

**EXPLANATORY MEMORANDUM TO**  
**THE AIR NAVIGATION (OVERSEAS TERRITORIES) (AMENDMENT) ORDER 2015**  
**2015 No. 1769**

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 purpose of this Order is to amend the Air Navigation (Overseas Territories) Order 2013 (“the 2013 Order”) to require Governors in Overseas Territories to publish requirements for the issue of an export certificate of airworthiness (to facilitate an aircraft’s transfer to another State of registry), to empower a Governor to issue an airworthiness directive in respect of an aircraft registered in an Overseas Territory, if the Governor has concerns about the aircraft’s airworthiness, and to ensure that the requirements in the 2013 Order are enforceable by a criminal prosecution in all of the Overseas Territories.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 The Order is being made to clarify the fact that Governors may issue export certificates of airworthiness and issue directions to ensure the airworthiness or continued airworthiness of aircraft registered in the Territory. It also makes modifications to the provision regarding criminal offences under the 2013 Order to reflect the different criminal justice systems in certain Overseas Territories.
5. **Territorial Extent and Application**
  - 5.1 This Order extends to all the British Overseas Territories with the exception of Gibraltar and the British Antarctic Territory.
  - 5.2 It does not apply in the United Kingdom.
6. **European Convention on Human Rights**
  - 6.1 As the Order is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- 7.1 Aircraft registered in an Overseas Territory may sometimes be de-registered and transferred to the registry of another State. In that case the State of intended registry sometimes requests an export certificate of airworthiness from the transferor State of registry in order to be able to accept the aircraft on to its register.
- 7.2 An export certificate of airworthiness is not the same as an actual certificate of airworthiness: it indicates that the aircraft in question conforms to the described Type Certificate Data Sheet but does not grant authority for flight. A valid certificate of airworthiness, permit to fly or other current airworthiness document satisfactory to the International Civil Aviation Organization (ICAO) requirements will still be necessary for flight. This Order makes it clear that the Governor must publish requirements in respect of the issuance of an export certificate of airworthiness in respect of aircraft registered in an Overseas Territory.
- 7.3 Sometimes concerns about airworthiness may arise with respect either to a specific aircraft or with a class or type of aircraft, which may render the aircraft unsafe to fly unless some form of maintenance is made to it or unless operational limitations or conditions are imposed in respect of it. The aircraft manufacturer will usually issue a service bulletin if it becomes aware of this but these have no legal force on their own. Therefore the State of registry can issue an airworthiness directive requiring maintenance to be carried out or imposing operational conditions or limitations. In the case of an Overseas Territory such a directive would have to be issued by the Governor of the Territory, or another designated person on their behalf; this Order clarifies that Governors have the power to do this.
- 7.4 Infringement of a provision of the 2013 Order is an offence for which there are prescribed penalties and certain prescribed defences. The relevant provisions assumed that the criminal justice system in each Overseas Territory was the same as in the United Kingdom. As this is not the case, this Order makes modified provision in respect of particular Overseas Territories and makes it clear that the equivalent financial penalty, as would apply in the United Kingdom, apply.

## **8. Consultation outcome**

- 8.1 Consultations have been held with the Overseas Territories' civil aviation authorities and law enforcement officers. None have expressed any objections to the proposals.

## **9. Guidance**

- 9.1 No guidance is necessary to accompany the proposed amendments.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The Order extends only to the UK Overseas Territories. An Airworthiness Directive may be issued against an aircraft operated by a small business, but the legislation will not otherwise have any impact on small businesses.

## **12. Monitoring & review**

12.1 The effect of the amendments will be monitored and reviewed by Air Support Safety International, a wholly owned subsidiary of the Civil Aviation Authority of the United Kingdom, which has responsibility for ensuring that civil aviation legislation applying in the Overseas Territories (other than in Gibraltar and the British Antarctic Territory) remains up to date and effective.

## **13. Contact**

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