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STATUTORY INSTRUMENTS

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**2007 No. 3468**

**The Air Navigation (Overseas Territories) Order 2007**

PART XVII

GENERAL

**Flights over any foreign country**

**138.**—(1) The operator and the pilot-in-command of an aircraft registered in the Territory (or, if the operator's principal place of business or permanent residence is in the Territory, any other aircraft) which is being flown over any foreign country shall not allow that aircraft to be used for a purpose which is prejudicial to the security, public order or public health of, or to the safety of air navigation in relation to, that country.

(2) A person does not contravene paragraph (1) if he neither knew nor suspected that the aircraft was being or was to be used for a purpose referred to in paragraph (1).

(3) The operator and the pilot-in-command of an aircraft registered in the Territory (or, if the operator's principal place of business or permanent residence is in the Territory, any other aircraft) which is being flown over any foreign country shall comply with any directions given by the appropriate aeronautical authorities of that country whenever—

- (a) the flight has not been duly authorised; or
- (b) there are reasonable grounds for the appropriate aeronautical authorities to believe that the aircraft is being or will be used for a purpose which is prejudicial to the security, public order or public health of, or to the safety of air navigation in relation to, that country;

unless the lives of persons on board or the safety of the aircraft would thereby be endangered.

(4) A person does not contravene paragraph (3) if he neither knew nor suspected that directions were being given by the appropriate aeronautical authorities.

(5) The requirement in paragraph (3) is without prejudice to any other requirement to comply with directions of an aeronautical authority.

(6) In this article 'appropriate aeronautical authorities' includes any person, whether a member of a country's military or civil authorities, authorised under the law of the foreign country to issue directions to aircraft flying over that country.

**Mandatory reporting**

**139.**—(1) The objective of this article is to contribute to the improvement of air safety by ensuring that the relevant information on safety is reported, collected, stored, protected and disseminated.

(2) The sole objective of occurrence reporting is the prevention of accidents and incidents and not to attribute blame or liability.

(3) Every person listed below shall report to the Governor any event which constitutes an occurrence for the purposes of paragraph (4) and which comes to his attention in the exercise of his functions—

- (a) the operator and the pilot-in-command of an aircraft which has a certificate of airworthiness or permit to fly issued by the Governor;
  - (b) the operator and the pilot-in-command of an aircraft operated under an air operator's certificate granted by the Governor;
  - (c) a person who carries on in the Territory the business of manufacturing, repairing or overhauling an aircraft referred to in sub-paragraphs (a) or (b), or any equipment or part thereof;
  - (d) a person who carries on the business of maintaining or modifying an aircraft that has a certificate of airworthiness or permit to fly issued by the Governor and a person who carries on the business of maintaining or modifying any equipment or part of such an aircraft;
  - (e) a person who carries on the business of maintaining or modifying an aircraft, operated under an air operator's certificate granted by the Governor, and a person who carries on the business of maintaining or modifying any equipment or part of such an aircraft;
  - (f) a person who signs an airworthiness report or a certificate of release to service in respect of such an aircraft, part or equipment;
  - (g) a person who performs a function for which he requires an air traffic controller's licence or to be authorised as a flight information service officer;
  - (h) an aerodrome certificate holder, operator or manager of a certificated or licensed aerodrome;
  - (i) a person who performs a function connected with the installation, modification, maintenance, repair, overhaul, flight checking or inspection of air navigation facilities which are utilised by a person who provides an air traffic control service under an approval issued by the Governor;
  - (j) a person who performs a function in respect of the ground-handling of aircraft, including fuelling, servicing, load sheet preparation, de-icing and towing.
- (4) In this article 'reportable occurrence' means—
- (a) any incident relating to such an aircraft or any defect in or malfunctioning of such an aircraft or any part or equipment of such an aircraft, being an incident, malfunctioning or defect endangering, or which if not corrected would endanger, the aircraft, its occupants or any other person; and
  - (b) any defect in or malfunctioning of any facility on the ground used or intended to be used for purposes of or in connection with the operation of such an aircraft, being a defect or malfunctioning endangering, or which if not corrected would endanger, such an aircraft or its occupants.
- (5) Any accident or serious incident notified to the Governor in pursuance of regulations made under section 75 of the Civil Aviation Act 1982(1) shall not constitute a reportable occurrence for purposes of this article.
- (6) Reports of occurrences shall be made within such time, by such means and containing such information as may be specified by the Governor and shall be presented in such form as the Governor may in any particular case approve.
- (7) Nothing in this article shall require a person to report any occurrence which he has reason to believe has been or will be reported by another person to the Governor in accordance with this article.
- (8) A person shall not make any report under this article if he knows or has reason to believe that the report is false in any particular.

(9) Without prejudice to article 56 and subject to article 120 and paragraph 10, the operator of an aircraft shall, if he has reason to believe that a report has been or will be made in pursuance of this article, preserve any data from a flight data recorder or a combined cockpit voice recorder/flight data recorder relevant to the reportable occurrence for 14 days from the date on which a report of that occurrence is made to the Governor or for such longer period as the Governor may in a particular case direct.

(10) The record referred to in paragraph 9 may be erased if the aircraft is outside the Territory and it is not reasonably practicable to preserve the record until the aircraft reaches the Territory.

### **Mandatory reporting of birdstrikes**

**140.**—(1) The pilot-in-command of an aircraft shall make a report to the Governor of any birdstrike occurrence which occurs whilst the aircraft is in flight within the Territory.

(2) The report shall be made within such time, by such means and shall contain such information as may be specified by the Governor and it shall be presented in such form as the Governor may in a particular case approve.

(3) Nothing in this article shall require a person to report any occurrence which he has reported under article 139 or which he has reason to believe has been or will be reported by another person to the Governor in accordance with that article.

(4) A person shall not make any report under this article if he knows or has reason to believe that the report is false in any particular.

(5) In this article “birdstrike occurrence” means an incident in flight in which the pilot-in-command of an aircraft has reason to believe that the aircraft has been in collision with one or more than one bird.

### **Power to prevent aircraft flying**

**141.**—(1) If it appears to the Governor or an authorised person that any aircraft is intended or likely to be flown—

- (a) in such circumstances that any provision of article 3, 5, 7, 20, 21, 56, 57, 58, 64, 127(2), 135, 137 or 138 would be contravened in relation to the flight;
- (b) in such circumstances that the flight would be in contravention of any other provision of this Order or of any regulations made thereunder, and be a cause of danger to any person or property whether or not in the aircraft; or
- (c) while in a condition unfit for the flight, whether or not the flight would otherwise be in contravention of any provision of this Order, or of any regulations made thereunder;

the Governor or that authorised person may direct the operator or the pilot-in-command of the aircraft that he is not to permit the aircraft to make the particular flight or any other flight of such description as may be specified in the direction, until the direction has been revoked by the Governor or by an authorised person, and the Governor or that authorised person may take such steps as are necessary to detain the aircraft.

(2) For the purposes of paragraph (1) the Governor or any authorised person may enter upon and inspect any aircraft.

