

# Drones & Enforcement 2019

## Legal Framework

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# *Drones & Enforcement*

## Matters Covered

- Introduction
- Regulatory Framework
- Changes in the law
- Human Rights
- Future



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# Introduction

There have been some developments in the law and drones continue to dominate the news headlines. So, it is timely for an update.

Drones are appearing everywhere. Ironically both the blue light services and the criminal fraternity have taken up the opportunities of an eye in the sky and the ability to fly over fences and walls. Various emergency services are exploring the use of Drones for on the spot assessment of disaster zone for example the 2018 summer moorland fires and their use has been abused to the smuggling of drugs.



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# Introduction

Drones have an important role to play in acquiring data about property condition and use, they offer the option of a cost effective high quality surveying tool which can deliver a real time picture of land and buildings.

For example building condition can be checked in minutes in difficult to access places where otherwise scaffolding and costly methods would have to be utilised.

In extreme they can access places which would be hazardous to life such as toxic chemical leaks, fires and high levels of contamination or radioactivity.



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# Regulatory Framework

Drones are, in the UK unmanned aircraft controlled by an operator who will steer the aircraft in the air. This will be done by radio control and additional feedback by the drone utilising the Global Positioning Satellites i.e. GPS.

The principal UK legislation is set out in the Civil Aviation Act 1982. This gives power to the Secretary of State to make secondary legislation referred to as Air Navigation Orders.

The key legislation is the Air Navigation Order 2016 (S.I. 2016/765) (“2016 Order”). The 2016 Order replaced the Air Navigation Order 2009. This is amended by the Air Navigation Order (Amendment) 2018 (“2018 Order”) and brought with it changes which came into force on 30 July 2018. This year saw a further Air Navigation Order (Amendment) 2019 (“2019 Order”) which extended the flight restriction zone on small unmanned aircraft (SUA’s) around airfields and airports and extended it to 5km from runways and thresholds.



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# Regulatory Framework

The first point to be made is that any commercial activity with a drone is likely to be unlawful unless authorized by a permission granted by the Civil Aviation Authority (CAA), and that failing to comply with the Air Navigation Order is an offence - See Article 94 (5) and Article 7.

It is vital to ensure that you are in possession of the latest version of the Air Navigation Order as the 2019 amendments are substantial and change the amendment made in 2018.

The CAA published guidance CAP 1763 – Air Navigation Order 2018 and 2019 – Guidance for small Unmanned Aircraft Users.



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# Regulatory Framework

One key change is that flying of small unmanned aircraft which was regulated by articles 94 and 95 of the 2016 Order, previously applied to the “person in charge of” the aircraft.

The 2018 Order changes this approach, so that there will now be two new categories of person responsible that being the “remote pilot” (defined as an individual who remotely operates the aircraft’s flight controls, or who monitors its course while it is flying automatically and is able to intervene by operating the flight controls) and the “SUA operator” (defined as the person who has the management of the aircraft). What this means is that an owner of the drone say a local authority will have responsibility too for compliance with the Order with regard to the drone’s operation.



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# Regulatory Framework

Article 94 provides inter alia that the drone must be within sight of the remote pilot who must maintain direct, unaided visual contact with the unmanned aircraft sufficient to monitor its flight path in relation to other aircraft, persons, vehicles, vessels and structures for the purpose of avoiding collisions.

The convention for visual contact is normally taken to be within **500 m** horizontally and **400 ft** vertically of its remote pilot (i.e. the 'person in charge' of it). Operations above the ceiling must be approved either by the CAA /ATC /FIS - Art 94A(2) and see 94A (4)(a).

But if the weather or visibility is poor then the distance will need to be reduced too because Art 94 requires the remote pilot to be reasonably satisfied the flight is safe.

Yes, there's a mixture of metric for short distances and feet for altitude in the Air Navigation Orders. Be sure not to get them mixed up.



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# Changes in the Law

The big change in 2019 is in terms of the prohibition of use regarding the 7kg weight of the Drone has now gone and paragraphs 94 (4) & (4A) are completely deleted.

