



PROPOSALS FOR THE REGULATORY OVERSIGHT OF CORPORATE AVIATION

Partial Regulatory Impact Assessment (RIA)

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1. **Title**

Partial Regulatory Impact Assessment (RIA) of proposals for regulatory oversight of corporate aviation (CA) operations by aircraft registered in the UK Overseas Territories.

2. **Purpose and Intended Effect of Measure**

2.1 **Objectives**

The objectives of these proposals are:

- to address the risks identified below; and
- to allow the UK government to demonstrate the discharge of its obligations under the Convention on International Civil Aviation (the Convention); and
- to enable Governors of Territories (through their Aviation Authorities) to satisfy themselves that the business and corporate aviation operators registered in their Territories are operating to an acceptable level of safety; and
- to meet the level of aviation activity in the Territories; and
- to give effect to or “enable” the application of Overseas Territories Aviation Requirements (OTARs) to address the operation of aircraft in the particular industry sector referred to as CA if, following consultation, they are considered necessary.

2.2 **Background**

- (a) The proposals described in this RIA are only a part of a larger project to set in place a comprehensive and integrated regulatory structure which includes changes to the Air Navigation (Overseas Territories) Order (AN[OT]O), introduction of OTARs and Overseas Territories Aviation Circulars (OTACs). Further information on these changes can be found on the ASSI website (www.airsafety.aero).
- (b) Following the International Civil Aviation Organisation (ICAO) Safety Oversight Audit Mission of 2000, the UK established ASSI to oversee and ensure discharge of UK Government obligations for civil aviation regulation within the Territories. The audit highlighted that some of the provisions contained in ICAO Annex 6, Part II and Part III, Section III for international general aviation had not been incorporated in the national regulations in conformance with the ICAO Standards and Recommended Practices (SARPs). Revisions to the AN(OT)O and OTARs are in hand to address these specific issues.
- (c) The sizes and types of aircraft used in CA, together with the sophistication of operations, have advanced ahead of the regulation of such activities. ICAO, the international standards-setting body, has recognised the problem and is actively working on the development of new SARPs. However, it is considered that to reach international agreement on standards may take a significant time and that enhancements in regulatory oversight of this sector of aviation are desirable in the short term. The measures proposed here will be effected in advance of the introduction of any ICAO SARPs.

- (d) Notwithstanding the above, and acknowledging the unique profile of the aviation activities of the Territories, ASSI has undertaken a risk assessment¹ to understand better the risks associated with CA operations. This assessment of hazards and quantification of the risks they present are key components of this RIA.

2.3 Risk Assessment

- (a) The International General Aviation and Corporate Aviation Risk Assessment was carried out to establish, among other things, the levels of safety of such operations relative to other areas of the industry. The report shows that most CA accident frequencies fall with the "Remote" region, i.e. between 0.01 and 1 per 100,000 hours. This relatively low accident rate for corporate aviation is comparable with that for scheduled airline operations. The safety performance level of CA operations may be largely as a result of the involvement of key operators and is no guarantee of homogeneity across the sector. CA operations represent a small statistical sample and, therefore, minor changes in the low numbers of accidents lead to disproportionately large statistical impact.
- (b) The CA sector is currently lightly regulated, being dealt with as 'private' flights. This means that large, corporate airliners (eg A320 or B747) and executive aircraft (eg Learjet, King Air) operating on company business are regulated using a similar regime to small, private aircraft (eg Cessna 172). There is an increasing acceptance in the industry of the need for more differentiation between the various types of private operations. A more structured approach to regulation is required to underpin the increasingly sophisticated operating standards of business or corporate operations as opposed to pure 'private' operations.
- (c) In order to prevent the number of accidents from increasing in line with increasing levels of air travel of all types, it is necessary to review continually and, where found necessary, to increase safety standards. A number of CA companies have already voluntarily adopted modern safety systems and practices in order to raise their standards. Such acknowledged best practice would benefit the CA sector if more formally applied.
- (d) The CA Risk Assessment was carried out to ensure that any additional regulation is correctly focused to address identified safety risks. The low accident/incident rate may be attributed to the effect of a high percentage of CA aircraft being operated by a small minority of operators who operate to standards equivalent to those of commercial operators. These operators tend to use modern aircraft flown by professional pilots following mature operating procedures. Therefore, it could be inferred that the operations in the remainder of the sector have a relatively higher accident/incident rate. It is this part of the industry that these proposals will primarily affect.
- (e) The risk factor with the largest influence is that of Flight Operations which is the area to be covered by the new OTARs although airworthiness issues will also be addressed. The OTARs for CA should formalise into requirements the best practices already adopted by some corporate operators.

