

SUMMARY: INTERVENTIONS & OPTIONS

Department: Foreign and Commonwealth Office	Impact Assessment of Amendments to the Air Navigation (Overseas Territories) Order (AN(OT)O)
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Stage Implementation	Version V1.0 9 October 2007	Related Publications Can be found at link below
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Available to view or download at:

<http://www.airsafety.aero>

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What is the problem under consideration? Why is governmental intervention necessary?

The UK is a signatory to the Convention on International Civil Aviation (the Convention) and agrees to comply with the Standards and Recommended Practices (SARPs) published by the International Civil Aviation Organisation (ICAO) in the Annexes to the Convention. This Impact Assessment addresses the deficiencies identified in the Air Navigation (Overseas Territories) Order (AN(OT)O) to ensure that it is up to date and that it includes all elements of the SARPs.

What are the policy objectives and the intended effects?

1. To provide consistency and compliance with the Annexes to the Convention.
2. To give effect to or 'enable' the application of the Overseas Territories Aviation Requirements (OTARs).
3. To ensure the AN(OT)O provides a sound legal framework for the adoption of the OTARs as a modern, cohesive package of Requirements capable of being used on a stand-alone basis wherever possible.
4. To modernise and simplify the AN(OT)O.
5. To suit the level of aviation activity in the UK Overseas Territories.

What policy options have been considered? Please justify any preferred option.

1. No intervention.
2. Keep the AN(OT)O in alignment in so far as is appropriate with the UK Air Navigation Order (ANO) in order to use the UK regulatory framework.
3. Amend the AN(OT)O to reflect the provisions of the ICAO Annexes and align it with a comprehensive set of OTARs. This is the only viable option and is thus the preferred option.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? 31 December 2009

Ministerial Sign-Off For final proposal/implementation stage assessments

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:

Date:

SUMMARY: ANALYSIS & EVIDENCE

In accordance with the advice for regulators contained within the Cabinet Office's Impact Assessment Toolkit, Air Safety Support International has adapted the IA template to better suit its needs of regulating in compliance with a statutory responsibility. As the focus of aviation regulation is on safety, the Summary: Analysis and Evidence page is considered inappropriate and has therefore not been completed. However, the evidence pages contain the arguments and rationale for each option and include any relevant costs.

Evidence Base for Summary Sheets

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on p1 and p2 of this form.]

1 RATIONALE AND OBJECTIVES OF GOVERNMENT INTERVENTION

1.1 Background. The Convention on International Civil Aviation (the Convention) is the main treaty agreement regulating international civil aviation and is the founding instrument of the International Civil Aviation Organisation (ICAO). The Convention establishes a number of basic provisions for the conduct of international civil aviation and includes provision for uniform rules for regulation. These rules are established by ICAO through the Annexes to the Convention by way of Standards and Recommended Practices (SARPs) for various aspects of aviation operations. Signatories to the Convention, known as Contracting States, are expected to comply with the SARPs in so far as is reasonable. The UK is a signatory to the Convention and therefore agrees to comply with the SARPs; the UK Overseas Territories (OTs) are, in effect, parties to the Convention by virtue of the UK's signature, which is on behalf of the UK and its Territories and Dependencies. The Convention forms the basis of the reciprocity of the international aviation industry.

1.2 The Issues. The ICAO Safety Oversight Audit of the UK in July 2000 resulted in a number of "findings" that were critical. In particular, the audit concluded that the UK:

- had not ensured that the OT legislation, mainly the AN(OT)O, had been kept up to date compared with that of the UK;
- had not clearly identified and promulgated the means by which the OTs complied with the SARPs and associated legislation;
- had not exercised suitable oversight of compliance with the legislation and SARPs by the OTs;
- had not notified differences between the OT regulations and the SARPs; and
- had not implemented some elements of the SARPs, particularly those relating to general aviation.