### **Right of access to aerodromes and other places**

**142.**—(1) The Governor and any authorised person shall have the right of access at all reasonable times—

- (a) to any aerodrome, for the purpose of inspecting the aerodrome;

- (b) to any aerodrome for the purpose of inspecting any aircraft on the aerodrome or any document which he has power to demand under this Order, or for the purpose of detaining any aircraft under the provisions of this Order;
  - (c) to any place where an aircraft has landed, for the purpose of inspecting the aircraft or any document which he has power to demand under this Order and for the purpose of detaining the aircraft under the provisions of this Order;
  - (d) to any building or place from which an air traffic control service is being provided or where any aeronautical telecommunications service requiring approval under article 101 is situated for the purpose of inspecting—
    - (i) any equipment used or intended to be used in connection with the provision of a service to an aircraft in flight or on the ground; or
    - (ii) any document or record which it or he has power to demand under this Order.
- (2) Access to a Government aerodrome shall only be obtained with the permission of the person in charge of the aerodrome.

#### **Extra-territorial effect of the Order**

**143.**—(1) Except where the context otherwise requires, the provisions of this Order—

- (a) insofar as they apply (whether by express reference or otherwise) to aircraft registered in the Territory, apply to such aircraft wherever they may be;
- (b) insofar as they apply to other aircraft apply to such other aircraft when they are within the Territory or on or in the neighbourhood of an offshore installation;
- (c) insofar as they prohibit, require or regulate (whether by express reference or otherwise) the doing of anything by persons in or by any of the crew of, any aircraft registered in the Territory, apply to such persons and crew, wherever they may be; and
- (d) insofar as they prohibit, require or regulate the doing of anything in relation to any aircraft registered in the Territory by other persons shall, where such persons are Commonwealth citizens or British protected persons, apply to them wherever they may be.

(2) Nothing in this article shall be construed as extending to make any person guilty of an offence in any case in which it is provided by section 3(1) of the British Nationality Act 1948<sup>(2)</sup> (which limits the criminal liability of certain persons who are not citizens of the United Kingdom and colonies) that that person shall not be guilty of an offence.

#### **Application of Order to British-controlled aircraft not registered in the Territory**

**144.** The Governor may direct that such of the provisions of this Order and of any regulations made or having effect thereunder as may be specified in the direction shall have effect as if reference in those provisions to aircraft registered in the Territory included references to the aircraft specified in the direction, being an aircraft not so registered but for the time being under the management of a person who, or of persons each of whom, is qualified to hold a legal or beneficial interest by way of ownership in an aircraft registered in the Territory.

#### **Application of Order to the Crown and visiting forces, etc.**

**145.**—(1) Subject to the following provisions of this article, the provisions of this Order apply to or in relation to aircraft belonging to or exclusively employed in the service of Her Majesty as they apply to or in relation to other aircraft.

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(2) 1948 c.56.

(2) For the purposes of such application, the Department or other authority for the time being responsible on behalf of Her Majesty for the management of the aircraft shall be deemed to be the operator of the aircraft and, in the case of an aircraft belonging to Her Majesty, to be the owner of the interest of Her Majesty in the aircraft.

(3) Nothing in this article shall render liable to any penalty any department or other authority responsible on behalf of Her Majesty for the management of any aircraft.

(4) Save as otherwise expressly provided the naval, military and air force authorities and members of any visiting force and any international headquarters and the members thereof and property held or used for the purpose of such a force or headquarters shall be exempt from the provisions of this Order and of any regulations made thereunder to the same extent as if that force or headquarters formed part of the forces of Her Majesty raised in the United Kingdom and for the time being serving in the Territory.

(5) Save as otherwise provided by paragraph (6), article 31(3)(a), article 63(5), (9) and (10), and article 109 and the Rules of the Air, nothing in this Order applies to or in relation to any military aircraft.

(6) Where a military aircraft is flown by a civilian pilot and is not commanded by a person who is acting in the course of his duty as a member of any of Her Majesty's naval, military or air forces or as a member of a visiting force or international headquarters, the following provisions of this Order apply on the occasion of that flight, that is to say, articles 38 and 37 and articles 125, 126, and 127 apply unless the aircraft is flown in compliance with Military Flying Regulations (Joint Service Publication 550) or Flying Orders to Contractors (Aviation Publication 67) issued by the Secretary of State.

### **Exemption from Order**

**146.** The Governor may exempt from any of the provisions of this Order (other than articles 35, 36, 123, 135, 136, 137, 138, and 147) or any regulations made thereunder, any aircraft or persons or classes of aircraft or persons, either absolutely or subject to such conditions as he thinks fit.

### **Appeal to Supreme Court**

**147.—(1)** An appeal shall lie to the Supreme Court or to such other court as may be prescribed from any decision of the Governor that a person is not a fit person to hold a licence to act as an aircraft maintenance engineer, member of the flight crew of an aircraft, air traffic controller, student air traffic controller or aerodrome flight information service officer, and if the court is satisfied that on the evidence submitted to the Governor he was wrong in so deciding, the court may reverse the Governor's decision and the Governor shall give effect to the court's determination.

(2) An appeal shall not lie from a decision of the Governor that a person is not qualified to hold the licence by reason of a deficiency in his knowledge, experience, competence, skill, physical or mental fitness.

(3) The respondent to any appeal under this article shall be the Attorney General or other principal legal officer of the Government of the Territory.

(4) For the purposes of any provision relating to the time within which an appeal may be brought, the Governor's decision shall be deemed to have been taken on the date on which the Governor furnished a statement of his reasons for the decision to the applicant for the licence, or as the case may be, the holder or former holder of it.

### **Application of Order**

**148.** The provisions of this Order apply to the Territories mentioned in Schedule 12, any one of which is in this Order referred to in the expression "the Territory".

### **Regulations by the Governor: Fees**

**149.**—(1) The Governor may make regulations for prescribing anything that, under the provisions of this Order, is to be prescribed.

(2) The Governor, with the approval of a Secretary of State, may make regulations amending the Air Navigation (General) Regulations in Schedule 9 to this Order.

(3) Without prejudice to the generality of paragraph (1) of this article, such regulations may prescribe the fees to be charged in connection with the issue, validation, renewal, extension or variation of any certificate, licence or other document (including the issue of a copy thereof), or the undergoing of any examination, test, inspection or investigation or the grant of any permission or approval, required by, or for the purpose of, this Order or any regulations made hereunder.

(4) Upon an application being made in connection with which any fee is chargeable in accordance with the said provisions the applicant may be required before the application is entertained to pay the whole or to deposit a portion of the fee or fees so chargeable.

(5) If, after payment or deposit has been made under paragraph (4), the application is withdrawn by the applicant or otherwise ceases to have effect or is refused by the Governor, the Governor may, subject as hereinafter provided, refund the amount of such payment or deposit.

(6) Where the amount paid or deposited under paragraph (4) is wholly or to any extent attributable to a fee chargeable in respect of an investigation which would have been carried out in connection with the application if it had not been so withdrawn or ceased to have effect or been refused but which has not been carried out by reason only of such withdrawal, cessation or refusal, the Governor may refund the amount so attributable or, subject to paragraph (7), in a case where an investigation has been partially completed, so much of that amount as in the opinion of the Governor is reasonable having regard to the stage to which the investigation has progressed at the time of such withdrawal, cessation or refusal.

(7) If in any case the amount deposited by the applicant is not sufficient to cover the fee, as ultimately assessed, chargeable in respect of any investigation in so far as the same has been carried out at the time when the application is withdrawn by him or otherwise ceases to have effect or is refused by the Governor the amount representing the balance of such fee shall be payable by the applicant.

(8) In this article the expression “investigation” includes an inspection, examination, calculation or test.

