

December 2018

## DRONES UPDATE

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Changes to the Air Navigation Order 2016: review your drone services contracts

# INTRODUCTION

Amendments to the Air Navigation Order 2016 (the **ANO 2016**) mean anyone with a contract for drone services should review their current contracts.

## CHANGES TO THE AIR NAVIGATION ORDER

The Air Navigation (Amendment) Order 2018 (the **ANO 2018**) came into force on 30 July 2018 and amends the ANO 2016, which provides the main regulatory framework for drone usage, as follows:



Extending the height restriction of 400ft (from the earth's surface), which previously applied to all aircraft over 7kg, to all small unmanned aircraft (SUA, also known as drones). Flights over 400ft will need permission from the CAA



Extending the 1km flight restriction around the boundary of protected aerodromes, which previously applied to all aircraft over 7kg, to all SUA. You will need permission from the CAA in order to fly within this 1km boundary



Introducing the terms 'remote pilot' and 'SUA Operator', which will replace the singular term 'person in charge' used in the ANO 2016:

- a. *the "remote pilot", in relation to a small unmanned aircraft, is an individual who –*
  - i. *operates the flight controls of the small unmanned aircraft by manual use of remote controls, or*
  - ii. *when the small unmanned aircraft is flying automatically, monitors its course and is able to intervene and change its course by operating its flight controls*
- b. *the "SUA operator", in relation to a small unmanned aircraft, is the person who has the management of the small unmanned aircraft*

The Explanatory Memorandum to the ANO 2018 clarifies that the remote pilot is the individual who will intervene should there be an issue mid-flight, whilst the SUA Operator is the person or company with overall management of the drone



Introducing a registration scheme for operators of an SUA with a mass between 250g and 20kg. The CAA will create the scheme which is to come into force by 30 November 2018. From this date, unless the SUA operator is registered under the scheme, and the registration number is displayed on the SUA, the remote pilot will be prohibited from flying the SUA and the SUA operator prohibited from permitting or causing the SUA to be flown



Introducing competency requirements for remote pilots of small SUA of a mass between 250g and 20kg. The CAA will create a scheme for competence testing by 1 October 2019. Remote pilots will not be able to pilot the SUA unless they can demonstrate competence and SUA operators must not allow the SUA to be flown unless they are satisfied that the remote pilot has passed the appropriate competency test

## [Further Changes?](#)

Drone-users should keep in mind that the government is keen to build on this regulatory framework, and that the September 2018 consultation 'Taking Flight: The Future of Drones in the UK', sought opinions of further amendments to the ANO 2016, namely:

1. whether an age limit of 18 for small drone leisure operators should be introduced; and
2. whether the current exclusion zone of 1km is sufficient, whether it should be extended, and whether the zone itself should be a different shape.

It is likely further regulations will also be brought into force by the Drones Bill, which is due for its second reading in the House of Commons in February 2019. This wants to mandate the use of flight information and notification systems (FINS) prior to or during drone flight for users (this system will check whether a flight is permitted, file a notification which will make the user accountable and visible and serve as a forum for users to report any incidents or other information) and provide police with more extensive powers in relation to drones.

## CONTRACTUAL RISK MANAGEMENT

The drone services contract is a crucial tool for ensuring that the risks associated with operating commercial drones are properly allocated. Such risks are hugely varied, and include for example, responsibility for any accidents or damage caused to property (third party or otherwise) as well as errors in the data collected by the drone.

In general, those contracting for drone services should ensure that the contract sufficiently details the purpose and scope of operations, the format and timing of the deliverables, who will be responsible for any delay in the deliverables and any impact any such delays will have on payment. In light of the recent legal changes outlined above, the following issues deserve particular attention.

### [Compliance](#)

Most drone services contracts will contain drafting to ensure compliance with applicable law and regulation. This will oblige the relevant party to comply with all laws, enactments, regulatory policies, guidelines and industry codes applicable to them and should cover compliance with the amendments to the ANO 2016 (as well as other specific drone guidance and regulation and other regulations which might impact drone usage).

However, rather than simply relying on such drafting, those contracting for drone services should consider setting out in detail each party's responsibilities for compliance with the amended legislation and in particular, indicating which party is the SUA operator and which is the remote pilot. This is because it is possible to envisage that if the party contracting for services is determining the nature of the drone service, including where, when and why the drone is flown, then a judge might hold that they have management of the aircraft (as per the guidance to the ANO 2018) and is therefore the SUA operator. If found to be the SUA operator, the party contracting for services will be responsible at minimum in the future for ensuring that the remote pilot is registered, the drone has a registration number on and that the pilot is competent. Depending on the scale and nature of the contractor and the services themselves, this could be a substantial administrative burden and one that that party wishes to avoid. Careful drafting regarding obligations could help avoid this problem.

### [Data and Privacy](#)

Although the General Data Protection Regulation (GDPR) came into force in the UK on 25 May 2018, not all contracts have addressed the issues raised by the new legislation. Those contracting for drone services, if they have not already, could consider re-examining service contracts to ensure that the drone service provider (who will most likely be processing data under the legislation), is under an explicit obligation to comply with the obligations set out in the GDPR, as well as the specific ICO data guidance for drones.

The contract can also deal with the risk and liability of the parties in respect of privacy or trespassing. Those contracting for drone service could consider clarifying the drafting so that it clearly outlines whose responsibility it is to mitigate such risks through operational measures and through obtaining any required licences or permissions from stakeholders or neighbours.

### [Insurance](#)

The appropriate party is obliged to insure all relevant risks under the drone services contract. Those contracting for drone services should ask themselves in particular whether damage to third party property, negligence and cyber risks are covered under the contract. Existing policies should also be checked for compatibility with drone operations, for example, do they contain any aircraft exclusions?

## CONSEQUENCES OF NON-COMPLIANCE

Breaches of the ANO 2016 could lead to penalties of up to £2,500 and/or charges of recklessly or negligently acting in a manner likely to endanger aircraft or person in an aircraft, the maximum sentence for which is 5 years in prison.

## AG SERVICES

If you would like to discuss any issues raised by the above, then please do get in contact using the information below. Follow our [Trends in Transport](#) series for further developments and commentary.

### **PAUL HIRST**

Partner, Head of Transport  
United Kingdom

+ 44 (0) 113 209 2466

[paul.hirst@addleshawgoddard.com](mailto:paul.hirst@addleshawgoddard.com)



### **LAUREN PAYNE**

Managing Associate, Infrastructure  
Projects & Energy

+ 44 (0) 20 7160 3480

[lauren.payne@addleshawgoddard.com](mailto:lauren.payne@addleshawgoddard.com)



### **RHIANNON GILLING**

Associate, Infrastructure Projects &  
Energy

+ 44 (0) 20 7788 5003

[rhiannon.gilling@addleshawgoddard.com](mailto:rhiannon.gilling@addleshawgoddard.com)



addleshawgoddard.com

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