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STATUTORY INSTRUMENTS

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**2004 No. 2038**

**CIVIL AVIATION**

**The Air Navigation (Overseas Territories) (Amendment) Order 2004**

<i>Made</i>	- - - -	<i>27th July 2004</i>
<i>Laid before Parliament</i>		<i>9th August 2004</i>
<i>Coming into force</i>	- -	<i>31st August 2004</i>

At the Court at Buckingham Palace, the 27th day of July 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by Sections 8, 41, 57, 58, 59 and 61 of the Civil Aviation Act 1949(1), as extended to certain territories by the Civil Aviation Act 1949 (Overseas Territories) Order 1969(2), as amended by the Civil Aviation Act 1982 (Overseas Territories) Order 2001(3), of the powers conferred on Her by Section 61 of the Civil Aviation Act 1982(4), as extended to certain territories by the Civil Aviation Act 1982 (Overseas Territories) Order 2001 and all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

**Citation and Commencement**

1. This Order may be cited as the Air Navigation (Overseas Territories) (Amendment) Order 2004 and shall come into force on 31<sup>st</sup> August 2004.

**Amendment of the Air Navigation (Overseas Territories) Order 2001**

2. The Air Navigation (Overseas Territories) Order 2001(5) shall be amended as follows.
3. In article 4(5), after “chartered” and after “charterer”, there shall be inserted “by demise”.
- 4.—(1) For article 8(2)(e) there shall be substituted:

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(1) 1949 c. 67.  
(2) S.I.1969/592.  
(3) S.I. 2001/1452.  
(4) 1982 c. 16.  
(5) S.I. 2001/2128, amended by S.I. 2003/433.

“an aircraft flying in accordance with a permit to fly issued by the Governor under article 9A of this Order or with a certificate of validation issued by the Governor under article 9B of this Order.”

(2) After article 9 there shall be inserted:

**“Issue, renewal, etc. of permits to fly**

- (a) **9A.** (1) Subject to sub-paragraph (b), the Governor shall issue in respect of any aircraft a permit to fly if he is satisfied that the aircraft is fit to fly having regard to the airworthiness of the aircraft and the conditions to be attached to the permit.
- (b) The Governor shall refuse to issue a permit to fly in respect of an aircraft if it appears to the Governor that the aircraft is eligible for and ought to fly under and in accordance with a certificate of airworthiness.
- (a) (2) Subject to sub-paragraph (c), an aircraft flying in accordance with a permit to fly pursuant to article 8(2)(e) shall not fly for the purpose of public transport or aerial work other than aerial work which consists of flights for the purpose of flying displays, associated practice, test and positioning flights or the exhibition or demonstration of the aircraft.
- (b) No person shall be carried during flights for the purpose of flying displays or demonstration flying, except the minimum flight crew unless the prior permission of the Governor has been obtained.
- (c) With the permission of the Governor, an aircraft flying in accordance with a permit to fly pursuant to article 8(2)(e) may fly for the purpose of aerial work which consists of the giving of instruction in flying or the conduct of flying tests, subject to the aircraft being owned or operated under arrangements entered into by a flying club of which the person giving the instruction or conducting the test and the person receiving the instruction or undergoing the test are both members.
- (3) The Governor may issue the permit to fly subject to such conditions relating to the airworthiness, operation or maintenance of the aircraft as he thinks fit.
- (4) Subject to this article and article 81 of this Order, a permit to fly issued under this article shall remain in force for such periods as may be specified therein and may be renewed from time to time by the Governor for such further period as he thinks fit.
- (5) A permit to fly issued in respect of an aircraft shall cease to be in force:
  - (a) if any conditions associated with the permit are not complied with;
  - (b) until the completion of any inspection, modification or maintenance of the aircraft or any of its equipment, required for ascertaining whether the aircraft remains airworthy and:
    - (i) classified as mandatory by the Governor; or
    - (ii) required as a condition of the permit to fly;
  - (c) if the aircraft, engines or propellers, or such of its equipment as is necessary for the airworthiness of the aircraft, are modified or repaired; unless the repair or modification has been approved by the Governor or by a person approved by the Governor for the purpose;
  - (d) unless the permit includes a current certificate of validity issued by the Governor or by a person approved by the Governor for the purpose.
- (6) A placard shall be affixed to any aircraft flying in accordance with a permit to fly in full view of the occupants which shall be worded as follows:

“Occupant Warning This aircraft has not been certificated to an International Requirement”

(7) An aircraft flying in accordance with a permit to fly shall only be flown by day and in accordance with the Visual Flight Rules unless the prior permission of the Governor has been obtained.

(8) Nothing in this Order shall oblige the Governor to accept an application for the issue, variation or renewal of a permit to fly when the application is not supported by such reports from such approved persons as the Governor may specify (either generally or in a particular case or class of cases).

(9) A permission granted for the purpose of paragraphs (2)(b), (2)(c) or (7) and an approval granted for the purpose of paragraph (5)(c) or (5)(d) shall be in writing and may be granted subject to such conditions as the Governor thinks fit.

#### **Issue etc. of certificates of validation of permits to fly or equivalent documents**

**9B.**—(1) The Governor shall issue in respect of any aircraft registered elsewhere than the Territory a certificate of validation if he is satisfied that there is in respect of the aircraft a permit to fly or equivalent document issued or validated by the competent authority of the country in which the aircraft is registered which applies standards which are substantially equivalent to those required for the issue of a permit to fly by the Governor.

(2) An aircraft flying in accordance with a certificate of validation pursuant to article 8(2) (e) shall not fly for the purpose of public transport or aerial work other than aerial work which consists of flights for the purpose of flying displays, associated practice, test and positioning flights or the exhibition or demonstration of the aircraft.

(3) The Governor may issue a certificate of validation subject to such other conditions relating to the airworthiness, operation or maintenance of the aircraft as he thinks fit.

(4) Subject to this article and article 81 of this Order, a certificate of validation issued under this article shall remain in force for such periods as may be specified therein and may be renewed from time to time by the Governor for such further period as he thinks fit.”.

**5.**—(1) In article 20(7)(b) for “cabin attendants” there shall be substituted “cabin crew”.

(2) In article 20(7)(c)(i) for “one cabin attendant” there shall be substituted “one member of the cabin crew”.

(3) In article 20(7)(c)(ii) for “cabin attendants” there shall be substituted “members of the cabin crew”.

(4) In article 20(8) for “cabin attendants” on the first occasion on which it occurs there shall be substituted “cabin crew” and on the second occasion on which it occurs there shall be substituted “members of the cabin crew”.

(5) In article 45(2)(a)(ii), 45(2)(e)(ii) and 45(2)(f)(i)(bb) for “cabin attendants” there shall be substituted “cabin crew”.

(6) In article 130(1), in the definition of “Cabin attendant”, for ““Cabin attendant” in relation to an aircraft means a person” there shall be substituted ““Cabin crew” in relation to an aircraft means those persons”.

(7) In article 130(1), in the definition of “Crew”, for “cabin attendant” there shall be inserted “member of the cabin crew”.

(8) In Schedule 4, paragraph 5, Scale B, paragraph (1)(e) for “cabin attendants” there shall be substituted “cabin crew”.

(9) In Schedule 4, paragraph 5, Scale G, paragraph (iii)(b)(bb)(bbb) for “cabin attendants” there shall be substituted “members of the cabin crew”.

(10) In Schedule 4, paragraph 5, Scale L2, Part I, sub-paragraphs (ii)(b) and (iii)(b) for “Cabin attendants”, on each occasion on which it occurs, there shall be substituted “Members of the cabin crew”.

(11) In Schedule 4, paragraph 5, Scale L2, Part II, sub-paragraphs (ii)(b), (ii)(c) and (iii)(b) for “Cabin attendants”, on each occasion on which it occurs, there shall be substituted “Members of the cabin crew”.

(12) In Schedule 4, paragraph 5, Scale R, paragraph (i)(a) for “cabin attendant” there shall be substituted “member of the cabin crew”.

(13) In Schedule 4, paragraph 5, Scale R paragraph (ii)(a) for “cabin attendants” there shall be substituted “members of the cabin crew”.

