

EXPLANATORY MEMORANDUM TO
THE AIR NAVIGATION (OVERSEAS TERRITORIES) (ENVIRONMENTAL
STANDARDS) ORDER 2024

2024 No. 378

1. Introduction

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

2. Declaration

- 2.1 Anthony Browne MP, Parliamentary Under Secretary at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Erin Cowburn, Deputy Director for the Airport Policy Division, at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Gary Marshall at the Department for Transport. Telephone: 07977 429812 or email: gary.marshall@dft.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 This instrument is designed to keep the civil aviation legislative structure in the Overseas Territories up to date. It revokes and replaces the Air Navigation (Overseas Territories) (Environmental Standards) Order 2014 (S.I. 2014/2926) (“the 2014 Order”) and the Air Navigation (Overseas Territories) (Environmental Standards) (Amendment) Order 2015 (S.I. 2015/236) (“the 2015 Order”). In doing so it makes provision for noise certification and aircraft emissions certification in respect of the overseas territories. It also updates references to Annex 16 to the Convention on International Civil Aviation (“the Chicago Convention”).
- 4.2 This instrument addresses concerns raised by the Joint Committee on Statutory Instruments in the 18th Report of Session 2014-15 and the 1st Report of Session 2015-16 in relation to the 2014 and 2015 Orders respectively.

Where does the legislation extend to, and apply?

- 4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is: Anguilla; Bermuda; British Indian Ocean Territory; Cayman Islands; Falkland Islands; Montserrat; Pitcairn, Henderson, Ducie and Oeno Islands; St Helena, Tristan da Cunha and Ascension; South Georgia and South Sandwich Islands; Sovereign Base Areas of Akrotiri and Dhekelia; Turks and Caicos Islands; and Virgin Islands (“the Territories”).

- 4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) are the Territories.
- 4.5 This instrument has extra-territorial effect outside the Territories to which it applies in certain situations. For example, in relation to aircraft registered in a Territory, the provisions of the instrument generally apply to such aircraft wherever they may be.

5. Policy Context

What is being done and why?

- 5.1 Following its 11th formal meeting from 4 to 15 February 2019, the International Civil Aviation Organization (ICAO) Committee on Aviation Environmental Protection (CAEP) agreed amendments to ICAO Annex 16 Volume I ‘Aircraft Noise’, Volume II ‘Aircraft Engine Emissions’, and Volume III ‘Aeroplane CO2 Emissions’. The amendments to these Volumes address technical issues and editorial corrections and set out new standards and regulatory levels.
- 5.2 As the appointed representative of His Majesty the King in an 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 Chicago Convention. 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 Overseas Territory.
- 5.3 Annex 16 sets out standards and recommended practices for dealing with aircraft noise and aircraft engine emissions.
- 5.4 This instrument provides for noise and emissions certification in compliance with Annex 16 and prohibits aircraft from flying without the appropriate certification in place. This instrument also allows the Governor of a Territory to exempt certain aircraft from the noise and emissions certification requirements and includes offences and penalties for persons that do not comply with the noise and emissions certification requirements in a given territory.
- 5.5 Work on this instrument has suffered a number of delays. Work was initially paused in 2019 due to resourcing constraints related to EU-exit priorities and then again in 2020 due to resource being focused on the COVID-19 pandemic response. As the instrument had initially been drafted some time previously, a full review was then needed to ensure the instrument properly implemented the requirements of, and any subsequent updates to ICAO Annex 16 Volumes I and II, as well as those of Volume III.

What was the previous policy, how is this different?

- 5.6 This instrument clarifies areas related to validation of noise certificates and implements the latest requirements of Volumes I, II and III of ICAO’s Annex 16 to the Chicago Convention.

6. Legislative and Legal Context

How has the law changed?

- 6.1 This instrument is designed to keep the civil aviation legislative structure in the Overseas Territories up to date by implementing the latest standards and recommendations of the International Civil Aviation Organization in Annex 16 to the Chicago Convention.

- 6.2 This instrument revokes and replaces the 2014 Order and the 2015 Order, consolidating and updating provision for the implementation of the requirements of Annex 16 in relation to noise and emission standards for aircraft in respect of the Overseas Territories.

Why was this approach taken to change the law?

