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STATUTORY INSTRUMENTS

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**2013 No. 2870**

**The Air Navigation (Overseas Territories) Order 2013**

**PART 1**

**POWERS AND DUTIES**

**Regulations by the Governor**

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

(2) A power to make regulations under this Order includes 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.

(3) 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), 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 under it and the method by, the time at which and the person to whom such fees must be paid.

(4) Upon an application being made in connection with which any fee is chargeable the applicant may be required, before the application is considered, to pay the whole or to deposit a portion of the fee or fees chargeable with the Governor or to or with such other person as the regulations may require.

(5) Subject to paragraph (6), if, after payment or a deposit has been made under paragraph (4), the application is withdrawn by the applicant or otherwise ceases to have effect or is refused by the Governor, the Governor may refund the amount of such payment or deposit.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respect of an investigation which would have been carried out in connection with the application if it had not been so withdrawn or ceased to have effect or been refused but which has not been carried out by reason only of such withdrawal, cessation or refusal, the Governor may refund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 ultimately assessed to be chargeable in respect of any investigation, in so far as the same has been carried out at the time when the application is withdrawn 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.

### **Publication of requirements**

5.—(1) Where any provision of this Order provides for the Governor to grant a certificate, licence or other document upon being satisfied as to any matters specified in the provision, to grant a rating in a licence or to require a person to keep or to do something in accordance with the specified requirements or description, the Governor must before determining whether to effect that grant or require such a person to keep or do something—

- (a) publish or cause to be published the Governor’s requirements as to those matters in the Territory by means of an OTAR; and
- (b) take into account those requirements when determining whether to grant the certificate, licence or other document or to require a person to keep or do something.

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

### **Designation by the Governor**

6.—(1) Subject to paragraphs (2), (4) and (5), the Governor 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 the Governor thinks fit.

(2) Subject to paragraphs (3), (4) and (5), the Governor of the Territory in which any activity takes place which is subject to any of the provisions of this Order, other than an activity described in Part 1 only of this Order, must designate a person in accordance with paragraph (1).

(3) Subject to paragraph (4) the Governor may revoke or vary a designation made under paragraph (1).

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

(5) 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 5, 13 or 161.

### **Arrangements for giving effect to the Convention on International Civil Aviation**

7.—(1) The Governor must within the Territory issue such instructions or publish such requirements or make such arrangements as are necessary, requisite or expedient for carrying out the Convention on International Civil Aviation and implementing any Annex 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 section 8(1) of the Act.

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

- (a) provide or secure the provision of a meteorological service to meet the needs of international air navigation, with due regard to regional air navigation agreements and must designate the appropriate authority to provide or arrange for the provision of such meteorological service;
- (b) provide or secure the provision in the Territory of aeronautical charts that comply with the specified requirements;
- (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; and

(d) provide or secure the provision of an aeronautical information service.

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

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

**8.**—(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 14, 22, 24, 40, 44, 84, 94, 100, 107, 111 or 178(2) 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 under it, 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 under it;

the Governor or that authorised person may direct the operator or the pilot-in-command of the aircraft 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.

(2) For the purposes of paragraph (1) the Governor or any authorised person may enter upon and inspect any aircraft, and the Governor or that authorised person may take such steps as are necessary to detain the aircraft.

(3) If it appears to the Secretary of State or to the Governor or to an authorised person that any aircraft is intended or is likely to be flown in such circumstances that any provision of article 135 or 137 would be contravened in relation to the flight, the Secretary of State, the Governor or that authorised person may direct the pilot-in-command of the aircraft 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 Secretary of State, the Governor or by an authorised person.

(4) For the purposes of paragraph (3) the Secretary of State or the Governor or any authorised person may enter upon any aerodrome and may enter upon and inspect any aircraft and the Secretary of State, or the Governor or any authorised person may take such steps as are necessary to detain the aircraft.

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

**9.**—(1) The Governor, and any authorised person, has the right of access at all reasonable times—

- (a) to any aerodrome, including any facility provided for rescue and fire fighting at the 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 may be demanded under this Order, or for the purpose of detaining any aircraft under this Order;
- (c) to any place where an aircraft has landed, for the purpose of inspecting the aircraft or any document which may be demanded under this Order and for the purpose of detaining the aircraft under 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 153 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 may be demanded under this Order.
- (e) to any place where a service described in article 7(1) and 7(2) is designed, directed, arranged or provided, for the purpose of determining whether such services are being provided satisfactorily; and
- (f) to inspect any part of, or material intended to be incorporated in or used in the manufacture of any part of, an aircraft or its equipment or any document relating to them and may for that purpose go upon any aerodrome or enter any aircraft factory or other premises, including premises used for any of the purposes of the maintenance, overhaul, repair or modification of an aircraft or of any of the material, parts or equipment installed or to be installed in an aircraft.
- (2) Access to a military aerodrome may only be obtained with the permission of the person in charge of the aerodrome.

### **Exemption from the Order**

**10.** The Governor (including any person designated by the Governor under article 6) may exempt from any of the provisions of this Order (other than articles 12, 13, 65, 66, 135, 136, 137, 186, and 193) or any regulations made under it, any aircraft or persons or classes of aircraft or persons, either absolutely or subject to such conditions as the Governor thinks fit.

