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STATUTORY INSTRUMENTS

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**2001 No. 2128**

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

**PART XI**

*General*

**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.
- (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 subparagraph (2)(c) in respect of the flight or the purpose of the flight it shall:
- (i) subject to subparagraph (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(1).

(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).

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(1) 1985 c. 6 as amended by section 144 of the Companies Act 1989 (c. 40).

(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.