

EXPLANATORY MEMORANDUM TO
THE AIR NAVIGATION (AMENDMENT) ORDER 2012
2012 No. 1751

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 Air Navigation Order 2009 (“the ANO 2009”) (S.I. No. 2009/3015) is a substantial piece of secondary legislation by which aviation safety standards are implemented and air navigation is regulated. The ANO 2009 is wide-ranging, relating to aircraft (airworthiness, operation and certification), air crew, passengers, cargo, air traffic services and aerodromes.

2.2 This Order amends the ANO 2009 and has six Parts, each relating to a different area. The amendments to the ANO 2009 relate to the licensing of flight crew on aircraft (Part 1); the certification of airworthiness of aircraft (Part 2); air navigation services (Part 3); air traffic control licensing (Part 4); and the operation of aeronautical radio stations (Part 5). The Order also contains minor textual amendments to the ANO 2009 (Part 6).

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

3.1 None

4. **Legislative Context**

4.1 This instrument will bring about various amendments to the ANO 2009. The amendments in Parts 1 to 4 are necessary or desirable changes to domestic legislation as a consequence of European legislation relating to the same or similar subject matters. The changes in Part 5 introduce controls on the operation of aeronautical radio stations and put the certification of aeronautical radio station operators on a statutory footing.

5. **Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**

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

7. Policy background

Part 1: Changes Arising from the EASA Aircrew Regulation

7.1 Part 1 of the Order amends the ANO 2009 as a consequence of a new European Commission Regulation (the so-called EASA Aircrew Regulation) relating to aircrew licensing. EASA is the European Aviation Safety Agency established under European law and the EASA Aircrew Regulation will be directly applicable in UK law from 17th September. Relevant provisions of the ANO 2009 need to be amended both to reflect the EASA Aircrew Regulation and to provide consistency with that element of air crew licensing which will be governed by purely domestic, complementary rules.

7.2 A failure to update the ANO 2009 to reflect the new European Regulation in relation to licensing would create legal uncertainty and would risk significant disruption and financial loss to UK businesses and licence holders. In the light of the amendment the CAA will continue to issue licences to UK pilots without any difficulties arising.

Part 2: Non-expiring national certificate of airworthiness and airworthiness review

7.3 Prior to 2003 the airworthiness of aircraft in the UK was regulated by a wholly domestic regime. Since 2003, EASA has had legal responsibility for the airworthiness of most aircraft operating within the EU. However, the licensing of certain categories of aircraft remains a matter for individual member States. These categories include state aircraft, historic aircraft and microlight aeroplanes. These categories of aircraft are known as non-EASA aircraft and remain the responsibility of the national aviation authorities. In the UK this authority is the CAA.

7.4 The changes to the ANO 2009 made by this Order will produce a set of domestic licensing rules which resemble the European, or EASA, regime. This will provide simplicity and consistency. It will in particular be beneficial in the case where an aircraft transfers between the two regulatory systems (e.g. a helicopter may be operated for private commercial purposes and thus subject to the EASA regime, but be hired out from time to time to a police operator, during which period it will be a state aircraft and therefore subject to the non-EASA regime). It will reduce the costs and risks involved in operating two different airworthiness regulatory systems in parallel, and offer benefits to the UK aircraft operating and maintenance industries.

Part 3: Changes arising from the Single European Sky (SES) Service Provision Regulation

7.5 Changes made to European legislation by the Single European Sky (SES) Service Provision Regulation (EC) (550/2004) create an overlap with domestic rules relating to air traffic control approvals and flight information

service manuals. Part 3 of this Order contains consequential changes to the ANO 2009 to remove this overlap.

Part 4: Changes arising from the EASA Air Traffic Controller Regulation

7.6 This change is required in order to update the ANO to reflect the recent EASA Air Traffic Controller Licensing Regulation (EC) (805/2011). This Regulation harmonises the arrangements for the issuing of licences across the EU and allows for the mutual recognition of these, in particular enabling Air Traffic Controllers to obtain their licences in one member state but to perform their role in a separate EU member state. The ANO is amended to remove the national provisions for air traffic controller licensing which previously applied and to provide enforcement measures and sanctions for the requirements in the Regulation.

Part 5: Certificate of Competence to operate aeronautical radio stations

7.7 The Aeronautical Radio Operators Certificate of Competence (ROCC) is a non-statutory certification scheme currently run by the CAA to promote the safe operation of aeronautical radio stations. However, participation in the ROCC scheme is voluntary. Since unsafe or non-standard operation of aeronautical radio stations creates safety concerns, Part 5 requires those individuals who operate aeronautical radio stations to obtain a licence to do this. In turn this helps to ensure the safe and standard operation of aeronautical radio stations.

8. Consultation outcome

8.1 Formal consultations were carried out by the CAA for three of the changes made by the Order as outlined below.

8.2 The principal amendments to be made in Part 1 (as regards licensing) were identified early in 2011 and the proposed changes were consulted upon via the CAA website. The consultation lasted for 3 months, beginning in June 2011. During the consultation period 28 relevant comments were received. There were no objections to the amendment.

8.3 In respect of Part 2 (relating to airworthiness certificates) two rounds of consultation were carried out within the CAA, to solicit the opinions of a wide range of technical experts about the changes. The first round produced 360 comments and the second produced 29 comments. These were used to develop and refine the proposals. An external consultation was carried out between October and December 2010 with those companies and organisations affected. No comments were received regarding the proposed ANO changes.

8.4 The amendments relating to the certificates of competence in radio operations (Part 5) were consulted upon with industry via the CAA website. The external consultation began in July 2011. During the consultation period 32 relevant comments were received. There were mixed views regarding the initial consultation based on a misunderstanding regarding the scope of the

ANO amendment. These have been clarified and amendments have been incorporated into the change. In the light of these there was general agreement to the proposals.

9. Guidance

9.1 Guidance relating to all of the amendments contained within this amendment to the ANO 2009 can be provided to users by the CAA in its role as the industry regulator with respect to such matters if asked to do so.

10. Impact

10.1 The impact on businesses, charities and voluntary bodies is low.

10.2 The impact on the public sector is negligible.

10.3 Impact Assessments have been carried out for three of the proposed amendments to the ANO. These are attached as annexes to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the CAA provides assistance and advice to small business where possible in respect of new aviation regulations which are likely to increase their costs.

11.3 The basis for the final decision on what action to take to assist small business has been left to the judgement of the CAA as the industry regulator.

12. Monitoring & review

12.1 The CAA will monitor the UK aviation industry to ensure compliance with the standards which are set out in the ANO 2009 and European legislation.

12.2 The ANO 2009 as amended by this Order contains provisions which give effect to or complement elements of European law, in particular the EASA Air Crew Regulation and the EASA Air Traffic Control Regulation. The policy objective of these provisions is to ensure effective compliance and operational compatibility with European law (where relevant) through the use of proportionate and targeted regulations.

12.3 Regulation 2 of the instrument requires the Secretary of State to carry out a review of certain provisions of the ANO 2009 to which this Order is

relevant. The first review will happen by 10th August 2017 and thereafter at no more than five year intervals. Reports of these reviews will be published on the Department for Transport's website at www.dft.gov.uk.

13. Contact

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