

2005 No. 2763

CIVIL AVIATION

**The Air Navigation (Overseas Territories) (Amendment) Order
2005**

Made - - - - - *12th October 2005*

Laid before Parliament *24th October 2005*

Coming into force - - - *14th November 2005*

At the Court at Buckingham Palace, the 12th day of October 2005

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(a), as extended to certain territories by the Civil Aviation Act 1949 (Overseas Territories) Order 1969(b), as amended by the Civil Aviation Act 1982 (Overseas Territories) Order 2001(c), of the powers conferred on Her by Section 61 of the Civil Aviation Act 1982(d), 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 2005 and shall come into force on 14th November 2005.

Amendment of the Air Navigation (Overseas Territories) Order 2001

2. The Air Navigation (Overseas Territories) Order 2001(e) shall be amended as follows.

3. After article 8 there shall be inserted:

“Type Acceptance Certificate

8A.—(1) A certificate of airworthiness for an aircraft registered in the Territory shall not be issued in accordance with article 9 of this Order unless there is in force a Type Acceptance Certificate issued by the Governor for the aircraft type.

(a) 1949 c. 67.
(b) S.I. 1969/592.
(c) S.I. 2001/1452.
(d) 1982 c. 16.
(e) S.I. 2001/2128, amended by S.I. 2003/433 and S.I. 2004/2038.

(2) Any person who intends to operate an aircraft to be registered in the Territory of a type for which a Type Acceptance Certificate has not been issued shall apply to the Governor for the issue of a Type Acceptance Certificate for that aircraft in accordance with this article and the requirements of the Governor.

(3) A Type Acceptance Certificate with respect to an aircraft, engine or propeller means a document issued by the Governor on the basis of a Type Certificate issued by a Contracting State acceptable to the Governor.

(4) For the purposes of this article a “Type Certificate” means a document issued by a Contracting State to define the design of an aircraft type and to certify that this design meets the appropriate airworthiness requirements of that State.”

4. For article 9(4) there shall be substituted:

“(4) The flight manual or equivalent document shall specify the operational limitations within which the aircraft shall be operated for the purposes of the requirements referred to in article 36(1) of this Order.”

5. In article 12(1) after the words “is in force” there shall be inserted “or would be in force if it had not ceased to be in force by virtue of sub-paragraphs (b) and (c) of article 9(7)”.

6. In article 13(8) for “drink or a drug to such an extent as to impair his capacity to exercise such privileges” there shall be substituted “alcohol, any drug or any psychoactive substance, including prescribed or proprietary medication, so as to render that person unable safely and properly to exercise such privileges or so as to create a risk to the licence holder or any other person”.

7. After article 13 there shall be inserted:

“Approval of maintenance organisations

13A.—(1) No person intending to engage in any stage of the maintenance of aircraft, aircraft components or aircraft materials, or the manufacture of components for the purpose of maintenance, or in associated training activities shall do so without first obtaining from the Governor a certificate of approval in respect of those activities.

(2) The Governor shall issue an approval to an organisation which complies with his requirements.

(3) A certificate of approval shall be in such form, be subject to such conditions and limitations and contain such particulars as may be determined by the Governor.

(4) Subject to the provisions of this article and article 81 of this Order, a certificate of approval shall remain in force for such period 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) For the purposes of this order “Maintenance” means any one or combination of overhaul, repair, inspection, replacement, modification or defect rectification of an aircraft or component, with the exception of pre-flight inspection.”

8. In article 16(2)(b) for “the particulars specified at sub-paragraph (xvii) of Part A of Schedule 10 to this Order” there shall be substituted “such particulars of any permission granted to the operator under this article as may be necessary to enable the commander of the aircraft to determine whether he can comply with article 43(b)(ii) of this Order”.

9.—(1) For article 20(2) there shall be substituted:

“(2)(a) An aircraft registered in the Territory shall carry a flight crew adequate in number and description to ensure the safety of the aircraft.

(b)(i) In the case of an aircraft in respect of which there is a flight manual, the flight crew shall be of at least a number and description specified in the flight manual.