1.3 As a result of these audit findings, the UK Government decided to establish Air Safety Support International (ASSI), a wholly owned subsidiary of the Civil Aviation Authority (CAA), to ensure discharge in the OTs of the UK obligations under the Convention. Amongst its responsibilities, ASSI is required to maintain the currency of the AN(OT)O and to create the Overseas Territories Aviation Requirements (OTARs) as the means of compliance with the AN(OT)O and ICAO SARPs.

1.4 Rationale for Intervention. Government intervention is required to ensure that the regulatory framework addresses all the current international standards contained within ICAO SARPs. The changes proposed in this amendment to the AN(OT)O are intended to bring the document and the supporting OTARs in line with current and imminent changes to SARPs. Without these proposals, the aviation industry in the OTs will remain, or will become, non-compliant with international standards. In view of the importance of aviation to the economic wellbeing and development of the Territories such an outcome would be detrimental to their

interests and would affect, in particular, the ability of the Caribbean and North Atlantic Territories' operators to operate air services to the USA. Furthermore, another audit by ICAO of the UK and Territories is scheduled for early 2009 and continued non-compliance with international standards would strain the UK's credibility. Additionally, as there have already been four amendments to the Order, the opportunity is being taken to consolidate and reissue the Order in line with established practice.

1.5 Objectives. The objectives of this amendment to the AN(OT)O are:

- to provide consistency and compliance with the Annexes to the Convention;
- to give effect to or 'enable' the application of OTARs;
- to ensure that the AN(OT)O provides a sound legal framework for the adoption of OTARs as a modern, cohesive package of Requirements capable of being used on a stand-alone basis wherever possible;
- to modernise and simplify the AN(OT)O;
- to suit the level of aviation activity in the UK OTs; and
- to align the terminology within the AN(OT)O with that used by ICAO.

1.6 Specific Objectives. In addition to the high level objectives listed above at paragraph 1.5, this amendment to the AN(OT)O aims to address the following specific objectives of:

- redefining the categories of person who may register an aircraft in the OTs in order to give greater control over the register of civil aircraft;
- improving the control of aircraft airworthiness by requiring the establishment of a maintenance control manual and the nomination of an accountable person or technical coordinator who will be responsible for the management of maintenance for each aircraft. That person would be subject to approval by the regulator designated by the Governor;
- enabling the Governor to give instructions relating to the performance criteria for the operation of an aircraft in accordance with the aircraft flight manual and for the adoption of good operating and airmanship practices consistent with best international practice;
- extending the requirement for aircraft technical logs to be maintained for all aircraft above 2700kg with a Certificate of Airworthiness. At present this is required only for aircraft engaged in commercial air transport or aerial work; and
- introducing greater regulation for general aviation, including the operation of complex corporate aircraft . Such operations will require an Approval from the Governor; requirements relating to the issue of the Approval are set out in OTAR Part 125. The introduction of these provisions reflects ICAO's adoption of amendments to Annex 6 Part II.

1.7 Phased Approach to Amending the AN(OT)O and Related Consultations.

The updating of the AN(OT)O has been done in three phases, each supported by a consultative document; these documents can be found at the following link:

http://www.airsafety.aero/legislation_and_otar_s/legislation_for_consultation/

Additionally, some interim changes have been made.

- Phase 1 focussed on bringing the Order up to the standard of, and in line with, the then current UK Order. These changes became effective at the end of August 2004. A full Regulatory Impact Assessment (RIA) of Phase 1 was published in June 2004.

- Phase 2 concentrated on bringing the Order to a point where the first two batches of the OTARs, principally those relating to airworthiness of aircraft, personnel licensing and air traffic services, could be implemented. This Phase was completed during 2005/2006 by two further amendment orders and an Environmental Standards Order. A partial RIA was published in November 2004 in support of Phase 2 which, as well as reiterating the objectives of the earlier full RIA, articulated the explicit objectives of simplifying the AN(OT)O by means of transferring detail from it to the OTARs.
- A further partial RIA followed in December 2005 in support of a limited amendment to the AN(OT)O which related mainly to the certification of aerodromes and to the type of flights which are required to use a certificated aerodrome.
- A partial RIA was then published in January 2006 concerning the regulation of Corporate Aviation.
- Phase 3, the current phase and the subject of this Impact Assessment, is to permit the introduction of the remaining OTARs, principally those concerned with aircraft operations. It also aims to simplify and modernise the Order to form a coherent unit with the OTARs to allow the OTARs to be the working regulatory documents with the AN(OT)O providing the necessary legal basis.

