EXPLANATORY MEMORANDUM TO

THE POLICING OF AERODROMES (BELFAST INTERNATIONAL AIRPORT) ORDER 2010

2010 No. 575

1. 1.1 This explanatory memorandum has been prepared by the Department for Transport 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 The Policing and Crime Act 2009 amends Part 3 of the Aviation Security Act 1982 to impose requirements on "relevant aerodromes" in relation to police services agreements. The purpose of this Order ("the Exemption Order") is to exempt Belfast International Airport from being a "relevant aerodrome" so that the provisions in Part 3 (as amended) in relation to police services agreements will not apply to the Airport. This has the effect of preserving the current policing arrangements at Belfast International Airport.

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

3.1 Section 80 of the Policing and Crime Act 2009 ("the 2009 Act") provides that Schedule 6 shall have effect, which Schedule contains amendments to Part 3 of the Aviation Security Act 1982 ("the new requirements").

At the request of the Department for Transport ("DfT"), the Home Office commenced Part 7 (which includes section 80) of the 2009 Act on 29 January 2010 for England, Scotland and Wales, and intends that a commencement order for Northern Ireland shall come into effect on 1 April 2010.

The Exemption Order will also come into effect on 1 April so as to ensure that the new requirements do not apply to Belfast International Airport ("BIA").

The 1 April deadline requires the Minister to make the Exemption Order by 3 March 2010 to allow sufficient time for laying before Parliament and meeting the 21 day rule.

However, the making of the Exemption Order requires use of a power (s25AA(2) Aviation Security Act 1982), which will not be force until the Northern Ireland commencement Order is effective as it is a power provided within the new requirements.

Section 13 of the Interpretation Act 1978 is, therefore, relied on to make this Order.

DfT considers that relying on section 13 is the most appropriate approach in respect of this Order. In coming to this conclusion two point shave been considered:

a. is the reference to "Act" in section 13(b) a reference, in this case, to the 1982 Act or the 2009 Act? ("the first point") and

b. is the making of this Order before the amendments made by the 2009 Act to Part 3 of the 1982 Act come into force expedient for the purpose of giving full effect to the amendments being made to Part 3. ("the second point")

In respect of the **first point**, it would be peculiar, given the purpose of section 13, if the Act being referred to was, in this case, the 1982 Act. When the same issue arose in respect of other legislation, in a Note by Counsel to the Speaker of the House of Commons, it was observed:

"As section 13 provides that the power may be exercised, and an instrument made under it may be made so as to come into force, "at any time after the passing of the Act", it would seem probable that the Act referred to is the later one. It also seems very artificial to regard as a provision of an Act which does not come into force immediately on its passing a provision enacted perhaps many years later and not yet part of that Act"

(extract from paragraph 9 of Annex 2 (Note by Counsel to the Speaker of the House of Commons) to the 8th Report of the Joint Committee on Statutory Instruments (Session 1988-89)).

Unlike some amending provisions, the amending provisions in Schedule 6 are substantial and have the effect of substituting one scheme on police service agreements for another. In this context the idea of "giving effect" to provisions of an Act which are amending provisions is a sensible one.

In respect of the **second point**, whilst the amendments could come into force and operate without the exemption Order being made to come into force at the same time as the amendments, the effect would be that in the period between the coming into force of the amendments and the coming into force of the Order (assuming the Order is made when the amendments come into force), Belfast International Airport would be required to have a Police Services Agreement (specifying levels of policing and funding for policing by the aerodrome manager). This would be nonsensical since the Airport already fund and control their own constabulary and so there would be no purpose to imposing the Police Service Agreement requirements on the Airport. Making the Order as intended would also avoid making the Airport subject to section 26 of the 1982 Act (as amended by the 2009 Act), a provision which would otherwise cause current arrangements the Airport to be changed with adverse consequences because the Belfast International Airport constabulary would be without requisite policing powers. The policing of the Airport needs to continue to be in accordance with the Airport (Northern Ireland) Order 1994 (No. 426 (N.I. 1)). In this context, the exempting of Belfast International Airport from the start of the scheme introduced into the 1982 Act by the 2009 Act can properly be described as being expedient for the purpose of giving full effect to the provisions of the 2009 Act which introduce the amendments in relation to the Police Services Agreement into the 1982 Act.