(14) In Schedule 4, paragraph 5, Scale Y, paragraph (iv)(b) for “cabin attendants” there shall be substituted “cabin crew”.

6. After article 34 there shall be inserted:

**“Flight data monitoring, accident prevention and flight safety programme**

**34A.**—(1) The operator of an aircraft registered in the Territory flying for the purpose of public transport shall establish and maintain an accident prevention and flight safety programme.

(2) The operator of an aeroplane registered in the Territory with a maximum total weight authorised of more than 27,000 kg flying for the purpose of public transport shall on and after 1<sup>st</sup> July 2005 include a flight data monitoring programme as part of its accident prevention and flight safety programme.

(3) The sole objective of an accident prevention and flight safety programme shall be the prevention of accidents and incidents. It shall not be its purpose to apportion blame or liability. Each programme shall be designed and managed to meet that objective.”

7. In article 37 for “the cloud ceiling or visibility prevailing at the aerodrome of departure and forecast for the estimated time of landing at the aerodrome at which it is intended to land and at any alternate aerodrome” there shall be substituted “the cloud ceiling or visibility prevailing at the aerodrome of departure or forecast for the estimated time of landing at the aerodrome at which it is intended to land or at any alternate aerodrome”.

8.—(1) After article 40(1) there shall be inserted:

“(1A) An aircraft to which this article applies shall not:

- (a) conduct a Category II, Category IIIA or Category IIIB approach and landing; or
- (b) take-off when the relevant runway visual range is less than 150 metres, otherwise than under and in accordance with the terms of an approval so to do granted in accordance with the law of the country in which it is registered.

(1B) In the case of an aircraft registered in the Territory, the approval referred to in paragraph (1A) shall:

- (a) be issued by the Governor;
- (b) be in writing; and
- (c) contain such conditions as the Governor thinks fit.”

(2) At the commencement of article 40(2) and (3) there shall be inserted:

“Without prejudice to the provisions of paragraph (1A).”

(3) After article 40(3) there shall be inserted:

“(3A) If, according to the information available, an aircraft would as regards any flight be required by the Rules of the Air to be flown in accordance with the Instrument Flight Rules at the aerodrome of intended landing, the commander of the aircraft shall select prior to take off an alternative aerodrome unless no aerodrome suitable for that purpose is available.”

(4) After article 40(4) there shall be inserted:

“(4A) In this article “Category II, Category IIIA and Category IIIB approach and landing have the same meaning as in article 39(8).”

9.—(1) In article 62(1) for “aircraft” there shall be substituted “aeroplane and helicopter”.

(a) In articles 62(2)(a), 62(2)(b)(i), 62(2)(b)(ii) and (iii), 62(4)(b), 62(8)(a) and 62(8)(b)(i), on each occasion on which it occurs, for “aircraft” there shall be substituted “aeroplane or helicopter”.

(2) For article 62(3) there shall be substituted:

“(3) Every exit from the aeroplane or helicopter shall be marked with the words “exit” or “emergency exit” in capital letters, which shall be red in colour and if necessary shall be outlined in white to contrast with the background.”

(3) For article 62(4)(a) there shall be substituted:

“(a) Every exit from the aeroplane or helicopter shall be marked with instructions in English and with diagrams to indicate the correct method of opening the exit, which shall be red in colour and located on a background which provides adequate contrast.”

(4) For article 62(5) there shall be substituted:

(a) “(5) An operator of an aeroplane or helicopter shall ensure that if areas of the fuselage suitable for break-in by rescue crews in emergency are marked on aeroplanes and helicopters, such areas shall be marked upon the exterior surface of the fuselage with markings to show the areas (in this paragraph referred to as “break-in areas”) which can, for purposes of rescue in an emergency, be most readily and effectively broken into by persons outside the aeroplane or helicopter.

(b) The colour of the break-in markings shall be red or yellow, and if necessary they shall be outlined in white to contrast with the background. If the corner markings are more than 2 metres apart, intermediate lines 9 cm x 3 cm shall be inserted so that there is no more than 2 metres between adjacent marks.”

(5) Articles 62(6) and 62(7)(b) and (c) shall be omitted.

10. After article 78 there shall be inserted:

**“Production of air traffic service equipment documents and records**

**78A.** The holder of an approval under articles 104 or 105 of this Order shall within a reasonable time after being requested to do so by an authorised person, cause to be produced to that person any documents and records relating to any air traffic service equipment used or intended to be used in connection with the provision of a service to an aircraft.”

11. In article 84(3)(c) for “Joint Service Publication 318” there shall be substituted “Joint Service Publication 550”.

12. For article 88 there shall be substituted:

**“Requirement for air traffic control approval for the provision of air traffic services**

**88.**—(1) No person in charge of the provision of an air traffic control service shall provide such a service in the Territory otherwise than under and in accordance with the terms of an air traffic control approval granted to him by the Governor.

(2) The Governor shall grant an air traffic control approval if he is satisfied that the applicant is competent, having regard to his organisation, staffing, equipment, maintenance and other arrangements, to provide a service which is safe for use by aircraft.

(3) An air traffic control approval may be granted subject to such conditions as the Governor thinks fit and shall, subject to the provisions of article 81 of this Order, remain in force for the period specified in the approval.”

**13.** After article 88 there shall be inserted:

**“Duty of person in charge to satisfy himself as to competence of controllers**

**88A.** The holder of an approval under article 88 shall not permit any person to act as an air traffic controller or to act as a student air traffic controller in the provision of the service under the approval unless:

- (a) such person holds an appropriate licence; and
- (b) the holder has satisfied himself that such person is competent to perform his duties.”

**14.** For the title to Part X there shall be substituted: “*Air Traffic Service Equipment, Aerodromes, Aeronautical Lights and Dangerous Lights*”.

**15.** For articles 104 and 105 there shall be substituted:

**“Air traffic service equipment**

**104.**—(1) A person shall not cause or permit any air traffic service equipment to be established or used in the Territory otherwise than under and in accordance with an approval granted by the Governor to the person in charge of the equipment.

(2) An approval shall be granted pursuant to paragraph (1) upon the Governor being satisfied:

- (a) as to the intended purpose of the equipment; and
- (b) that the person is competent to operate the equipment and that the equipment is fit for its intended purpose.

(a) (3) The person in charge of an aeronautical radio station at an aerodrome for which a licence for public use has been granted shall cause to be notified in relation to that aeronautical radio station the type and availability of operation of any service which is available for use by any aircraft.

(b) An approval granted pursuant to paragraph (1) may include a condition requiring a person in charge of an aeronautical radio station at any other aerodrome or place to cause the information specified in subparagraph (a) to be notified.

(4) An approval granted pursuant to paragraph (1) may include a condition requiring the person in charge of the equipment to use a person approved by the Governor pursuant to paragraph (5) for the provision of particular services in connection with the equipment and in particular but without limitation may include a condition requiring that the equipment be flight checked by such an approved person.

(5) The Governor may approve a person to provide particular services in connection with approved equipment.

(6) For the purpose of paragraphs (1) and (5) an approval:

- (a) shall be in writing and may be granted subject to such conditions as the Governor thinks fit; and
- (b) may be granted in respect of one or more than one person or generally.

(7) The provisions of this article shall not apply in respect of any air traffic service equipment of which the person solely in charge is the Governor.

(8) In this part of the Order, “air traffic service equipment” means ground based equipment, including an aeronautical radio station, used or intended to be used in connection with the provision of a service to an aircraft in flight or on the ground which equipment is not otherwise approved by or under this Order but excluding:

- (a) any public telecommunication system; and
- (b) any equipment in respect of which the Governor has made a direction that it shall be deemed not to be air traffic service equipment for the purposes of articles 104 and 105 of this Order.

#### **Air traffic service equipment records**

**105.**—(1) The person in charge of any air traffic service equipment and any associated apparatus required pursuant to paragraph (2) shall keep in respect of such equipment or apparatus records in accordance with Part A of Schedule 19, and shall preserve such records for a period of one year or such longer period as the Governor may in a particular case direct.

- (a) (2) The person in charge of an aeronautical radio station which is used for the provision of an air traffic control service by an air traffic control unit shall provide recording apparatus in accordance with paragraph (3).
- (b) The Governor may direct the person in charge of any other air traffic service equipment to provide recording apparatus in accordance with paragraph (3).