1.8 Phase Three. In addition to addressing the objectives listed in paragraphs 1.5 and 1.6 above, Phase Three of the amendment also considers a number of areas in which, traditionally, the UK legislation has adopted different terms to those used by ICAO in the SARPs. Key examples are the terms “public transport” and “commander”. While these terms largely equate to the ICAO terminology of “commercial air transport” and “pilot in command” there are differences concerning not just the actual words but also their interpretation and their use. In drafting the OTARs, ASSI has employed ICAO terminology wherever possible with the intention of making the Requirements easier to understand and more in line with the rules used elsewhere in the world. This has created a need for amendments to the AN(OT)O not only to effect the change of terminology but also to reflect the necessary amendments to the related terms “aerial work” (as defined in articles 157 to 163 of the Order) and “general aviation” (as defined in Annex 6 Part II).

2 EQUITY

The Chicago Convention is the principal source of international air law and the basis of regulation and safety oversight for the aviation industry. Signatories to the Convention agree to adopt and implement ICAO SARPs so far as practicable in order that civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity. Thus, the amendments to the AN(OT)O, by providing consistency and compliance with the Annexes, ensure that these aims are met and that the UK OTs are treated equitably.

3 EXISTING POLICY LEVERS

The proposed amendments to the AN(OT)O are aimed at ensuring that the UK’s international obligations under the Convention are met.

4 PROPORTIONATE ANALYSIS

The basic philosophy underlying the development of the aviation regulation for the OTs is to create a package of requirements that form the principal means of

compliance with the ICAO SARPs and that are consistent with the legislation in force. Furthermore, underpinning this philosophy is the need to ensure that any requirements are proportionate to the aviation industry within the OTs; thus all regulations developed are appropriately tailored to the size and level of aviation activity in the OTs.

5 GENERATING AND SHORTLISTING OPTIONS

5.1 Options. The following Options have been identified:

- Option One – No intervention.
- Option Two - Keep the AN(OT)O in alignment in so far as is appropriate with the UK ANO in order to use the UK regulatory framework.
- Option Three - Amend the AN(OT)O to reflect the provisions of the ICAO Annexes and align it with a comprehensive set of OTARs.

5.2 Options Appraisal – Benefits

5.2.1 Option One (No intervention): The AN(OT)O 2001 as amended, is still deficient in some areas of the SARPs, thus, in its current form the document does not fully meet the objective of ensuring compliance with the SARPs and therefore does not allow the UK to demonstrate fully that international standards are being met. Additionally, the terminology used is not always consistent with ICAO's, potentially causing some difficulties in interpretation of terms. The adoption of this option therefore would fail to realise the objectives of the amendment as stated above in paragraphs 1.5 and 1.6 and would leave the document in a state of partial completeness. There are no safety benefits to be gained by adopting Option One and this option is considered unviable.

5.2.2 Option Two (Keep the AN(OT)O in alignment with the UK regulatory framework): One of the high level objectives of the amendment to the AN(OT)O is to ensure that the regulatory framework is appropriate and proportionate to the type and level of aviation activity within the OTs. The UK civil aviation industry is becoming increasingly aligned with that of Europe, and governed by European law, which is, by its nature, far more complex than that of the OTs. The European system therefore demands a regulatory system to meet its particular complicated needs. The continued expansion of the European Aviation Safety Agency, EASA, an agency of the European Commission, along with the development of the Single European Sky (SES) Regulations are already impacting significantly on the way the UK aviation industry is regulated and the legislation relating thereto. The magnitude and complexity of the UK system is considered wholly unsuitable and disproportionate to that required for efficient, effective and proportionate regulation within the OTs' aviation industries. Additionally, some amendments to the Annexes to the Convention have not yet been implemented by the UK; this is largely due to many such amendments being planned for implementation via European Union legislation and EASA Rules. Such mechanisms will not apply in the OTs and hence an alternative means of implementing the amendments to the Annexes would have to be sought. Importantly, one of the issues identified by the OTs was that they were not appropriately consulted upon in the development of the regulatory system under which they are regulated. Through the adoption of the UK regulatory framework with its significant European influences, this situation is likely to be