### **Exceptions for certain classes of aircraft**

**150.** The provisions of this Order other than articles 38(1), 39, 40, 78, 126, 141(1)(b), 156(1), (4) and (7) do not apply to or in relation to—

- (a) any small balloon;
- (b) any kite weighing not more than 2 kg;
- (c) any small aircraft; or
- (d) any parachute, including a parascending parachute.

### **Approval for persons to furnish reports**

**151.** In relation to any of his functions under any of the provisions of this Order the Governor may approve a person as qualified to furnish reports to him and may accept such reports.

### **Publication of requirements**

**152.**—(1) Where any provision of this Order provides for the Governor to grant a certificate, licence or other document if he is satisfied as to matters specified in the provision, he shall before determining whether to effect that grant—

- (a) publish the requirements which he considers relevant to determining his satisfaction in respect of those matters in the publication issued in the Territory concerned known as “OTARs (Overseas Territories Aviation Requirements)”; and
- (b) take into account those requirements.

(2) Nothing in this article shall require the Governor to publish requirements in respect of a licence, certificate or other document if he does not exercise his powers to grant the licence, certificate or document in question.

### **Designation by the Governor**

**153.**—(1) Subject to paragraphs (3) and (4), the Governor, acting in his discretion, may designate a person to carry out those functions of the Governor under this Order that are specified in the designation, subject to such conditions as he sees fit.

(2) Subject to paragraph (3), the Governor may revoke or vary a designation made under paragraph (1).

(3) Before making, revoking or varying a designation made under paragraph (1), the Governor shall consult with, and take into account any advice given by, ASSI.

(4) The Governor may not include in any designation made under paragraph (1) the functions of the Governor—

- (a) to make rules, orders or regulations or give instructions under this Order; or
- (b) under this article or articles 113, 152 or 154.

### **Review by the Governor**

**154.**—(1) Where any person designated under article 153(1)—

- (a) decides that it would be inexpedient in the public interest to register an aircraft in a Territory; or
- (b) refuses an application for the grant, validation or variation of a licence, certificate, approval, authorisation or rating; or
- (c) decides to cancel the registration of an aircraft; or
- (d) decides to revoke, suspend or vary a licence, certificate, approval, authorisation, validation or rating otherwise than on the application of the holder;

the person designated shall serve on the person concerned a notice stating the reasons for the decision and the person concerned may within 14 days of the date of the service of the notice, serve on the Governor a request that the decision be reviewed by the Governor.

(2) Where such a request under paragraph (1) has been duly served the Governor shall, before making a decision, consider any oral representations which may be made to him or any representations in writing which may have been served upon him by the person concerned within 21 days after the date of service of the request and may, before making a decision, consider the advice of such technical assessors as the Governor may appoint to advise him provided that the Governor shall not appoint as an assessor any person who participated in the decision or proposal or in giving or assessing any test or examination which is to be the subject of the Governor’s decision.

### Arrangements for giving effect to the Convention

**155.**—(1) The Governor shall within the Territory issue such instructions or make such arrangements as are necessary, requisite or expedient for carrying out the Chicago Convention and implementing any Annex thereto and any amendment to the Convention, or any such Annex made in accordance with the Convention, or generally for regulating and securing the safety of international air navigation in accordance with the provisions of section 8(1) of the Act.

(2) Under the provisions of paragraph (1) the Governor shall in particular—

- (a) provide or secure the provision of a meteorological service to meet the needs of international air navigation and with due regard to regional air navigation agreements and shall designate the appropriate authority to provide or arrange for the provision of such meteorological service;
- (b) ensure the availability in the Territory of aeronautical charts;
- (c) arrange for the establishment and provision of search and rescue services within the Territory, and in such portions of the high seas that are the responsibility of the Territory under regional air navigation agreements;
- (d) provide an aeronautical information service or agree with one or more other Contracting States for the provision of a joint service, or delegate the authority for the provision of the service to a non-governmental agency.

(3) The Governor shall arrange for the details of the services and arrangements provided in accordance with paragraph (2) to be included in the Aeronautical Information Publication relating to the Territory.

### Interpretation

**156.**—(1) In this Order, unless the context otherwise requires—

“The Act” means the Civil Aviation Act 1949(3);

“Aerial work” has the meaning assigned to it by article 157;

“Aerial work aircraft” means an aircraft (other than a commercial air transport aircraft) flying, or intended by the operator to fly, for the purpose of aerial work;

“Aerial work undertaking” means an undertaking whose business includes the performance of aerial work;

“Aerobatic manoeuvres” includes loops, spins, rolls, bunts, stall turns, inverted flying and any other similar manoeuvre;

“Aerodrome” means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft and includes any area or space, whether on the ground, on the roof of a building or elsewhere, which is designed, equipped or set apart for affording facilities for the landing and departure of aircraft capable of descending or climbing vertically, but shall not include any area the use of which for affording facilities for the landing and departure of aircraft has been abandoned and has not been resumed;

“Aerodrome control service” means an air traffic control service for any aircraft on the manoeuvring area or apron of the aerodrome in respect of which the service is being provided or which is flying in, or in the vicinity of, the aerodrome traffic zone of that aerodrome by visual reference to the surface;

“Aerodrome operating minima” in relation to the operation of an aircraft at an aerodrome means the cloud ceiling and runway visual range for take-off, and the decision height or



minimum descent height, runway visual range and visual reference for landing, which are the minimum for the operation of that aircraft at that aerodrome;

“Aerodrome traffic zone” means the airspace specified below, being airspace in the vicinity of an aerodrome which is notified for the purposes of rule 39 of the Rules of the Air—

- (a) in relation to such an aerodrome at which the length of the longest runway is notified as 1850 metres or less—
  - (i) subject to sub-paragraph (ii), the airspace extending from the surface to a height of 2000 ft above the level of the aerodrome within the area bounded by a circle centred on the notified mid-point of the longest runway and having a radius of 2 nautical miles;
  - (ii) where such an aerodrome traffic zone would extend less than 1½ nautical miles beyond the end of any runway at the aerodrome and this sub-paragraph is notified as being applicable, sub-paragraph (b) applies as though the length of the longest runway is notified as greater than 1850 metres;
- (b) in relation to such an aerodrome at which the length of the longest runway is notified as greater than 1850 metres, the airspace extending from the surface to a height of 2000 ft above the level of the aerodrome within the area bounded by a circle centred on the notified mid-point of the longest runway and having a radius of 2½ nautical miles;

except any part of that airspace which is within the aerodrome traffic zone of another aerodrome which is notified for the purposes of this Order as being the controlling aerodrome;

“Aeronautical beacon” means an aeronautical ground light which is visible either continuously or intermittently to designate a particular point on the surface of the earth;

“Aeronautical ground light” means any light specifically provided as an aid to air navigation, other than a light displayed on an aircraft;

“Aeronautical radio station” means a radio station on the surface, which transmits or receives signals for the purpose of assisting aircraft;

“Air traffic control unit” means a person appointed by the Governor or by any other person maintaining an aerodrome or place to give instructions, advice or information by means of radio signals to aircraft in the interests of safety but does not include a person so appointed solely to provide a flight information service to aircraft, and ‘air traffic control service’ shall be construed accordingly;

“Air transport undertaking” means an undertaking whose business includes the undertaking of flights for the purposes of commercial air transport of passengers or cargo;

“Altitude hold and heading mode” mean aircraft autopilot functions that enable the aircraft to maintain an accurate height and an accurate heading;

