

2016 No. 369

CIVIL AVIATION

**The Aviation Security and Piracy (Overseas Territories)
(Amendment) Order 2016**

Made - - - - - *15th March 2016*

Coming into force - - - - - *1st May 2016*

At the Court at Buckingham Palace, the 15th day of March 2016

Present,

The Queen's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by section 39(3) of the Aviation Security Act 1982(a).

Her Majesty, by and with the advice of Her Privy Council, orders as follows.

Citation and commencement

1. This Order may be cited as the Aviation Security and Piracy (Overseas Territories) (Amendment) Order 2016 and comes into force on 1st May 2016.

Amendment of order

2. The Aviation Security and Piracy (Overseas Territories) Order 2000(b) is amended in accordance with articles 3 and 4.

Amendments to Schedule 2 (provisions of the Aviation Security Act 1982 extended to the Territories specified in Schedule 1)

3.—(1) Schedule 2 is amended in accordance with paragraphs (2) to (20).

(2) In section 8, after “consent” insert “of the Attorney-General of the Territory or”.

(3) In subsection 12(1), for paragraph (b) substitute—

“(b) not to cause or permit any such aircraft to fly in or into the Territory unless such searches (of persons or property or of the aircraft itself) as are specified in the direction have been carried out by police officers or by other persons of a description so specified.”.

(a) 1982 c.36; section 39(2) was amended by section 26(5) Merchant Shipping and Maritime Security Act 1997 (c.28).

(b) S.I.2000/3059.

(4) After subsection 12(1), insert—

“(2) Subject to subsection (3) below, the Governor may give a direction in writing to the operator of any one or more aircraft registered in the Territory, requiring him not to cause or permit the aircraft to fly unless such modifications or alterations of the aircraft, or of apparatus or equipment installed in the aircraft, as are specified in the direction have first been carried out, or such additional apparatus or equipment as is so specified is first installed in the aircraft.

(3) Before giving any direction under subsection (2) above, the Governor shall inform, and shall take account of any advice given by—

- (a) any person that he has designated to carry out any of the functions of the Governor in accordance with article 6 of the Air Navigation (Overseas Territories) Order 2013(a);
- (b) ASSI (as defined in article 3(1) of the Air Navigation (Overseas Territories) Order 2013); and
- (c) the Director of Civil Aviation,

as to the modifications, alterations or additional apparatus or equipment proposed to be required.

(4) In giving any direction under subsection (2) above, the Governor shall allow, and shall specify in the direction, such period as appears to him to be reasonably required for carrying out the modifications or alterations or installing the additional apparatus or equipment in question; and the direction shall not take effect before the end of the period so specified.”.

(5) In subsection 12(5)—

- (a) in paragraph (c) for “direction.” substitute “direction,”; and
- (b) after paragraph (c) insert—

“and a direction given to an operator of aircraft under subsection (2) above may be given so as to relate either to all aircraft registered in the Territory of which at the time when the direction is given or at any subsequent time he is the operator or only to one or more such aircraft, or to a class of such aircraft, specified in the direction.”.

(6) In subsection 12(8), in paragraph (a), after “subsection (1)” insert “or (2)”.

(7) After subsection 15(1), insert—

“(2) A direction under section 12(2) of this Act must require all the persons carrying out any modifications or alterations, or the installation of any additional apparatus or equipment, to be persons approved by the Governor or any person that he has designated to carry out any of the functions of the Governor in accordance with article 6 of the Air Navigation (Overseas Territories) Order 2013.”.

(8) In subsection 16(5), for paragraph (a) substitute—

- “(a) it shall have effect only in relation to—
 - (i) aircraft registered in the Territory, or
 - (ii) a requirement not to cause or permit an aircraft to fly in or into the Territory unless certain things have, or have not, been done, and”.