exacerbated with the voice of the OTs diminishing further. Overall, this option would not support a regulatory system commensurate with the specific needs of the OTs and is therefore unviable.

5.2.3 Option Three (Amend the AN(OT)O to reflect the provisions of ICAO SARPs and align it with a comprehensive set of OTARs): This option fulfils the benefits of updating the AN(OT)O to reflect ICAO SARPs and, together with the OTARs, secures full compliance with the Annexes to the Convention. Thus, through this cohesive and harmonised regulatory framework of the AN(OT)O and its supporting OTARS, it can be clearly demonstrated that the OTs are meeting international standards and that the UK is fulfilling its obligations under the Convention. This is the preferred option and is the only viable option.

6 COSTS

6.1 Option One (No intervention): Not viable.

6.2 Option Two (Keep the AN(OT)O in alignment with the UK regulatory framework): Not viable.

6.3 Option Three (Amend the AN(OT)O to reflect the provisions of ICAO SARPs and align it with a comprehensive set of OTARs): The vast majority of the changes proposed to the AN(OT)O 2001 are cost neutral as they are merely regularising and updating the document to reflect Statutory Instrument practice, the SARPs and common practice within the aviation industry within the OTs. The industry should already be compliant with the notified regulatory documents (the UK Civil Aviation Publications (CAPs)) and, thus, the SARPs and therefore little monetary impact is envisaged. Furthermore, as the OTARs will generally not set higher standards than ICAO there should be no additional financial burden with having to meet more stringent regulations. That said, the following areas have been identified as having potential cost implications:

6.3.1 Emergency Locator Transmitters (ELTs).

6.3.1.1 The introduction of requirements relating to ELTs will have an impact on the operators of aircraft. All businesses should already be compliant with ICAO SARPs (through compliance with CAPS) and so no significant additional costs are expected. It must be noted that there may be areas where businesses of an OT do not comply with the international standards at present although compliance is mandated under the 'gazetted' (publicly notified) requirements for that OT. New and amended Articles in this Amendment to the AN(OT)O will make compliance with the international standards enforceable. Any costs associated with compliance where industry should have been compliant previously but was not, have not been considered here.

6.3.1.2 Approximately 250 aircraft registered in the OTs will have to comply with the proposed amendment in relation to the carriage of ELTs. It is known that the majority of aircraft are currently equipped with ELTs, however, not all of these are fully compliant with the current ICAO specifications or the proposed requirements. Of those that are not compliant, most will require existing equipment to be modified or replaced by equipment meeting the new requirements. This will be necessary in any case to allow them to operate

into other states' airspace. Since most of the Territories' sovereign airspace is relatively small and the surrounding airspace is under the jurisdiction of other states (mainly the USA) this need for interoperability is a significant factor. Additionally, the majority of the aircraft entered onto the registers in Bermuda and the Cayman Islands operate in USA, European or Russian airspace where compliance with this requirement is mandatory. It is believed that only a small number of aircraft are not equipped with an ELT and will require fitment of such equipment. The majority of future new aircraft coming on to a Territory's register are likely to be fitted with compliant equipment as standard. Therefore the costs of compliance are not repetitive.