“Annual costs” in relation to the operation of an aircraft means the best estimate reasonably practicable at the time of a particular flight in respect of the year commencing on the first day of January preceding the date of the flight, of the costs of keeping and maintaining and the indirect costs of operating the aircraft, such costs in either case excluding direct costs and being those actually and necessarily incurred without a view to profit;

“Annual flying hours” means the best estimate reasonably practicable at the time of a particular flight by an aircraft of the hours flown or to be flown by the aircraft in respect of the year commencing on the first day of January preceding the date of the flight;

“Approach control service” means an air traffic control service for any aircraft which is not receiving an aerodrome control service, which is flying in, or in the vicinity of the aerodrome traffic zone of the aerodrome in respect of which the service is being provided, whether or not the aircraft is flying by visual reference to the surface;

“Approach to landing” means that portion of the flight of the aircraft when approaching to land, in which it is descending below a height of 1000 ft above the relevant specified decision height or minimum descent height;

“Appropriate aeronautical radio station” means in relation to an aircraft an aeronautical radio station serving the area in which the aircraft is for the time being;

“Appropriate air traffic control unit” means in relation to an aircraft either the air traffic control unit notified as serving the area in which the aircraft is for the time being, or the air traffic control unit notified as serving the area which the aircraft intends to enter and with which unit the aircraft is required to communicate prior to entering that area, as the case may be;

“Apron” means the part of an aerodrome provided for the stationing of aircraft for the embarkation and disembarkation of passengers, for loading and unloading of cargo and for parking;

“Area control centre” means an air traffic control unit established to provide an area control service to aircraft flying within a notified flight information region which are not receiving an aerodrome control service or an approach control service;

“Area control service” means an air traffic control service for any aircraft which is flying neither in nor in the vicinity of an aerodrome traffic zone except for an aerodrome traffic zone which has been notified as being subject to an area control service;

“Area navigation equipment” means equipment carried on board an aircraft which enables the aircraft to navigate on any desired flight path within the coverage of appropriate ground based navigation aids or within the limits of that on-board equipment or a combination of the two;

“ASSI” means Air Safety Support International, being a wholly owned subsidiary company of the Civil Aviation Authority formed in accordance with a direction given by the Secretary of State to the Civil Aviation Authority under section 6(2)(c) of the Civil Aviation Act 1982(4) on 2 January 2003;

“Authorised person” means any person authorised by the Governor either generally or in relation to a particular case or class of cases, and references to a person authorised by the Governor include references to the Director of Civil Aviation in the Territory and the holder for the time being of any office designated by the Governor;

“Beneficial interest” includes interests arising under contract and other equitable interests;

“Cabin crew” in relation to an aircraft means those persons on a flight carried for the purpose of performing in the interests of the safety of passengers duties to be assigned by the operator or the pilot-in-command of the aircraft but who shall not act as a member of the flight crew;

“Captive balloon” means a balloon which when in flight is attached by a restraining device to the surface;

“Captive flight” means flight by an uncontrollable balloon during which it is attached to the surface by a restraining device;

“Cargo” includes mail and animals;

“Certificated aerodrome” means an aerodrome certificated under this Order;

“Certificate of airworthiness” includes any validation thereof and any flight manual, performance schedule or other document, whatever its title, incorporated by reference in that certificate relating to the certificate of airworthiness;

“Certificate of release to service issued under the Order” has the meaning assigned to it by article 12(6);

“Certificated for single pilot operation” means an aircraft that is not required to carry more than one pilot by virtue of any one or more of the following—

- (a) the certificate of airworthiness duly issued or rendered valid under the law of the country in which the aircraft is registered;
- (b) if no certificate of airworthiness is required to be in force, the certificate of airworthiness, if any, last in force in respect of the aircraft;
- (c) if no certificate of airworthiness is or has previously been in force but the aircraft is identical in design with an aircraft in respect of which such a certificate is or has been in force, the certificate of airworthiness which is or has been in force in respect of such an identical aircraft; or
- (d) in the case of an aircraft flying in accordance with the conditions of a permit to fly issued by the Governor, that permit to fly;

“Circling approach” means an extension of an instrument approach procedure which provides for visual circling by an aircraft of an aerodrome prior to landing;

“The Civil Aviation Authority” means the body corporate constituted in accordance with the provisions of section 2 of the Civil Aviation Act 1982<sup>(5)</sup>;

“Class A airspace”, “Class B airspace”, “Class C airspace”, “Class D airspace” and “Class E airspace” mean airspace respectively notified as such;

“Cloud ceiling” in relation to an aerodrome means the vertical distance from the elevation of the aerodrome to the lowest part of any cloud visible from the aerodrome which is sufficient to obscure more than one-half of the sky so visible;

“Commercial air transport” has the meaning assigned to it by articles 157 to 163;

“Commercial air transport aircraft” means an aircraft flying, or intended by the operator of the aircraft to fly, for the purpose of commercial air transport;

“the Commonwealth” means the United Kingdom, the Channel Islands, the Isle of Man, the countries mentioned in Schedule 3 to the British Nationality Act 1981<sup>(6)</sup> and all other territories forming part of Her Majesty’s dominions or in which Her Majesty has jurisdiction;

“Competent authority” means in relation to the Territory, the Governor, and in relation to any other country the authority responsible under the law of that country for promoting the safety of civil aviation;

“Conditional sale agreement” has the same meaning as in section 189 of the Consumer Credit Act 1974<sup>(7)</sup>;

“Congested area” in relation to a city, town or settlement, means any area that is substantially used for residential, industrial, commercial or recreational purposes;

“Contracting State” means any State (including the United Kingdom and any of the Territories) that is a party to the Convention on Civil Aviation signed on behalf of the Government of the United Kingdom at Chicago on 7 December 1944;

“Controllable balloon” means a balloon, not being a small balloon, which is capable of free controlled flight;

“Controlled airspace” means airspace that has been notified as Class A, Class B, Class C, Class D or Class E airspace;

“Control area” means controlled airspace that has been further notified as a control area and which extends upwards from a notified altitude or flight level;

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(5) 1982 c. 16

(6) 1981 c. 61.

(7) 1974 c. 39.

“Control zone” means controlled airspace which has been further notified as a control zone and which extends upwards from the surface;

“Co-pilot” in relation to an aircraft means a pilot who in performing his duties as such is subject to the direction of another pilot carried in the aircraft;

“Country” includes a territory, except in paragraph (3)(b);

“Crew” means a member of the flight crew, a person carried on the flight deck whom the operator of the aircraft appoints to give or to supervise the training experience, practice and periodical tests required in respect of the flight crew under article 70(3) of this Order, or a member of the cabin crew or a task specialist;

“Danger area” means airspace which has been notified as such within which activities dangerous to the flight of aircraft may take place or exist at such times as may be notified;

“Day” means the time from half an hour before sunrise until half an hour after sunset (both times exclusive), sunset and sunrise being determined at surface level;

“Decision height” in relation to the operation of an aircraft at an aerodrome means the height in a precision approach at which a missed approach must be initiated if the required visual reference to continue that approach has not been established;

“Declared distances” has the meaning that has been notified;

“Designated required navigation performance airspace” means airspace that has been notified, prescribed or otherwise designated by the competent authority for the airspace as requiring specified navigation performance capabilities to be met by aircraft flying within it;

“Direct costs” means, in respect of a flight, the costs actually and necessarily incurred in connection with that flight without a view to profit but excluding any remuneration payable to the pilot for his services as such;