(3) The person in charge of the air traffic service equipment in respect of which recording apparatus is required to be provided pursuant to paragraph (2) shall, subject to paragraph (5):

- (a) ensure that when operated the apparatus is capable of recording and replaying the terms or content of any message or signal transmitted or received by or through that equipment or in the case of an aeronautical radio station is capable of recording and replaying the terms or content of any voice radio message or signal transmitted to an aircraft either alone or in common with other aircraft or received from an aircraft by the air traffic control unit;
- (b) ensure that the apparatus is in operation at all times when the equipment is being used in connection with the provision of a service provided for the purpose of facilitating the navigation of aircraft;
- (c) ensure that each record made by the apparatus complies with Part B of Schedule 19;
- (d) not cause or permit that apparatus to be used unless it is approved by the Governor; and
- (e) comply with the terms of such an approval.

- (a) (4) The Governor may in considering whether or not to grant an approval, without limitation, have regard to the matters specified in Part C of Schedule 19.

- (b) An approval may be granted subject to such conditions as the Governor thinks fit including, without limitation, conditions relating to the matters to which he may have had regard under sub-paragraph (a).
- (c) For the purpose of this article an approval shall be in writing and may be granted in respect of one or more than one person or generally.

(5) If any apparatus provided in compliance with paragraph (2) ceases to be capable of recording the matters required by this article to be included in the records, the person required to provide that apparatus shall ensure that, so far as practicable, a record is kept which complies with Part B of Schedule 19 and on which the particulars specified therein are recorded together with, in the case of apparatus provided in compliance with paragraph (2) (a), a summary of voice communications exchanged between the aeronautical radio station and any aircraft.

(6) If any apparatus provided in compliance with paragraph (2) becomes unserviceable, the person in charge of the air traffic service equipment shall ensure that the apparatus is rendered serviceable again as soon as reasonably practicable.

(7) The person in charge of any air traffic service equipment shall preserve any record made in compliance with paragraphs (3) or (5) for a period of 30 days from the date on which the terms or content of the message or signal were recorded or for such longer period as the Governor may in a particular case direct.

- (a) (8) Subject to sub-paragraph (b), a person required by this article to preserve any record by reason of his being the person in charge of the air traffic service equipment shall, if he ceases to be such a person, continue to preserve the record as if he had not ceased to be such a person, and in the event of his death the duty to preserve the record shall fall upon his personal representative.
- (b) If another person becomes the person in charge of the air traffic service equipment the previous person in charge or his personal representative shall deliver the record to that other person on demand, and it shall be the duty of that other person to deal with any such record delivered to him as if he was the previous person in charge.

(9) The person in charge of any air traffic service equipment shall within a reasonable time after being requested to do so by an authorised person produce any record required to be preserved pursuant to this article to that authorised person.

(10) The provisions of this article shall not apply in respect of any air traffic service equipment of which the person solely in charge is the Governor.”.

**16.** After article 109 there shall be inserted:

**“Lighting of en-route obstacles**

**109A.**—(1) This article shall apply to any en-route obstacle which for the purposes of this article means any building, structure or erection which is 150 metres or more above ground level other than any such building, structure or erection which is in the vicinity of a licensed aerodrome.

(2) The person in charge of an en-route obstacle shall ensure that it is fitted with medium intensity steady red lights positioned as close as possible to the top of the obstacle and at intermediate levels spaced so far as practicable equally between the top lights and ground level with an interval not exceeding 52 metres.

(3) Subject to paragraph (4), the person in charge of an en-route obstacle shall ensure that, by night, the lights required to be fitted by this article shall be displayed.



(4) In the event of the failure of any light which is required by this article to be displayed by night the person in charge shall repair or replace the light as soon as is reasonably practicable.

(5) At each level on the obstacle where lights are required to be fitted, sufficient lights shall be fitted and arranged so as to show when displayed in all directions.

(6) In this article, “medium intensity steady red light” means a light which complies with the characteristics described for a medium intensity type C light as specified in Volume 1 (Aerodrome Design and Operations) of Annex 14 (Third edition November 1999) to the Chicago Convention.

(7) In any particular case the Governor may direct that an en-route obstacle shall be fitted with and shall display such additional lights in such positions and at such times as it may specify.

(a) (8) This article shall not apply to any en-route obstacle in respect of which a permission has been granted by the Governor to the person in charge provided any conditions specified in such a permission are complied with.

(b) A permission may be granted for the purposes of this article in respect of a particular case or class of cases or generally and subject to such conditions as the Governor thinks fit.”

17. After article 117 there shall be inserted:

**“Mandatory reporting of birdstrikes**

**117A.**—(1) Subject to the provisions of this article, the commander of an aircraft shall make a report to the Governor of any birdstrike occurrence which occurs whilst the aircraft is in flight within the Territory.

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

(3) Nothing in this article shall require a person to report any occurrence which he has reported under article 117 of this Order or which he has reason to believe has been or will be reported by another person to the Governor in accordance with that article.

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

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

18. In article 118(1)(a) for “or 60” there shall be substituted “60 or 65(2)”.

19. In article 119(1) after sub-paragraph (c) there shall be inserted:

“(d) to any building or place from which an air traffic control service is being provided or where any air traffic service equipment requiring approval under article 104 is situated for the purpose of inspecting:

(i) any equipment used or intended to be used in connection with the provision of a service to an aircraft in flight or on the ground, or

(ii) any document or record which it or he has power to demand under this Order.”.

20. In article 125(5) for “Joint Service Publication 318” there shall be substituted “Joint Service Publication 550”.

**21.—(1)** In article 130(1):

“(1) For the definition of “Appropriate air traffic control unit” there shall be substituted: “Appropriate air traffic control unit” means in relation to an aircraft either the air traffic control unit notified as serving the area in which the aircraft is for the time being, or the air traffic control unit notified as serving the area which the aircraft intends to enter and with which unit the aircraft is required to communicate prior to entering that area, as the case may be;”.

(2) For the definition of “Microlight aeroplane” there shall be substituted:

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

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

**22.** In Schedule 2, Part B, paragraph 1(1) for “four capital letters” substitute “three capital letters”.

**23.—(1)** In Schedule 3, Part A, under the heading “A Conditions” in paragraph (2)(a)(i) after “shall mean a modification which has previously been approved by the Governor” there shall be inserted “or by an organisation approved for that purpose by the Governor”.

(2) In Schedule 3, Part A, under the heading “A Conditions” for paragraph (3) there shall be substituted:

“(3) The aircraft, including any modifications, shall be of a design which previously has been approved by the Governor, or by an organisation approved for that purpose by the Governor, as being compliant with a standard accepted by the Governor as appropriate for the issue of a certificate of airworthiness”.

**24.—(1)** In Schedule 4, paragraph 4 (Table):

- (a) in sub-paragraph (11)(a), in the column headed “Circumstances of flight”, for “on or after 1<sup>st</sup> October 2001” there shall be substituted “on or after 1<sup>st</sup> January 2005” and adjacent thereto in the column headed “Scale of Equipment required” for “X(ii)” there shall be substituted “X(ii) or (iii)”.
- (b) in sub-paragraph (11)(b), in the column headed “Circumstances of flight”, for “on or after 1<sup>st</sup> January 2005” there shall be substituted “on or after 1<sup>st</sup> January 2007” and adjacent thereto in the column headed “Scale of Equipment required” for “X(ii)” there shall be substituted “X(ii) or (iii)”.

(2) In Schedule 4, paragraph 5, for Scale X there shall be substituted:

**“Scale X**

- (i) Subject to sub-paragraph (iv), a Ground Proximity Warning System being equipment capable of giving warning to the pilot of the potentially hazardous proximity of ground or water.
- (ii) Subject to sub-paragraph (iv), a Terrain Awareness and Warning System known as Class A, being equipment capable of giving warning to the pilot of the potentially hazardous proximity

of ground or water, including excessive closure rate to terrain, flight into terrain when not in landing configuration, excessive downward deviation from an instrument landing system glideslope, a predictive terrain hazard warning function and a visual display.