### **Revocation, suspension and variation of certificates, licences and other documents**

**11.—(1)** Subject to paragraph (5), the Governor may provisionally suspend or vary any certificate, licence, approval, permission, exemption, authorisation or other document issued, granted or having effect under this Order, pending inquiry into or consideration of the case.

(2) Subject to paragraph (6) the Governor may, on being satisfied as to sufficient ground being shown following due inquiry, revoke, suspend or vary any such certificate, licence, approval, permission, exemption, authorisation or other document.

(3) The holder or any person having the possession or custody of any certificate, licence, approval, permission, exemption or other document which has been revoked, suspended or varied under this Order must surrender it to the Governor within a reasonable time after being required to do so by the Governor.

(4) The breach of any condition subject to which any certificate, licence, approval, permission, exemption or other document, other than a certificate issued in respect of an aerodrome, has been granted or issued or which has effect under this Order, in the absence of provision to the contrary in the document, renders the document invalid during the continuance of the breach.

(5) Nothing in this article applies to any permission to which article 12 applies.

(6) A flight manual, performance schedule or other document incorporated by reference in the certificate of airworthiness may be varied on sufficient ground being shown to the satisfaction of the Governor, whether or not after due inquiry.

### **Revocation, suspension and variation of permissions, etc. granted under article 135 or article 137**

**12.—(1)** The Secretary of State may revoke, suspend or vary any permit to which this article applies.

(2) Save as provided by paragraph (3), the Secretary of State may exercise the powers under paragraph (1) only after notifying the permit-holder of the intention to do so and after due consideration of the case.

(3) If, by reason of the urgency of the matter, it appears to the Secretary of State to be necessary to do so, the Secretary of State may provisionally suspend or vary a permit without complying with the requirements of paragraph (2); but must in any such case comply with those requirements as soon thereafter as is reasonably practicable and must then either—

- (a) revoke the provisional suspension or variation of the permit; or
- (b) substitute for it a definitive revocation, suspension or variation, which, if a definitive suspension, may be for the same or a different period as the provisional suspension (if any) or, if a definitive variation, may be on the same or different terms as the provisional variation (if any).

(4) The powers vested in the Secretary of State by paragraph (1) and paragraph (3) may be exercised whenever, in the Secretary of State's judgement and whether or not by reason of anything done or omitted to be done by the permit-holder or otherwise connected with the permit-holder, it is necessary or expedient that the permit-holder should not enjoy, or should no longer enjoy, the rights conferred by a permit to which this article applies or should enjoy them subject to such limitations or qualifications as the Secretary of State may determine.

(5) In particular, and without prejudice to the generality of the foregoing, the Secretary of State may exercise those powers if it appears to the Secretary of State that—

- (a) the person to whom the permit was granted has committed a breach of any condition to which it is subject;
- (b) any agreement between Her Majesty's Government in the United Kingdom and the Government of any other country in pursuance of which or in reliance on which the permit was granted is no longer in force or that that other Government has committed a breach of the agreement;
- (c) the person to whom the permit was granted, or a Government which is a party to an agreement referred to in sub-paragraph (b), or the aeronautical authorities of the country concerned, have—
  - (i) acted in a manner which is inconsistent with or prejudicial to the operation in good faith, and according to its object and purpose, of any such agreement; or
  - (ii) engaged in unfair, discriminatory or restrictive practices to the prejudice of the holder of an Air Transport Licence granted under section 65 of the Civil Aviation Act 1982<sup>(1)</sup> or the holder of a route licence granted under that section as applied by section 69A of that Act in the operation of air services to or from points in the country concerned or of the operator of an aircraft registered in and licensed to operate from any of the Territories by regulations under section 13 of that Act in the operation of air services to or from points in the country concerned; or
- (d) the person to whom the permit was granted, having been granted it as a person designated by the Government of a country other than the United Kingdom for the purposes of any such agreement, is no longer so designated or that that person has so acted, or that such circumstances have arisen in relation to that person, as to make it necessary or expedient to disregard or qualify the consequences of being so designated.

(6) The permit-holder or any person having the possession or custody of any permit which has been revoked, suspended or varied under this article must surrender it to the Secretary of State within a reasonable time of being required by the Secretary of State to do so.

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(1) 1982 c.16.

(7) The breach of any condition subject to which any permit to which this article applies has been granted renders the permit invalid during the continuance of the breach.

(8) The permits to which this article applies are permissions granted by the Secretary of State or the Governor as the case may be under article 135 or article 137 and any approvals or authorisations of, or consents to, any matter which the Secretary of State or the Governor has granted, or is deemed to have granted, in pursuance of a permission which either of them has so granted.

(9) References in this article to the “permit-holder” are references to the person to whom any permit to which this article applies has been granted, or that is deemed to have been granted.

(10) The Secretary of State may, in any particular case, or class of cases, delegate to the Governor the exercise of the powers conferred on the Secretary of State under this article in respect of permissions granted by the Secretary of State or the Governor as the case may be under article 135 and any approvals or authorisations of, or consents to, any matter which the Secretary of State or the Governor has granted, or is deemed to have granted, in pursuance of a permission which either of them has so granted.

### **Review by the Governor**

**13.—**(1) Where any person designated under article 6—

- (a) decides that it would be inexpedient in the public interest to register an aircraft in the 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 must 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 must, before making a decision, consider any oral representations which may be made to the Governor or any representations in writing which may have been served upon the Governor 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 as advisers, provided that the Governor must 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.