“Director” has the same meaning as in section 53(1) of the Companies Act 1989<sup>(8)</sup>;

“Flight” and “to fly” have the meanings respectively assigned to them by paragraph (4);

“Flight crew” means, in relation to an aircraft, those members of the crew of the aircraft who respectively undertake to act as pilot, flight navigator, flight engineer and flight radiotelephony operator of the aircraft;

“Flight information service unit” means a person appointed by the Governor or by any other person maintaining an aerodrome or area control centre—

- (a) in the case of such a unit appointed in respect of an aerodrome to—
  - (i) give information by means of radio signals to aircraft flying in or intending to fly within the aerodrome traffic zone of that aerodrome; and
  - (ii) grant or refuse permission, under Rule 35 or 36(2) of the Rules of the Air;
- (b) in the case of such a unit appointed in respect of an area control centre, to give information by means of radio signals to aircraft;

and “flight information service”, “aerodrome flight information service” and “aerodrome flight information service unit” shall be construed accordingly;

“Flight level” means one of a series of levels of equal atmospheric pressure, separated by notified intervals and each expressed as the number of hundreds of feet which would be indicated at that level on a pressure altimeter calibrated in accordance with the International Standard Atmosphere and set to 1013.2 hectopascals;

“Flight manual” means a manual approved by the state of type certification for the aircraft, associated with the certificate of airworthiness, containing limitations within which the aircraft

may be considered airworthy, and instructions and information necessary to the flight crew for the safe operation of the aircraft;

“Flight plan” means such information as may be notified in respect of an air traffic control service unit being information provided or to be provided to that unit, relative to an intended flight or portion of a flight of an aircraft;

“Flight recording system” means a system comprising either a flight data recorder or a cockpit voice recorder or both;

“Flight simulator” means apparatus by means of which flight conditions in an aircraft are simulated on the ground;

“Flight visibility” means the visibility forward from the flight deck of an aircraft in flight;

“Flying display” means any flying activity deliberately performed for the purpose of providing an exhibition or entertainment at an advertised event open to the public;

“Free balloon” means a balloon which, when in flight, is not attached by any form of restraining device to the surface;

“Free controlled flight” means flight during which a balloon is not attached to the surface by any form of restraining device (other than a tether not exceeding 5 metres in length which may be used as part of the take-off procedure) and during which the height of the balloon is controllable by means of a device attached to the balloon and operated by the pilot-in-command of the balloon or by remote control;

“General lighthouse authority” has the same meaning as in section 193 of the Merchant Shipping Act 1995<sup>(9)</sup>;

“Governor” means the person for the time being administering the Government of the Territory and, in relation to such of the functions of the Governor under this Order as are specified in a designation made by the Governor under article 153, includes any person specified in that designation to carry out those functions;

“Hire-purchase agreement” has the same meaning as in section 189 of the Consumer Credit Act 1974<sup>(10)</sup>;

“Holding approach” means a predetermined manoeuvre which keeps an aircraft within a specified area of airspace while awaiting further clearance;

“Instructor’s rating” means a flying instructor’s rating, an assistant flying instructor’s rating, a flight instructor rating (aeroplane), a flight instructor rating (helicopter), a type rating instructor rating (multi-pilot aeroplane), a type rating instructor rating (helicopter), a class rating instructor rating (single pilot aeroplane), an instrument rating instructor rating (aeroplane) or an instrument rating instructor rating (helicopter);

“Instrument approach procedure” means a series of predetermined manoeuvres by reference to flight instruments, with specified protection from obstacles, from a specified point to a point from which a landing can be completed and thereafter, if a landing is not completed, to a position at which holding or other obstacle clearance criteria apply;

“Instrument flight procedure” means a generic term to include individually, in whole or in part, “instrument approach procedure”, “standard instrument arrival”, “standard instrument departure”, “circling approach” and “holding procedure” designed in accordance with International Civil Aviation Organisation Procedures for Air Navigation Services (PANS-OPS);

“IFR” means the Instrument Flight Rules;

“Instrument Flight Rules” means Instrument Flight Rules specified in the Rules of the Air;

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<sup>(9)</sup> 1995 c. 21.

<sup>(10)</sup> 1974 c. 39.

“Instrument Meteorological Conditions” means weather that precludes flight in compliance with the Visual Flight Rules;

“International headquarters” means an international headquarters designated by Order in Council under section 1 of the International Headquarters and Defence Organisations Act 1964(11), as extended to the Territory;

“To land” in relation to aircraft includes alighting on the water;

“Legal personal representative” means the person so constituted executor, administrator, or other representative, of a deceased person;

“Licence” includes any certificate of competency or certificate of validity issued with the licence or required to be held in connection with the licence by the law of the country in which the licence is granted;

“Lifejacket” includes any device designed to support a person individually in or on the water;

“Log book” in the case of an aircraft log book, engine log book or variable pitch propeller log book, or personal flying log book, includes a record kept either in a book, or by any other means approved by the Governor in the particular case;

“Maintenance” means any one or combination of overhaul, repair, inspection, replacement, modification or defect rectification of an aircraft or component, with the exception of pre-flight inspection;

“Manoeuvring area” means the part of an aerodrome provided for the take-off and landing of aircraft and for the movement of aircraft on the surface, excluding the apron and any part of the aerodrome provided for the maintenance of aircraft;

“Maximum approved passenger seating configuration” means the maximum passenger seating capacity of an individual aircraft, excluding pilot seats or flight deck seats and cabin crew seats, as applicable, used by the operator, approved by the appropriate authority and specified in the operations manual or, if no such approval has been given, the maximum number of passengers that may be carried in an aircraft under and in accordance with its certificate of airworthiness, its flight manual and this Order;

“Maximum total weight authorised” in relation to an aircraft means the maximum total weight of the aircraft and its contents at which the aircraft may take off anywhere in the world, in the most favourable circumstances in accordance with the certificate of airworthiness in force in respect of the aircraft;

“Medical attendant” means a person carried on a flight for the purpose of attending to any person in the aircraft in need of medical attention, or to be available to attend to such a person;

“Microlight aeroplane” means an aeroplane designed to carry not more than two persons which has—

- (a) a maximum total weight authorised not exceeding—
  - (i) 300 kg for a single seat landplane;
  - (ii) 450 kg for a two seat landplane;
  - (iii) 330 kg for a single seat amphibian or floatplane; or
  - (iv) 495 kg for a two seat amphibian or floatplane; and
- (b) either a wing loading at the maximum total weight authorised not exceeding 25 kg per square metre or a stalling speed at the maximum total weight authorised not exceeding 35 knots calibrated airspeed;

“Military aircraft” means the naval, military or air force aircraft of any country and—

(a) any aircraft being constructed for the naval, military or air force of any country under a contract entered into by the Secretary of State; and

(b) any aircraft in respect of which there is in force a certificate issued by the Secretary of State that the aircraft is to be treated for the purposes of this Order as a military aircraft;

“Minimum descent height” in relation to the operation of an aircraft at an aerodrome means the height in a non-precision approach below which descent may not be made without the required visual reference;

“Multi-crew co-operation” means the functioning of the flight crew as a team of co-operating members led by the pilot-in-command;

“Nautical mile” means the International Nautical Mile, that is to say, a distance of 1852 metres;

“Night” means the time from half an hour after sunset until half an hour before sunrise (both times inclusive), sunset and sunrise being determined at surface level;