- (iii) Subject to sub-paragraph (iv), a Terrain Awareness and Warning System known as Class B, being equipment capable of giving warning to the pilot of the potentially hazardous proximity of ground or water, including a predictive terrain hazard warning function.
- (iv) If the equipment becomes unserviceable, the aircraft may fly or continue to fly until it first lands at a place at which it is reasonably practicable for the equipment to be repaired or replaced.”

**25.**—(1) In Schedule 5, paragraph 2 (Table), after sub-paragraph (1)(c) in the column headed “Aircraft and circumstances of flight” there shall be inserted “(d) when flying for the purpose of public transport on and after 1<sup>st</sup> January 2006” and adjacent thereto in the column headed “Scale of equipment required” there shall be inserted “E\*”.

(2) In Schedule 5, paragraph 2 (Table), after sub-paragraph (4)(a) in the column headed “Aircraft and circumstances of flight” there shall be inserted “(aa) when flying for the purpose of public transport on and after 1<sup>st</sup> January 2006” and adjacent thereto in the column headed “Scale of equipment required” there shall be inserted “E\*”.

(3) In Schedule 5, paragraph 3 for “Scale E Secondary surveillance radar equipment” there shall be substituted

#### “Scale E

Secondary surveillance radar equipment which includes a pressure altitude reporting transponder capable of operating in Mode A and Mode C and of being operated in accordance with such instructions as may be given to the aircraft by the air traffic control unit.”

(4) In Schedule 5, paragraph 4 after sub-paragraph (5) there shall be inserted:

“(6) “Mode A” means replying to an interrogation from secondary surveillance radar units on the surface to elicit transponder replies for identity and surveillance with identity provided in the form of a 4 digit identity code;

(7) “Mode C” means replying to an interrogation from secondary surveillance radar units on the surface to elicit transponder replies for automatic pressure-altitude transmission and surveillance.”.

**26.** In Schedule 9, paragraph 2(3), the words “for any aircraft which is flying not more than 40 nautical miles from the aerodrome traffic zone of the aerodrome in respect of which the service is being provided” shall be omitted.

**27.** In Schedule 12, Part A, in the column headed “Articles of order”, after “87” there shall be inserted “88A” and adjacent thereto, in the column headed “Subject matter”, there shall be inserted “Duty of person in charge to satisfy himself as to competence of controllers”.

**28.** In Schedule 13, Section VI for rule 31(4)(a) substitute the following:—

- (a) “(4) subject to sub-paragraph (b), the commander of the aircraft shall fly in conformity with:
  - (i) the air traffic control clearance issued for the flight, as amended by any further instructions given by an air traffic control unit; and
  - (ii) (aa) the instrument departure procedures notified in relation to the aerodrome of departure, unless he is otherwise authorised by the appropriate air traffic control unit; and

- (bb) the holding and instrument approach procedures notified in relation to the aerodrome of destination, unless he is otherwise authorised by the appropriate air traffic control unit.”

29.—(1) In Schedule 14 there shall be made the following substitutions:

- (a) In regulation 7 for “cloud ceiling or visibility prevailing at the aerodrome of departure and forecast for the estimated time of landing at the aerodrome at which it is intended to land and at any alternate aerodrome” there shall be substituted “the cloud ceiling or visibility prevailing at the aerodrome of departure or forecast for the estimated time of landing at the aerodrome at which it is intended to land or at any alternate aerodrome”.
- (b) In regulation 8(2)(a) for “the cloud ceiling or visibility prevailing at the aerodrome of departure and forecast for the estimated time of landing at the aerodrome at which it is intended to land and at any alternate aerodrome” there shall be substituted “the cloud ceiling or visibility prevailing at the aerodrome of departure or forecast for the estimated time of landing at the aerodrome at which it is intended to land or at any alternate aerodrome”.
- (c) In regulation 9(6) for “the aerodrome at which it is intended to land and at any alternate aerodrome” there shall be substituted “the aerodrome at which it is intended to land or at any alternate aerodrome”.
- (d) In Regulation 19(3) for “N2700.00 W02500.00” substitute the following:  
“N2700.00 W04000.00  
N2218.00 W04000.00  
N1700.00 W03730.00  
N2400.00 W02500.00”.
- (e) In paragraph (11) of the Annex for “the cloud ceiling or visibility prevailing at the aerodrome of departure and forecast for the estimated time of landing at the aerodrome of destination” there shall be substituted “the cloud ceiling or visibility prevailing at the aerodrome of departure or forecast for the estimated time of landing at the aerodrome at which it is intended to land.”

(2) After Regulation 18 there shall be inserted:

**“Mandatory reporting of birdstrikes – time and manner of reporting and information to be reported**

- (a) **18A.** (1) Without prejudice to the Governor’s power in a particular case to approve the form of presentation and subject to sub-paragraph (b), for the purposes of article 117A(1), a report containing the information referred to in paragraph (2) shall be made to the Governor by post, telex, facsimile transmission or other similar means which produce a document containing a text of the communication within 96 hours of the birdstrike occurrence coming to the knowledge of the person making the report.
- (b) If at that time any of the said information is not in the possession of that person, a report containing that information shall be made to the Governor by post, telex, facsimile transmission or other similar means which produce a document containing a text of the communication within 96 hours of the information coming into his possession.

(2) For the purposes of article 117A(2), a report shall, as far as possible, contain the following information:

- (a) the type, series and registration marks of the aircraft concerned;
- (b) the name of the operator of the aircraft;
- (c) the date and the Co-ordinated Universal Time of the birdstrike occurrence;
- (d) the last point of departure and the next point of intended landing of the aircraft at that time;
- (e) a description of the birdstrike occurrence, including the part(s) of the aircraft affected, the effect on flight and any other relevant information;
- (f) the bird species/description;
- (g) the weather at the time of the occurrence;
- (h) the runway in use (where relevant);
- (i) the height and speed of the aircraft;
- (j) the phase of flight;
- (k) the position (if en route) of the aircraft at the time of the birdstrike;
- (l) any other reporting action taken;
- (m)
  - (i) the signature and name in block capitals of the person making the report;
  - (ii) the name of his employer and the capacity in which he acts for that employer; and
  - (iii) the address or telephone number at which communications should be made to him.”

### **The Air Navigation (Dangerous Goods) Regulations**

30. For Schedule 15 there shall be substituted the following:

“SCHEDULE 15

Article 60

#### THE AIR NAVIGATION (DANGEROUS GOODS) REGULATIONS

### PART I

#### Interpretation

#### **Interpretation**

1.—(1) In these Regulations:

“acceptance check list” means a document used to assist in carrying out a check on the external appearance of packages of dangerous goods and their associated documents to determine that all appropriate requirements have been met;

“cargo aircraft” means any aircraft which is carrying goods or property but not passengers and for the purposes of these Regulations the following are not considered to be passengers;

- (a) a crew member;
- (b) an operator’s employee permitted to be carried by, and carried in accordance with, the instructions contained in the Operations Manual;
- (c) an authorised representative of a competent national aviation authority;

- (d) a person with duties in respect of a particular shipment on board;
- “dangerous goods” means any article or substance which is identified as such in the Technical Instructions;
- “dangerous goods accident” means an occurrence associated with and related to the carriage of dangerous goods by air which results in fatal or serious injury to a person or major property damage;
- “dangerous goods incident” means an occurrence, other than a dangerous goods accident, which:
- (a) is associated with and related to the carriage of dangerous goods by air, not necessarily occurring on board an aircraft, which results in injury to a person, property damage, fire, breakage, spillage, leakage of fluid or radiation or other evidence that the integrity of the packaging has not been maintained; or
  - (b) relates to the carriage of dangerous goods and which seriously jeopardises the aircraft or its occupants;
- “dangerous goods transport document” means a document which is specified by the Technical Instructions and contains information about those dangerous goods;
- “freight container” means an article of transport equipment for radioactive materials, designed to facilitate the carriage of such materials, either packaged or unpackaged, by one or more modes of transport, but does not include a unit load device;
- “handling agent” means an agent who performs on behalf of the operator some or all of the functions of the latter including receiving, loading, unloading, transferring or other processing of passengers or cargo;
- “ID number” means an identification number specified in the Technical Instructions for an item of dangerous goods which has not been assigned a UN number;
- “non-Territory operator” means an aircraft operator who holds an air operator’s certificate issued otherwise than by the Governor;
- “overpack” means an enclosure used by a single shipper to contain one or more packages and to form one handling unit for convenience of handling and stowage, but does not include a unit load device;
- “package” means the complete product of the packing operation consisting of the packaging and its contents prepared for carriage;
- “packaging” means the receptacles and any other components or materials necessary for the receptacle to perform its containment function;
- “proper shipping name” means the name to be used to describe a particular article or substance in all shipping documents and notifications and, where appropriate, on packagings;
- “serious injury” means an injury which is sustained by a person in an accident and which:
- (a) requires hospitalisation for more than 48 hours, commencing within seven days from the date the injury was received; or
  - (b) results in a fracture of any bone (except simple fractures of fingers, toes or nose); or
  - (c) involves lacerations which cause severe haemorrhage, nerve, muscle or tendon damage; or
  - (d) involves injury to any internal organ; or

(e) involves second or third degree burns, or any burns affecting more than 5 per cent of the body surface; or

(f) involves verified exposure to infectious substances or injurious radiation.

