EXPLANATORY MEMORANDUM TO

THE AIR NAVIGATION (OVERSEAS TERRITORIES) (AMENDMENT) ORDER 2021

2021 No. 524

1. Introduction

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

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

2. Purpose of the instrument

2.1 This Order ensures that provisions of the Air Navigation (Overseas Territories) Order 2013 (S.I. 2013/2870) ("the 2013 Order") made under section 61 (power to provide for offences and penalties, etc.) of the Civil Aviation Act 1982 ("the 1982 Act") apply to Anguilla. It also provides that Pitcairn, Henderson, Ducie and Oeno Islands ("the Pitcairn Islands") are a British Overseas Territory to which the 2013 Order applies.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This Order corrects two defects in the 2013 Order and is therefore being issued free of charge to all known recipients of the 2013 Order.

3.2 Section 61 of the 1982 Act (which enables an Air Navigation Order to include criminal offences and penalties) was extended to Anguilla by the Civil Aviation Act 1982 (Overseas Territories) Order 2001 (S.I. 2001/1452) ("the first 2001 Order"), but this was defective as it referred to provisions of the Civil Aviation Act 1949 which had never been extended to Anguilla. The first 2001 Order has been replaced, in relation to Anguilla, by the Civil Aviation Act 1982 (Overseas Territories) Order 2021 (S.I. 2021/XXX) ("the first 2021 Order"), which extends a correct version of section 61(1) and (2) to Anguilla. This Order therefore provides that, insofar as certain provisions in the 2013 Order made pursuant to section 61(1) did not previously have effect in Anguilla, they have effect there from 26th May 2021. The relevant provisions of the 2013 Order are sections 14(4) (deemed offences in respect of flights by unregistered aircraft), 67(2) (contravention of Rules of the Air), 68(4) (contravention of directions prohibiting or retricting flying), 185(4), (5) and (6) (contravention of Order or regulations made under it), and Schedule 5 (penalties).

3.3 The British Overseas Territories to which the 2013 Order applies are listed in Schedule 6 to that Order. Schedule 6 includes a reference to the Pitcairn Islands, but this was defective as most of the powers under which the 2013 Order were made had not been extended to those Islands. This Order therefore inserts identical provision made under provisions of the Civil Aviation Act 1982 which have now been extended to the Pitcairn Islands by the first 2021 Order. Incidentally to this, it also revokes the existing defective reference. As such, it makes the 2013 Order legally effective in the Pitcairn Islands.

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)

3.4 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 of this instrument is Anguilla and the Pitcairn Islands.

4.2 The territorial application of this instrument is Anguilla and the Pitcairn Islands.

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 Powers to make provision for aviation safety in most British Overseas Territories are contained in the Civil Aviation Act 1949 (Overseas Territories) Order 1969 ("the 1969 Order"). This extended to those territories the powers in the Civil Aviation Act 1949 to make Air Navigation Orders. The Civil Aviation Act 1949 was repealed and replaced by the 1982 Act, subject to certain savings provisions, but air navigation in the British Overseas Territories continued to be regulated under the 1949 Act and the 1969 Order (except as set out in paragraph 6.4 below).

6.2 Anguilla was not a British Overseas Territory in 1969 and only acquired this status in 1980. The 1969 Order therefore did not extend the 1949 Act to Anguilla; nor, due to historical oversight, did it extend the 1949 Act to the Pitcairn Islands. However, this appears to have been overlooked in a number of Air Navigation Orders applying to the Overseas Territories which stated that they applied to the Pitcairn Islands since at least 1976 and to Anguilla since 1980, even though the underlying legal powers in the 1949 Act had never been extended there.

6.3 This defect was fixed in relation to Anguilla by the Civil Aviation Act 1982 (Anguilla) Order 2019 (S.I. 2019/756) and the Air Navigation (Overseas Territories) (Amendment) Order 2019 (S.I. 2019/853). The defect in relation to the Pitcairn Islands was discovered later in 2019, in the course of unrelated work. As there was (and still is) no aerodrome currently operating in the Pitcairn Islands, nor any relevant aviation activity, the correction was not of practical urgency, and has been deferred until now due to other pressures on the Department's secondary legislation programme. However it is now being fixed through the first 2021 Order and this Order. This puts in place a proper legal framework for regulating aviation in the Pitcairn Islands and ensures that the United Kingdom meets its obligations as a signatory to the Convention on International Civil Aviation.