Thus the law applies to all small unmanned aircraft other than balloons or kites and a dry mass of 20Kg or less.

The number that matters now is 250 grams.

Simple guidance is provided on the CAA's Dronesafe Site see: <http://dronesafe.uk/> and a revised DroneCode is downloadable.



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# Changes in the Law

From 30th November 2019 small unmanned aircraft with a mass of 250 grams or more are prohibited from flying by the remote pilot, and the SUA operator from causing or permitting it to be flown, unless the SUA operator has a valid certificate of registration and the registration number is displayed on the drone and the remote pilot has a valid Acknowledgement of Competency. See Articles 94D & 94E.

Certificates of registration and Acknowledgements of Competency will be issued by the Civil Aviation Authority, but they will not be required to accept applications before 1st October 2019. Breach of the new Articles can be an offence under article 265 of the 2016 Order.

The CAA before issuing a permit will require an applicant to provide details of their Operations Manual (describing the operation and the processes/procedures) and evidence demonstrating the appropriate level of pilot competence (theoretical knowledge and flying skills).



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# Changes in the Law

It is entirely possible that drones used for public services will meet or exceed the 250-gram threshold particularly if there are attached payloads be it camera or surveillance equipment as it will count toward the gross weight.

It is therefore important to assess existing drones and consider in the procurement what the weight will be, because from the 30th November 2019 then both the remote pilot and the SUA operator will be criminally liable if they operate or cause or permit the flight of the drone without the necessary registration and acknowledgement of competency.



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# Changes in the Law

- **Protected Aerodromes**
- Regulations 94 A & 94 B changes the law significantly
  - Flight Restriction Zones
  - Protected aerodromes
  - 94A(7) Table
  - 94B Definitions
- Beware the zone will depend upon the runway(s). The key thing to understand is there could well be several airstrips including grass on smaller airfields. Farmers whose fields abut an airdrome need to ensure they have an up-to-date chart of the flight restrictions.