“Technical Instructions” means the 2003-2004 English language edition of the Technical Instructions for the Safe Transport of Dangerous Goods by Air approved and published by decision of the Council of the International Civil Aviation Organisation;

“UN number” means the four-digit number assigned by the United Nations Committee of Experts on the Transport of Dangerous Goods to identify a substance or a particular group of substances;

“unit load device” means any type of container or pallet designed for loading onto an aircraft but does not include a freight container for radioactive materials or an overpack; and

“Territory operator” means an aircraft operator who holds an air operator’s certificate issued by the Governor.

(2) Other expressions used in these Regulations shall have the same respective meanings as in this Order.

(3) For the avoidance of doubt any reference in the Technical Instructions or these Regulations to the taking on board, loading onto or carriage of dangerous goods in or on an aircraft shall for the purpose of these Regulations be interpreted as applying also to the placing, suspending or carriage of such goods beneath an aircraft unless the context makes it otherwise apparent.

## PART II

### Requirements for carriage of dangerous goods

#### **Requirement for approval of operator**

2.—(1) An aircraft shall not carry or have loaded onto it any dangerous goods unless;

(a) the operator is approved under this regulation; and

(b) such goods are carried or loaded in accordance with:

(i) any conditions to which such approval may be subject; and

(ii) in accordance with the Technical Instructions.

(2) An approval under this regulation:

(a) shall be granted by the Governor if he is satisfied the operator is competent to carry dangerous goods safely;

(b) shall be in writing; and

(c) may be subject to such conditions as the Governor thinks fit.

#### **Prohibition of carriage of dangerous goods**

3.—(1) Subject to paragraphs (2) and (3) a person shall not:

(a) deliver or cause to be delivered for carriage in, or

(b) take or cause to be taken on board;

an aircraft any dangerous goods, which he knows or ought to know or suspect to be goods capable of posing a risk to health, safety, property or the environment when carried by air, unless the Technical Instructions have been complied with and the package of those goods is in a fit condition for carriage by air.

(2) Subject to paragraph (3), these Regulations shall not apply to those dangerous goods specified in the Technical Instructions as being:

- (a) for the proper navigation or safety of flight;
  - (b) to provide, during flight, medical aid to a patient;
  - (c) to provide, during flight, veterinary aid or a humane killer for an animal;
  - (d) to provide, during flight, aid in connection with search and rescue operations;
  - (e) permitted for carriage by passengers or crew members; or
  - (f) intended for use or sale during the flight in question.
- (a) (3) The goods specified in paragraph (2) shall only be carried provided they comply with the following sub-paragraphs and Part 8 and the applicable provisions in paragraphs 1.1.3 and 2.2 of Part 1 of the Technical Instructions.
- (b) The goods specified in sub-paragraph (2)(a) shall only be carried if:
- (i) they are required to be carried on an aircraft by or under this Order or are otherwise intended for use on an aircraft for the purpose of the good order of the flight in accordance with the normal practice whether or not, in either case, such goods are required to be carried or intended to be used on that particular flight;
  - (ii) when they are intended as replacements or have been removed for replacement, they comply with paragraph 2.2.2 or Part 1 of the Technical Instructions;
- (c) The goods specified in sub-paragraph (2)(b) and (2)(c) shall only be carried if:
- (i) they are or may be required for use during the flight;
  - (ii) they are or may be required for use during a subsequent flight by the same aircraft and it will not be practicable to load the goods onto the aircraft in the intervening period before the commencement of that subsequent flight; or
  - (iii) they were used or might have been required for use during a previous flight by the same aircraft and it has not been practicable to unload them from the aircraft since that flight;
- (d) The goods specified in sub-paragraph (2)(e) shall only be carried by passengers or crew members if they comply with the provisions in Part 8 of the Technical Instructions;
- (e) The goods specified in sub-paragraph (2)(f) shall only be carried if the Technical Instructions identify them as being items which can be carried on an aircraft for sale or use during a flight or, when they are intended as replacements for such items or have been removed for replacement, they are carried in accordance with paragraph 2.2.3 of Part 1 of the Technical Instructions.



## PART III

### Operator's Obligations

#### **Provision of information by the operator to crew etc.**

- (a) **4. (1)** The operator of an aircraft flying for the purposes of public transport shall ensure that all appropriate manuals, including the Operations Manual, contain information about dangerous goods so that ground staff and crew members can carry out their responsibilities in regard to the carriage of dangerous goods, including the actions to be taken in the event of emergencies involving dangerous goods.
- (b) Where applicable, the operator shall ensure such information is also provided to his handling agent.
- (2) The operator of an aircraft in which dangerous goods are to be carried as cargo shall ensure that, before the flight begins, the commander of the aircraft is provided with:
  - (a) written information about the dangerous goods as specified in paragraph 4.1 of Part 7 of the Technical Instructions; and
  - (b) information for use in responding to an in-flight emergency as specified in paragraph 4.8 of Part 7 of the Technical Instructions.
- (3) The operator of an aircraft which is involved:
  - (a) in an aircraft accident whilst carrying any dangerous goods as cargo on the aircraft; or
  - (b) a serious incident in which, in the reasonable opinion of the operator, dangerous goods carried as cargo on the aircraft may be involved:

shall notify the Governor and a police officer for the area where the accident or serious incident occurred of any dangerous goods carried as cargo on the aircraft.

“serious incident” means an incident involving circumstances indicating that an accident nearly occurred.

#### **Acceptance of dangerous goods by the operator**

- 5.—(1)** The operator of an aircraft in which dangerous goods are to be carried shall ensure that no package, overpack or freight container which contains dangerous goods is accepted for carriage in an aircraft until such package, overpack or freight container has been inspected to determine that:
- (a) insofar as it is reasonable to ascertain, the goods are not forbidden for carriage by air in any circumstances by the provisions of the Technical Instructions;
  - (b) insofar as it is reasonable to ascertain, the goods are classified as required by the Technical Instructions;
  - (c) insofar as it is reasonable to ascertain, the goods are packed as required by the Technical Instructions;
  - (d) the package, overpack or freight container is marked and labelled in accordance with the provisions of Chapters 2 and 3 of Part 5 of the Technical Instructions;
  - (e) the package, overpack or freight container is not leaking or damaged so that the contents may escape.
- (2) The operator of an aircraft in which dangerous goods are to be carried shall ensure that no package, overpack or freight container which contains dangerous goods is accepted for

carriage in that aircraft unless it is accompanied by a dangerous goods transport document, except where the Technical Instructions indicate that such a document is not required, and shall inspect such a document to determine that it complies with the provisions of the Technical Instructions.

- (a) (3) For the purpose of each of the inspections required by paragraphs (1) and (2) an acceptance check list shall be used and the results of the inspection shall be recorded thereon.
- (b) The acceptance check list shall be in such form and shall provide for the entry of such details as will enable the relevant inspection to be fully and accurately made by reference to the completion of that list.

#### **Method of loading by the operator**

6.—(1) The operator of an aircraft in which dangerous goods are to be carried as cargo shall ensure that dangerous goods are not carried in any compartment occupied by passengers or on the flight deck, except in circumstances permitted by the provisions in paragraph 2.1 of Part 7 of the Technical Instructions.

