



## AIR SAFETY SUPPORT INTERNATIONAL

### SECOND CONSULTATION

### ADDITIONAL PROPOSALS TO AMEND THE AIR NAVIGATION (OVERSEAS TERRITORIES) ORDER 2013

#### Introduction

In March 2025, we published a major consultation setting out proposals to amend the Air Navigation (Overseas Territories) Order (hereafter referred to as ‘the Order’) across six areas. That consultation closed on 28 May 2025 and will be used to lay a Statutory Instrument of UK secondary legislation in Autumn 2025.

In view of our hope to avoid the need for subsequent amendments once the 2025 Order is enacted, we are now also considering and consulting on additional policy proposals on new areas listed below that have crystallised since we published the first consultation.

Please note that this consultation will take place for **60 days** rather than the usual 90 days and closes on **Monday 4 August**.

#### Proposed amendment areas

In addition to the amendment areas proposed in the first consultation, we are looking at changes in the following areas:

1. **Psychoactive substances:** in addition to the proposals in the first consultation to amend articles 138 and 178, we also propose changes to article 148 concerning Exercise of privileges of licences and provisional inability.
2. **Clarifying the legal status of Overseas Territories Aviation Requirements (OTARs):** proposed amendments in Part 1 of the Order (articles 3, 4 and 6) to clarify the status of these requirements.
3. **Amendments to Rules of the Air in Schedule 4:** we propose amendments to Visual Flight Rules (VFR) and for night operations.

For each of these areas, we propose the amended text ([in blue and underlined](#)) and provide an explanatory note of the rationale behind the change.

#### 1. Psychoactive substances article 148

##### Proposed amendment to article 148 Prohibition on use of psychoactive substances

Article to be retitled: ‘[Exercise of the privileges of licences and provisional inability](#)’

148.—(1) A person must not act as an air traffic controller or a student air traffic controller whilst under the influence of any psychoactive substance, or any medication, which renders that person unable to safely perform their duties or makes that person a risk to the safety of another person.

[\(2\) Licence holders shall not exercise the privileges of their licence when having doubts of being able to safely exercise the privileges of the licence and shall, in such case, immediately notify the relevant air traffic services provider of the provisional inability to exercise the privileges of their licence.](#)

[\(3\) Air traffic services providers may declare the provisional inability of the licence holder if they become aware of any doubt concerning the ability of the licence holder to safely exercise the privileges of the licence due to the licence holder—](#)

[\(i\) being under the influence of psychoactive substances; or](#)

- (ii) [being unfit to perform the duties due to injury, fatigue, sickness, stress, including critical incident stress or other similar causes; or](#)
- (iii) [not meeting all the competence-related requirements set out in the unit competence scheme.](#)

### Explanatory notes:

This is based on equivalent provisions in the UK CAA. Licence holders shall not exercise the privileges of their licence when having doubts of being able to safely exercise the privileges of the licence.

Air traffic services providers may declare the provisional inability of the licence holder if they become aware of any doubt concerning the ability of the licence holder to safely exercise the privileges of the licence due to the licence holder being under the influence of psychoactive substances.

## 2. Clarifying the legal status of OTARs

We propose several amendments to clarify the legal status of OTARs but also to clarify the importance of collaboration with Territory Government authorities. We also propose reordering the articles in this Part to form a better logical sequence as follows:

- Article 3: Interpretation: remains as numbered with revised definition of 'OTAR';
- Article 4: Arrangements for giving effect to the Convention on Civil Aviation: moved from current article 7;
- Article 5: Regulations by the Governor: moved down from its current article 4 as a consequence of the above;
- Article 6: Designations by the Governor: remains as numbered; and
- Article 7: Publication of requirements: moved down from its current article 5.

### Proposed amendment to article entitled 'Interpretation'

Remains article 3 of the Order, amended as follows:

"OTAR" means Overseas Territories Aviation Requirements [made](#) by the Governor under article [4\(1\) and published by the Governor under article 7\(1\)](#).

### Proposed amendment to article entitled 'Arrangements for giving effect to the Convention on Civil Aviation'

We propose re-numbering this as **article 4** with the same title as existing article 7, and making the following textual amendments:

**4.**—(1) The Governor must within the Territory [make such requirements](#) and issue such instructions or make such arrangements as are necessary, requisite or expedient for carrying out the Convention on International Civil Aviation and implementing the [standards and recommended practices in](#) any Annex [to the Convention](#) and any amendment to the Convention, or any such Annex made in accordance with the Convention, or generally for regulating and securing the safety of international air navigation in accordance with section 8(1) of the Act.