“Non-precision approach” means an instrument approach using non-visual aids for guidance in azimuth or elevation but which is not a precision approach;

“Non-revenue flight” means—

(a) in the case of a flight by an aeroplane, any flight which the holder of a Territory Private Pilot’s Licence (Aeroplanes) may undertake under paragraph (2)(a) and (b) of the privileges of that licence set out in Schedule 6;

(b) in the case of a flight by a helicopter, any flight which the holder of a Territory Private Pilot’s Licence (Helicopters) may undertake under paragraph (2)(a) and (b) of the privileges of that licence set out in Schedule 6; and

(c) in the case of a flight by a gyroplane, any flight which the holder of a Territory Private Pilot’s Licence (Gyroplanes) may undertake under paragraph (2)(a) and (b) of the privileges of that licence set out in Schedule 6;

“North Atlantic Minimum Navigation Performance Specification airspace” means the airspace specified as such in regulation 3 in Schedule 9;

“Notified” means shown in any of the following publications for the time being in force and issued in the Territory whether before or after the coming into operation of this Order, that is to say, “Notams (Notices to Airmen)”, “Aeronautical Information Publications (AIP)”, “OTARs (Overseas Territories aviation requirements)”, or such other official publications so issued for the purpose of enabling any of the provisions of this Order to be complied with;

“Operator” has the meaning assigned to it by paragraph (5);

“Operating staff” means the servants and agents employed by the operator, whether or not as members of the crew of the aircraft, to ensure that the flights of the aircraft are conducted in a safe manner, and includes an operator who himself performs those functions;

“OTAR” means Overseas Territories Aviation Requirements published by the Governor under article 152;

“Parascending parachute” means a parachute which is towed by cable in such a manner as to cause it to ascend;

“Passenger” means a person other than a member of the crew;

“Performance Class 1 operations” means flights where, in the event of the failure of a power unit, the helicopter will be able to safely continue the flight and land at an appropriate landing area unless the power unit failure recognition occurs during take-off at or prior to reaching the take-off decision point in which case the helicopter will be able to safely land back within the area from which it has taken off;

“Performance Class 2 operations” means flights where, in the event of the failure of a power unit, the helicopter will be able to safely continue the flight to an appropriate landing area or, where the failure occurs at a point during the take-off manoeuvre or the landing manoeuvre when it cannot do so, the helicopter will be able to carry out a forced landing;

“Performance Class 3 operations” means flights where, in the event of the failure of a power unit at any time during the flight, the helicopter will be required to carry out a forced landing;

“Period of duty” means the period between the commencement and end of a shift during which an air traffic controller performs, or could be called upon to perform, any of the functions specified in respect of a rating included in his licence;

“Pilot-in-command” in relation to an aircraft means the pilot designated by the operator as being in command and charged with the safe conduct of a flight, or, if no such designation has been made, the person who for the time being is in charge of piloting the aircraft without being under the direction of any other pilot in the aircraft;

“Precision approach” means an instrument approach using Instrument Landing System, Microwave Landing System or Precision Approach Radar for guidance in both azimuth and elevation;

“Prescribed” means prescribed by regulations made by the Governor under this Order, and the expression “prescribe” shall be construed accordingly;

“Pressurised aircraft” means an aircraft provided with means of maintaining in any compartment a pressure greater than that of the surrounding atmosphere;

“Private flight” means a flight which is neither for the purpose of aerial work nor commercial air transport;

“Record” includes, in addition to a record in writing—

- (a) any disc, tape, sound-track or other device in which sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced therefrom;
- (b) any film, tape or other device in which visual images are embodied so as to be capable (as aforesaid) of being reproduced therefrom; and
- (c) any photograph;

and any reference to a copy of a record includes, in the case of a record falling within paragraph (a) only of this definition, a transcript of the sounds or signals embodied therein, in the case of a record falling within paragraph (b) only of this definition, a still reproduction of the images embodied therein, and in the case of a record falling within both those paragraphs, such a transcript together with such a still reproduction;

“Reduced vertical separation minimum airspace” means any airspace between flight level 290 and flight level 410 inclusive designated by the relevant competent authority as being airspace within which a vertical separation minimum of 1000 feet or 300 metres shall be applied;

“Released flight” means flight by an uncontrollable balloon during which it is not attached to the surface by any form of restraining device;

“Replacement” in relation to any part of an aircraft or its equipment includes the removal and replacement of that part whether or not by the same part, and whether or not any work is done on it; but does not include the removal and replacement of a part which is designed to be removable solely for the purpose of enabling another part to be inspected, repaired, removed or replaced or cargo to be loaded;

“Requirements” means requirements published by the Governor under the provisions of article 152;



“Rules of the Air” means the rules in Schedule 8 and any supplementary rules made by the Governor under article 37(1);

“Runway visual range” in relation to a runway means the distance in the direction of take-off or landing over which the runway lights or surface markings may be seen from the touchdown zone as calculated by either human observation or instruments in the vicinity of the touchdown zone or where this is not reasonably practicable in the vicinity of the mid-point of the runway; and the distance, if any, communicated to the pilot-in-command of an aircraft by or on behalf of the person in charge of the aerodrome as being the runway visual range shall be taken to be the runway visual range for the time being;

“Safety management system” means a systematic approach to managing safety, including the necessary organisational structures, accountabilities, policies and procedures;

“Scheduled journey” means one of a series of journeys that are undertaken between the same two places and which together amount to a systematic service;

“Seaplane” includes a flying boat and any other aircraft designed to manoeuvre on water;

“Sector” means part of the airspace controlled from an area control centre or other place;

“Small aircraft” means any unmanned aircraft, other than a balloon or a kite, weighing not more than 20 kg without its fuel but including any articles or equipment installed in or attached to the aircraft at the commencement of its flight;

“Small balloon” means a balloon not exceeding 2 metres in any linear dimension at any stage of its flight, including any basket or other equipment attached to the balloon;

“Special VFR flight” means a flight which is a special VFR flight for the purposes of the Rules of the Air;

“Standard instrument arrival” means a designated IFR arrival route linking a significant point, normally on an air traffic service route, with a point from which an instrument approach procedure can be commenced;

“Standard instrument departure” means a designated IFR departure route linking the aerodrome or a specified runway at the aerodrome with a specified significant point, normally on a designated air traffic service route, at which the en-route phase of a flight commences;

“State of the operator” means the State in which the operator of an aircraft has his principal place of business (as defined in article 64(2)) or, if he has no such place of business, his permanent residence, in circumstances where—

- (a) that aircraft is registered in another Contracting State;
- (b) the operator is operating that aircraft under an agreement for its lease, charter or interchange or any similar arrangement;
- (c) the State in which the aircraft is registered has, by agreement with the State in which the operator of the aircraft has his principal place of business or, if he has no such place of business, his permanent residence, agreed to transfer to it its functions and duties as State of registry in respect of that aircraft in relation to, in the case of article 7(1), airworthiness, in the case of article 16(1), aircraft radio equipment, in the case of article 21(3), flight crew licensing or in the case of article 49(1), radio licensing; and
- (d) the agreement has been registered with the Council of the International Civil Aviation Organisation or the existence and scope of the agreement have been directly communicated to the Governor.