(2) The operator of an aircraft in which dangerous goods are to be carried shall ensure that any package, overpack or freight container which contains dangerous goods is loaded, segregated, stowed and secured on an aircraft in accordance with the provisions in Chapter 2 of Part 7 of the Technical Instructions.

(3) The operator of an aircraft in which dangerous goods are to be carried shall ensure that packages, overpacks or freight containers bearing an indication that they can only be carried on a cargo aircraft are loaded and stowed in accordance with the provisions in paragraph 2.4.1 of Part 7 of the Technical Instructions and are not loaded on an aircraft carrying passengers.

#### **Inspections by the operator for damage, leakage or contamination**

7.—(1) The operator of an aircraft in which dangerous goods are to be carried shall ensure packages, overpacks or freight containers which contain dangerous goods are inspected for evidence of damage or leakage before being loaded on an aircraft or placed in a unit load device.

(2) The operator of an aircraft in which dangerous goods are to be carried shall ensure a unit load device containing dangerous goods is not loaded unless it has been inspected and found free from any evidence of leakage from or damage to the packages, overpacks or freight containers contained in it.

(3) The operator of an aircraft in which dangerous goods are to be carried shall ensure that any package, overpack or freight container which contains dangerous goods which appears to be leaking or damaged is not loaded on an aircraft.

(4) The operator of an aircraft in which dangerous goods are to be carried shall ensure that any package, overpack or freight container which contains dangerous goods which is found to be leaking or damaged on an aircraft is removed and that other cargo or baggage loaded on that aircraft is in a fit state for carriage by air and has not been contaminated.

(5) The operator of an aircraft in which dangerous goods have been carried shall ensure after unloading that all packages, overpacks or freight containers which contain dangerous goods are inspected for signs of damage or leakage and if there is such evidence shall ensure that any part of the aircraft where the package, overpack or freight container was stowed, or any sling or other apparatus which has been used to suspend goods beneath the aircraft is inspected for damage or contamination.

### **Removal of contamination by the operator**

8.—(1) The operator of an aircraft in which dangerous goods are to be carried shall ensure that any contamination found as a result of leaking or damaged packages, overpacks or freight containers is removed without delay.

(2) The operator of an aircraft shall ensure that an aircraft is not permitted to fly for the purpose of carrying passengers or cargo if it is known or suspected that radioactive materials have leaked in or contaminated the aircraft, unless the radiation level resulting from the fixed contamination at any accessible surface and the non-fixed contamination are not more than the values specified in paragraph 3.2 of Part 7 of the Technical Instructions.

## **PART IV**

### **Shipper's Responsibilities**

#### **Shipper's responsibilities**

9. Before consigning any dangerous goods for carriage by air the shipper shall ensure that:

- (a) the goods are not forbidden for carriage by air in any circumstances under the provisions in paragraph 2.1 of Part 1 of the Technical Instructions;
- (b) if the goods are forbidden for carriage by air without approval, all such approvals have been obtained where the Technical Instructions indicate it is the responsibility of the shipper to so obtain them;
- (c) the goods are classified according to the classification criteria contained in Part 2 of the Technical Instructions;
- (d) the goods are packed according to paragraphs 2.2 and 2.4 of Part 1, Part 2, Chapters 2 and 3 and paragraphs 4.2, 4.3 and 4.4 of Part 3 and Part 4 of the Technical Instructions and the packagings used are in accordance with such provisions of those paragraphs, chapters and Parts and Part 6 of the Technical Instructions as apply to those goods;
- (e) the package is marked and labelled in English in addition to any other language required by the State of Origin as specified for those goods in paragraph 2.4 of Part 1, Chapters 2 and 3 and paragraph 4.5 of Part 3, Chapters 2 and 3 of Part 5 and Chapter 2 of Part 6 of the Technical Instructions;
- (f) the package is in a fit condition for carriage by air;
- (g) when one or more packages are placed in an overpack, the overpack only contains packages of goods permitted to be carried by paragraph 1.1 of Part 5 of the Technical Instructions and the overpack is marked and labelled as required by paragraphs 2.4 and 3.2 of Part 5 of the Technical Instructions;
- (h) a dangerous goods transport document:
  - (i) has been completed in English in addition to any other language required by the State of Origin as required by paragraph 4.1 of Part 5 of the Technical Instructions; and
  - (ii) contains a declaration signed by or on behalf of the shipper stating that the Technical Instructions have been complied with in that the dangerous goods:
    - (aa) are fully and accurately described;
    - (bb) are correctly classified, packed, marked and labelled; and

- (cc) are in a proper condition for carriage by air.
- (i) the operator of the aircraft has been furnished with the dangerous goods transport document required by paragraph (h) and such other documents in respect of dangerous goods as are required by Part 4 and paragraphs 4.3 and 4.4 of Part 5 of the Technical Instructions.

## PART V

### Commander's Obligations

#### **Commander's duty to inform air traffic services**

**10.** The commander of an aircraft carrying dangerous goods as cargo shall, in the event of an in-flight emergency and as soon as the situation permits, inform the appropriate air traffic services unit of those dangerous goods in detail or as a summary or by reference to the location from where the detailed information can be obtained immediately.

## PART VI

### Training

#### **Provision of information and training programmes by operators and shippers**

**11.—(1)** The operator of an aircraft in which dangerous goods are to be carried shall, before the flight begins, provide the commander of the aircraft with written information specifying the matters required by the provisions of Chapter 4.1 of Part 5 of the Technical Instructions and shall preserve a copy thereof for not less than six months.

(2) The operator of an aircraft and a shipper of dangerous goods by air and, in each case, any agent thereof shall inform any of their respective employees whose duties include a function connected with the carriage of passengers or cargo by air of the provisions of the Technical Instructions and for the purpose shall establish and undertake training programmes, as required by Chapter 4 of Part 1 of the Technical Instructions, which shall be submitted to the Governor for approval on such occasions as the Governor may require and which shall be amended as the Governor may require.

## PART VII

### Provision of Information to Passengers and in Respect of Cargo

#### **Provision of information to passengers**

**12.—(1)** An airport operator and the operator of an aircraft flying for the purpose of public transport of passengers or his agent shall ensure that persons who are or may become passengers on an aircraft flying for the purposes of public transport are warned as to the types of dangerous goods which they are forbidden from carrying on an aircraft as checked baggage or with them by displaying notices sufficient in number and prominence for this purpose:

- (a) at each of the places at an airport where tickets are issued;

- (b) at each of the areas at an airport maintained to assemble passengers to board an aircraft; and
- (c) at any location where a passenger may be checked in.

(2) The operator of an aircraft flying for the purpose of the public transport of passengers or his agent shall ensure that passengers are warned as to the type of dangerous goods which they are forbidden from carrying on an aircraft as checked baggage or with them either by providing information with each passenger ticket, sufficient in prominence for this purpose, or by some other appropriate means such that passengers receive a warning in addition to that required by paragraph (1).

(3) Any person who, in the Territory, makes available flight accommodation shall ensure that persons who are or may become passengers on an aircraft flying for the purposes of public transport are warned as to the types of dangerous goods which they are forbidden from carrying on an aircraft as checked baggage or with them by displaying notices sufficient in number and prominence for this purpose at any place where flight accommodation is offered for sale.

#### **Provision of information in respect of cargo**

**13.** The operator of an aircraft in which cargo is to be carried and any agent thereof shall ensure that notices giving information about the carriage of dangerous goods are displayed in sufficient number and prominence for this purpose at those places where cargo is accepted for carriage.

## **PART VIII**

### **Documents and Records, Enforcement Powers and General**

#### **Keeping of documents and records**

**14.—(1)** The operator of an aircraft carrying dangerous goods as cargo shall ensure that a copy of the dangerous goods transport document required by regulation 5(2) and the written information to the commander required by regulation 4(2)(a) are retained at a readily accessible location until after the full period of the flight on which the goods were carried.

(2) The operator of an aircraft in which dangerous goods are carried shall preserve for not less than three months:

- (a) any dangerous goods transport document or other document in respect of dangerous goods which has been furnished to him by the shipper in accordance with regulation 5(2);
- (b) the record of any acceptance check list completed in accordance with regulation 5(3); and
- (c) the written information to the commander as required by regulation 4(2)(a).

