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STATUTORY INSTRUMENTS

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**2001 No. 2128**

**The Air Navigation (Overseas Territories) Order 2001**

**PART XI**

*General*

**Restriction with respect to carriage for valuable consideration in aircraft registered outside the Territory**

**113.**—(1) Notwithstanding anything in any regulations made under Section 13 of the Act, an aircraft registered in a Contracting State, other than the United Kingdom or any of the Territories, or in a foreign country, shall not take on board or discharge any passengers or cargo in the Territory, being passengers or cargo carried or to be carried for valuable consideration, except with the permission of the Secretary of State granted under this article to the operator or charterer of the aircraft or to the Government of the country in which the aircraft is registered, and in accordance with any conditions to which such permission may be subject.

(2) Without prejudice to the provisions of Article 81 or 82 of this Order or of paragraph (1), any breach by a person to whom a permission has been granted under this article of any condition to which that permission was subject shall constitute a contravention of this article.

(3) 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 paragraph (1); and where the exercise of the powers conferred under paragraph (1) is so delegated, the Governor shall, in exercising those powers, comply with any general guidelines or specific directions which may from time to time be conveyed to him by the Secretary of State.

**Filing and approval of tariffs**

**114.**—(1) Where a permission granted under this article contains a tariff provision, the Secretary of State may, in any particular case or class of cases, delegate to the Governor the exercise of the power to approve or disapprove the tariff which the operator or charterer of the aircraft concerned proposes to apply on flights to which the permission relates, and where the power to approve or disapprove tariffs is so delegated, the Governor shall, in exercising that power, comply with any general guidelines or specific directions which may from time to time be conveyed to him by the Secretary of State.

(2) For the purposes of this article, “tariff provision” means a condition as to any of the following matters:

- (a) the price to be charged for the carriage of passengers, baggage or cargo on flights to which a permission granted under article 113(1) of this Order relates;
- (b) any additional goods, services or other benefits to be provided in connection with such carriage;
- (c) the prices, if any, to be charged for any such additional goods, services or benefits; and

- (d) the commission, or rates of commission, to be paid in relation to the carriage of passengers, baggage or cargo;

and includes any condition as to the applicability of any such price, the provision of any such goods, services or benefits or the payment of any such commission or of commission at any such rate.

### **Restriction with respect to aerial photography, aerial survey and aerial work in aircraft registered outside the Territory**

**115.**—(1) An aircraft registered in a Contracting State other than the United Kingdom or any of the Territories, or in a foreign country, shall not fly over the Territory for the purpose of aerial photography or aerial survey (whether or not valuable consideration is given or promised in respect of the flight or the purpose of the flight) or for the purpose of any other form of aerial work except with the permission of the Governor granted under this article to the operator or the charterer of the aircraft and in accordance with any conditions to which such permission may be subject.

(2) Without prejudice to article 81 or 82 of this Order or to paragraph (1), any breach by a person to whom a permission has been granted under this article of any condition to which that permission was subject shall constitute a contravention of this article.

### **Flights over any foreign country**

**116.**—(1) The operator or commander 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 or commander 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**

**117.**—(1) Subject to the provisions of this article, every person who:

- (a) is the operator or commander of:
  - (i) a public transport aircraft registered in the Territory;

- (ii) a public transport aircraft not registered in the Territory but operated by the holder of an aircraft operator's certificate granted by the Governor; or
- (iii) an aircraft registered in the Territory in respect of which there is in force a certificate of airworthiness in any category and which is powered by one or more turbine engines;
- (b) carries on the business of manufacturing, repairing or overhauling such an aircraft, or any equipment or part thereof;
- (c) signs a certificate of maintenance review, or of release to service in respect of such an aircraft, part or equipment;
- (d) performs a function for which he requires an air traffic controller's licence;
- (e) is the licensee or manager of a licensed aerodrome;
- (f) performs a function connected with the installation, modification, maintenance, repair, overhaul, flight checking or inspection of equipment on the ground which is used or intended to be used for the purpose of or in connection with the provision of an air traffic control service or navigational aid to an aircraft;

shall:

