

**EXPLANATORY MEMORANDUM TO**  
**THE AIR NAVIGATION (OVERSEAS TERRITORIES) (AMENDMENT) ORDER**  
**2019**

**2019 No. 853**

**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.

**2. Purpose of the instrument**

- 2.1 This Order amends the Air Navigation (Overseas Territories) Order 2013 (“the 2013 Order”) to the effect that Anguilla is a British Overseas Territory to which that Order applies. The 2013 Order sets out the detailed regulatory framework governing aviation safety and related matters.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments*

- 3.1 This Order corrects a defect in the 2013 Order. The British Overseas Territories to which the 2013 Order applies are listed in Schedule 6 to that Order. Schedule 6 includes a reference to Anguilla, but this was defective as most of the powers under which the 2013 Order were made had not been extended to Anguilla. This Order therefore inserts identical provision made under provisions of the Civil Aviation Act 1982 which have been extended to Anguilla by the Civil Aviation Act 1982 (Anguilla) Order 2019 (S.I. 2019/756). Incidentally to this, it also revokes the existing defective reference. As such, it makes the 2013 Order legally effective in Anguilla.
- 3.2 As this Order makes provision to correct a defect in the 2013 Order, this Order is being issued free of charge to all known recipients of the 2013 Order.

*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)*

- 3.3 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 British Overseas Territory of Anguilla.
- 4.2 This Order does not apply in the United Kingdom.

## **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 Powers to make provision for aviation safety in the British Overseas Territories are contained in the Civil Aviation Act 1949 (Overseas Territories) Order 1969 (“the 1969 Order”). This extended to those territories the powers in the Civil Aviation Act 1949 to make Air Navigation Orders.
- 6.2 Anguilla was not a British Overseas Territory in 1969 and only acquired this status in 1980. The 1969 Order therefore did not extend the 1949 Act to Anguilla. However, this was overlooked in relation to the oversight of aviation regulation once Anguilla became a British Overseas Territory in 1980. As a result, whilst provisions made under the 1969 Order since 1980 (including most recently the 2013 Order) stated that they extended to Anguilla, and whilst regulation and compliance continued as if this were the case, the legal provisions did not, in fact, legally extend to Anguilla.
- 6.3 The Civil Aviation Act 1949 was repealed and replaced by the 1982 Act, subject to certain savings provisions. This Order is made under powers in the 1982 Act, which are being extended to Anguilla by the Civil Aviation Act 1982 (Anguilla) Order 2019. It is being made after the making of that Order, but prior to its coming into force, by virtue of sections 13 and 23 of the Interpretation Act 1978 (which permit the anticipatory exercise of powers). It puts in place a proper legal framework for regulating aviation in Anguilla and ensures that the United Kingdom meets its obligations as a signatory to the Convention on International Civil Aviation.

## **7. Policy background**

### *What is being done and why?*

- 7.1 This Order provides a fix to a legislative error but in practice will not result in any substantive change to the regulatory regime that is currently in place in Anguilla. Since this oversight was discovered in 2017, Air Safety Support International (“ASSI”), the designated regulator for the British Overseas Territories, has continued to oversee aviation regulation in Anguilla whilst steps are taken to remedy the legislative gap. This ensured there was no effect on commercial air operations or the safety of aviation in Anguilla. In practice, operators would have had to continue to comply with international standards in any event, in order to continue to operate commercial flights to other countries and territories.
- 7.2 Under the International Civil Aviation Organisation framework, the United Kingdom remains responsible for aviation safety in the British Overseas Territories.
- 7.3 As the appointed representative of Her Majesty the Queen in a British Overseas Territory, the Governor has specific responsibilities regarding the regulation of civil aviation. The foundation of these responsibilities lies in the United Kingdom being a signatory to the International Convention on Civil Aviation (1944). This places an obligation on the United Kingdom to abide by specific standards for international civil aviation. The Governor is therefore responsible for fulfilling the obligations within the British Overseas Territory.

## **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. Consultation**

9.1 There have been extensive discussions between the Department, the Foreign and Commonwealth Office, ASSI, the Civil Aviation Authority and the Governor of Anguilla in relation to the legislation required to remedying the position, including sharing drafts of the requisite legislation.

## **10. Consultation outcome**

10.1 Following the discussions referred to in paragraph 9.1, it was decided that the legislative gap was capable of being fixed with the making of this Order and the Civil Aviation Act 1982 (Anguilla) Order 2019.

10.2 Following those discussions, and with the agreement of the Governor and Attorney General in Anguilla, it was decided that the provisions of these Orders should provide only for the regulatory system that is currently in place and no more.

10.3 Following consultation with the Governor and Attorney General of Anguilla, the Governor has confirmed his agreement to the making of these Orders.

## **11. Impact**

11.1 There is no, or no significant, impact on business, charities or voluntary bodies.

11.2 There is no, or no significant, impact on the public sector.

11.3 An Impact Assessment has not been prepared for this instrument because there is no significant impact on United Kingdom citizens or business.

## **12. Regulating small business**

12.1 The legislation applies to activities that are undertaken by small businesses.

12.2 The measures will have negligible impact on business, so no mitigations are therefore proposed.

## **13. Monitoring & review**

13.1 The approach to monitoring of this legislation is handled by both ASSI and the Department. ASSI monitors the UK Overseas Territories aviation industry to ensure compliance with the standards which are set out in Air Navigation Orders.

## **14. Contact**

14.1 James Ball at the Department for Transport Telephone: 07977 423466 or email: [James.Ball1@dft.gov.uk](mailto:James.Ball1@dft.gov.uk) can be contacted with any queries regarding the instrument.

14.2 Catherine Adams, Deputy Director for Aviation Strategy and Consumers Division, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

14.3 Baroness Sugg at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.