

EXPLANATORY MEMORANDUM TO
THE AIR NAVIGATION (OVERSEAS TERRITORIES) (AMENDMENT) (No. 2)
ORDER 2014

2014 No. 3281

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 of 2013) to incorporate provisions concerning the implementation of the Convention on International Interests in Mobile Equipment signed at Cape Town on 16 November 2001 (“the Cape Town Convention”) and the Protocol to the Cape Town Convention on Matters specific to Aircraft Equipment (“the Aircraft Protocol”).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 This instrument will bring about various amendments to the AN(OT)O 2013, in relation to provisions concerning the registration of aircraft. The amendments are necessary to enable the implementation of the Cape Town Convention and the Aircraft Protocol in the Overseas Territories should any of the Territories wish to have the ratification of the Cape Town Convention and the Aircraft Protocol by the United Kingdom extended to the Territory.
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.
 - 5.2 The instrument comes into force in relation to a Territory only if a declaration has been deposited by the United Kingdom at UNIDROIT (the International Institute for the Unification of Private Law) in relation to that 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 The United Kingdom intends to ratify the Cape Town Convention and the Aircraft Protocol.

7.2 The Cape Town Convention and Aircraft Protocol create an internationally recognised and registrable security interest in commercial aircraft and helicopters (with a minimum cargo or passenger-carrying capacity) and aircraft engines (with certain, minimum power capacities) and also a system of enforceable remedies for the creditor in cases of default. The purpose of the Convention and Protocol is to reduce risk in international aviation transactions and thereby to make the obtaining of credit for them cheaper.

7.3 The Convention and Protocol may be extended to any territorial units of a Contracting State by the deposit of declarations with UNIDROIT. Bermuda and Cayman Islands have expressed an interest in having the Convention and Protocol extended to them.

7.4 In order for the Convention and the Protocol to be implemented in any Territory to which the AN(OT)O 2013 applies, certain amendments to it would need to be made.

7.5 One amendment is to ensure that any aircraft which has been registered on a Territory's aircraft register, which is the subject of a registered international interest and in respect of which an irrevocable de-registration and export authorisation ('IDERA') has been recorded on the register in accordance with the law of the Territory, does not cease to be valid if an unqualified person subsequently becomes entitled to a property interest in the aircraft. An IDERA is one of the remedies available to a creditor under the Cape Town Convention and Aircraft Protocol and enables the creditor to secure the de-registration of the aircraft if required.

7.6 The other amendment is to require the Governor to cancel the registration of an aircraft if satisfied that the person entitled to exercise the IDERA wishes, and is entitled under the law of the Territory, to procure the de-registration of the aircraft.

7.7 The Governor is the person responsible under the AN(OT)O 2013 for maintaining the aircraft register in each Overseas Territory.

7.8 Any Territory wishing to have the ratification of the Convention and Protocol extended to them will also have to make laws implementing the Convention and Protocol in the Territory.

7.9 The amendments will not affect any Territory that does not wish to have the ratification of the Convention and Protocol extended to the Territory.

8. Consultation outcome

8.1 Consultation on the proposed amendments 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 Transport, for the oversight of aviation safety in the Overseas Territories (apart from Gibraltar). The consultation began on 30 October 2014. There have been no objections to the proposal.

9. Guidance

9.1 Any guidance relating to the Cape Town Convention and the Aircraft Protocol will be provided by the Department for Business, Innovation and Skills.

10. Impact

10.1 The impact on businesses, charities and voluntary bodies is negligible, as the amendments simply enable the de-registration of an aircraft at the request of a creditor who has recorded an IDERA in respect of that aircraft on the Territory's aircraft register in accordance with that Territory's law.

10.2 The amendments have no direct impact on the public sector.

11. Regulating small business

11.1 The legislation applies to small business. However, it imposes no burdens on it.

12. Monitoring & review

12.1 Each Territory which has had a declaration extending the Convention and Protocol to it will be responsible for ensuring compliance with the requirements set out in the Cape Town Convention and Aircraft Protocol, in so far as they apply to its aircraft register.

12.2 The AN(OT)O 2013 is regularly reviewed and updated by ASSI and amendments proposed as necessary.

13. Contact

13.1 Stephen Baker, Air Safety Support International Ltd. Telephone: 020 7453 6168; email: stephen.baker@caa.co.uk.