¹ Cranfield University Report, "International General Aviation and Corporate Aviation Risk Assessment Project", Contract No E3308E, Issue 1.1 dated 17 June 2005. See the ASSI website.

- (f) Furthermore, there is perceived to be increasing pressure on operational safety from the large numbers of less expensive corporate jets (known as 'Very Light Jets' [VLJ]) coming onto the market. In addition to the present operators, such Very Light Jets will enable additional individuals and companies to become operators for international and corporate travel. Pilots of VLJs may not be as highly qualified as those associated hitherto with jet aircraft. Proactive introduction of more comprehensive requirements will provide an explicit regulatory structure in line with current industry best-practice for both present operators and new entrants.
- (g) One particular issue to be addressed is the risk to passengers who are employees of companies who must travel on company business and who are compelled to fly on company aircraft.
- (h) A further risk area concerns the use of CA aircraft in congested airspace and complex operational environments which may be combined with the absence of any formal flight duty-time limitations.

3. Options

- (a) **Option 1: Do nothing.** Evidence suggests that, overall, the level of safety of this sector of industry is comparable with that for scheduled airline operations. This sector of the industry is lightly regulated under current requirements. "Do nothing" does not mean that absolutely nothing is being done at present. It means do nothing *more* than that already being undertaken ie compliance with ICAO Annex 6, Part II and Part III, Section III, through OTAR Part 91 and related OTACs.
- (b) **Option 2: OTAC.** Produce an OTAC which would detail industry best practice (in effect a Code of Practice). Compliance would not be mandatory and there would be no regulatory oversight of compliance with the OTAC.
- (c) **Option 3: Approved Operator.** An OTAR Part 125 would be published (following consultation) which would turn current industry best practice into mandatory requirements to be implemented by all operators. Operators would require an approval. There would be some regulatory oversight of compliance with the OTAR, the level and source of which would be the subject of consultation with industry. There are several possible methods of implementing the requirements:
- through a Safety Management System (SMS) appropriate to the size of operation; or
 - through an Operations Manual; or
 - through individual approvals of specific items such as a Flight Time Limitations scheme; or
 - through approval of a category of operations dependent upon complexity/size of aircraft.

The OTAR would be legally enforceable through the AN(OT)O.

- (d) **Option 4: Corporate AOC.** OTAR Part 125 would be written to require aircraft operators to operate in the same manner as equivalent AOC operators. There would be full regulatory oversight of compliance with the OTAR.

4. Benefits

- (a) **Option 1 (Do nothing):** Doing nothing more than that already being done has the advantage that there are no additional costs imposed by regulation. There is no evidence to suggest that allowing operators to continue to set their own standards would result in falling standards and increasing risks for the CA industry. However, doing nothing does rely on general liability laws and insurance laws having an influence on safety standards. In other areas of aviation, standards are being raised to ensure the number of accidents does not increase in line with increasing numbers of operations. Doing nothing does not address this increasing demand for corporate air travel and the likelihood of larger numbers of more sophisticated aircraft and operators coming into the market. ICAO is developing standards for this specific area but these will not be ready in the short term. As there is no regulatory oversight at the level of private operations, this Option may not be acceptable because it does not at present (or in the future) permit the Territory Governors or UK government to satisfy themselves (or others) that CA operators are meeting international standards.
- (b) **Option 2 (OTAC):** In this option operators claiming compliance with the OTAC may benefit from lower incident/accident rates with associated potential savings in insurance premiums and total lifecycle costs. There are potential benefits in attracting and retaining higher quality staff in what is perceived to be a well run organisation and claiming compliance with the OTAC may be a marketing opportunity. As the OTAC is not mandatory this option has the same shortcomings as Option 1.
- (c) **Option 3 (Approved Operator):** In addition to the benefits shown for Option 2, the Overseas Territories Aviation Authorities (OTAAAs) could ensure that the identified risks are being addressed, that requirements are being met and that the UK government would be able to demonstrate to ICAO that it is meeting its international obligations in respect of CA operations.
- (d) **Option 4 (Corporate AOC):** For those areas subject to certification the benefits shown for Option 3 apply. This option would mainly affect that part of the CA sector which does not already operate to high standards.

