INFORMATION PAPER 062 - Aviation Law and Regulation in the UK Overseas Territories

1 Introduction

This document sets out in some detail the legislative structure relating to civil aviation 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. The UK ratified the Convention on behalf of its "Colonies, Dominions, Territories and Dependences" in 1947. Article 2 to the Convention states:

"For the purposes of this Convention the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State."

The OTs are under the "**sovereignty**" of the UK and for the purposes of the Convention are therefore a part of the UK.

2.2 Under Article 37 to the 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, to that extent, applies the standards and recommended practices adopted by the International Civil Aviation Organisation (ICAO) and incorporated in the 19 Annexes to the Convention. This is subject to the right under Article 38 to file differences where it is not practicable to do so. For the purposes of the Convention, the OTs are an integral part of the UK (as noted above) and the law and regulations applied in the UK are therefore applied consistently to and within the OTs – as indeed they are to the Crown Dependencies, being the Isle of Man and the Channel Islands.

2.3 The Convention was implemented in the UK by the Civil Aviation Act 1949 (1949 c 67); and was extended to the OTs (with modifications) by the Civil Aviation Act 1949 (Overseas Territories) Order 1969 (Statutory Instrument [SI] 1969/592). This Order repealed and replaced a series of Colonial Air Navigation Orders after most of the former British Colonies gained their independence. An Order is an Order in Council made by His Majesty the King (the Monarch) on the advice of the Privy Council under Statutory Powers: i.e., under powers contained in an Act of Parliament, in this case the Civil Aviation Acts (and the Aviation Security Acts). The Privy Council is the body of senior Parliamentarians appointed by the Monarch to advise the Monarch on. inter alia, legislative instruments. The 1949 Act itself (but not the 1969 Order) was repealed by the Civil Aviation Act 1982 which contained similar provisions, parts of which were extended to the OTs by The Civil Aviation Act 1982 (Overseas Territories) Order 2001 (SI 2001/1452).

2.4 As a result of the critical findings of the ICAO Universal Safety Oversight Audit in July 2000, the Secretary of State directed the UK Civil Aviation Authority to establish Air Safety Support International Limited (ASSI) as a subsidiary of the UK Civil Aviation Authority (CAA). The Direction requires ASSI:

- to assist Governors in exercising the functions of aviation safety oversight and regulation,
- to regulate in an OT when designated to do so,

- to audit the Overseas Territories Aviation Authorities' (OTAA) functions within an OT,
- to produce draft amendments to the Air Navigation (Overseas Territories) Order and Air Navigation (Overseas Territories) (Environmental Standards) Order, and
- to develop a set of Overseas Territories Aviation Requirements (OTARs) designed to implement the standards and recommended practices contained in the Annexes to the Convention (other than those in Annex 9, *Facilitation*).

3 UK Legislation in the Overseas Territories

3.1 The structure of the civil aviation legislation applicable in the OTs is illustrated in Section 7.

3.2 The primary aviation legislation applicable in the OTs is the Civil Aviation Act 1949 (the Act), sections of which were extended to the OTs by the Civil Aviation Act 1949 (Overseas Territories) Order 1969 ("the 1969 Order"). This Order extended to the OTs some of the principal elements of the Act, particularly section 8, which provides as follows:

"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."

3.3 The primary legislation was consolidated in the UK by the enactment of the Civil Aviation Act 1982. However, the 1969 Order was not repealed and remains in force. Some parts of the 1982 Act have been extended to the OTs by The Civil Aviation Act 1982 (Overseas Territories) Order 2001 (SI 2001/1452) which applied to the OTs sections 61 (offences and penalties) and 75 (investigation of accidents). This Order also made some amendments to the 1969 Order. The above Orders confer on Governors of the OTs the responsibility for the application, regulation, and enforcement of the legislation; and empower Governors to make air accident investigation and other regulations.

Note: *Provisions of the Convention and of Annex 17 thereto were implemented in the UK by the Aviation Security Act 1982 and the Aviation and Maritime Security Act 1990 and the relevant provisions of those Acts were extended to the OTs by The Aviation Security and Piracy Overseas Territories) Order 2000 (as amended).*

3.4 To give effect to the Convention Annexes in the OTs the Air Navigation (Overseas Territories) Order was first made in 2001 (as amended in 2003) and most recently in 2013 to bring the OT legislation up to date. That Order recognised certain aspects of ASSI's role under the above Directions and made a number of changes relating to:

- the definition of Governor,
- the designation by Governors of persons to undertake their functions under the Order (with certain exceptions),
- the introduction of procedures for a review of the exercise of a Governor's functions in relation to licensing, certification, authorisations, permissions, and approvals.

3.5 The AN(OT)O 2013 has been amended five times up to the Air Navigation (Overseas Territories) (Amendment) Order 2024 (SI 2024/384). At time of writing of this Information Paper issue, we were working to introduce a new Order, with an SI due to be laid in due course. This would consolidate the five amendments to the 2013 Order, as well as revise or introduce new content across six topics including article 73 on unmanned aircraft.