- (i) make a report to the Governor of any reportable occurrence of which, he knows and which is of such a description as is specified in regulation 18 in Schedule 14: the report shall be made within such time, by such means, and shall contain such information as is so specified and it shall be presented in such form as the Governor may in any particular case approve; and
- (ii) make a report to the Governor, within such time, by such means; and containing such information as the Governor may specify in a notice in writing served upon him, being information which is in his possession or control and which relates to a reportable occurrence which has been reported by him or by another person to the Governor in accordance with this article.
  - (a) (2) (a) Subject to sub-paragraph (b), in this article "reportable occurrence" means:
    - (i) 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
    - (ii) 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.
  - (b) Any accident or serious incident notified to the Governor in pursuance of regulations made under section 75 of the Civil Aviation Act 1982 as set out in Schedule 1 to the Civil Aviation Act 1982 (Overseas Territories) Order 2001(1) shall not constitute a reportable occurrence for the purposes of this article.
- (3) Subject to paragraph (1)(f)(ii), 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.
- (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.
  - (a) (5) (a) Without prejudice to article 53(2), (4) and (5) and subject to article 80 of this Order and sub-paragraph (b), 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.

- (b) The record referred to in sub-paragraph (a) 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.

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

**118.**—(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, 6, 8, 20, 21, 35, 53, 59, 60, 113, 115 or 116 of this Order or any provision relating to the licensing of air transport in the Territory 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, 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, of any regulation made thereunder;

the Governor or that authorised person may direct the operator or the commander 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 purpose of paragraph (1) the Governor and any authorised person may enter upon and inspect any aircraft.

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

**119.**—(1) Subject to paragraph (2), 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 the power to demand under this Order, or for the purpose of detaining any aircraft under the provisions of this Order; and
- (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.

(2) Access to a Government aerodrome shall only be obtained with the permission of the person in charge of the aerodrome.

### **Obstruction of persons**

**120.** A person shall not intentionally obstruct or impede any person acting in the exercise of his powers or the performance of his duties under this Order.

### **Enforcement of directions**

**121.** Any person who without reasonable excuse fails to comply with any direction given to him under any provision of this Order or any regulations made thereunder shall be deemed for the purposes of this Order to have contravened that provision.

### **Penalties**

**122.—(1)** If any provision of this Order or of any regulations made thereunder is contravened in relation to an aircraft, the operator of that aircraft and the commander thereof and, in the case of a contravention of article 113 of this Order, the charterer of that aircraft, shall (without prejudice to the liability of any other person for that contravention) be deemed for the purposes of the following provisions of this article to have contravened that provision unless he proves that the contravention occurred without his consent or connivance and that he exercised all due diligence to prevent the contravention.

(2) If it is proved that an act or omission of any person which would otherwise have been a contravention by that person of a provision of this Order or of any regulations made thereunder was due to any cause not avoidable by the exercise of reasonable care by that person the act or omission shall be deemed not to be a contravention by that person of that provision.

(3) Where a person is charged with contravening a provision of this Order or of any regulations made thereunder by reason of his having been a member of the flight crew of an aircraft on a flight for the purpose of public transport or aerial work the flight shall be treated (without prejudice to the liability of any other person under this Order) as not having been for that purpose if he proves that he neither knew nor suspected that the flight was for that purpose.

(4) If any person contravenes any provision of this Order or of any regulations made thereunder not being a provision referred to in paragraphs (5) or (6), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

(5) If any person contravenes any provision specified in Part A of Schedule 12 to this Order he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

(6) If any person contravenes any provision specified in Part B of the said Schedule he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000 and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both.

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

**123.—(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, shall apply to such aircraft wherever they may be;
- (b) insofar as they apply as aforesaid to other aircraft shall apply to such other aircraft when they are within the Territory;
- (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, shall apply to such persons and crew, wherever they may be, and
- (d) insofar as they prohibit, require or regulate as aforesaid the doing of anything in relation to any aircraft registered in the Territory by other persons shall, where such persons are Commonwealth citizens, British protected persons or citizens of the Republic of Ireland, 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(2) (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**

**124.** 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.**

- (a) **125.** (1) (a) Subject to the following provisions of this article, the provisions of this Order shall 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.
- (b) 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.
- (c) 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.

(2) 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.

(3) Save as otherwise provided by paragraph (4), article 70(4) and (9), article 71(2)(a), and article 108 of this Order and the Rules of the Air, nothing in this Order shall apply to or in relation to any military aircraft.

(4) 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 shall apply on the occasion of that flight, that is to say, articles 63, 64, 65 and 85 and in addition article 84 (so far as applicable) shall apply unless the aircraft is flown in compliance with Military Flying Regulations (Joint Service Publication 318) or Flying Orders to Contractors (Aviation Publication 67) issued by the Secretary of State.

#### **Exemption from Order**

**126.** The Governor may exempt from any of the provisions of this Order (other than articles 75, 77, 82, 113, 114, 115, 116 or 127 thereof) 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**

**127.**—(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**

**128.** The provisions of this Order apply to the Territories mentioned in Schedule 18 to this Order, any one of which is in this Order referred to in the expression “the Territory”.