“Supreme Court” means the highest court exercising original jurisdiction in respect of the Territory;

“Task Specialist” means a member of the crew who is not part of the flight crew or cabin crew and who carries out duties on board the aircraft which are essential to the purpose of the flight;

“The Territory” has the meaning assigned to it by article 148 and includes the dependencies of the Territory and the adjacent territorial waters;

“Territory reduced vertical separation minimum airspace” means Territory airspace that has been notified as reduced vertical separation minimum airspace for the purposes of article 52;

“Tethered flight” means flight by a controllable balloon throughout which it is flown within limits imposed by a restraining device that attaches the balloon to the surface;

“Uncontrollable balloon” means a balloon, not being a small balloon, which is not capable of free controlled flight;

“Valuable consideration” means any right, interest, profit or benefit, forbearance, detriment, loss or responsibility accruing, given, suffered or undertaken under an agreement, which is of more than a nominal nature;

“VFR” means the Visual Flight Rules;

“Visual Flight Rules” means Visual Flight Rules prescribed by the Rules of the Air;

“Visual Meteorological Conditions” means weather that permits flight in accordance with the Visual Flight Rules;

“With the surface in sight” means with the flight crew being able to see sufficient surface features or surface illumination to enable the flight crew to maintain the aircraft in a desired attitude without reference to any flight instrument.

(2) In this Order references to sums expressed in terms of sterling shall be construed as references to the equivalent sums in the currency of the Territory calculated at such rate of exchange as may be prescribed or as the Governor may by order direct.

(a) (3) (a) In its application to any Territory which is mentioned in Schedule 12 to this Order but is not mentioned in the First Schedule to the Visiting Forces Act (Application to Colonies) Order 1954(12), as amended from time to time, this Order shall have effect as if—

(i) the whole of paragraph (4) was omitted from article 145;

(ii) the words “or as a member of a visiting force” were omitted from paragraph (6) of article 145; and

(iii) in article 104 paragraph (2) the words “or of any visiting force” were omitted from the definition of “Government aerodrome”.

(b) In relation to any Territory which is mentioned in Schedule 12 and is also mentioned in the First Schedule to the Visiting Forces Act (Application to Colonies) Order 1954, as amended from time to time, the expression “visiting force” in this Order means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952(13), which extend to that Territory, in respect of that country, by virtue of any Order in Council made under section 1(2) or under section 15 of that Act.

(4) An aircraft shall be deemed to be in flight—

(a) in the case of a piloted flying machine, from the moment when, after the embarkation of its crew for the purpose of taking off, it first moves under its own power until the moment when it next comes to rest after landing;

(b) in the case of a pilotless flying machine, or a glider, from the moment when it first moves for the purpose of taking off until the moment when it next comes to rest after landing;

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(12) SI 1954/636

(13) 1952 c. 67.

- (c) in the case of an airship, from the moment when it first becomes detached from the surface until the moment when it next becomes attached thereto or comes to rest thereon;
- (d) in the case of a free balloon, from the moment when the balloon, including the canopy and basket, becomes separated from the surface until the moment it next comes to rest thereon; and
- (e) in the case of a captive balloon, from the moment when the balloon, including the canopy and basket, becomes separated from the surface, apart from a restraining device attaching it to the surface, until the moment when it next comes to rest thereon;

and the expressions “a flight” and “to fly” shall be construed accordingly.

(5) For the purposes of the application of any provision of this Order in relation to any particular aircraft, “Operator” means—

- (a) the person who at the particular time has management of an aircraft, and
- (b) when the aircraft is chartered, hired, leased or loaned, responsibility for airworthiness and equipment passes immediately to the charterer, hirer, lessee or borrower; except
- (c) when a person other than an air transport undertaking or an aerial work undertaking has chartered, hired, leased or borrowed the aircraft for a period not exceeding 14 days he shall not be considered to be the operator.

(6) The expressions appearing in the general classification of aircraft set forth in Schedule 2 shall have the meanings thereby assigned to them.

(7) A power to make regulations under this Order shall include the power to make different provisions with respect to different classes of aircraft, aerodromes, persons or property and with respect to different circumstances and with respect to different parts of the Territory and to make such incidental and supplementary provisions and give instructions as are necessary or expedient for carrying out the purposes of the Order.

- (a) (8) (a) Any power conferred by this Order to issue, make, serve or grant any instrument shall be construed as including a power exercisable, in the like manner and subject to the like conditions, if any, to vary, revoke, cancel or otherwise terminate the instrument.
- (b) In this paragraph “instrument” includes any regulations, direction, instruction, rule or other requirement, any notice and any certificate, licence, approval, permission, exemption, authorisation, log book record or other document.

### **Commercial air transport and aerial work – general rules**

**157.**—(1) Aerial work means any purpose (other than commercial air transport) for which an aircraft is flown if valuable consideration is given or promised in respect of the flight or the purpose of the flight.

(2) If the only such valuable consideration consists of remuneration for the services of the pilot the flight shall be deemed to be a private flight for the purposes of Part II.

(3) An aircraft in flight shall for the purposes of this Order be deemed to fly for the purposes of commercial air transport—

- (a) if valuable consideration is given or promised for the carriage of passengers or cargo in the aircraft on that flight;
- (b) if any passengers or cargo are carried gratuitously in the aircraft on that flight by an air transport undertaking, not being persons in the employment of the undertaking (including, in the case of a body corporate, its directors) and persons with the authority of the Governor either making any inspection or witnessing any training, practice or test for the purposes of this Order, or cargo intended to be used by any such passengers as aforesaid, or by the undertaking; or

(c) for the purposes of Part II (other than articles 15(2) and 16(2)), if valuable consideration is given or promised for the primary purpose of conferring on a particular person the right to fly the aircraft on that flight (not being a single-seat aircraft of which the maximum total weight authorised does not exceed 910 kg) otherwise than under a hire-purchase or conditional sale agreement.

(4) Notwithstanding that an aircraft may be flying for the purpose of commercial air transport by reason of paragraph (3)(c), it shall not be deemed to be flying for the purpose of the commercial air transport of passengers unless valuable consideration is given for the carriage of those passengers.

(5) A glider shall not be deemed to fly for the purpose of commercial air transport for the purposes of Part II by virtue of paragraph (3)(c) if the valuable consideration given or promised for the primary purpose of conferring on a particular person the right to fly the glider on that flight is given or promised by a member of a flying club and the glider is owned or operated by that flying club.

(6) Notwithstanding the giving or promising of valuable consideration specified in sub-paragraph (3)(c) in respect of the flight or the purpose of the flight it shall—

- (a) subject to sub-paragraph (b), for all purposes other than Part II; and
- (b) for the purposes of articles 15(2) and 16(2);

be deemed to be a private flight.

(7) Where under a transaction effected by or on behalf of a member of an association of persons on the one hand and the association of persons or any member thereof on the other hand, a person is carried in or is given the right to fly an aircraft in such circumstances that valuable consideration would be given or promised if the transaction were effected otherwise than aforesaid, valuable consideration shall, for the purposes of this Order, be deemed to have been given or promised, notwithstanding any rule of law as to such transactions.

(8) For the purposes of paragraph (3)(a), there shall be disregarded any valuable consideration given or promised in respect of a flight or the purpose of a flight by one company to another company which is—

- (a) its holding company,
- (b) its subsidiary; or
- (c) another subsidiary of the same holding company.

(9) For the purposes of this article “holding company” and “subsidiary” have the meanings respectively specified in Section 736 of the Companies Act 1985(14).