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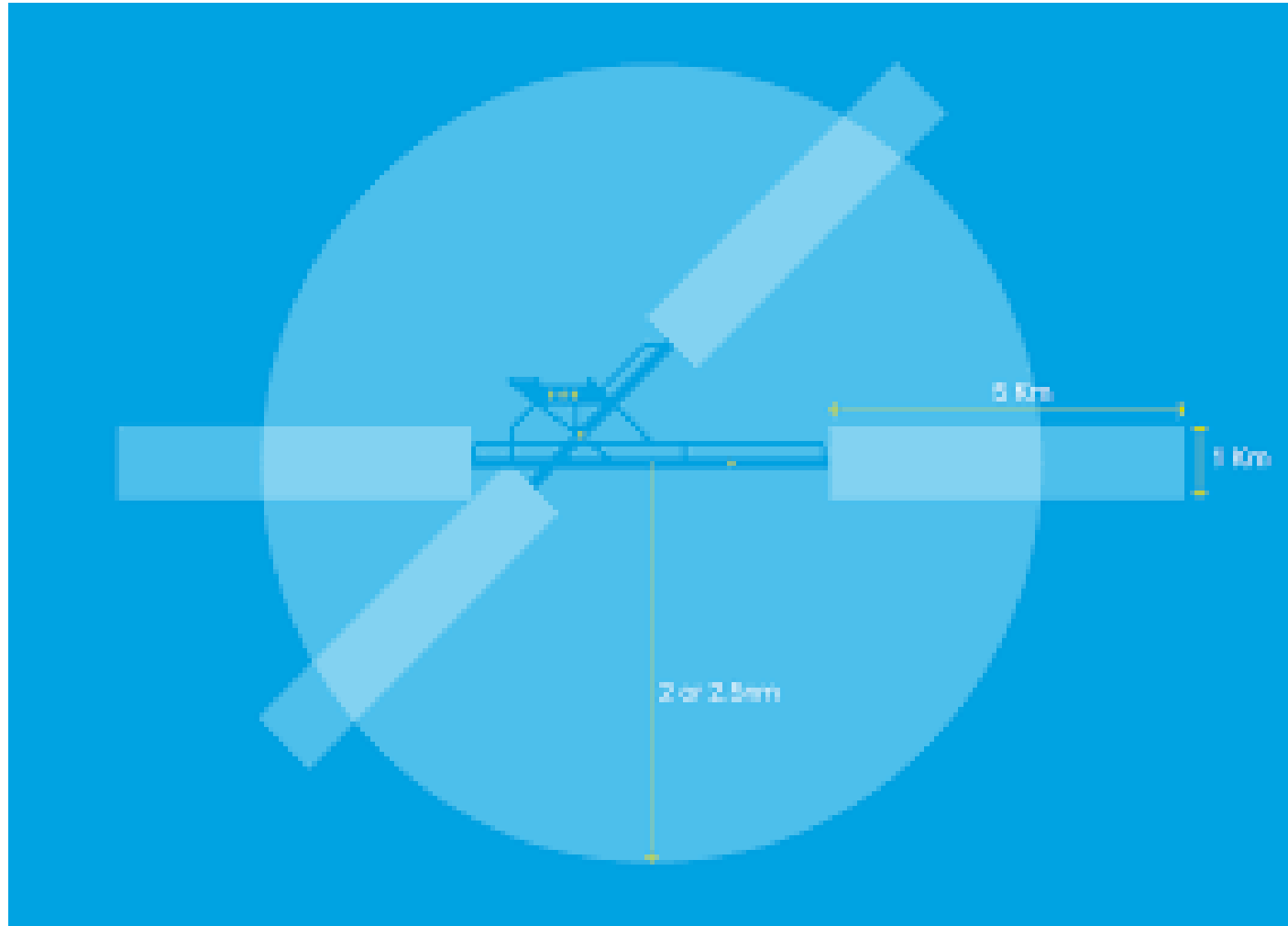
# Changes in the Law

- **Protected Aerodromes**
- **Go to CAA as first stop also see [Dronesafe.uk](https://www.dronesafe.uk)**
- **VFR Maps**
- **The Aerodrome Traffic Zone:** A 2 or 2.5 nautical mile radius 'cylinder' around the aerodrome, extending 2000 ft above ground level, centred on the longest runway.
- **Runway Protection Zones:** A rectangle extending 5Km from the threshold of the runway away from the aerodrome, along the extended runway centreline, and 500m either side- also to a height of 2000 ft above ground level.
- **Additional Zones:** In the case where the 1Km boundary of an aerodrome extends beyond the Aerodrome traffic zone, and so would not be protected by it, the flight restriction zone will include a 'bump' (the airfield boundary + 1KM) to protect this part of the aerodrome.



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# Changes in the Law



# Drones operation

## Where can a Drone Go?

There is no ownership of the airspace above your property, so, can a drone be shot down? The answer is no. A drone is still an aircraft so apart from the illegality of discharging firearms; it would amount to criminal damage.

Nevertheless, a drone hovering near a home could amount to a civil nuisance. Technology is being developed to bring drones down including jamming devices which either block the GPS signal and or that the drone pilot. However, that can lead to a heavy object out of control in the sky destined to lose attitude and eventually hit the ground. For the same reason flying net drones as developed in France carry similar dangers.

Interfering with a drone flight may also be an offence under Article 240 of the Air Navigation Order in endangering the aircraft (it does not matter that it is unmanned).



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# Drones and Information Commissioner (ICO)

The Air Navigation Order distinguishes drones which carry out surveillance. The ICO considers that drones if equipped with cameras are covered by the Data Protection Act 2018 and that users should operate them in a responsible way to respect the privacy of others. The ICO states:

The use of UAS [ unmanned surveillance aircraft ] have a high potential for collateral intrusion by recording images of individuals unnecessarily and therefore can be highly privacy intrusive, i.e. the likelihood of recording individuals inadvertently is high, because of the height they can operate at and the unique vantage point they afford. Individuals may not always be directly identifiable from the footage captured by UAS, but can still be identified through the context they are captured in or by using the devices ability to zoom in on a specific person. As such, it is very important that you can provide a strong justification for their use.



