EXPLANATORY MEMORANDUM TO

THE AIR NAVIGATION (OVERSEAS TERRITORIES) (AMENDMENT) ORDER 2024

2024 No. 384

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.

2. Declaration

2.1 Anthony Browne MP, Minister for Aviation at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

2.2 David Harding, Deputy Director for Safety, Sponsorship, Skills, and General Aviation, at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 James Ball at the Department for Transport Telephone: 07977 695561 or email: james.ball1@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 instrument amends the Air Navigation (Overseas Territories) Order 2013 as amended (hereby referred to as "the 2013 Order), which provides the framework for regulation of civil aviation in the British Overseas Territories, to ensure that the aviation safety regulatory framework in the Overseas Territories complies with the United Kingdom's obligation under the Chicago Convention of 7th December 1944.

4.2 This instrument introduces new, additional, and/or revised provisions dealing with:

a) definitions;
b) powers and duties of the Governor - increased rights of access to aerodromes and other places for authorised persons and aviation security personnel;
c) aircraft registration and registration marks;
d) airworthiness and equipment of aircraft;
e) operation of aircraft in flight;
f) regulation of large unmanned aircraft, including addition of penalties in relation to large unmanned aircraft;
g) carriage of weapons and munitions of war;
h) carriage of dangerous goods and occurrence reporting;
i) air traffic services (ATS) and the licencing of air traffic controllers;
j) documents and records to be carried on aircraft, including acceptance of a digital or e-signature;

k) rules of the air.

Where does the legislation extend to, and apply?

4.3 The extent and application of this instrument is the British 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.

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

5. Policy Context

What is being done and why?

5.1 Routine amendments to existing articles, or paragraphs, in this instrument have been made to:

a) remove inconsistencies or conflicts;

b) clarify or amend provisions which have raised difficulties of interpretation;

c) expand certain regulatory powers in the light of experience; and/or

d) align provisions more closely with International Civil Aviation Organisation (ICAO) Annex Standards and Recommended Practices (SARPs) and UK legislation, as is required by the Convention. ICAO Annexes set out the SARPs expected from State signatories to the ICAO convention, of which the UK is a signatory. They elaborate on the SARPs and give insight into what and how States must do to achieve them.

5.2 The purpose of the amendments is to align the Overseas Territories regulatory framework with the latest minimum international safety standards which are regularly reviewed to improve the safety standards of aviation. The amendments are largely of a technical nature with the aim of enhancing aviation safety. Consequently, the provisions being introduced will have a direct impact on improvement aviation safety standards in the Overseas Territories.

5.3 Amendments for the purpose of removing inconsistencies or conflicts are as follows:

a) A minor grammatical correction to Articles 22 of the 2013 Order.

b) Removal of reference to “or special flight permit” in Article 28 of the 2013 Order to correct a provision previously included in error within the 2013 Order.

c) an amendment to Article 139A of the 2013 Order to remove reference in the 2013 Order to “flight information services officer” for who Air Traffic Services (ATS) provision requirements outlined in the 2013 Order should not apply.

d) Article 118(2) of the 2013 Order, about the carriage of dangerous goods, has been amended by this Order to only apply to local operators and their agents because at present they also apply to foreign operators.

5.4 Amendments for the purposes of clarifying or amending provisions which have raised difficulties of interpretation are as follows:

a) the removal of a perceived conflict arising from the wording in Article 107(1)(b) and Article 108(4) of the 2013 Order regarding approval for the

carriage of munitions of war by removing and substituting the word "nothing" – so that the requirement now reads "Other than the requirement in article 107(1)(b) nothing in article 108 applies to a police officer, or person authorised by the Governor to act as flight security officer, carrying munitions of war whilst acting in the course of their duties".

b) amendments to provisions in Article 18 of the 2013 Order to align it with the equivalent United Kingdom Air Navigation Order 2016 Article No. 765, to reduce difficulties in interpretation of Air Navigation (Overseas Territories) Order 2013 as amended. This also ensures that the Governor is able to issue instructions to publish requirements to regulate small unmanned aircraft in accordance with developing international and UK practice. This also ensure that regulations can be made specific to each Overseas Territory and the specific operating environment.

5.5 Amendments for the purposes of expanding regulatory powers in light of recent experiences are as follows:

a) amendments to provisions in Article 9 of the 2013 Order to make it easier for regulatory personnel to access places to carry out inspections or audits, particularly in cases of dangerous goods intended for carriage by air. This is enabled by minor textual changes made by this amendment Order, for example the substitution of the word "Premises" with the word "Place".

b) A new Article 73A has been inserted to address the subject of large unmanned aircraft as there are currently no provisions in the 2013 Order to cover these. It creates provisions to address this type of aircraft, applicable to unmanned aircraft with a mass of greater than 25kg. Internationally, and in the UK, regulations for the operation of this type of aircraft are still evolving. The intention of the provisions created by this new Order is that these aircraft will be subject to regulations, instructions and directions made and issued by the Governors and requirements published by the Governor in each territory, meaning they can be appropriate to each territory and its needs. Regulations made under Article 4 to the 2013 Order cover matters such as registration and markings, airworthiness certification, operator certification, general operating conditions, pilot licencing, rules of the air, and aerial work. Article 191 of the 2013 Order sets out the specific provisions for which the provisions of the 2013 is and is not applicable for particular categories of aircraft for example small ballons. This amendment Order inserts provisions into Article 191 of the 2013 Order which details which provisions of the 2013 Order are and are not applicable to large unmanned aircraft.