3.6 Current legislation comprises the following:

The Civil Aviation Act 1949 (Overseas Territories) Order 1969 (SI 1969/592)
The Tokyo Convention Act 1967 (Overseas Territories) Order 1968 (SI 1864)
The Civil Aviation Act 1971 (OT) Order 1976 (SI 1976/1912)
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 Aviation Security & Piracy (OT) Order 2000 (SI 2000/3059)
The Aviation Security & Piracy (OT) (Amendment) Order 2016 (SI 2016/369)
The Air Navigation (Overseas Territories) (Environmental Standards) Order 2024 (SI 2024/378)
The Air Navigation (Overseas Territories) Order 2013 (SI 2013/2870)
The Air Navigation (Overseas Territories) (Amendment) Order 2014 (SI 2014/2925)
The Air Navigation (Overseas Territories) (Amendment) (No. 2) Order 2014 (SI 2014/3281)
The Air Navigation (Overseas Territories) (Amendment) Order 2015 (SI 2015/1769)
The Air Navigation (Overseas Territories) (Amendment) (No. 2) Order 2021 (SI 2021/755)
The Air Navigation (Overseas Territories) (Amendment) Order 2024 (SI 2024/384)
The Air Navigation (Overseas Territories) Order 2025 (consolidation of the 2013 Order pending)

3.7 In addition, Aircraft Accident and Incident Investigation Regulations have been made and issued by the Governor of each Territory; under which the Air Accident Investigation Branch (AAIB) of the UK Department for Transport is appointed as the “accident investigation authority” in accordance with Annex 13.

3.8 **Note:** As indicated above, the Aviation Security and Piracy (OT) Orders are made under the Aviation Security Act 1982 and the Aviation and Maritime Security Act 1990 although some aspects of aviation security are covered by specific provisions in the AN(OT)O.

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 King’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 Constitutions, and in relation to international affairs which are reserved to the UK under the Constitutions.

4.2 Article 4(1) of the AN(OT)O provides that the ***‘Governor may make regulations for prescribing anything which, under the provisions of this Order, is to be prescribed’***. These include specific powers to make regulations covering fees for functions under the Order; imposing aerodrome charges (currently article 158(1), noting that the 2025 consolidation Order may change the article numbering); and, in particular, to make Supplementary Rules of the Air (currently article 67(1)).

4.3 The above article does 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, i.e., where the Order allows for something to be prescribed.

4.4 Under Article 5 the Governor is required to publish the “Requirements” relating to any of the functions of licensing, certificating, permitting, and approving aviation activities, i.e., the Overseas Territories Aviation Requirements (OTARs).

4.5 Furthermore, under Article 6 the Governor may designate a person/organisation to carry out those functions of the Governor under the Order (with certain exceptions) as specified in the Designation.

4.6 Article 7 of the Air Navigation (Overseas Territories) Order 2013 places an obligation on the Governor to ***'issue such instructions or publish such requirements or make such arrangements as are necessary, requisite or expedient for carrying out the Convention on International Civil Aviation and implementing any Annex 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'***.

4.7 The Governor is also empowered under the current Article 74 to give Instructions concerning the operation and safety of aircraft, the safety and security of persons and property carried, and the instruments and equipment to be installed, in an aircraft. Under Article 68 the Governor has power to prohibit or restrict flying.

4.8 The Rules of the Air and Dangerous Goods provisions are not - as in the UK – prescribed in separate statutory instruments but are incorporated into the AN(OT)O, either as a Schedule to it or within the body of that Order – Dangerous Goods currently in Part 12 of the Order and Rules of the Air currently in Schedule 4 to the Order.

5 UK Requirements relating to Regulations and the OTARs

5.1 Regulations and Orders in Council made pursuant to statute are Statutory Instruments. Consequently, such regulations and orders 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's Joint Committee on Statutory Instruments.

5.2 Having regard to the requirements indicated above, the process for making and adopting regulations is complex and lengthy. In particular, the development of amendments to statutory instruments are the responsibility of the policy and legal officials of the Department for Transport.

5.3 Accordingly, OTARs take the form of "Requirements" (in accordance with Article 5) rather than "regulations". This means that such requirements can be issued without them having to be structured and processed in accordance with the legislation relating to Statutory Instruments. This allows for necessary changes in requirements to be made expeditiously, after due consultation with all interested parties. The Requirements are the principal means of compliance with the Order and are equivalent to "rules or codes" as stipulated by ICAO in Critical Element 2 (CE-2) of the 8 Critical Elements of a State's Safety Management System as prescribed in Annex 19 to the Convention.

5.4 The OTARs have a clear legislative 'basis', in the form of the AN(OT)O, in order to render them enforceable by regulatory (but not penal) action.