(2) The Governor must [in the Territory](#)

- (a) provide or secure the provision of a meteorological service to meet the needs of international air navigation, with due regard to regional air navigation agreements and must designate the appropriate authority to provide or arrange for the provision of such meteorological service;

- (b) provide or secure the provision in the Territory of aeronautical charts that comply with the specified rules;
- (c) arrange for the establishment and provision of search and rescue services within the Territory, and in such portions of the high seas that are the responsibility of the Territory under regional air navigation agreements;
- (d) provide or secure the provision of an aeronautical information service; and
- (e) review the classification of airspace in the Territory where appropriate in light of any relevant regional air navigation plan published by the International Civil Aviation Organisation, and make such alterations to that classification as the Governor, after consulting with such persons as the Governor thinks fit, considers appropriate to ensure compliance with any such plan;

(3) The Governor must arrange for the details of the services and arrangements provided in accordance with paragraph (2) to be included in an Aeronautical Information Publication relating to the Territory.

(4) Nothing in paragraph (2) requires the Governor to provide any services in relation to a military aerodrome if those services are provided by, or under the direction of, any military authority at that aerodrome.

#### **Proposed amendment to the article entitled ‘Regulations by the Governor’**

Renumbered as article 5, moved down from its current article 4 as a consequence of the above.

#### **Proposed amendment to the article entitled ‘Designation by Governor’**

Remains numbered as article 6, and title amended to read just ‘Designation’. We propose a new paragraph (6) to improve Governor collaboration with agencies such as the ASSI to secure compliance with the Order.

**6.—**(1) Subject to paragraphs (2), (4), (5) and (6) the Governor may designate a person to carry out those functions of the Governor under this Order that are specified in the designation, subject to such conditions as the Governor thinks fit.

(2) Subject to paragraphs (3), (4) and (5), the Governor of the Territory in which any activity takes place which is subject to any of the provisions of this Order, other than an activity described in Part 1 only of this Order, must designate a person in accordance with paragraph (1).

(3) Subject to paragraph (4) the Governor may revoke or vary a designation made under paragraph (1).

(4) Before making a designation, or revoking or varying a designation made, under paragraph (1), the Governor must consult, and take into account any advice given by, ASSI.

(5) The Governor may not include in any designation made under paragraph (1) the functions of the Governor—

- (a) to make rules, orders or regulations or give instructions under this Order; or
- (b) under this article or articles 5, 13 or 161.

(6) In exercising the functions designated under this article, the designated person shall collaborate so far as is necessary with law enforcement agencies and other authorities of the Territory in securing compliance with, and enforcement of the provisions of this Order.

#### **Proposed amendment to the article entitled ‘Publication and application of requirements’**

Renumbered as article 7 with amended title and with the following textual amendments to paragraphs (1) and (5). Other paragraphs unchanged:

7—(1) The Governor must, before determining whether to grant a certificate, licence, approval, permit, or other document in accordance with this Order, be satisfied as to any matters specified in the provisions of this Order, or to grant a rating in a licence or to require a person to keep or to do something—

(a) publish or cause to be published the Governor's requirements as to those matters in the Territory by means of an OTAR;

(b) take into account those requirements when determining whether to grant the certificate, licence or other document or to require a person to keep or do something; and

(c) take into account those requirements when determining whether to suspend, revoke, or vary any licence certificate or other document.

(2) Nothing in this article requires the Governor to publish requirements in respect of a licence, certificate or other document if the Governor does not exercise the powers to grant the licence, certificate or document in question.

(3) Subject to paragraph (4), nothing in this article requires the Governor to publish requirements in respect of a licence, certificate or other document if the Governor determines that to do so would be, or would be likely to be, detrimental to national security.

(4) If the Governor makes a determination under paragraph (3) any applicant for such licence, certificate or other document must be given access to such requirements on such terms as the Governor thinks fit.

(5) The Governor may grant a deviation from or vary the terms of an OTAR provision in respect of an application by any holder of a licence, certificate, permit, approval or other document issued under this Order on such terms as the Governor thinks fit.

