

EXPLANATORY MEMORANDUM TO
THE AIR NAVIGATION (AMENDMENT) (NO. 2) ORDER 2018
2018 No. 1160

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport (“the Department”) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments (“the JCSI”).

2. Purpose of the instrument

- 2.1 The Air Navigation Order 2016 (“the ANO 2016”) is the principal Statutory Instrument by which the Civil Aviation Authority (CAA) regulates safety for the aviation industry.
- 2.2 The Air Navigation (Amendment) (No. 2) Order 2018 (“this instrument”) makes minor amendments to Articles 99, 100, and 168 of the ANO 2016. This instrument also creates offences in respect of Annex III (Organisation Requirements for Air Operations) and Annex V (Specific Approvals), Subpart K (Approval of helicopter offshore operations) of Commission Regulation (EU) No 965/2012 (“the EASA Air Operations Regulation”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The JCSI identified in its Tenth Report of Session 2016-17 a number of amendments that should be made to the ANO 2016. The list of specific amendments required were addressed in the Air Navigation (Amendment) Order 2017. The Department acknowledges the JCSI’s recommendation to continue to carry out a detailed review of the ANO 2016 as part of any further consolidation, and have considered this whilst implementing minor correction in this instrument, as well as implementing specific EU requirements.
- 3.2 The Department will continue to consider the JCSI’s recommendation to review the ANO 2016 when such opportunity may arise in the future.
- 3.3 As this instrument includes provision correcting a defect in the ANO 2016, this instrument is being issued free of charge to all known recipients of the ANO 2016.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.4 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom, to UK registered aircraft wherever they may be, and to non-UK aircraft within UK airspace.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Part III of the Civil Aviation Act 1982 allows for the regulation of civil aviation in the United Kingdom. This confers power on Her Majesty to make by Order in Council provision for regulating air navigation including (but not limited to) registration of aircraft, airworthiness, regulation of aerodromes and licensing of pilots.

6.2 This instrument amends articles 99, 100, and 168 of the ANO 2016. Articles 99 and 100 prohibit the carrying of a sporting weapon or munition of war on board an aircraft. This instrument creates an additional exception, where a police officer can take a munition of war on board an aircraft, provided the officer is acting in the course of the officer's duty and the munition is removed from the aircraft before the aircraft takes off. This instrument also corrects an error in article 168.

6.3 The EASA Air Operations Regulation contains operating rules for European aviation under a number of different categories, and is directly applicable in the UK. This instrument introduces criminal offences for breach of specified obligations relating to the Organisation Requirements for Air Operations as set out in Annex III and also includes a criminal offence for breach of a specified obligation relating to the approval of helicopter offshore operations as set out in Annex V, thus enabling the CAA to enforce compliance when necessary.

7. Policy background

What is being done and why?

7.1 This instrument fills a legislative gap in the security context, and permits police officers to take on board aircraft munitions of war when they need to do so.

7.2 This instrument also implements amendments reflecting changes to standards in aviation and air navigation safety arising from EU legislation. This will enable the CAA to take enforcement action which is necessary to ensure compliance with specific requirements of the EASA Air Operations Regulation, and manage the risk of infraction from the EU Commission.

7.3 This instrument also corrects a minor error in the ANO 2016.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This is the third amendment to the ANO 2016, so a consolidation at this stage is not appropriate, however, the Department will continue to consider the JCSI's recommendation to review the ANO 2016 when necessary.

10. Consultation outcome

- 10.1 The EU derived changes from Annexes III and V of the EASA Air Operations Regulation are routine, small in scale and do not go beyond minimum EU requirements. These measures do not require consultation in the manner of domestic regulation given they are technical changes to areas of regulation that were already previously established in UK law.

11. Guidance

- 11.1 None.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because there is no significant impact on business, charities or voluntary bodies, or the public sector.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The measures from the EASA Air Operations Regulation will have negligible impact on business, so no mitigations are therefore proposed. This is because the offences are being introduced on a like-for-like basis.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is handled by both the CAA, which monitors the UK aviation industry to ensure compliance with the standards which are set out in the ANO 2016 and related EU legislation, and also the Department, which will continue to review the need to make further amendments to the ANO 2016 as necessary.
- 14.2 A statutory review provision is included in the ANO 2016 which requires the Secretary of State to review its operation and effect and publish a report within five years after it comes into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether it should remain as it is, or be revoked or be amended.

15. Contact

- 15.1 Andy Kirby at the Department for Transport Telephone: 07584 157697 or email: Andy.Kirby@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Catherine Adams, Deputy Director for Aviation Strategy and Consumers, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Baroness Sugg CBE at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.