(ii) In the case of an aircraft in respect of which there is not a flight manual, the flight crew shall be of at least a number and description specified by the Governor in the Certificate of Airworthiness or Permit to Fly.”

(2) For article 20(7)(a) there shall be substituted:

“(a) This paragraph applies to any flight for the purpose of public transport by an aircraft registered in the Territory which has a maximum approved seating configuration of more than 19.”

10. For article 22(1)(a) there shall be substituted:

“(a) Subject to sub-paragraph (d), the Governor shall grant licences, subject to such conditions as he thinks fit, of any of the classes specified in Part A of Schedule 8 to this Order authorising the holder to act as a member of the flight crew of an aircraft registered in the Territory upon his being satisfied that the applicant complies with his requirements.”

11. For article 40 there shall be substituted:

“40.—(1) This article shall apply to any aircraft that is not a public transport aircraft.

(2) 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.

(3) In the case of an aircraft registered in the Territory, an approval referred to in paragraph (2) shall be issued by the Governor.

(4) Without prejudice to the provisions of paragraph (2) an aircraft to which this article applies, when making a descent at an aerodrome to a runway in respect of which there is a notified instrument approach procedure, shall not descend from a height of 1000 ft or more above the aerodrome to a height less than 1000 ft above the aerodrome if the relevant runway visual range for that runway is at the time less than the specified minimum for landing.

(5) Without prejudice to the provisions of paragraph (2) an aircraft to which this article applies when making a descent to a runway in respect of which there is a notified instrument approach procedure shall not:

- (a) continue an approach to landing at such a runway by flying below the relevant specified decision height;
- (b) descend below the relevant specified minimum descent height;

unless in either case from such height the specified visual reference for landing is established and is maintained.

(6) 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 alternate aerodrome unless no aerodrome suitable for that purpose is available.

(7) A flight to be conducted in accordance with the Instrument Flight Rules to an aerodrome when no alternate aerodrome is available shall not be commenced unless:

- (a) a designated standard instrument approach procedure is available for the aerodrome of intended landing; and
- (b) available current meteorological information indicates that visual meteorological conditions will exist at the aerodrome of intended landing from two hours before to two hours after the estimated time of arrival.

(8) A flight shall not be continued towards the aerodrome of intended landing unless the latest available information indicates that conditions at that aerodrome, or at least one alternate aerodrome, will, at the estimated time of arrival, be at or above the specified aerodrome operating minima.

(9) In this article “specified” in relation to aerodrome operating minima means such particulars of aerodrome operating minima as have been notified in respect of the aerodrome or if the relevant minima have not been notified such minima as are ascertainable by reference to the notified method for calculating aerodrome operating minima.

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

12. After article 41(1)(c) there shall be inserted:

“(d) An operator shall not permit a helicopter rotor to be turned under power for the purpose of making a flight unless there is a person at the controls qualified to act as pilot-in-command of the helicopter in accordance with the provisions of article 21 of this Order.”

13.—(1) After article 45 there shall be inserted:

“Non-public transport flights – additional duties of commander

45A.—(1) This article shall apply to an aircraft flying for any purpose other than public transport.

(2) In relation to every flight to which this article shall apply the commander of the aircraft shall ensure that breathing oxygen is available to crew members and passengers in sufficient quantities for all flights at such altitudes where lack of oxygen might result in impairment of the faculties of crew members or harmfully affect passengers and made available for use by such crew members and passengers in accordance with paragraphs (2)(e) and (f) of article 45 of this Order.”

(2) In Schedule 4 Paragraph 4 (Table) sub-paragraphs (2)(a) and (15)(a), in the column headed “Circumstances of flight”, there shall be added “(iv) when flying at a height of 10 000 ft or more above mean sea level” and adjacent thereto, in the column headed “Scale of equipment required”, there shall be added “L1 or L2”.