### **Commercial air transport and aerial work – exception for flying displays etc.**

**158.**—(1) A flight shall, for the purposes of Part III of this Order, be deemed to be a private flight if—

- (a) the flight is—
  - (i) wholly or principally for the purpose of taking part in an aircraft race, contest or flying display;
  - (ii) for the purpose of positioning the aircraft for such a flight as is specified in sub-paragraph (i) and is made with the intention of carrying out such a flight; or
  - (iii) for the purpose of returning after such a flight as is specified in sub-paragraph (i) to a place at which the aircraft is usually based; and
- (b) the only valuable consideration in respect of the flight or the purpose of the flight other than—

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(14) 1985 c.6 as amended by section 144 of the Companies Act 1989 (c.40).

- (i) valuable consideration specified at article 157(3)(c), or
  - (ii) in the case of an aircraft owned in accordance with article 162(2), valuable consideration which falls within article 162 (3);
- falls within paragraph (2)(a) or (2)(b) or both.
- (2) Valuable consideration falls within this paragraph if it either is—
- (a) that given or promised to the owner or operator of an aircraft taking part in such a race, contest or flying display and such valuable consideration does not exceed the direct costs of the flight and a contribution to the annual costs of the aircraft which contribution shall bear no greater proportion to the total annual costs of the aircraft than the duration of the flight bears to the annual flying hours of the aircraft; or
  - (b) one or more prizes awarded to the pilot-in-command of an aircraft taking part in an aircraft race or contest to a value which shall not exceed £500 in respect of any one race or contest except with the permission in writing of the Governor granted to the organiser of the race or contest which permission may be granted subject to such conditions as the Governor thinks fit.
- (3) Any prize falling within paragraph (2)(b) shall be deemed for the purposes of this Order not to constitute remuneration for services as a pilot.

#### **Commercial air transport and aerial work – exception for charity flights**

**159.**—(1) A flight shall be deemed to be a private flight if the only valuable consideration given or promised in respect of the flight or the purpose of the flight other than—

- (a) valuable consideration specified at article 157(3)(c); or
- (b) in the case of an aircraft owned in accordance with article 162(2), valuable consideration which falls within article 162(3);

is given or promised to a registered charity which is not the operator of the aircraft and the flight is made with the permission in writing of the Governor and in accordance with any conditions therein specified.

(2) If valuable consideration specified at article 157(3)(c) is given or promised the flight shall for the purposes of Part II of this order (other than articles 15(2) and 16(2)) be deemed to be for the purposes of commercial air transport.

#### **Commercial air transport and aerial work – exception for cost sharing**

**160.**—(1) A flight shall be deemed to be a private flight if the only valuable consideration given or promised in respect of the flight or the purpose of the flight falls within paragraph (2) and the criteria in paragraph (3) are satisfied.

- (2) Valuable consideration falls within this paragraph if it is—
- (a) valuable consideration specified at article 157(3)(c);
  - (b) in the case of an aircraft owned in accordance with article 162(2), valuable consideration which falls within article 162(3); or
  - (c) a contribution to the direct costs of the flight otherwise payable by the pilot-in-command;
- or falls within any two or all three sub-paragraphs.
- (3) The criteria in this paragraph are satisfied if—
- (a) no more than 4 persons (including the pilot) are carried on such a flight;
  - (b) the proportion which the contribution referred to in paragraph (2)(c) bears to the total direct costs of the flight shall not exceed the proportion which the number of persons carried

on the flight (excluding the pilot) bears to the number of persons carried on the flight (including the pilot);

- (c) no information concerning the flight shall have been published or advertised prior to the commencement of the flight other than, in the case of an aircraft operated by a flying club, advertising wholly within the premises of such a flying club in which case all the persons carried on such a flight who are aged 18 years or over shall be members of that flying club; and
- (d) no person acting as a pilot on such a flight shall be employed as a pilot by or be a party to a contract for the provision of services as a pilot with the operator of the aircraft being flown on the flight.

(4) If valuable consideration specified in article 157(3)(c) is given or promised the flight shall for the purposes of Part II of this Order (other than articles 15(2) and 16(2)) be deemed to be for the purposes of commercial air transport.

#### **Commercial air transport and aerial work – exception for recovery of direct costs**

**161.**—(1) A flight shall be deemed to be a private flight if the only valuable consideration given or promised in respect of the flight or the purpose of the flight other than—

- (a) valuable consideration specified in article 157(3)(c); or
- (b) in the case of an aircraft owned in accordance with article 162(2), valuable consideration which fails within article 162(3);

is the payment of the whole or part of the direct costs otherwise payable by the pilot-in-command by or on behalf of the employer of the pilot-in-command, or by or on behalf of a body corporate of which the pilot-in-command is a director, provided that neither the pilot-in-command nor any other person who is carried is legally obliged, whether under a contract or otherwise, to be carried.

(2) If valuable consideration specified in article 157(3)(c) is given or promised the flight shall for the purposes of Part II of this Order (other than articles 15(2) and 16(2)) be deemed to be for the purposes of commercial air transport.

#### **Commercial air transport and aerial work – exception for jointly owned aircraft**

**162.**—(1) A flight shall be deemed to be a private flight if the aircraft falls within paragraph (2) and the only valuable consideration given or promised in respect of the flight or the purpose of the flight falls within paragraph (3).

- (2) An aircraft falls within this paragraph if it is owned—
  - (a) jointly by persons (each of whom is a natural person) who each hold not less than a 5% beneficial share and—
    - (i) the aircraft is registered in the names of all the joint owners; or
    - (ii) the aircraft is registered in the name or names of one or more of the joint owners as trustee or trustees for all the joint owners, and written notice has been given to the Governor of the names of all the persons beneficially entitled to a share in the aircraft; or
  - (b) by a company in the name of which the aircraft is registered and the registered shareholders of which (each of whom is a natural person) each hold not less than 5% of the shares in that company.
- (3) Valuable consideration falls within this paragraph if it is either—

- (a) in respect of and is no greater than the direct costs of the flight and is given, or promised by one or more of the joint owners of the aircraft or registered shareholders of the company which owns the aircraft; or
- (b) in respect of the annual costs and given by one or more of such joint owners or shareholders (as aforesaid);

or falls within both sub-paragraphs (a) and (b).

### **Commercial air transport and aerial work – parachuting**

**163.** A flight shall be deemed to be for the purpose of aerial work if it is a flight in respect of which valuable consideration has been given or promised for the carriage of passengers and which is for the purpose of—

- (a) the dropping of persons by parachute and which is made under and in accordance with the terms of a written permission granted by the Governor under article 82;
- (b) positioning the aircraft for such a flight as is specified in sub-paragraph (a) and which is made with the intention of carrying out such a flight and on which no person is carried who it is not intended shall be carried on such a flight and who may be carried on such a flight in accordance with the terms of a written permission granted by the Governor under article 82; or
- (c) returning after such a flight as is specified in sub-paragraph (a) hereof to the place at which the persons carried on such a flight are usually based and on which flight no persons are carried other than persons carried on the flight specified in sub-paragraph (a).

### **Saving**

**164.—(1)** Subject to the provisions of articles 105 and 108, nothing in this Order or any regulations made hereunder shall confer any right to land in any place as against the owner of the land or other persons interested therein.

(2) Nothing in this Order shall oblige the Governor to accept an application from the holder of any current certificate, licence, approval, permission, exemption or other document, being an application for the renewal of that document, or for the granting of another document in continuation of or in substitution for the current document, if the application is made more than 60 days before the current document is due to expire.