#### **Explanatory note:**

Over the past few years ASSI has been frequently challenged regarding the status and effect of the OTARs. The OTARs have been developed since 2003 under the Directions issued by the Secretary of State under section 6 to the Civil Aviation Act 1982 to the CAA to establish ASSI as the principal regulatory authority for the Overseas Territories. Those Directions were issued following the conclusion of the Overseas Territories Institutional Development Study and in furtherance of its Recommendations. The Study was established to address the Critical Findings of the International Civil Aviation Organisation (ICAO) in its Audit of the UK in 2000.

Consequent upon the Directions the Air Navigation (Overseas Territories) Order 2001 (the Order) was amended in 2003 to take account of the Directions. That Amendment Order was the basis for the establishment of ASSI and the adoption of the OTARs. It also provided for the Designation by Governors of a body or regulatory authority to carry out the Governors' regulatory functions under the Order. The directions instructed ASSI to develop and maintain, on behalf of the Governors of the Territories, the OTARs.

The term Requirements was adopted recognising that at that time the UK, and most of Europe, applied the Joint Aviation Requirements (JARs). These had been developed under the Cyprus arrangements of 1970 and were later adopted by the European Union and formed the basis of the EASA (European Aviation Safety Agency) Implementing Rules; which are designed to implement the Standards and Recommended Practices (SARPs) as prescribed by ICAO in the Annexes to the Chicago Convention. States are obliged to adopt and implement the SARPs under article 37 to the Convention.

Since 2003 there have been many developments, particularly regarding development of State Safety Plans and other instruments in accordance with the 8 Critical Elements adopted by ICAO relating to its Universal Safety Oversight Audit Program. Critical Element 2 (CE-2) provides as follows:

## **Specific operating regulations (CE-2)**

***“States shall promulgate regulations to address, at a minimum, national requirements emanating from the primary aviation legislation, for standardized operational procedures, products, services, equipment and infrastructures in conformity with the Annexes to the Convention on International Civil Aviation.***

***Note.—The term “regulations” is used in a generic sense and includes but is not limited to instructions, rules, edicts, directives, sets of laws, requirements, policies and orders.”***

ICAO has also adopted Annex 19, Safety Management Systems - which contains the above 8 Critical Elements – and in addition to that has applied several Principles regarding the implementation of the SARPs. Those principles are outlined below and are expected to be applied by States in developing the subordinate legislation in accordance with CE-2.

### **ICAO Doc 9734, Part A – 3<sup>rd</sup> edition 2017, State Safety Management**

#### **Chapter 3**

#### ***“3.2 SPECIFIC OPERATING REGULATIONS (CE-2)***

##### **3.2.1 General requirements**

***3.2.1.1 Specific operating regulations should be comprehensive, clear, consistent and up to date.***

***3.2.1.2 The State’s specific operating regulations should conform with the Annexes to the Chicago Convention. Annexes contain SARPs which have been agreed upon by Member States. SARPs are designed to provide the minimum necessary and desirable requirements to be met by all Member States, regardless of the size and complexity of their civil aviation activity. However, Annexes are not written in a manner that supports transposing the SARPs verbatim into a state’s regulations. Therefore, it is the responsibility of States to develop regulations which contain sufficient details that are consistent with their legal frameworks, including the non-aviation areas.***

***3.2.1.3 It is also the responsibility of a State to develop and implement a process to ensure the timely amendment of the specific operating regulations, as necessary, in order to keep pace with the amendments to the Annexes to the Convention. The system in place should ensure that the regulations are issued at the appropriate level, as provided for by the State’s primary legislation. It should also ensure that the overall legislation is consistent and, in particular, that regulations are repealed when replaced by new ones.”***

Based on the definition contained in those Instruments it is clear that the term Requirements satisfies ICAO’s definition of Secondary Operating Regulations as specified in Annex 19. The time is now right - as we are updating, modernising and consolidating Order - to reinforce the status of the OTARs to remove any uncertainty or ambiguity as to their status and effect in the interests of transparency and clarity.

The Order is the principal legislative instrument, whereby acts of Parliament (relating to civil aviation) are extended to the Territories, in whole or in part. They are made by the Monarch on the advice of the Privy Council under enabling powers contained in Acts of Parliament. In the case of the Territories the principal Act is the Civil Aviation Act 1949, as extended to the Territories by the Civil Aviation Act 1949 (Overseas Territories) Order 1969. Section 8 to that Act provides as follows:

***Now, therefore, His Majesty may by Order in Council make such provision as appears to Him 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.”***

It is that section, as extended, which provides Governors (on behalf of the Monarch) with the necessary powers to implement the SARPs in the Territories. It is the legal basis upon which those powers are exercised.