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

**129.**—(1) The Governor may make regulations for prescribing anything which, 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 14 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 thereunder.

(a) (4) (a) 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. If, after such payment or deposit has been made, 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. Where the amount paid or deposited 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, cesser or refusal, the Governor may refund the amount so attributable, or, subject to paragraph (b), 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, cesser or refusal.

(b) 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.

In this paragraph the expression “investigation” includes an inspection, examination, calculation or test.

### **Interpretation**

**130.**—(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 131 of this Order;

“Aerial work aircraft” means an aircraft (other than a public 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 1,850 metres or less:
  - (i) subject to sub-paragraph (ii), the airspace extending from the surface to a height of 2,000 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 two nautical miles;
  - (ii) where such an aerodrome traffic zone would extend less than one and a half nautical miles beyond the end of any runway at the aerodrome and this sub-paragraph is notified as being applicable, sub-paragraph (b) shall apply as though the length of the longest runway is notified as greater than 1,850 metres;
- (b) in relation to such an aerodrome at which the length of the longest runway is notified as greater than 1,850 metres, the airspace extending from the surface to a height of 2,000 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 two and a half 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 public transport of passengers or cargo;

“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 1,000 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 serving the area in which the aircraft is for the time being or the air traffic control unit 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;

“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 attendant” in relation to an aircraft means a person on a flight for the purpose of public transport carried for the purpose of performing in the interests of the safety of passengers duties to be assigned by the operator or the commander 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;

“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 maintenance review” has the meaning assigned to it by article 10(1) of this Order;

“Certificate of release to service” has the meaning assigned to it by article 12(7) of this Order;

“Certificated for single pilot operation” means an aircraft which 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;

“The Civil Aviation Authority” means the body corporate constituted in accordance with the provisions of section 2 of the Civil Aviation Act 1982(4);

“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;

“Commander” in relation to an aircraft means the member of the flight crew designated as commander of that aircraft by the operator thereof, or, failing such a person, the person who is for the time being the pilot in command of the aircraft;

“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>(5)</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>(6)</sup>;

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

“Contracting State” means any State (including the United Kingdom and any of the Territories) which is 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 which has been notified as Class A, Class B, Class C, Class D or Class E airspace;

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

“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 who is appointed by the operator of the aircraft to give or to supervise the training, experience, practice and periodical tests required in respect of the flight crew under article 34(3) of this Order or a cabin attendant;

“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 which has been notified;

“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>(7)</sup>;

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

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(5) 1981 c. 61, as amended by S.I. 1983/892; S.I. 1983/1699; the Brunei and Maldives Act 1985 section 1 and Schedule paragraph 8; S.I. 1989/1331; S.I. 1990/1502 and S.I. 1998/3161.

(6) 1974 c. 39.

(7) 1989 c. 40.

“Flight crew” in relation to an aircraft means 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, pursuant to 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 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 five 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 commander of the balloon or by remote control;

“General lighthouse authority” has the same meaning as in section 193 of the Merchant Shipping Act 1995(8);

“Government aerodrome” means any aerodrome in the Territory which is under the control of the Governor or is in the occupation of any Department of the Government of the Territory or of the Government of the United Kingdom, or of Her Majesty’s naval, military or air forces, or of any visiting force;

“Governor” means the officer for the time being administering the Government of the Territory, and includes, in relation to any purpose of this Order, other than the purposes of making rules or regulations under this Order or of making or revoking a designation under article 111 of this Order:

- (a) any person appointed by the Governor as Director of Civil Aviation in the Territory, being the person responsible under the law of the Territory on behalf of the Governor for the administration of this Order;
  - (b) any person who, or the holder for the time being of any office which, is designated for the time being for that purpose by the Governor with the approval of the Secretary of State;
- “Hire-purchase agreement” has the same meaning as in section 189 of the Consumer Credit Act 1974<sup>(9)</sup>;
- “Instrument Flight Rules” means Instrument Flight Rules specified in the Rules of the Air;
- “Instrument Meteorological Conditions” means weather precluding 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<sup>(10)</sup>, 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;
- “Licence for public use” has the meaning assigned to it by article 103(3) of this Order;
- “Licensed aerodrome” means an aerodrome licensed under this Order;
- “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;
- “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 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 having a maximum total weight authorised not exceeding 390 kg, a wing loading at the maximum total weight authorised not exceeding 25 kg per square metre, a maximum fuel capacity not exceeding 50 litres and which has been designed to carry not more than two persons;
- “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;

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<sup>(9)</sup> 1974 c. 39.