5. Business Sectors Affected

- (a) The intention of these proposals is not to affect private operations by simple, light aircraft. The scope of these proposals is therefore restricted to flights by business or corporate operators and flights by private operators of heavier, complex aircraft.
- (b) It is proposed that the requirements will apply to operators of the following aircraft which are used for non-commercial air transport purposes:
- (1) flights conducted with an aeroplane:
 - with a MTWA more than 5,700 kg; or
 - with a maximum approved passenger seating configuration of 10 or more; or
 - certificated for operation with a minimum crew of 2 or more pilots; or

- when used for Business Aviation (Corporate)² purposes and equipped with turbine engine(s); or
 - when used for any other purpose and equipped with turbojet engine(s); or
- (2) flights conducted with a helicopter:
- of MTWA more than 3,180 kg; or
 - with a maximum approved passenger seating configuration of 6 or more; or
 - certificated for operation with a minimum crew of 2 or more pilots; or
 - when used for Business Aviation (Corporate) purposes and equipped with turbine engine(s); or
- (3) flights that are conducted with a powered-lift (eg tilt rotor) aircraft; or
- (4) any Business Aviation (Corporate) or Business Aviation (Owner Operated)³ flight where the operator has an operational fleet of 2 or more aircraft; or
- (5) any flight where the operator is required to hold a specific approval (MNPS⁴, PRNAV, RVSM, AWOPS etc).

6. Issues of equity and fairness

- (a) Evidence suggests that, overall, the level of safety of this sector of industry is comparable with that for scheduled airline operations. There is no evidence to suggest that allowing operators to continue to set their own standards would result in falling standards and increasing risks. Therefore, it could be claimed that there is no need to impose any form of regulation on this sector of industry. However, aircraft operated in this sector are broadly the same as (and in many cases identical to) aircraft which are strictly regulated when operated for commercial air transport. It is considered equitable and reasonable to regulate them all in broadly the same way.
- (b) For many years larger, more complex corporate aircraft have not been regulated to a greater degree than that for private aircraft. It is recognised that the proliferation of such aircraft and the advent of large numbers of very light jet aircraft are forcing regulators to think again about regulation to ensure that the number of accidents/incidents does not increase in line with increasing numbers of operations.

² Business Aviation (Corporate) is defined as the non-commercial operation or use of aircraft by a company for the carriage of passengers or goods as an aid to the conduct of company business, flown by a professional pilot(s) employed to fly the aircraft. [IBAC, 2005]

³ Business Aviation (Owner Operated) is defined as the non-commercial operation or use of aircraft by an individual for the carriage of passengers or goods as an aid to the conduct of his/her business. [IBAC, 2005]

⁴ MNPS – Minimum Navigation Performance Specification

PRNAV – Precision Area Navigation

RVSM – Reduced Vertical Separation Minima

AWOPS – All Weather Operations

- (c) In the past, operators of corporate aircraft had to meet only the basic, internationally agreed standards for private operations. The position of the UK government has shifted significantly since the ICAO Universal Safety Oversight Audit Programme (USOAP) audit in 2000. The UK government has been a signatory of the Convention since 1944 and accepts that its oversight of the aviation industry in the Territories was not as robust as it should have been.
- (d) The UK government's position is now that the aviation industry in the Territories should be demonstrably compliant with internationally agreed standards and, to that end, these proposals will provide the UK government with the regulatory oversight enabling that assurance. It is considered fair and reasonable to regulate CA operations adequately to provide the UK government, other States and ICAO with the necessary assurance that the required standards are being met.

7. Costs

(a) **Compliance costs**

Option 1 (Do nothing): No additional costs over those experienced at the present level of oversight.

Option 2 (OTAC): The main burden of work, and thus cost, falls on ASSI to produce the OTAC but this cost is not passed on to the industry. There is little or no cost to OTAAAs as there is no regulatory oversight involved. There may be cost implications for operators in reaching the standards recommended (where not already compliant) and in demonstrating compliance if this was recommended.

Option 3 (Approved Operator): Initially, the burden of work and cost falls on ASSI to produce the OTAR but this is not passed on to the industry. Once the OTAR is gazetted⁵, the OTAAAs would incur the costs of regulatory oversight (initial approval, ongoing oversight and enforcement) which could be passed on to aircraft operators. The level of regulatory oversight would be the subject of consultation with industry. There would be cost implications for operators in reaching the standards required (where not already compliant) and in demonstrating compliance. The levels of costs incurred would be dependent upon the mode of regulation chosen and the scale of charges levied by the OTAA.

