

EXPLANATORY MEMORANDUM TO
THE AIR NAVIGATION (AMENDMENT) ORDER 2011
2011 No. 2432

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 This Order removes the requirement for operators of aircraft registered in the European Economic Area to have the prior permission of the Secretary of State for Transport before undertaking aerial work in the United Kingdom. The amendment will ensure that the requirements of the Services Directive¹ in this respect are implemented. Aerial work includes aerial photography, aerial survey, parachute dropping, crop spraying and other similar services that are not the transportation of passengers or cargo.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 Article 4 of this Order addresses a number of points raised by the Joint Committee on Statutory Instruments that were not regarded as sufficiently significant for them to be formally reported.
4. **Legislative context**

4.1 Article 225 of the Air Navigation Order 2009 (ANO) restricts aerial work in the United Kingdom so that it may only be undertaken by operators of aircraft registered in the United Kingdom or by operators of foreign-registered aircraft with the express prior permission of the Secretary of State for Transport. This is incompatible with the Services Directive, which aims to remove barriers to the trade in services across the European Union.

4.2 Article 2 of the Services Directive sets out the Directive's scope. Paragraph (2) of Article 2 describes the activities to which the Directive does not apply and sub-paragraph (d) refers to "services in the field of transport, including port services, falling within the scope of Title V of the Treaty". However, aerial work is not a "service in the field of transport", thus the terms of the Services Directive applies to aerial work.
5. **Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

¹ Directive 2006/123/EC of 12 December 2006 on services in the internal market.

6. European Convention on Human Rights

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

7. Policy background

7.1 United Kingdom Government policy is to support and promote liberalised markets in air services and the trade in services in the European internal market. In 2010 an incompatibility was identified between the ANO and the Services Directive regarding the ability of providers from other EEA member states to freely provide aerial work services in the United Kingdom. This amendment to the ANO has been made to remove that incompatibility and discrimination against providers of aerial work services from other EEA member states.

Consolidation

7.2 The ANO is often amended and is consolidated approximately every five years.

8. Consultation outcome

8.1 The purpose of this Order is to bring the ANO into line with existing provisions in the Services Directive. It is deregulatory in nature and does not impose any costs or other burdens on business, individuals or the third sector. Consultation on the Order has, therefore, not been considered necessary.

9. Guidance

9.1 The Department for Transport will make guidance available on its website and will inform relevant trade bodies of the change in legislation.

10. Impact

10.1 There is no measurable impact on United Kingdom business, charities or voluntary bodies. Operators of EEA-registered aircraft wishing to undertake aerial work in the United Kingdom will no longer require the Secretary of State's permission and the amendment will eliminate a small amount of paperwork for them.

10.2 The Department for Transport will no longer be required to regulate this sector, amounting to approximately 140 applications per year.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The legislation is deregulatory in nature and does not impact on firms employing up to 20 people in the United Kingdom.

11.3 The legislation is deregulatory in nature and no special action is required to assist small business.

12. Monitoring & review

12.1 The ANO is reviewed and updated periodically; however, this order simply removes the incompatibility with the Services Directive and makes a few minor amendments to address points raised by the JCSI. Therefore, a more extensive review or a time limitation on the provision is not appropriate.

13. Contact

13.1 James Gilderoy at the Department for Transport, Tel: 020 7944 5807 or e-mail: james.gilderoy@dft.gsi.gov.uk, can answer any queries regarding the instrument.