(9) After subsection 18A(2), insert—

“(2A) Before serving any enforcement notice which relates to a direction given under section 12(2) of this Act, the authorised person shall inform, and shall take account of any advice given to him by, the Governor or any person that he has designated to carry out any of the functions of the Governor in accordance with article 6 of the Air Navigation (Overseas Territories) Order 2013 as to the measures proposed to be specified in the notice.”.

(a) S.I. 2013/2870, as amended by S.I. 2014/2925 and S.I. 2014/3281.

(10) In section 18B(3)—

- (a) before the words “An enforcement notice” insert “Subject to subsection (4) below,”; and
- (b) after the words “subsection (1)(a) or (b)” insert “or (2)”.

(11) After subsection 18B(3), insert—

“(4) In serving an enforcement notice which relates to a direction under section 12(2) of this Act, the authorised person shall allow, and specify in the notice, such period as appears to him to be reasonably required for taking the measures specified in the notice and the notice shall not take effect before the end of the period so specified.”.

(12) After section 18D(3) insert—

“(3A) On receipt of an objection to an enforcement notice under subsection (1) the Governor must—

- (a) give a copy of the objection to the authorised person who served the enforcement notice,
- (b) consider the objection,
- (c) allow the person making the objection and the authorised person who served the enforcement notice an opportunity to make written or oral representations to the Governor or a person appointed by the Governor,
- (d) give a decision notice to the person who made the objection, and
- (e) give a copy of the decision notice to the authorised person who served the enforcement notice.”.

(13) In section 18D(4)—

- (a) for the words from “Where” to “either” substitute—

“In this section “decision notice” means a notice in writing either”; and

- (b) in paragraph (b) for “notice under this subsection” substitute “decision notice”.

(14) In section 18D(5)(a) and (b) for “notice under subsection (4) above” substitute “decision notice”.

(15) After section 20 insert—

“Detention direction

20B—(1) An authorised person may give a detention direction in respect of an aircraft if he is of the opinion that—

- (a) a person has failed to comply or is likely to fail to comply with a requirement of a direction under section 12 or 14 of this Act in respect of the aircraft,
- (b) a person has failed to comply with a requirement of an enforcement notice in respect of the aircraft,
- (c) a threat has been made to commit an act of violence against the aircraft or against any person or property on board the aircraft, or
- (d) an act of violence is likely to be committed against the aircraft or against any person or property on board the aircraft.

(2) A detention direction in respect of an aircraft—

- (a) shall be given in writing to the operator of the aircraft, and
- (b) shall require him to take steps to ensure that the aircraft does not fly while the direction is in force.

(3) An authorised person who has given a detention direction in respect of an aircraft may do anything which he considers necessary or expedient for the purpose of ensuring that the aircraft does not fly while the direction is in force; in particular, the authorised person may—

- (a) enter the aircraft;

- (b) arrange for another person to enter the aircraft;
- (c) arrange for a person or thing to be removed from the aircraft;
- (d) use reasonable force;
- (e) authorise the use of reasonable force by another person.

(4) The operator of an aircraft in respect of which a detention direction is given may object to the direction in writing to the Governor.

(5) On receipt of an objection to a detention direction under subsection (4) the Governor shall—

- (za) give a copy of the objection to the authorised person who gave the direction,
- (a) consider the objection,
- (b) allow the person making the objection and the authorised person who gave the direction an opportunity to make written or oral representations to the Governor or to a person appointed by him,
- (c) confirm, vary or cancel the direction, and
- (d) give notice of his decision in writing to the person who made the objection, and
- (e) give a copy of the notice to the authorised person who gave the direction.

(6) A detention direction in respect of an aircraft shall continue in force until—

- (a) an authorised person cancels it by notice in writing to the operator of the aircraft, or
- (b) the Governor cancels it under subsection (5)(d).

(7) A person commits an offence if—

- (a) without reasonable excuse he fails to comply with a requirement of a detention direction, or
- (b) he intentionally obstructs a person acting in accordance with subsection (3).