- 6.3 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 As this instrument replaces existing provision in the 2014 Order and the 2015 Order with limited changes to address concerns raised by the Joint Committee on Statutory Instruments, a formal consultation was not considered necessary. The instrument has been prepared, however, in consultation with Air Safety Support International Limited (ASSI). ASSI is a not-for-profit subsidiary of the Civil Aviation Authority (CAA), established in 2003 under Directions from the Secretary of State (latest version 2014)¹. The Directions provide, inter alia, for ASSI to maintain the legislation applicable to the Territories and to develop and maintain the Overseas Territories Aviation Requirements (OTARs), in conjunction with any appropriate civil aviation regulatory authorities in the territories. These are published by ASSI on its website on behalf of the Governors. ASSI also publishes Overseas Territories Aviation Circulars (OTACs) and Consultations on changes to the legislation and OTARs on its website under its Procedure 38.
- 7.2 The 2014 Order was subject to a 12-week consultation by ASSI from 27 June 2014 and no objections were raised to the proposals. As the 2015 Order was correcting errors in the 2014 Order, no consultation was undertaken.

8. Applicable Guidance

- 8.1 Guidance will be provided as necessary to accompany the proposed amendments, in the form of the OTACs and Alerts. OTACs are issued to provide advice, guidance and information on standards, practices and procedures. The OTACs are published on the ASSI website and are published to support the OTARs to provide guidance on their implementation and procedures for compliance. The Alerts are issued by ASSI to all those in the Territories – Governors, Territory Governments and regulators, and industry – who have registered their interest in receiving information regarding legislation (including OTARs and OTACs) and any proposed changes thereto including Consultations published relating thereto. The OTACs also advise of any changes to procedures or administration.²

¹ These directions were given by the Secretary of State to the Civil Aviation Authority under section 6(2)(b), (c) and (d) of the Civil Aviation Act 1982 on 14th March 2014 and amended by the Civil Aviation Authority (Overseas Territories) (Variation) Directions 2015. A copy of the directions can be found at: <http://www.airsafety.aero/About-ASSI/Directions-Establishing-ASSI.aspx>. A hardcopy document is available for inspection by appointment only at the offices of Air Safety Support International Limited at Floor 2, The Portland Building, 25 High Street, Crawley, West Sussex, RH10 1BG.

² Electronic copies of OTARs and OTACs can be found respectively at <https://www.airsafety.aero/requirements-and-policy/otars> and <https://www.airsafety.aero/requirements-and-policy/otacs>.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument because the Order makes relatively modest changes to update existing regulatory standards as explained above and applies only in the Overseas Territories. The level of impact on business is therefore not expected to be significant and will mainly be limited to initial familiarisation costs.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the Order makes relatively modest changes to update existing regulatory standards.
- 9.3 The legislation does impact small or micro businesses.
- 9.4 No specific action is proposed to minimise regulatory burdens on small or micro businesses because the Order makes relatively modest changes to update existing regulatory standards. As a result, the measures are not expected to have a significant impact on these businesses. For these reasons, no mitigations are proposed.
- 9.5 There is no, or no significant, impact on the public sector because the Order makes relatively modest changes to update existing regulatory standards.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring this legislation is that the regulation of civil aviation in the Overseas Territories is monitored by ASSI. ASSI monitors the Overseas Territories aviation industry to ensure compliance with the standards which are set out in Air Navigation Orders.
- 10.2 The instrument does not include a statutory review clause as it is an Order in Council and ensures implementation of the UK's international legal obligations.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 This instrument addresses concerns raised by the Joint Committee on Statutory Instruments in the 18th Report of Session 2014-15 and the 1st Report of Session 2015-16 in relation to the 2014 and 2015 Orders respectively. It is therefore being issued free of charge to all known recipients of these Orders.
- 11.2 In summary, the Committee's concerns were that the 2014 Order referred to a validation process for noise certification that it failed to make provision for. Under paragraph 1.2 of Part 2, Chapter 1 of ICAO Annex 16, Volume 1 to the Chicago Convention, it is a requirement for noise certification to be granted (referred to as "issued" in this instrument) or validated by the State of Registry of an aircraft on the basis of satisfactory evidence that the aircraft complies with requirements that are at least equal to the applicable Standards specified in the Annex. There is no requirement for a noise certificate to be both granted and then also validated under a separate validation process.
- 11.3 The position in the UK and the Overseas Territories is to issue noise certificates as required by the provisions of Annex 16 to the Chicago Convention mentioned above in paragraph 3.2. There is no separate validation process for noise certificates in the Overseas Territories as such all references to a validation process have been removed. Accordingly, this Order provides for the issuance of noise certificates in the territories by the Governor and the recognition of noise certificates issued or validated by competent authorities of other States of Registry. The Order further provides that where a noise certificate is issued in accordance with the Annex 16, it remains valid indefinitely, subject to certain specified circumstances set out in the Order.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").