6 Content and Status of OTARs

6.1 The OTARs do not themselves constitute legislation or regulations: they are the means by which compliance with the ICAO SARPs can be achieved in accordance with the legislation in force. As noted above, they satisfy the definition of a "regulatory code" as prescribed by ICAO in CE-2. They are also the means by which the Governor can be satisfied as to the basis for the issue or maintenance of a licence, certificate, permission, or approval.

6.2 Therefore, obligations imposed upon persons to hold a certificate, licence, permission, or approval - or to fulfil certain specific requirements - are retained in the AN(OT)O or AN(OT)(ES)O. The OTARs provide the requirements an applicant must satisfy, in order to meet the obligations contained in the Order; whereby the Governor must be satisfied as to the competence of the person applying for such certificate, licence, permission, or

approval or, in the case of aircraft, the airworthiness of the aircraft. An exception to this is when certain OTARs constitute Governor's Instructions issued under Article 74 of the AN(OT)O, e.g., OTAR Part 91.

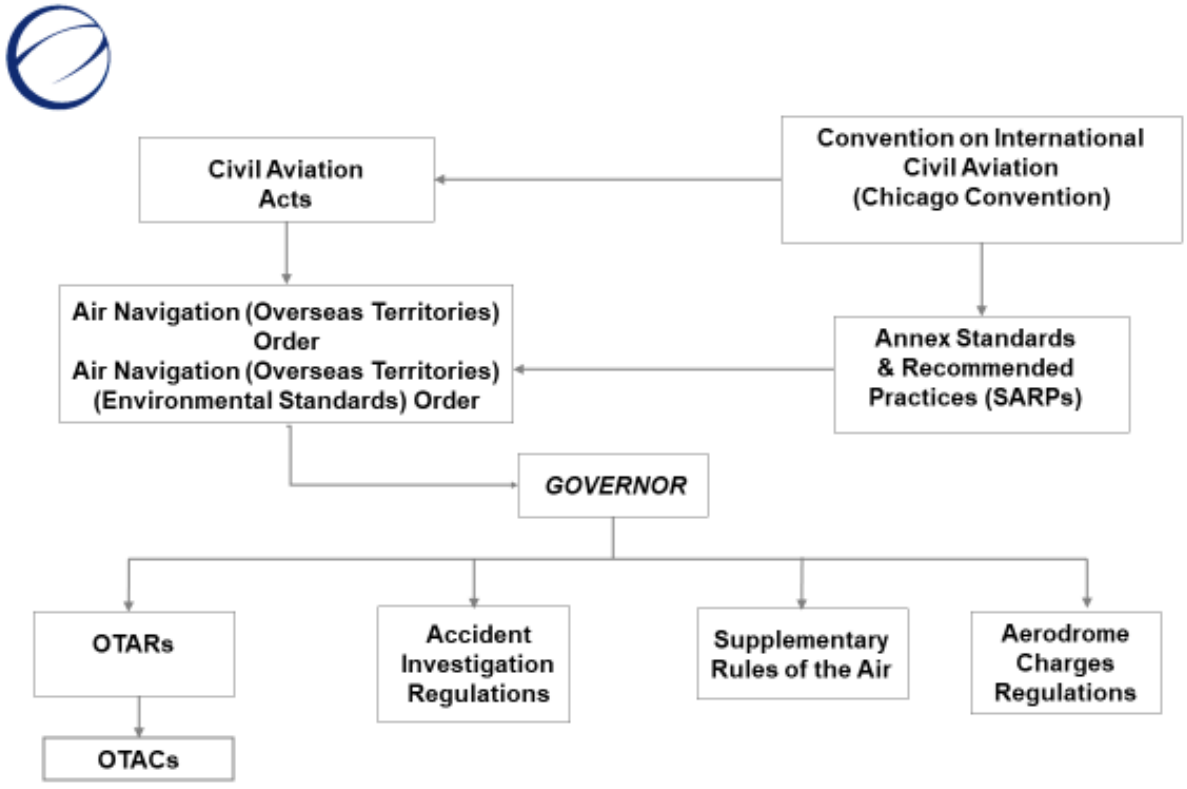
6.3 The Governor must designate a person to carry out the Governor's functions in this respect under the AN(OT)(O) and AN(OT)(ES)O, other than certain functions such as a Governor's review, the making of regulations, the issue of Instructions/Directions, and the issue of the OTARs.

6.4 Publication of the OTARs fulfils the Governor's obligation under Article 5 of the AN(OT)O and contributes to the discharge of the Governor's obligations under Article 7 of the Order.

6.5 While the OTARs are intended to provide a comprehensive suite of requirements, there is a need to promulgate additional information which is not appropriate for inclusion in the OTARs themselves and such information and guidance will be included in Overseas Territories Aviation Circulars (OTACs). OTACs are produced and published to provide:

- Practical, detailed guidance on meeting the requirements.
- Information of a temporary nature.
- Administrative material.
- Information published in advance of a formal amendment to OTARs.

7 Diagram of Legislative Structure (excluding Aviation Security)



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