(3) The record referred to in paragraph (2)(b) may be in a legible or a non-legible form so long as the recording is capable of being reproduced in a legible form.

#### **Production of documents and records**

**15.—(1)** The operator of an aircraft on which dangerous goods are to be or have been carried and any agent thereof shall, within a reasonable time after being requested so to do by an authorised person, cause to be produced to that person such of the following documents as may have been requested by that person:

- (a) the written approval referred to in regulation 2(1);
- (b) the dangerous goods transport document or other document in respect of any dangerous goods, referred to in regulation 5(2);
- (c) the completed acceptance check list in a legible form in respect of any dangerous goods, referred to in regulation 5(3); and
- (d) a copy of the written information provided to the commander of the aircraft in respect of any dangerous goods, referred to in regulation 4(2)(a).

(2) The aircraft operator, shipper and any agent of either of them shall, within a reasonable time after being requested so to do by an authorised person, cause to be produced to that person any document which relates to goods which the authorised person has reasonable grounds to suspect may be dangerous goods in respect of which the provisions of these Regulations have not been complied with.

### **Powers in relation to enforcement of the Regulations**

**16.—**(1) An authorised person may examine, take samples of and seize any goods which the authorised person has reasonable grounds to suspect may be dangerous goods in respect of which the provisions of these Regulations have not been complied with.

(2) An authorised person may open or require to be opened any baggage or package which the authorised person has reasonable grounds to suspect may contain dangerous goods in respect of which the provisions of these Regulations have not been complied with.

- (a) (3) Subject to paragraph (5), any sample taken or goods seized by an authorised person under this regulation shall be retained or detained respectively for so long as the Governor considers necessary in all the circumstances and shall be disposed of in such manner as the Governor considers appropriate in all the circumstances.
- (b) Without prejudice to the generality of sub-paragraph (a) any sample taken or goods seized under this regulation may be retained or detained respectively:
  - (i) for use as evidence at a trial for an offence; or
  - (ii) for forensic examination or for investigation in connection with an offence.
- (a) (4) The person from whom any goods have been seized by an authorised person under this regulation may apply to the Governor for the item to be released to him.

(b) An application under this paragraph shall be made in writing and shall be accompanied by evidence of ownership by the applicant.

(c) Where the Governor is satisfied that the applicant is the owner of the item concerned and that further retention of the item is not necessary for the purposes of any criminal proceedings he shall arrange for the goods concerned to be returned to the applicant.

(5) Where further retention of goods is, in the opinion of the Governor, no longer necessary and no application has been made under paragraph (4) or any such application has been unsuccessful the goods shall be destroyed or otherwise disposed of in accordance with the directions of the Governor.

### **Occurrence reporting**

**17.—**(1) A Territory operator shall ensure that any dangerous goods accident, dangerous goods incident or the finding of undeclared or misdeclared dangerous goods in cargo or passenger's baggage, wherever it occurs, is reported to the Governor.

(2) A non-Territory operator shall ensure that any dangerous goods accident, dangerous goods incident or the finding of undeclared or misdeclared dangerous goods in cargo or passenger's baggage which occurred in the Territory is reported to the Governor.

(3) A report required under paragraph (1) or (2) shall contain such of the following information as is appropriate to the occurrence:

- (a) date of the occurrence;
- (b) location of the occurrence, flight number and flight date;
- (c) description of the goods and the reference number of the air waybill, pouch, baggage tag and ticket;
- (d) proper shipping name (including the technical name, if applicable);
- (e) UN/ID number;
- (f) class or division in accordance with the Technical Instructions and any subsidiary risk(s);
- (g) type of packaging and the packaging specification marking;
- (h) quantity of dangerous goods;
- (i) name and address of the shipper or passenger;
- (j) suspected cause of the occurrence;
- (k) action taken;
- (l) any other reporting action taken;
- (m) name, title, address and contact number of the reporter;
- (n) any other relevant details.

(a) (4) Subject to sub-paragraph (b) a report containing as much of the information referred to above as is in his possession shall be despatched in writing, or in such other form as the Governor may approve, and by the quickest available means to the Governor within 72 hours of the occurrence coming to the knowledge of the person making the report.

(b) If at that time any of the said information is not in the possession of that person, he shall despatch the information to the Governor in writing, or in such other form as the Governor may approve, and by the quickest available means within 72 hours of the information coming into his possession.

(5) Nothing in this regulation shall require a person to report any occurrence which he has reported under article 117 or which he has reason to believe has been or will be reported by another person to the Governor in accordance with that article.

### **Dropping articles for agricultural, horticultural, forestry or pollution control purposes**

18. Subject to the provisions of regulation 4(1)(a) nothing in these Regulations shall apply to any aircraft flying solely for the purpose of dropping articles for the purpose of agriculture, horticulture, forestry or pollution control.

### **Police aircraft**

19. Nothing in these Regulations other than regulation 2(1)(a) shall apply to the carriage of dangerous goods by an aircraft flying under and in accordance with the terms of a police air operator's certificate."

31. After Schedule 18 there shall be inserted:

“SCHEDULE 19

Article 105

**PART A**

**Records to be kept pursuant to article 105(1)**

(1) A record of any functional tests, flight checks and particulars of any maintenance, repair, overhaul, replacement or modification.

- (a) (2) Subject to sub-paragraph (b), the record shall be kept in a legible or a non-legible form so long as the record is capable of being reproduced by the person required to keep the record in a legible form and it shall be so reproduced by that person if requested by an authorised person.
- (b) In any particular case the Governor may direct that the record is kept or be capable of being reproduced in such a form as he may specify.

**PART B**

**Records required pursuant to article 105(3)(c)**

Each record made by the apparatus provided in compliance with article 105(2) shall be adequately identified and in particular shall include:

- (a) the identification of the aeronautical radio station;
- (b) the date or dates on which the record was made;
- (c) a means of determining the time at which each message or signal was transmitted or received;
- (d) the identity of the aircraft to or from which and the radio frequency on which the message or signal was transmitted or received; and
- (e) the time at which the record started and finished.

**PART C**

**Matters to which the Governor may have regard in granting an approval of apparatus pursuant to article 105(4)(a)**

- (a) The purpose for which the apparatus is to be used.
- (b) The manner in which the apparatus has been specified and produced in relation to the purpose for which it is to be used.
- (c) The adequacy, in relation to the purpose for which the apparatus is to be used, of the operating parameters of the apparatus (if any).
- (d) The manner in which the apparatus has been or will be operated, installed, modified, maintained, repaired and overhauled.
- (e) The manner in which the apparatus has been or will be inspected.”.



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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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*A.K. Galloway*  
Clerk of the Privy Council

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order further amends the Air Navigation (Overseas Territories) Order 2001 (referred to below as “the Order”), In addition to minor and drafting amendments the following changes are made:

(1) In article 4 of the Order there are references to a “charter” and other references to a “charter by demise”. These are intended to refer to the same thing. For consistency “charter by demise” is now used throughout (article 3).

(2) The manner in which the Governor may issue a permit to fly or issue a certificate of validation in respect of a permit to fly issued by another state is specified. The Governor shall refuse to issue a permit to fly in respect of an aircraft if it appears that the aircraft is eligible for the issue of a certificate of airworthiness. An aircraft with a permit to fly shall not fly for the purpose of public transport or aerial work other than aerial work connected with flying displays and demonstration flights. No persons may be carried during flying display or demonstration flight other than minimum flight crew except with the permission of the Governor. With the permission of the Governor an aircraft with a permit may fly for the purpose of aerial work which consists of the giving of instruction or flying or the conduct of flying tests within a club environment. A permit to fly shall cease to be in force until the completion of an inspection, modification or maintenance mandated by the Governor. A permit aircraft must have a placard visible to its occupants stating that the aircraft has not been certificated to an international requirement. A permit aircraft may fly only by day and in accordance with the visual flight rules unless the prior permission of the Governor has been obtained (article 4).

(3) The internationally used term “cabin crew” is adopted in place of “cabin attendants” (article 5).