6.3.1.3 Worst-case costs are estimated as follows:

- New fit to 20 aircraft (each): unit costs \$4,500, installation costs \$7,000, associated engineering costs \$7,000, reprogramming of ELTs approximately \$800 - total approx \$390k.
- Modify existing unit to 100 aircraft (each): \$3,000 - total approx \$300k.
- Change existing unit to 100 aircraft (each): unit costs \$4,500, installation costs \$7,000, associated engineering costs \$7,000, reprogramming of ELTs approximately \$800 - total approx \$1,930k.

Total for entire industry approx \$2.62m

6.3.4 Regulation of Corporate Aviation.

6.3.4.1 The regulation of Corporate Aviation would incur costs for the OT Aviation Authorities (OTAA) associated with discharging their responsibilities relating to the initial approval, ongoing oversight and enforcement. The level of regulatory oversight would be the subject of consultation with industry. The proposals allow the option of compliance by industry based on meeting the standards required of an operator who holds an International Standards-Business Aviation Operations (IS-BAO) Certificate of Registration granted by the International Business Aviation Council (IBAC), an industry association for the corporate aviation sector. It is envisaged that most operators will be able to follow this route without incurring further direct costs.

6.3.4.2 There would be costs implications for the remaining operators in reaching the required standards, where these are not already met, and in demonstrating compliance. However the incorporation of safety management principles within the requirements permits a larger degree of flexibility in meeting the objectives of the requirements compared with traditional prescriptive regulation.

6.3.4.3 It has not been possible to quantify the costs associated with this change as they would be entirely dependant upon the mode of regulation chosen and the scale of charges levied by the individual OTAA, which is a matter for the government of the Territory.

7 SECTORS AND GROUPS AFFECTED

The proposed amendments will apply to all sectors of the aviation industry within the OTs. However, as previously stated the actual impact upon the industry is assessed as minimal as the changes to the AN(OT)O are merely reflecting extant UK and ICAO requirements with which the OT aviation industry should already be compliant.

8 IMPLEMENTING

The changes to the AN(OT)O will be implemented by 31 December 2007.

9 MONITORING

The effect of the proposed changes will be monitored on a continuous basis by ASSI during the course of its usual regulatory business. However, formal review of the measures being implemented will be undertaken when the amendments have been in place for no more than two years.

10 ENFORCEMENT SANCTIONS

Breach of the AN(OT)O is an offence carrying a maximum penalty which depends on the circumstances of the breach.

11 COMPETITION ASSESSMENT

These changes are required to align the AN(OT)O with UK and ICAO requirements and to allow the UK to demonstrate that it is fulfilling its obligations under the Convention; this Convention forms the basis of the reciprocity of the international aviation industry. Although industry within the OTs should already be meeting these international standards this has not always been achieved. As a result, some elements of the aviation industry have been unable to compete in some markets. These changes will alleviate this situation and improve the competitive market within the OTs.

12 SMALL FIRMS IMPACT TEST

Almost all sectors of the aviation industry within the OTs are small in global terms. Full consultation has been carried out throughout the phased approach to amending the AN(OT)O.

13 SUMMARY AND RECOMMENDATION

13.1 The proposed changes to the AN(OT)O are necessary to ensure that it remains current and in alignment with ICAO SARPs, providing a sound legal framework for the adoption of the OTARs. Together, the amended AN(OT)O and the OTARs will provide the means by which the UK can demonstrate that it is fulfilling its international obligations under the Convention. Without this amendment, the OTs will remain non-compliant with international standards which will not only reflect badly on the UK when it undergoes its next ICAO audit but will also adversely affect the industry within the OTs by limiting their competitiveness and ability to market services outside the Territories.

13.2 The amendments to the AN(OT)O have been progressed in phases, each phase being supported by a consultation document. This final phase consolidates

the Order and supports the introduction of the remaining OTARs covering aircraft operations.

13.3 Three options have been identified of which only one, the adoption of the proposed changes to the AN(OT)O, is deemed viable. Although all sectors within the industry will be affected by the changes, the associated costs are considered minimal as the industry should already be compliant with ICAO SARPs and UK CAPs.

13.4 It is recommended that Option Three be adopted.