(8) A person who is guilty of an offence under subsection (7) shall be liable on conviction to a fine or to imprisonment for a term not exceeding two years or to both.

(9) A detention direction may be given in respect of—

- (a) any aircraft in the Territory, and
- (b) any aircraft registered or operating in the Territory.

(10) A detention direction may be given in respect of a class of aircraft; and for that purpose—

- (a) a reference to “the aircraft” in subsection (1) shall be treated as a reference to all or any of the aircraft within the class or of that type, and
- (b) subsections (2) to (9) shall apply as if the direction were given in respect of each aircraft within the class or of that type.”.

(16) After subsection 21C(3) insert—

“(4) A police officer, the manager of an aerodrome or a person acting on behalf of the manager of an aerodrome may use reasonable force to remove a person who fails to comply with a request under subsection (1)(b) above.”.

(17) After subsection 21D(2) insert—

“(3) A police officer, the operator of an aircraft or a person acting on behalf of the operator of an aircraft may use reasonable force to remove a person who fails to comply with a request under subsection (1)(b) above.”.

(18) For subsections 24(2) and 24(3) substitute—

- “(2) Any such document may be given to or served on any person—
 - (a) by delivering it to him,
 - (b) by leaving it at his proper address,

- (c) by sending it by post to him at that address,
- (d) by sending it to him at that address by telex or other similar means which produce a document containing the text of the communication, or
- (e) where—
 - (i) an address for service using electronic communications has been given by that person and not withdrawn in accordance with subsection (2E), and
 - (ii) that person has agreed to accept service by electronic communications of documents in a certain form and has not withdrawn that agreement in accordance with that subsection,

by using electronic communications to send the document in that form to that person at that address.

(2A) A document given to or served on a person in accordance with subsection 2(e) must be in a form sufficiently permanent to be used for subsequent reference.

(2B) Where a document is given to or served on a person in accordance with subsection (2)(e), the document is, unless the contrary is proved, to be deemed to have been given to or served on that person at the time at which the electronic communication is transmitted except where transmission is made outside that person's normal business hours, in which case it is to be taken to have been given or served on the next working day, and in this subsection, "working day" means any day other than—

- (a) a Saturday or a Sunday; or
- (b) a public holiday in the Territory.

(2C) A document authorised or required to be given to or served on a person by the Governor or an authorised person is also to be treated as given or served where—

- (a) that person and the Governor or (as the case may be) the authorised person have agreed to his having access to documents of a particular description and in a certain form on a website (instead of their being given to or served on him in any other way specified in subsection (2));
- (b) that person has not withdrawn his agreement in accordance with subsection (2F);
- (c) the document in question is a document to which the agreement applies;
- (d) the Governor or the authorised person has given that person a notice, in a manner agreed between them for the purpose—
 - (i) stating that the document has been published on a website maintained by or on behalf of the Governor;
 - (ii) setting out the address of that website; and
 - (iii) setting out the place on that website where the document may be accessed and how it may be accessed by that person; and
- (e) the published document is in a form sufficiently permanent to be used for subsequent reference.

(2D) Where a document is given to or served on a person in accordance with subsection (2C), the document is, unless the contrary is proved, to be deemed to have been given to or served on that person at the same time as the notice required to be given under subsection (2C)(d) is given.

(2E) A person who has supplied another person with an address for service using electronic communications and has agreed to accept service of documents in a certain form in accordance with subsection (2)(e) may give notice withdrawing that address or that agreement or both.

(2F) A person who has an agreement with the Governor or an authorised person under subsection (2C)(a) may give notice withdrawing that agreement.

(2G) A withdrawal under subsection (2E) or (2F) shall take effect on the later of—

- (a) the date specified by the person in the notice; and

(b) the date which is fourteen days after the date on which the notice is given.

(2H) A notice under subsection (2E) or (2F) must be given to the person to whom the address was supplied or with whom the agreement was made.

