 Article 7 removes provisions in article 265D of the ANO relating to age restrictions for remote pilots operating unmanned aircraft systems. Some of these provisions were previously inoperative as they relied on provisions in EUR 2019/947 which have been revoked.

6.6 Article 8 removes the requirement for the Secretary of State to review the ANO at intervals of no more than five years and to publish a report setting out the conclusions of those reviews.

6.7 Article 9 inserts two new definitions into the ANO to ensure consistency of interpretation of terms used in EUR 2012/923 in relation to communications requirements. It also amends the definition for a Part-21 aircraft to ensure that it will still capture all relevant aircraft in future, should the Secretary of State decide to make any implementing rules under the Basic Regulation in future.

6.8 Article 10 amends Part 3 of Schedule 13 of the ANO to include the new article 115A. This provides a penalty for operators who fail to comply with the communications requirements in article 115A. The associated penalty is set out in article 265(7) of the ANO. On summary conviction, the penalty is a fine in England and Wales, or a fine not exceeding the statutory maximum in Northern Ireland. On conviction on indictment, the penalty is a fine or a term of imprisonment not exceeding two years.

Why was this approach taken to change the law?

6.9 This is the only possible approach to make the necessary changes to the ANO.

7. Consultation

Summary of consultation outcome and methodology

7.1 No consultation with the aviation sector was undertaken on articles 3, 4, 6, 7 and 9 of this Order, as all changes made are minor amendments or clarifications, with no substantive change in policy. However, the CAA was involved in the review of them.

7.2 No consultation with the aviation sector was undertaken on articles 5 and 10 of the Order, the proposed inclusion of the responsibility of operators to ensure adherence to the communications requirements that are set out in SERA 8035. Operators have always had a general responsibility for ensuring compliance with communication

requirements. The CAA and other relevant government departments were consulted, and this measure forms part of a wider cross-government programme aimed at reducing the number of lost communication incidents.

7.3 No consultation with the aviation sector was undertaken on article 8 of this Order, the revocation of the requirement for the Secretary of State to conduct a PIR of the ANO. The CAA was consulted on this as part of their ALPs Programme with the Department.

8. Applicable Guidance

8.1 Guidance will be provided as necessary to accompany the proposed amendments in the form of Guidance Material published by the CAA. All approved and published UK civil aviation regulations alongside Guidance Material are stored at https://www.caa.co.uk/uk-regulations/.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this Instrument because there is no, or no significant, impact anticipated on businesses.

9.2 A De Minimis Assessment has been prepared alongside this instrument to measure the impact of Article 3, which amends the Order, so it refers to the revised version of CAP 553. There is no material change of policy, but the change may result in more organisations realising they may extend their approval privileges to include issuing CoVs. Previously, this was only stated in BCAR A3-7 where the process for conducting an airworthiness review prior to issuing a CoV is set out. This policy is expected to have no quantifiable costs or benefits involved, as they would be near negligible or unmeasurable. It does not contain significant distributional impacts, disproportionate burdens on small businesses, significant wider, social, environmental, financial or economic impacts, nor does it have significant novel or contentious elements.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies, due to the minor technical nature of most of the amendments. Concerning the communications requirement in article 115A, compliance with this requirement will have no significant impact as aircraft should already be complying and there is no evidence that they are deliberately failing to comply.

9.4 The legislation does not impact small or micro businesses.

9.5 There is no, or no significant, impact on the public sector. The insertion of article 115A into the ANO will lead to a potential increased workload for the CAA regarding investigation and enforcement, but the increase is expected to be minimal.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 No new provisions are required to monitor and review this legislation. The Order amends the ANO, which is subject to regular non-statutory review as described at paragraph 5.10 above.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Mike Kane MP, Parliamentary Under Secretary of State, has made the following statement:

"In my view, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the provisions of the Air Navigation (Amendment) Order 2024 are such that a statutory review clause would be inappropriate, for proportionality reasons, given the costs associated with such a review and the limited scope for change."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Article 8 of this Order removes the requirement under article 275 of the ANO for Secretary of State to conduct a PIR and publish a report at intervals of no more than five years, with the first PIR of the Order having been due in 2021. This has not been carried out. Following this, the decision was formally taken to seek an opportunity in legislation to remove the requirement in 2023. It is regrettable that this decision was not taken until the PIR was already two years overdue.

11.2 As explained above, the requirement for a PIR within the ANO is not consistent with other aviation legislation. While the Department has not been able to establish a clear policy reason for initially including article 275 in the ANO, it does not consider that its continuing inclusion is appropriate. As set out above, the ANO is subject to regular review through which necessary and appropriate amendments are identified. These reviews take place on a far more frequent basis than the five-year interval required under the PIR clause, with meetings of the ALPs Programme Board, which reviews the impacts of any regulatory changes, occurring multiple times per year. The nature of aviation means that more regular reviews are appropriate, as legislation may need to be updated on a more frequent basis including in response to changes in SARPs and other developments. Regulatory impact is considered as part of this process, and advice given by the CAA takes into account the Growth Duty on regulators, which requires regulators to "consider the economic consequences of their actions; be proportionate in their decision making; and to keep regulatory burdens to a minimum".

11.3 Further, undertaking a PIR would also duplicate some of the work already undertaken in the Department, as the rulemaking programme between the Department and the CAA works to identify necessary changes and updates to civil aviation legislation, taking into consideration a variety of drivers including updates to SARPs, as well as input from industry.

11.4 To illustrate this point further, in contrast, the Basic Regulation does not include a statutory review clause, as this would be inappropriate for proportionality reasons, given the high costs of undertaking such a review and limited scope for change. Instead, regular reviews are undertaken as part of the ALPs Programme. The same reasoning applies in the case of the ANO.

11.5 For these reasons, the Department considers that it is appropriate to revoke article 275 of the ANO.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").