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# Drones and Information Commissioner (ICO)

Let people know before start recording.

Consider surroundings. a drone may intrude on the privacy of others (such as in their back garden). It is unlikely that you would want a drone to be hovering outside your window so be considerate to others and don't hover outside theirs.

know the camera power. It is a good idea to get to know the capability of the camera in a controlled situation to understand how it works. What is the quality of the image? How powerful is the zoom? Is there control when it starts and stops recording? Drone cameras can be capable of taking unusual and creative pictures from original vantage points.

Plan the flight. drone's battery life is likely to be short. By understanding its capabilities you will be able to make best use of its flight and it will be easier to plan how to avoid invading the privacy of other people.

Sharing. Once the drone has landed, care needs to be taken with the images, particularly if you're thinking about posting them on social media. Apply the same common sense approach as with images or video recorded by a smartphone or digital camera.



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# Drones and Information Commissioner (ICO)

The ICO advises:

Keep the images safe. The images may be saved on an SD card or USB drive attached to the drone or the camera. If they are not necessary, then delete them. If kept, then make sure they are in a safe place.

Data Controller. As with personal use, if using drone for a more formal, professional purpose, then it is important that legal obligations as a data controller are understood.

For more information. [the CCTV code](#) (for organizations), which has a section about drones (referred to as UAS in the code).

For public authorities it is important to remember that they will be bound by the Human Rights Act and the European Convention on Human Rights Article 8 (respect for Private and Family life etc). In addition, the use of drones for investigatory work is almost certainly going raise the question as to whether it will amount to directed surveillance pursuant to the Regulation of Investigatory Powers Act 2000 and so necessary authority will need to be acquired.



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# Drones – Directed Surveillance

## The 2018 Home Office Guidance

“3.18 Where surveillance using airborne crafts or devices, for example helicopters or unmanned aircraft (colloquially known as ‘drones’), is planned, the same considerations outlined in chapters 3 and 5 of this code should be made to determine whether a surveillance authorisation is appropriate. In considering whether the surveillance should be regarded as covert, account should be taken of the reduced visibility of a craft or device at altitude. (See also 3.36 to 3.39 of this code with regard to overt surveillance cameras.)”

### **“Aerial covert surveillance**

***Example:*** *An unmanned aircraft deployed by a police force to monitor a subject of interest at a public demonstration is likely to require an authorisation for directed surveillance, as it is likely that private information will be obtained and those being observed are unaware it is taking place, regardless of whether the drone is marked as belonging to the police force. Unless sufficient steps have been taken to ensure that participants in the demonstration are aware that aerial surveillance will be taking place, such activity should be regarded as covert.”*

# Drones- Directed Surveillance

The Regulation of Investigatory Procedures requires that for Directed Surveillance a threshold in terms of the seriousness of offences applies. For LPA's the only offences which meet the threshold relate to protection of ancient monuments and conservation zones (Hallwood QC on Enforcement).

Thus if a drone is going to be used in connection with planning breaches, following the 2018 Home Office Guidance it needs not to be covert.

Options could include bright colours and flashing lights (?) but the key thing is it needs to be visible.



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# Drones operation

**A review is in progress and there are moves to develop the common law to address the current lacuna particularly with regard to the issue of privacy. In the United States there have been calls to treat the drone as a privacy catalyst, that is to say that a key definition of privacy is not to be bothered unnecessarily and unmanned surveillance aircraft are doing precisely that.**

And contrary to ANO 2016 Article 95(2)(c) not to be within 50 m of structure not controlled by operator.

# See Professor Ryan Calo University of Washington see 2011 64 Stanford Law Review Online 29



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# Drones and Enforcement 2019

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# Any Questions?



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