(2I) Oral notice is not sufficient for the purposes of subsections (2E) or (2F).

(3) Any document authorised to be given to or served on a body corporate, may be given or served on the secretary, clerk or similar officer of that body.”

(19) In section 24A—

(a) after the definition of “act of violence” insert—

““address”, in relation to electronic communications, means any number or address used for the purposes of this Order;”; and

(b) after the definition of “authorised person” insert—

““electronic communication” has the same meaning as in the Electronic Communications Act 2000(a);”.

(20) For paragraph (b) of the definition of “aircraft registered or operating in the Territory” in subsection 38(1) substitute—

“(b) an aircraft not so registered which is for the time being allocated for use on a flight any part of which is in the Territory;”.

(21) In paragraph 5 of Schedule 1 after “Governor” omit “in Council”.

Amendments to Schedule 3 (provisions of the Aviation Security Act 1982 extended to particular Territories specified in Schedule 1)

4.—(1) Schedule 3 is amended in accordance with paragraphs (2) to (7).

(2) In the entry for Anguilla—

(a) for “offence of criminal damage” and its definition substitute—

““offence of criminal damage” means an offence under section 302, 304, 305, 308 or 309 of the criminal code(b);”;

(b) for “prescribed offence” and its definition substitute—

““prescribed offence” means an offence under section 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, or 213 of the criminal code;”.

(3) In the entry for Falkland Islands insert after the definition of “fine”—

““Legislative Council” means the Legislative Assembly;”.

(4) In the entry for Montserrat—

(a) in the definition of “offence of criminal damage” for “265” substitute “277”;

(b) in the definition of “prescribed offence” for “163, 164, 165, 166, 167, 168, 170, 171, 172 or 173” substitute “168, 169, 170, 171, 172, 173, 174, 176, 177, 178 or 179”.

(5) In the entry for Turks and Caicos, in the definition of “fine” for “5000”, substitute “10,000”.

(6) In the entry for Sovereign Base Areas of Akrotiri and Dhekelia—

(a) omit “Section 25 of the Act, as set out in Schedule 2 of this Order, shall not apply and”;

(b) for “daily fine” and “fine” and their respective definitions substitute—

““fine” means a fine imposed by the Resident Judge’s Court or the Senior Judges’ Court;”.

(7) After the definition of “prescribed offence” in the list of definitions in respect of the Turks and Caicos Islands insert—

(a) 2000 c.7.

(b) Revised Statutes of Anguilla c. 140.

“All Territories specified in Schedule 1

1. In relation to all the Territories “the legislature” means the person or body established in the particular Territory with the function of making laws in that Territory and may variously be called the Legislative Council, the House of Assembly, the Senate and House of Assembly, Her Majesty and a Legislative Assembly or the Administrator.”.

Ceri King
Deputy Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Aviation Security and Piracy (Overseas Territories) Order 2000 (“the 2000 Order”) to further extend certain provisions of the Aviation Security Act 1982, with relevant adaptations and modifications, to the Territories specified in Schedule 1 to the 2000 Order.

This Order amends the 2000 Order so as to extend the powers of the Governor (this includes the officer for the time being administering the government of any relevant Territory) in each of the relevant Territories to the effect that:

- aircraft operators may be directed to refrain from causing or permitting their aircraft to enter the Territories unless searches specified in the direction have taken place;
- aircraft operators may be directed to modify or alter their aircraft, or apparatus or equipment installed in the aircraft, for the purposes of aviation security;
- persons authorised by the Governor may detain aircraft for the purposes of aviation security;
- persons may be forcibly removed from the restricted zone or from an aircraft where they are present in either place without authorisation;
- a direction or other document may be served by (amongst other things) other electronic means.

An impact assessment has not been prepared for this Order as no significant impact on individuals or businesses is foreseen. An Explanatory Memorandum is published alongside this Order at www.legislation.gov.uk.

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