(4) A public transport operator must include in his operations manual information and instructions concerning its accident prevention and flight safety programme with effect from 1<sup>st</sup> July 2005. The operator of an aircraft registered in the Territory with a maximum total weight authorised of more than 27,000 kg flying for the purpose of public transport must have a flight data monitoring programme as part of its accident prevention and flight safety programme (article 6).

(5) A single engined aircraft flying for the purpose of public transport may not fly unless minimum weather requirements prescribed for the aerodrome of departure, the aerodrome of intended landing or any alternate aerodrome are all satisfied or are forecast to be satisfied at the relevant time (article 7).

(6) A non-public transport aircraft may not land or take off in low visibility unless approved to do so by its State of registry. If it appears that it will encounter low visibility at its intended destination the commander of the aircraft must, before taking off, select an alternate aerodrome (article 8).

(7) Exit and break-in marking requirements apply to public transport aeroplanes and helicopters registered in the Territory. Every exit from such an aeroplane or helicopter must be appropriately marked in red letters, with instructions for opening which shall be in red. If areas of the fuselage of an aeroplane or helicopter suitable for break-in by rescue crews in emergency are marked, such areas must be marked in accordance with specified requirements (article 9).

(8) The Governor or an authorised person may require production of any documents and records relating to approved air traffic service equipment (article 10).

(9) An air traffic control approval granted by the Governor is required by a person in order to provide an air traffic control service, which may be granted subject to such conditions as the Governor thinks fit and shall remain in force for the period specified in it (article 12). The holder

of an air traffic control approval must ensure that no person shall act as an air traffic controller or as a student air traffic controller unless that person holds an appropriate licence and is competent to perform his duties (article 13).

(10) Air traffic service equipment is defined to mean ground based equipment including an aeronautical radio station, used or intended to be used in connection with the provision of a service to an aircraft in flight or on the ground. Such equipment may not be established or used unless the Governor has approved its intended purpose, the competence of the person in charge and the equipment. Records must be kept in relation to such equipment and associated recording apparatus in accordance with specified requirements which are set out in a new Schedule 19. If required recording apparatus becomes unserviceable, the person in charge of the air traffic service equipment must render it serviceable again as soon as reasonably practicable (article 15).

(11) The person in charge of an obstacle which is 150 metres or more above ground level and which is not in the vicinity of a licensed aerodrome must ensure that it is fitted with lights which are displayed at night (article 16).

(12) The commander of an aircraft must report to the Governor any birdstrike occurrence which occurs whilst the aircraft is in flight within the Territory (article 17).

(13) Article 118 of the Order provides that if it appears to the Governor or an authorised person that an aircraft is intended or likely to be flown where any one of a number of specified provisions would be contravened, the aircraft may be detained. There is now included in the list of specified provisions article 65(2). Article 65(2) of the Order prohibits a member of the crew of an aircraft being on board whilst under the influence of alcohol or a drug (article 18).

(14) The Governor and authorised persons have the right of access to any building or place from which an air traffic control service is being provided or where any approved air traffic service equipment is situated (article 19).

(15) The definition of a microlight aeroplane is revised. It includes single seat land planes weighing not more than 300 kg and two seat land planes weighing not more than 450 kg which meet specified wing loading or stalling speed requirements (article 21).

(16) An aircraft may fly in accordance with A Conditions if it is of a design which has previously been approved by the Governor or by an organisation approved for that purpose by the Governor as being compliant with a standard accepted by the Governor for the issue of a Territory certificate of airworthiness (article 23).

(17) Terrain Awareness and Warning Systems (TAWS) are categorised as Class A or Class B. Territory registered turbine jet and turbine propeller aeroplanes, with: (a) a maximum total weight authorised exceeding 5,700kg, or (b) certified to carry more than nine passengers which are not flying for the purposes of public transport, may be equipped with the simplified TAWS Class B equipment instead of TAWS Class A (article 24).

(18) The compliance date for aeroplanes without Ground Proximity Warning Systems (GPWS) will be 1 January 2005. Aircraft with GPWS installed before 1 April 2000 will be required to have TAWS equipment fitted by 1 January 2007 (article 24).

(19) All aircraft flying within the Territory for the purpose of public transport and all aircraft registered in the Territory flying for the purpose of public transport wherever they are, are required to be fitted with secondary surveillance radar equipment which includes a pressure altitude reporting transponder by 1<sup>st</sup> January 2006 (article 25).

(20) The holder of an approach radar control rating at an aerodrome may provide an approach control service to aircraft flying more than 40 nautical miles away (article 26).

(21) An offence is created in relation to breaches of Article 88A under Part A of Schedule 12 of the Order (Article 27).

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

(22) Schedule 13 (The Rules of the Air Regulations) is amended by requiring an aircraft commander to fly in conformity with any notified instrument departure procedures (article 28).

(23) A number of amendments are made to Schedule 14 to reflect the amendments made to article 37 of the Order (relating to single engined aircraft flying for the purpose of public transport), changes to the North Atlantic minimum navigation performance specification airspace and the introduction of mandatory reporting of birdstrikes (article 29).

(24) Schedule 15 (The Air Navigation (Dangerous Goods) Regulations) is replaced by a new Schedule, containing new Regulations (article 30). In addition to minor drafting amendments, the following changes are made:

- (a) Definitions are introduced for “acceptance check list”, “cargo aircraft”, “dangerous goods accident”, “dangerous goods incident”, “freight container”, “handling agent”, “ID number”, “non-Territory operator”, “overpack”, “package”, “packaging”, “proper shipping name”, “serious injury”, “UN number”, “unit load device”, and “Territory operator” (regulation 1).
- (b) An approval required under the Regulations shall be granted where the Governor is satisfied that the aircraft operator is competent to carry dangerous goods safely (regulation 2).
- (c) Requirements are introduced for the operator of an aircraft carrying dangerous goods. In particular, regulation 4(3) requires such an operator to notify the Governor of any dangerous goods carried on an aircraft which is involved in an accident or incident (regulations 4-8).
- (d) The shipper is required to obtain any necessary approvals for the carriage of certain types of dangerous goods by air (regulation 9(b)).
- (e) The commander of an aircraft carrying dangerous goods as cargo must, in the event of an in-flight emergency, provide information to the appropriate air traffic services unit about those dangerous goods (regulation 10).
- (f) Comprehensive requirements are introduced for the training of staff concerned with the carriage of dangerous goods by air. Obligations are placed on shippers and their agents, Territory operators and their agents and on agents for non-Territory operators. The approval of the Governor is required for specified training programmes and training instructors (regulation 11).
- (g) In addition to the operator of an aircraft flying for the purpose of public transport of passengers, an airport operator and a person who sells flight accommodation must ensure that persons who are or who may become passengers on such a flight are warned as to the types of dangerous goods which they are forbidden to carry (regulation 12).
- (h) The operator of an aircraft in which cargo is to be carried and any agent of such an operator must ensure that notices giving information about the carriage of dangerous goods are displayed where cargo is accepted for carriage (regulation 13).
- (i) A copy of the dangerous goods transport document and the written information required to be supplied to the commander must be retained by the aircraft operator (regulation 14(1)).
- (j) The aircraft operator, shipper and any agent of either must produce to an authorised person documents relating to the carriage of goods which may be dangerous goods (regulation 15(2)).
- (k) A dangerous goods accident, dangerous goods incident or a finding of undeclared or misdeclared dangerous goods must be reported to the Governor where it occurs on a flight operated by a Territory operator or on a flight within the Territory operated by a non-Territory operator. A report need not be made under this provision if it has been reported

under the Mandatory Occurrence Reporting Scheme established by Article 117 of the Order (regulation 17).

(25) A new Schedule 19 (records to be kept pursuant to article 105) is added (article 31).

The 2003-2004 English language editions of the Technical Instructions for the Safe Transport of Dangerous Goods by Air can be purchased from - Freight Merchandising Services, Unit 19, Ashford Industrial Estate, Shield Road, Ashford, Middlesex TW15 1AU or Labeline (Air, Sea and Road), Holly House, 14 Tenby Road, Frimley, Surrey GU16 5UT or Documedia Solutions Ltd, 37 Windsor Street, Cheltenham, Gloucestershire GL52 2DG.

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