6.4 Modified versions of sections 61 and 75 of the 1982 Act were extended to Anguilla and the Pitcairn Islands by the first 2001 Order, and a modified version of section 76(4) was extended there by the Civil Aviation Act 1982 (Overseas Territories) (No. 2) Order 2001 (S.I. 2001/3367) ("the second 2001 Order"). However again it appears that these were defective (in relation to these territories only) because the modified versions referred to the provisions of the 1949 Act which had not been extended to these territories.

6.5 The first 2021 Order corrects these errors in the two 2001 Orders, including extending a correct version of section 61(1) and (2) to Anguilla and the Pitcairn Islands. Article 2(2) of this Order therefore provides that, insofar as certain provisions in the 2013 Order made pursuant to section 61(1) did not previously have effect in Anguilla, they have effect there from 26th May 2021. The relevant provisions of the 2013 Order are sections 14(4) (deemed offences in respect of flights by unregistered aircraft), 67(2) (contravention of Rules of the Air), 68(4) (contravention of directions prohibiting or retricting flying), 185(4), (5) and (6) (contravention of Order or regulations made under it), and Schedule 5 (penalties). Article 2(3) of this Order also achieves a similar result in relation to the Pitcairn Islands. The first 2021 Order also makes further corrections and improvements to the modified versions of provisions in the 1982 Act which were extended to Anguilla in the 2019 Order, and ensures that these are identical for Anguilla and the Pitcairn Islands.

6.6 This Order is being made after the making of the first 2021 Order, but prior to its coming into force, by virtue of sections 13 and 23 of the Interpretation Act 1978 (which permit the anticipatory exercise of powers).

7. Policy background

What is being done and why?

7.1 This Order provides a fix to two legislative errors. It will not result in any substantive change to the regulatory regime that is currently in place in Anguilla, but will ensure that offences and penalties provisions are effective there. Air Safety Support International ("ASSI"), the designated aviation regulator in Anguilla, has continued to regulate aviation there since the coming into force of the 2019 Order, but it has not been necessary for them to initiate any prosecutions or impose any penalties during that period.

7.2 In relation to the Pitcairn Islands, while there is currently no aerodrome or relevant aviation activity, the intent of previous legislative provisions has been to ensure that the Pitcairn Islands were included within the territorial application of the Air Navigation (Overseas Territories) Order 2013 and subsequent amendments. Bringing the Islands properly within the scope of that Order will ensure that the UK is meeting its international legal obligations in relation to one of its Overseas Territories and ensures that any future aviation activity within the Islands can be conducted safely, securely, and within the same regulatory framework as that of the other Overseas Territories.

7.3 Under the International Civil Aviation Organisation framework, the United Kingdom remains responsible for aviation safety in the British Overseas Territories. As the appointed representative of Her Majesty the Queen in a British Overseas Territory, the Governor has specific responsibilities regarding the regulation of civil aviation. The foundation of these responsibilities lies in the United Kingdom being a signatory to the International Convention on Civil Aviation (1944). This places an obligation on the United Kingdom to abide by specific standards for international civil aviation. The Governor is therefore responsible for fulfilling the obligations within each Overseas Territory.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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

9. Consolidation

9.1 There are no current plans to consolidate the legislation covered by this instrument.

10. Consultation outcome

10.1 The Department has discussed the legislative corrections required with ASSI and its legal advisers, the Foreign, Commonwealth and Development Office, and the Governors and Attorneys General of Anguilla and the Pitcairn Islands, including sharing drafts of this Order and the first 2021 Order. The Governors have confirmed their agreement to the making of these Orders.

11. Guidance

11.1 The Department for Transport is not producing any specific guidance on the amendments provided for in this instrument.

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 for this instrument because there is no significant impact on business.

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 will have negligible 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 ASSI and 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 in the Aviation Directorate at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robert Courts MP, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.