<sup>(10)</sup> 1964 c. 5.

“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;

“Nautical mile” means the International Nautical Mile, that is to say, a distance of 1,852 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;

“North Atlantic Minimum Navigation Performance Specification airspace” means the airspace specified as such in regulation 19(3) in Schedule 14 to this Order;

“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)”, or such other official publications so issued for the purpose of enabling any of the provisions of this Order to be complied with;

“Obstacle limitation surfaces” has the same meaning as in “CAP 168 Licensing of aerodromes”(11);

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

“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;

“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 a person who for the time being is in charge of the piloting of 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 public transport;

“Public transport” has the meaning assigned to it by article 131 of this Order;

“Public transport aircraft” means an aircraft flying, or intended by the operator of the aircraft to fly, for the purpose of public 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 1,000 ft 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 designated to be removable solely for the purpose of enabling another part to be inspected, repaired, removed or replaced or cargo to be loaded;

“Rules of the Air” means the rules in Schedule 13 to this Order and any supplementary rules made by the Governor under article 84(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 commander 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;

“Scheduled journey” means one of a series of journeys which 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 two 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;

“State of the operator” means the State in which the operator of an aircraft has his principal place of business 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 pursuant to 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 8(1), airworthiness,

in the case of article 15(1), aircraft radio equipment, in the case of article 21(3), flight crew licensing or in the case of article 46(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;

“The Territory” has the meaning assigned to it by article 128 of this Order and includes the dependencies of the Territory and the adjacent territorial waters;

“Territory reduced vertical separation minimum airspace” means Territory airspace which has been notified as reduced vertical separation minimum airspace for the purposes of article 48;

“Tethered flight” means flight by a controllable balloon throughout which it is flown within limits imposed by a restraining device which 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 pursuant to an agreement, which is of more than a nominal nature;

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

“Visual Meteorological Conditions” means weather permitting flight in accordance with the Visual Flight Rules.

(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 18 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 words “or of any visiting force” were omitted from article 70(8)(a);

(ii) the words “or a visiting force” were omitted from article 94(5);

(iii) the whole of paragraph (2) were omitted from article 125;

(iv) the words “or as a member of a visiting force” were omitted from article 125(4); and

(v) in paragraph (1) 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 18 to this Order 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:

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(12) S.I. 1954/636.

(13) 1952 c. 67.



- (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;
- (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.

- (a) (5) (a) Subject to sub-paragraph (b), references in this Order to the operator of an aircraft are, for the purposes of the application of any provision of this Order in relation to any particular aircraft, references to the person who at the relevant time has the management of that aircraft, and cognate expressions shall be construed accordingly.
  - (b) For the purposes of the application of any provision in Part III of this Order, when by virtue of any charter or other agreement for the hire or loan of an aircraft a person other than an air transport undertaking or an aerial work undertaking has the management of that aircraft for a period not exceeding 14 days, the foregoing provisions of this paragraph shall have effect as if that agreement had not been entered into.
- (6) The expressions appearing in the “General classification of aircraft” set forth in Part A of Schedule 2 to this Order 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 as are necessary or expedient for carrying out the purposes of the Order.

(8) The Interpretation Act 1978<sup>(14)</sup> applies for the purpose of the interpretation of this Order and otherwise in relation thereto as it applies for the purpose of the interpretation of, and in relation to, an Act of Parliament of the United Kingdom, and as if this Order were such an Act of Parliament.

- (a) (9) (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.

### **Public transport and aerial work**

- (a) **131.** (1) (a) Subject to the provisions of this article, aerial work means any purpose (other than public 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.
- (b) 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 III of this Order.

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(14) 1978 c. 30.

(2) Subject to the provisions of this article, an aircraft in flight shall for the purposes of this Order be deemed to fly for the purposes of public 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 III of this Order (other than articles 14(2) and 15(2) thereof), 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.
- (a) (3) (a) Notwithstanding that an aircraft may be flying for the purpose of public transport by reason of paragraph (2)(c), it shall not be deemed to be flying for the purpose of the public transport of passengers unless valuable consideration is given for the carriage of those passengers.
- (b) A glider shall not be deemed to fly for the purpose of public transport for the purposes of Part III of this Order by virtue of paragraph (2)(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.
- (c) Notwithstanding the giving or promising of valuable consideration specified in sub-paragraph (2)(c) in respect of the flight or the purpose of the flight it shall:
- (i) subject to sub-paragraph (ii), for all purposes other than Part III of this Order; and
  - (ii) for the purposes of articles 14(2) and 15(2) of this Order;
- be deemed to be a private flight.