Option 4 (Corporate AOC): There may be significantly larger costs associated with this option compared to the others due to the level of regulatory oversight required. Production of OTARs would be at no cost to the industry. There may be general costs in setting up the necessary management systems to comply with the requirements for certification. The OTAAAs would incur substantial regulatory oversight costs as each operator would require in-depth oversight at least once per year. These costs would be passed on to the industry.

(b) **Other Costs**

None

⁵ Published for use within an OT as regulatory requirements.

(c) **Costs for a Typical Business**

Costs for any business will depend on the regulatory regime selected and the level of adoption of best practice by the operator. During consultation industry will be requested to put forward estimates of costs associated with the various options.

8. Consultation With Small Business: ‘Small Firms’ Impact Test

Nearly all the businesses involved in this sector of the industry are, in global terms, small and a full consultation exercise will take place before publication of the Amendments to the AN(OT)O.

9. Competition Assessment

- (a) **Between operators on the same Territory register (OTAR/OTAR):** On a ‘level playing field’ there will be no competitive advantage or disadvantage.
- (b) **Between operators on different Territory registers (OTAR/OTAR):** As the regulatory regime will be the same for aircraft on any Territory register there will be no competitive advantage or disadvantage between Territory registers.
- (c) **Between operators on Territory register and the register of another State (OTAR/ICAO SARPs):** It is possible that the regulatory regime of another State may provide a lower level of oversight to that required by the OTAAs. This may result in lower costs to the operators with aircraft registered in that State, thus providing a competitive advantage to operators on that register. This aspect may be countered in that some Territories offer broad financial and legal services for which the aircraft register is only a part of a larger package. Furthermore, it is likely that ICAO will develop similar international CA operational requirements which will require regulators with an international register to ensure compliance.

10. Enforcement Sanctions

- (a) Contravention of provisions of the AN(OT)O is an offence carrying a maximum penalty which depends on the nature and circumstances of the breach.
- (b) There are little or no enforcement sanctions available to the OTAAs under Option 1 and 2. The OTAA may refuse to register CA aircraft if the operator does not sign-up to a Code of Practice.
- (c) Under those options (3 and 4) where a certificate is granted to an operator the OTAA has the power to revoke, vary or suspend the certificate if considered necessary.

11. Monitoring and Review

These measures will be monitored continuously by ASSI in the course of its usual regulatory business. However, a formal review of the measures being implemented here will be undertaken when the amendments have been in operation for not more than 2 years.

12. Consultation

- (a) Directors of Civil Aviation (DCAs) of the two Territories with major aircraft registers were consulted prior to this RIA being put out for public consultation with industry.
- (b) Within UK Government, the Foreign and Commonwealth Office and Department for Transport will be consulted as part of the wider consultation (below).
- (c) A Public Consultation exercise will be undertaken in which the following will be asked for comment:
 - all Territory Directors of Civil Aviation; and
 - all Governors of Overseas Territories; and
 - all those previously named by their DCA as having an interest in the amendments; and
 - all those having previously notified ASSI as having an interest in the amendments.
- (d) Any proposed AN(OT)O amendment, draft OTAR Part 125 and this RIA will be placed on the ASSI website for comment for a period of at least 12 weeks. This consultation may take place concurrent with, or following, the Public Consultation in (c) above.
- (e) A Comments Log showing all comments and ASSI responses will be posted on the ASSI website following the consultation period.

13. Summary and Recommendation

- (a) The objectives of these proposals are to allow the UK to discharge its obligations under the Convention and to give effect to or “enable” the application of any OTARs to address the operation of aircraft in the CA sector.
- (b) Four viable options have been identified.
- (c) Options 1 and 2 do not ensure that best practice is being undertaken in a complex and growing sector of the aviation industry. Nor are concerns over carriage of corporate passengers or compliance with developing international standards addressed.

- (d) Option 3 (Approved Operator) requires OTAR Part 125 to be published (following consultation) which would turn current industry best practice into mandatory requirements to be implemented by all operators. Operators would require an approval. There would be some regulatory oversight of compliance with the OTAR, the level of which would be the subject of consultation with industry. The OTAR would be legally enforceable through the AN(OT)O.
- (e) Option 4 (a Corporate AOC) could be viewed as being a disproportionate response to the risks identified within the CA sector. Furthermore the costs to industry would be significant and, again, out of proportion to the identified risk.
- (f) It is recommended that Option 3 be adopted.