### 3. Amendments to Rules of the Air in Schedule 4

#### Proposed amendment to Rule 27 Flight within controlled airspace

**27.** —(1) Subject to paragraphs (2) and (3), for an aircraft flying within Class B, Class C, Class D or Class E airspace [the VMC visibility and distance from cloud minima, as specified in Table 1, shall apply](#):

**Table 1 – VMC Visibility and Distance from Clouds Minima**

Altitude Band	Airspace	Flight Visibility	Distance from Cloud
At and above FL100	Inside and Outside of Controlled Airspace	8km	1500m Horizontally 1,000 ft Vertically
Below FL100	Inside and Outside of Controlled Airspace	5km	1500m Horizontally 1,000 ft Vertically
At and below 3000ft AMSL	Inside Controlled Airspace	5km	1500m Horizontally 1,000 ft Vertically
At and below 3000ft AMSL	Outside of Controlled Airspace	5km	Clear of Cloud and with the surface in sight

(2) An aircraft is deemed to have complied with paragraph (1) if—

(a) the aircraft is not a helicopter and it—

(i) flies at or below 3,000 feet above mean sea level;

(ii) flies at an indicated airspeed of 140 knots or less to give adequate opportunity to observe other traffic or any obstacles in time to avoid collision; and

(iii) remains clear of cloud, with the surface in sight and in a flight visibility of at least 5 km; or

(b) the aircraft is a helicopter and it—

(i) flies at or below 3,000 feet above mean sea level; and

(ii) remains clear of cloud, with the surface in sight and in a flight visibility of at least 1,500 metres.

(3) Paragraph (1) does not apply to a helicopter that is air-taxiing or conducting manoeuvres in accordance with rule 6(i).

#### Flight outside controlled airspace

**28.** —(1) [Subject to paragraphs \(2\), \(3\) and \(4\), for an aircraft flying outside controlled airspace the VMC visibility and distance from cloud minima, as specified in Table 1 of Rule 27, shall apply.](#)

[\(2\)](#) Paragraph (1) does not apply to an aircraft which—

(a) flies at or below 3,000 feet above mean sea level;

- (b) remains clear of cloud with the surface in sight; and
- (c) is in a flight visibility of at least 5 km.

[\(3\)](#) Paragraph (1) does not apply to an aircraft which—

- (a) flies at or below 3,000 feet above mean sea level;
- (b) flies at an indicated airspeed of 140 knots or less to give adequate opportunity to observe other traffic or any obstacles in time to avoid collision;
- (c) remains clear of cloud with the surface in sight; and
- (d) is in a flight visibility of at least 1,500 metres or, if a helicopter, a flight visibility of at least 800 metres, if manoeuvred at a speed that will give adequate opportunity to observe other traffic or any obstacles in time to avoid collision.

[\(4\)](#) Paragraph (1) does not apply to a helicopter which is air-taxiing or conducting manoeuvres in accordance with rule 6(i).

### **Visual Flight Rules at night**

**28A.**—An aircraft flying at night in the Territory may be flown—

- (a) on a Special VFR flight within a control zone; or
- (b) [may be permitted under the following conditions:](#)

[\(1\) the VMC visibility and distance from cloud minima as specified in Table 1 of Article 27 shall apply, except that:](#)

[\(a\) the ceiling shall not be less than \(1500 feet\);](#)

[\(b\) in airspace classes B, C, D, E, F and G, at and below 3000 feet AMSL the pilot shall maintain continuous sight of the surface; and](#)

[\(2\) except when necessary for take-off or landing, unless the Governor has granted permission, a VFR flight at night shall be flown at a level which is not below the minimum safe altitude established by the State whose territory is overflown, or, where no such minimum safe altitude has been established:](#)

[\(a\) over high terrain or in mountainous areas, at a level which is at least 2000 feet above the highest obstacle located within 8 km of the estimated position of the aircraft;](#)

[\(b\) elsewhere than as specified in \(i\), at a level which is at least 1000 feet above the highest obstacle located within 8 km of the estimated position of the aircraft.](#)

### **Explanatory note**

Amendments to clarify the rules particularly for VFR operations at night and to better align with Annex 2 and the UK rules.

END