Taking the above into account and noting the purpose of section 13, DfT considers that using section 13 is not only possible but the appropriate procedure to use.

4. Legislative Context

4.1 This Order provides that Belfast International Airport is not a "relevant aerodrome" for the purposes of Part 3 of the Aviation Security Act 1982 and accordingly that the airport:

(i) does not require a Police Services Agreement (specifying levels of policing and funding for policing by the aerodrome manager); and

(ii) is not subject to Section 26 of Part 3 of the Aviation Security Act 1982, as amended.

Belfast International Airport will thereby continue to be policed in accordance with the requirements of Article 19 of the Airport (Northern Ireland) Order 1994 which makes provision for the operation of Belfast International Airport's Constabulary as a police force that is under the exclusive control of the airport operator.

4.2 Section 24B in Part 3 of the 1982 Act (powers of constables to stop and search persons, vehicles etc) will continue to apply to Belfast International Airport since this provision applies to all aerodromes and not just to "relevant aerodromes".

4.3 Parliamentary questions relating to the preservation of the powers and privileges of Belfast International and Belfast City Airports were answered on 6 and 19 January (Official Report, Column 339W and Official Report, Column 236W respectively). Since Belfast City Airport no longer uses a private force to provide a dedicated policing presence, the Order is only being applied to Belfast International Airport.

5. Territorial Extent and Application

5.1 This Order applies to all of the United Kingdom.

6. European Convention on Human Rights

As this Order is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 Belfast International Airport is the only airport in the UK which is policed by a dedicated private police force - the Belfast International Airport Constabulary. The use of a private force at the airport, under the sole control of the airport operator, reflects the historic and specific policing requirements in Northern Ireland resulting from the threat from paramilitary organisations.

7.2 By ensuring that Belfast International Airport is not a "relevant aerodrome" for the purposes of Part 3 of the Aviation Security Act 1982, the powers and privileges that the Constabulary require to effectively police the airport will be preserved. Moreover, since the Police Service of Northern Ireland (PSNI) does not provide any dedicated (on site) policing at the airport given the presence of the private force, the airport operator will not be required to make an agreement with PSNI despite the new security planning framework provided for in Part 7 of the Policing and Crime Act having identified the need for dedicated policing at the airport.

- ***Consolidation***

7.2 Not applicable.

8. Consultation outcome

8.1 A full public consultation on the new airport security planning, funding and policing arrangements was conducted from July-October 2008. As part of this, all of the relevant stakeholders with an interest in the policing of Belfast International Airport were invited to take part. The consultation documents can be found at: http://www.dft.gov.uk/consultations/archive/2008/airportpolicing/

8.2 This Order was drafted after discussion with Belfast International Airport and consultation suggests it fully meets their requirements. It has also been discussed and agreed with the Northern Ireland Office.

9. Guidance

9.1 Guidance on the new airport security planning framework has been published jointly by the Department for Transport and the Home Office. The guidance has been made available to all airports and police forces impacted by the new provisions, and also to other security stakeholders at airports. No specific guidance is necessary in respect of this Order.

10. Impact

10.1 There is no impact on charities or voluntary bodies.

10.2 The impact on the public sector relates to the involvement of public agencies in the new security planning process.

10.3 An Impact Assessment has not been prepared for this instrument since there are no impacts for Belfast International Airport that have not already been assessed in the final impact assessment on Airport Policing, Funding and Security Planning that was published with the Policing and Crime Bill in December 2008 - http://www.dft.gov.uk/consultations/archive/2008/airportpolicing/revisedimpactassessmet.pdf

11. Regulating small business

11.1 The legislation does not apply directly to small business.

12. Monitoring & review

12.1 As with the monitoring and review of the application of the new security planning process as a whole, the situation with regard to Belfast International Airport will be monitored regularly with the assistance of officials in the Northern Ireland Office/Northern Ireland Executive.

13. Contact

Rupert Seebohm at the Department for Transport - tel: 020 7944 2593 or email: rupert.seebohm@dft.gsi.gov.uk - can answer any queries regarding the instrument.