



THE LAW AND REGULATION IN THE UK OVERSEAS TERRITORIES

Published by Air Safety Support International Ltd

© Air Safety Support International Limited 2007

First published May 2007
Second issue September 2008

Enquiries regarding the content of this publication should be addressed to:
Manager PQS, Air Safety Support International, Northgate House, 115 High Street, Crawley,
West Sussex, RH10 1FY.

www.airsafety.aero

Change history

Changes to this document will be achieved by a re-issue of the entire document rather than by the amendment of individual pages.

Issue No	Date	Description
Issue 0.1	16 March 2007	First draft for internal review
Issue 1.0	3 May 2007	Final version for publication on website
Issue 2.0	15 September 2008	Changes arising from AN(OT)O 2007

Contents

1	INTRODUCTION	4
2	BACKGROUND	4
3	UK LEGISLATION IN THE OTs	4
4	CONTRAST BETWEEN THE UK AND THE OT SITUATION.....	5
5	UK REQUIREMENTS RELATING TO REGULATIONS AND THE OTARs	6
6	DIAGRAM OF LEGISLATIVE STRUCTURE	7

1 Introduction

This document sets out in some detail the legislative structure which applies to the United Kingdom Overseas Territories (OTs).

2 Background

- 2.1 The UK is a Contracting State under the Convention on International Civil Aviation (signed at Chicago on 7th December 1944), generally referred to as the Chicago Convention.
- 2.2 Under that Convention the UK is required to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures and organisation in relation to aircraft, personnel, airways and services with a view to facilitating and improving air navigation. Accordingly, the UK is obliged to put in place a system of law and regulation that applies the standards and recommended practices adopted by the International Civil Aviation Organisation (ICAO) and incorporated in the eighteen Annexes to the Convention.
- 2.3 For the purposes of the Convention, the OTs are an integral part of the UK and the law and regulations applied in the UK should be applied consistently within the OTs.
- 2.4 As a result of the critical findings of the ICAO Universal Safety Oversight Audit in July 2000, HM Government gave instructions for the creation of Air Safety Support International Limited (ASSI) as a subsidiary of the UK Civil Aviation Authority (CAA) under a Direction from the Secretary of State for Transport. The Direction requires ASSI to assist Governors in exercising the functions of aviation safety oversight and regulation; to regulate in the OT when designated to do so; to audit the Overseas Territories Aviation Authorities' functions within the OT and to develop a set of Overseas Territories Aviation Requirements (OTARs) designed to implement the standards contained in the Annexes to the Convention.

3 UK legislation in the OTs

- 3.1 The UK legislation dealing with civil aviation in the OTs is quite fragmented and difficult to follow. The structure of the legislation applicable in the OTs is illustrated in paragraph 6.
- 3.2 The primary legislation applicable in the OTs is the Civil Aviation Act 1949 (the Act), some sections of which were extended to the OTs by The Civil Aviation Act 1949 (Overseas Territories) Order 1969 (Statutory Instrument SI 1969 No. 592). This Order extended to the OTs some of the principal elements of the Act, and in particular section 8, which provides as follows:

“Her Majesty may by Order in Council make such provision as appears to Her to be requisite or expedient for carrying out the Chicago Convention, any annex thereto relating to international standards and recommended practices (being an Annex adopted in accordance with the Convention) and any amendment of the Convention or any such Annex made in

accordance with the Convention; or generally for regulating air navigation.”

- 3.3 The primary legislation was consolidated in the UK by the enactment of the Civil Aviation Act 1982. Some parts of that Act have been extended to the OTs by the Civil Aviation Act 1982 (Overseas Territories) Order 2001 (SI 2001 No. 1452) which applied in the OTs sections 61 (offences and penalties) and section 75 (investigation of accidents). This Order also made some amendments to the 1969 Order referred to above. The Order empowers Governors to make Accident Investigation Regulations.
- 3.4 To give effect to the Convention Annexes in the OT the Air Navigation (Overseas Territories) Order 2001 was enacted in order to bring the OT legislation up to date.
- 3.5 The AN(OT)O 2001 was in turn amended by the Air Navigation (Overseas Territories) (Amendment) Order 2003 (SI 2003 No. 433) that brought ASSI into existence and made a number of changes relating to the definition of Governor and designation by Governors of their functions and introduced procedures for a review of the exercise of a Governor's functions in relation to licensing, certification, authorisations and approvals.
- 3.6 The AN(OT)O 2001 and its various amendment Order were superseded by the AN(OT)O 2007 and current legislation comprises the following:

