

**EXPLANATORY MEMORANDUM TO  
THE AIR NAVIGATION (OVERSEAS TERRITORIES) (AMENDMENT) ORDER  
2014**

**2014 No. 2925**

**1.** 1.1 This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The Amendment Order amends the Air Navigation (Overseas Territories) Order 2013 ("the AN(OT)O 2013") (S.I. No. 2870) to incorporate provisions concerning aviation security and to amend the qualification criteria for registering an aircraft in the Overseas Territories. Three typographical errors are also being corrected, comprising removal of extraneous characters and correction of a cross-reference within two articles.

**3. Matters of special interest to the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee**

3.1 None.

**4. Legislative Context**

4.1 This instrument will bring about various amendments to the AN(OT)O 2013. The amendments are necessary to embed provisions for aviation security within that Order and to amend certain provisions relating to the qualifying criteria to register an aircraft in the Overseas Territories.

**5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom's Overseas Territories with the exception of Gibraltar and the British Antarctic Territory.

**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 Regulation of aviation security in the Overseas Territories is currently the legal responsibility of the Governor of the Territory, assisted by the Department for Transport, under directions made by each Governor under the Aviation Security and Piracy (Overseas Territories) Order 2000. The Order does not apply to Gibraltar or the British Antarctic Territory. While DfT will retain overall policy for aviation security, day-to-day oversight of security measures will be devolved to locally designated

regulators, in a similar way as for the regulation of aviation safety, thus achieving more commonality to the benefit of the aviation industry in the Territories.

7.2 Article 7 of the Air Navigation (Overseas Territories) Order 2013 (AN(OT)O) already places responsibility on the Governor of a Territory to make arrangements and publish requirements for implementing the Chicago Convention and the Annexes to it. Annex 17 of the Convention deals with aviation security.

7.3 To embed security provisions in the existing safety regulatory regime, it is proposed to add security measures to the criteria to be satisfied by certain bodies which are required to hold a certificate or approval under the AN(OT)O, that is certificated aerodromes, Air Operator Certificate holders, air traffic service approval holders and holders of an aeronautical telecommunications approval.

7.4 Article 5 of the AN(OT)O requires the Governor to publish requirements, the Overseas Territories Aviation Requirements (OTARs), for the grant of a certificate or approval. Amendments to the OTARs to include aviation security provisions relevant to the approvals and certificates referred to above are being made in parallel.

7.5 The proposed change to article 8 adds failure to comply with security requirements as grounds for prohibiting a flight taking place.

7.6 The proposed change to article 74(1)(c) adds security to the category of requirements a person operating a Territory registered aircraft or a non-Territory registered aircraft in the Territory may be required to comply with.

7.7 The AN(OT)O 2013 introduced changes to the qualification criteria for registering an aircraft in the Territories, the main change being the removal of Commonwealth citizens and businesses incorporated and having their principal place of business in some part of the Commonwealth. These changes were included in the consultation in October 2012 to January 2013. No comments or objections were raised by any consultation responders to the proposals.

7.8 Since these amendments came into effect, concerns have been raised in certain Territories about the implications of the changed criteria. Amendments are therefore proposed to article 16 of the Order to reinstate these 'Commonwealth' qualification criteria and, further, to include nationals of any European Economic Area state and undertakings formed in accordance with the law of an EEA state which have their registered office or principal place of business within the EEA. These changes would make the qualifying criteria consistent with those of the UK and the Crown Dependencies and will assist the aviation industry in those Territories that have an aircraft register.

7.9 The amendment also makes clear that any aircraft that had been validly registered at the time the 2013 Order came into effect remains validly registered (unless it has been deregistered) and to clarify that an application for registration could be accepted in one Territory from an applicant incorporated in another Territory.

## **8. Consultation outcome**

8.1 Consultation on the aviation security amendment was carried out via its website by Air Safety Support International Limited (ASSI), a wholly-owned subsidiary of the Civil Aviation Authority, which has responsibility under directions from the Secretary of State for the oversight of aviation safety in the Overseas Territories apart from in Gibraltar. The consultation lasted for 12 weeks from 27 June 2014. There were no objections to the proposal.

## **9. Guidance**

9.1 More detailed guidance relating to all of the amendments contained within this instrument will be provided by ASSI in its role as regulator.

## **10. Impact**

10.1 The impact on businesses, charities and voluntary bodies is negligible, as the security requirements are not changing to any material extent but are simply being enforced via the AN(OT)O 2013, rather than via the Governor's Directions.

10.2 While the amendments have no direct impact on the public sector, their purpose is to aid the transfer of responsibility for oversight of aviation security in the Overseas Territories from the Department for Transport to ASSI.

## **11. Regulating small business**

11.1 The legislation applies to small business. However the implementing requirements provide certain alleviations, including to operators of aeroplanes with a maximum certificated take-off mass below 10,000 kg and to aerodromes only handling such aircraft.

## **12. Monitoring & review**

12.1 ASSI will monitor the Overseas Territories' aviation industry to ensure compliance with the standards which are set out in more detail in the Overseas Territories Aviation Requirements.

12.2 The AN(OT)O is regularly reviewed and updated by ASSI and amendments proposed as necessary.

## **13. Contact**

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