EXPLANATORY MEMORANDUM TO

THE AIR NAVIGATION (OVERSEAS TERRITORIES) (AMENDMENT) (NO. 2) ORDER 2021

2021 No. 755

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 purpose of this instrument is to amend the Air Navigation (Overseas Territories) Order 2013 ("the Order"), which provides the framework for regulation of civil aviation in the Overseas Territories. In particular it includes new, additional, and/or revised provisions dealing with:

a) powers and duties of the Governor;

b) increased rights of access to aerodromes and other places for authorised persons and aviation security personnel;

c) aircraft registration and registration marks;

d) airworthiness of aircraft and aircraft subject to Chicago Convention Article 83bis agreements;

e) composition of aircraft crew;

f) regulation of small unmanned aircraft;

g) Commercial air transport operations at night;

h) the carriage of weapons and munitions and dangerous goods and training requirements for designated postal operators;

i) aviation security requirements;

j) air traffic and flight information services, air traffic controllers and fatigue management systems;

k) incident reporting, data monitoring and safety management requirements;

l) revised age restrictions for pilots and air traffic controllers;

m) use of certificated aerodromes;

n) drunkenness and use of psychoactive substances by licensed personnel;

o) Rules of the Air.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application.

4.1 The territorial extent and application of this instrument is the United Kingdom Overseas Territories, specifically: Anguilla, Bermuda, British Indian Ocean Territory, Cayman Islands, Falkland Islands, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena, Ascension and Tristan da Cunha, South Georgia and South Sandwich Islands, Sovereign Base Areas of Akrotiri and Dhekelia, Turks and Caicos Islands, British Virgin Islands.

4.2 This Instrument does not extend or apply to Gibraltar, the British Antarctic Territory, the Channel Islands, Isle of Man or the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Under the terms of the Chicago Convention the United Kingdom is responsible for ensuring the compliance of the British Overseas Territories with the provisions and standards of the Convention and its 19 Annexes, as well as its Procedures for Air Navigation, and remains responsible for aviation safety and security. The Air Navigation (Overseas Territories) Order 2013, made pursuant to s.61 of the Civil Aviation Act 1982, sets out the framework for regulating aviation safety and security within the Overseas Territories to International Civil Aviation Organization (ICAO) Standards.

6.2 The Air Navigation (Overseas Territories) Order 2013 is periodically amended to reflect changes and updates to ICAO Standards and ensure these are applicable within the British Overseas Territories. This ensures the United Kingdom is meeting its international obligations under the Chicago Convention and its responsibilities in relation to the Overseas Territories. This Order enacts the latest ICAO Standards across several technical areas and aviation security (detailed in Section 7, below); as well as revising other provisions to secure better alignment with those of United Kingdom itself and, where appropriate, international best practice.

7. Policy background

What is being done and why?

7.1 Changes to the Rules of the Air including those relating to formation flying, water aerodromes, time reporting procedures, marshalling signals, acts of unlawful interference and interception of aircraft, re-classification of airspace in accordance with ICAO Standards and the procedures used for flight in certain conditions and/or at specified altitudes or levels have necessitated many of the amendments to the 2013 Order. In addition, rapid technological advances and changes to operating practises in several related areas, such as small unmanned aircraft and Global Navigation

Systems, are an increasing factor across the industry and require revisions to legislation to support their use.

7.2 This Order also makes provisions relating to Aviation Security, reflecting the ongoing requirement to respond to emerging threats and as such, includes a range of minor textual changes to incorporate security functions into normal aviation business as well as the need to adopt more stringent training requirements for security personnel and greater access controls for known consignors and regulated agents. This Order provides additional access rights to premises for authorised persons and aviation security officers, as well as provisions relating to drunkenness and the use of psychoactive substances by holders of personnel licenses.

7.3 The amended Order gives better effect to inter-state agreements made under the Chicago Convention (Article 83bis which allows for certain oversight functions to be transferred from the State of aircraft registration to the State of the aircraft operator).

7.4 The Order also makes revised and additional provisions relating to: aircraft registration marks; the carriage of dangerous goods and training of postal operators; the carriage of weapons and munitions of war (including by persons authorised by the Governor to act as flight security officers); incident and safety data reporting requirements; age restrictions or limitations for pilots and air traffic controllers; and the adoption of fatigue management systems for air traffic services.

7.5 This Order also makes revised provisions covering the operation of aircraft at night and in instrument meteorological conditions. These provisions are designed to align more closely with standards contained in Annex 6 to the Chicago Convention and with international best practice. The Order also contains provisions relating to airworthiness, which include special permits to fly an aircraft when the Certificate of Airworthiness is no longer in force. This will enable aircraft operators to fly an aircraft on a restricted permit for the purposes of functionally assessing repairs or to transfer it to a maintenance base. These provisions ensure that an equivalent level of safety is maintained.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The legislation will not be consolidated at this amendment and there are no immediate plans for future consolidation, however, the desirability of consolidation will be kept under review.

10. Consultation outcome

10.1 Consultations have been held with the Overseas Territories' civil aviation authorities and law enforcement officers, and where necessary with operators and service providers. None have expressed any objection to the proposals.

11. Guidance

11.1 Guidance will be provided as necessary to accompany the proposed amendments, in the form of Overseas Territories Aviation Circulars and Alerts coupled with revised Overseas Territories Aviation Requirements.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared as the Order makes relatively modest changes to update existing regulatory standards as explained above. The level of impact on business is therefore not expected to be significant and will mainly be limited to initial familiarisation costs.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that, as the measures are not expected to have significant impact on business, no mitigations are proposed.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the regulation of civil aviation in the British Overseas Territories is monitored by both Air Safety Support International Ltd. ("ASSI") (a subsidiary of the Civil Aviation Authority) under a Direction from the Department in the course of normal departmental business. ASSI monitors the UK Overseas Territories aviation industry to ensure compliance with the standards which are set out in Air Navigation Orders.

14.2 The regulation does not include a statutory review clause as it is an Order in Council and ensures implementation of the UK's international legal obligations.

15. Contact

15.1 James Ball at the Department for Transport Telephone: 07977 423466 or email: james.ball1@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 David Harding, Deputy Director for General aviation, Safety, Skills, and CAA, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robert Courts MP at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.