The Civil Aviation Act 1949 (Overseas Territories) Order 1969 (SI 1969/592)
 The Civil Aviation Act 1971 (OT) Order 1976 (SI 1976/1912)
 The Aviation Security & Piracy (OT) Order 2000 (SI 2000/3059)
 The Civil Aviation Act 1982 (OT) Order 2001 (SI 2001/1452)
 The Civil Aviation Act 1982 (OT) (No 2) Order 2001 (SI 2001/3367)
 The Air Navigation (OT) (Environmental Standards) Order 2004 (SI 2004/3337)
 The Air Navigation (Overseas Territories) Order 2007 (SI 2007/3468)

In addition, Accident Investigation Regulations have been enacted in each Territory.

4 Contrast between the UK's and the OTs' situation

- 4.1 The power of the Secretary of State under the UK legislation to issue regulations is not matched, in general terms, by a similar power on the part of the Governor under the OT legislation. Within the OT, the Governor is the Queen's representative and acts on behalf of the UK Government in relation to the general governance of the Territory, within the scope of the respective Constitution, and in relation to international affairs which are reserved to the UK under the Constitution.
- 4.2 Articles 149(1) and (2) of the Air Navigation (Overseas Territories) Order 2007 provide as follows:

149(1) – The Governor may make regulations for prescribing anything which, under the provisions of this Order, is to be prescribed.

149(2) – The Governor, with the approval of a Secretary of State, may make regulations amending the Air Navigation (General) Regulations in Schedule 9 to this Order.

- 4.3 The above articles do not confer a general power on the Governor to make regulations. It is necessary to look at the specific provisions of the Order to identify areas in which the Governor may issue regulations.
- 4.4 The Governor has power to make regulations in the following areas:
Article 37(1) – Supplemental Rules of the Air;
Article 85(1) – Restriction or prohibition of flying;
Article 107(1) – Aerodrome charges.
- 4.5 The Governor is also empowered under Article 41 to give instructions concerning the operation and safety of aircraft and the safety of persons and property carried and the instruments and equipment to be installed.
- 4.6 Under Article 152 the Governor has power to publish requirements relating to any of his functions of licensing, certification and approval.
- 4.7 The Rules of the Air Regulations, the Air Navigation (General) Regulations and the Air Navigation (Dangerous Goods) Regulations are not, as in the UK, separate statutory instruments but are incorporated into the AN(OT)O as Schedules 138, 9 and 10 respectively.

5 UK requirements relating to Regulations and the OTARs

- 5.1 Regulations or Orders in Council issued pursuant to statute are Statutory Instruments. Consequently, such regulations must follow the rules laid down in the Statutory Instruments Act 1946 and the Statutory Instruments Regulations 1947 as well as the legislative drafting practices established by the Houses of Parliament Joint Committee on Statutory Instruments.
- 5.2 Having regard to the requirements indicated, it is clear that the process for the making and adoption of regulations is frequently complex and lengthy. Accordingly, it has been agreed that the OTARs should take the form of “Requirements” rather than “Regulations”. This means that such requirements can be issued by Governors without them having to be structured and processed in accordance with the legislation relating to Statutory Instruments.
- 5.3 In order to understand what OTARs are, in fact, it is necessary to refer to the Direction given by the Secretary of State (pursuant to the provisions of section 6 of the Civil Aviation Act 1982) in which it is stated as follows:

*3. No later than 31 January 2003 the CAA shall form a subsidiary company(ASSI) with the following functions:
(b) to produce, in respect of each function of each Governor of an OT under the AN(OT)O which provides for him to issue a certificate, licence or other document if he is satisfied as to specified matters, the means of compliance which will enable the Governor to be and remain satisfied as to those matters.*

6 Diagram of legislative structure