5.6 Amendments for the purposes of aligning provisions more closely with International Civil Aviation Organisation (ICAO) Annex Standards and Recommended Practices (SARPs) and UK legislation are as follows:

a) inserting a new definition of "safety management system" in Article 3 of the 2013 Order to align the definition with the latest amendment to ICAO Annex 19 of the Chicago Convention. This does not introduce new requirements in relation to safety management systems and is merely a textual update to align with international definitions. A new definition of large unmanned aircraft is also inserted, to again align the definition within the 2013 Order with the definition of the term used within international standards.

b) an amendment to Article 125 of the 2013 Order which changes the date to be the most recent edition of the ICAO Technical Instruction for the Safe

Transport of Dangerous Goods by Air which again aligns the provisions of the 2013 Order with the requirements of the Chicago Convention.

c) an amendment in Article 144 of the 2013 Order which replaces the term "surveillance equipment" with "ATS surveillance system or service" and inserts a definition for "ATS surveillance system or service" to comply and align the 2013 Order with the revised requirements of ICAO Annex 11 (Air Traffic Services).

What was the previous policy, how is this different?

5.7 There is no substantive change to the policy. The previous policy aligned with old ICAO SARPs, whereas this instrument updates it to include the latest ICAO SARPs.

5.8 All provisions within this order come into effect and are applicable from the date of entry into force detailed in the Order.

6. Legislative and Legal Context

How has the law changed?

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, including safety and security, as well as its procedures for Air Navigation. The Air Navigation (Overseas Territories) Order 2013 sets out the framework for regulating aviation safety and security within the British Overseas Territories. Its requirements reflect the minimum ICAO SARPs.

6.2 The Air Navigation (Overseas Territories) Order 2013 is periodically amended to reflect changes and updates to ICAO SARPs and ensure these are applicable within the British Overseas Territories. This ensures the United Kingdom is meeting its international obligations, as a signatory to the Chicago Convention, and its subsequent responsibilities in relation to the British Overseas Territories. This order enacts the latest ICAO SARPs across several aviation safety technical areas and one minor amendment related to aviation security (detailed in Section 5, above); as well as revising other provisions to further align with those of the United Kingdom itself and, where appropriate, international best practice.

Why was this approach taken to change the law?

6.3 The Air Navigation (Overseas Territories) Order 2013 is periodically updated through Amendment Orders to enact the latest ICAO SARPs – to ensure continued compliance with international standards. This Amendment Order represents the fifth amendment since the introduction of the 2013 Order. Whilst revocation of the 2013 Order and consolidation of all amendments into a new Order was considered on this occasion, the amendments made by this Amendment Order were considered minimal on this occasion. The decision was therefore taken to revoke the 2013 Order and consolidate all amendments at the next periodic amendment of the 2013 Order.

7. Consultation

Summary of consultation outcome and methodology

7.1 A 90-day consultation process was held between 1 June to 1 September 2023 with the British Overseas Territories' civil aviation authorities and law enforcement agencies, and – where appropriate – with operators and service providers. Twelve responses

were received from two organisations. All comments have been addressed and none have expressed any objection to the proposals.

8. Applicable Guidance

8.1 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 developed and published by Air Safety Support International (ASSI), a subsidiary of the Civil Aviation Authority, established under Directions of the Secretary of State in 2003 to provide oversight of civil aviation regulation in the British Overseas Territories.

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 it makes 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 familiarisation costs.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the regulations have no applicability to charities or voluntary bodies. For businesses, the changes relate to international standards that are required to be met in order to allow business to operate freely and internationally. Failure to adhere to these standards would have a negative impact on businesses ability to conduct operations.

9.3 The legislation does not impact small or micro businesses. Provisions do not contain any specific small business dimensions. In addition, the changes relate to international standards that are required to be met in order to allow business to operate freely and internationally. Failure to adhere to these standards would have a negative impact on businesses ability to conduct operations.

9.4 There is no, or no significant, impact on the public sector because the changes relate to international standards that are required to maintain compliance with international treaty obligations. Failure to adhere to these would have a negative impact on UK reputation and international compliance.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation will be through the ASSI's ongoing monitoring of the regulation of civil aviation in the British Overseas Territories. Under direction from the Secretary of State ASSI monitors the British Overseas Territories' aviation industry to ensure compliance with the standards which are set out in Air Navigation Orders and is accountable to the Department for Transport for fulfilment of this activity.

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

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister for Aviation has made the following statement regarding Human Rights:

"In my view the provisions of The Air Navigation (Overseas Territories) (Amendment) Order 2024 are compatible with the Convention rights."

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").