(4) 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.

- (a) (5) (a) For the purposes of paragraph (2)(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:
- (i) its holding company;
  - (ii) its subsidiary; or
  - (iii) another subsidiary of the same holding company.
- (b) For the purposes of this article “holding company” and “subsidiary” have the meanings respectively specified in Section 736 of the Companies Act 1985(15).
- (a) (6) (a) A flight shall, for the purposes of Part IV of this Order, be deemed to be a private flight if:

- (i) the flight is:
  - (aa) wholly or principally for the purpose of taking part in an aircraft race, contest or flying display;
  - (bb) for the purpose of positioning the aircraft for such a flight as is specified in sub-paragraph (aa) hereof and is made with the intention of carrying out such a flight; or
  - (cc) for the purpose of returning after such a flight as is specified in sub-paragraph (aa) hereof to a place at which the aircraft is usually based;
- (ii) the only valuable consideration in respect of the flight or the purpose of the flight other than:
  - (aa) valuable consideration specified at paragraph (2)(c); or
  - (bb) in the case of an aircraft owned in accordance with paragraph (10)(a), valuable consideration which falls within paragraph (10)(b);

is either:

- (cc) 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
- (dd) 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;

or falls within both sub-paragraphs (cc) and (dd).

- (b) Any prize falling within paragraph (6)(a)(ii)(dd) shall be deemed for the purposes of this Order not to constitute remuneration for services as a pilot.
- (a) (7) (a) Subject to paragraph (b), 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:
  - (i) valuable consideration specified at paragraph (2)(c); or
  - (ii) in the case of an aircraft owned in accordance with paragraph (10)(a), valuable consideration which falls within paragraph (10)(b);

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.

- (b) If valuable consideration specified at paragraph (2)(c) is given or promised the provisions of that paragraph shall apply to the flight.
- (a) (8) (a) Subject to paragraph (b), a flight shall be deemed to be a private flight if:
  - (i) the only valuable consideration given or promised in respect of the flight or the purpose of the flight other than:
    - (aa) valuable consideration specified at paragraph (2)(c); or
    - (bb) in the case of an aircraft owned in accordance with paragraph (10)(a), valuable consideration which falls within paragraph (10)(b);

is a contribution to the direct costs of the flight otherwise payable by the pilot in command; and

- (ii)
  - (aa) no more than four persons (including the pilot) are carried on such a flight;
  - (bb) the proportion which such contribution 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);
  - (cc) 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
  - (dd) 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.
- (b) If valuable consideration specified at paragraph (2)(c) is given or promised the provisions of that paragraph shall apply to the flight.
- (a) (9) (a) Subject to paragraph (b), 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:
  - (i) valuable consideration specified at paragraph (2)(c); or
  - (ii) in the case of an aircraft owned in accordance with paragraph (10)(a), valuable consideration which falls within paragraph (10)(b);

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.

- (b) If valuable consideration specified at paragraph (2)(c) is given or promised the provisions of that paragraph shall apply to the flight.
- (10) A flight shall be deemed to be a private flight if:
  - (a) the aircraft is owned:
    - (i) jointly by persons (each of whom is a natural person) who each hold not less than a 5 per cent beneficial share and:
      - (aa) the aircraft is registered in the names of all the joint owners; or
      - (bb) 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 share in the aircraft; or
    - (ii) 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 per cent of the shares in that company; and
  - (b) the only valuable consideration given or promised in respect of the flight or the purpose of the flight is either:
    - (i) 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

(ii) 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 (i) and (ii).

(11) 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 pursuant to article 57 of this Order;
- (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 pursuant to article 57 of this Order; 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);

shall be deemed to be for the purposes of aerial work.

### **Saving**

**132.**—(1) Subject to the provision of articles 103 and 107 of this Order, nothing in this Order or any regulations made thereunder 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.

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

**133.** The provisions of this Order other than articles 58, 64, 85(1), 86, 87, 118(1)(b), 130(1), (4) and (7) shall 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**

**134.** In relation to any of his functions pursuant to any of the provisions of this Order the Governor may, either absolutely or subject to such conditions as he thinks fit, approve a person as qualified to furnish reports to him and may accept such reports.

### **Publication of requirements**

**135.**—(1) Subject to paragraph (2), 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 publish the requirements which must be met by an applicant for such a certificate, licence or other document in order to so satisfy him.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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(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.