14. For articles 50 and 51 there shall be substituted:

“Area navigation and required navigation performance capabilities – aircraft registered in the Territory

50.—(1) Subject to paragraph (4) an aircraft registered in the Territory shall not fly in designated required navigation performance airspace unless it is equipped with area navigation systems which enable the aircraft to maintain the navigation performance capability specified in respect of that airspace.

(2) Subject to paragraph (4) while the aircraft is flying in the said airspace the equipment required by paragraph (1) shall be operated in accordance with procedures approved by the Governor.

(3) The equipment required by paragraph (1) shall be approved by the Governor and installed and maintained in a manner approved by the Governor.

(4) An aircraft need not comply with the requirements of paragraphs (1) and (2) where the flight has been authorised by the appropriate air traffic control unit notwithstanding the lack of compliance and provided that the aircraft complies with any instructions the air traffic control unit may give in the particular case.

(5) An approval granted by the Governor for the purposes of this article shall be in writing and subject to such conditions as the Governor thinks fit.

Area navigation and required navigation performance capabilities – aircraft not registered in the Territory

51.—(1) An aircraft registered elsewhere than in the Territory shall not fly in designated required navigation performance airspace in the Territory unless it is equipped with area navigation systems so as to comply with the law of the country in which the aircraft is registered insofar as that law requires it to be so equipped when flying within designated required navigation performance airspace.

(2) Subject to paragraph (3) the said navigation equipment shall be capable of being operated so as to enable the aircraft to maintain the navigation performance capability notified in respect of the airspace in which the aircraft is flying, and it is so operated.

(3) An aircraft need not comply with the requirements of paragraph (2) where the flight has been authorised by the appropriate air traffic control unit notwithstanding the lack of compliance and provided that the aircraft complies with any instructions the air traffic control unit may give in the particular case.”

15. For article 54(1) there shall be substituted:

“54.—(1) An aircraft in flight shall not tow a glider unless there is a certificate of airworthiness issued or rendered valid in respect of the towing aircraft under the law of the country in which the aircraft is registered and that certificate of airworthiness or the flight manual for the aircraft includes an express provision that it may be used for that purpose.”

16. For article 55(1) there shall be substituted:

“55.—(1) Subject to the provisions of this article, an aircraft in flight shall not, by means external to the aircraft, tow any article, other than a glider, or pick up or raise any person, animal or article, unless there is a certificate of airworthiness issued or rendered valid in respect of that aircraft under the law of the country in which the aircraft is registered and that certificate of airworthiness or the flight manual for the aircraft includes an express provision that it may be used for that purpose.”

17. In article 65(2) for “drink or drug to such an extent as to impair his capacity so to act” there shall be substituted “alcohol, any drug or any psychoactive substance, including prescribed or proprietary medication, so as to render that person unable safely and properly so to act or so as to create a risk to that person or any other person”.

18. For article 67 there shall be substituted:

“67.—(1) Every person in an aircraft shall obey all lawful commands which the commander or a member of the crew of that aircraft may give for the purpose of securing the safety of the aircraft and of the persons or property carried therein, or the safety, efficiency or regularity of air navigation.

(2) No person may operate on any aircraft any cellphone, computer or other electronic device that is designed to transmit or capable of transmitting electromagnetic energy otherwise than in accordance with the permission of the commander of that aircraft.

(3) Paragraph (2) of this article shall not apply to—

- (a) hearing aids; or
- (b) heart pacemakers; or
- (c) portable voice recorders; or
- (d) electric shavers; or
- (e) electronic watches; and
- (f) any other portable electronic device if the operator or commander of the aircraft has determined that the said portable electronic device to be used will not cause interference with any aircraft system or equipment of the aircraft on which it is used.”

19. After article 105 there shall be inserted:

“Instrument Approach Procedures

105A.—(1) No person may establish or use an instrument approach procedure at an aerodrome in the Territory otherwise than under and in accordance with an approval granted by the Governor to the aerodrome licence holder or to the person having the management and control of a government aerodrome.

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

- (a) as to the intended purpose of the procedure; and
- (b) that the person applying for approval is competent to operate the procedure and that any equipment associated with such procedure is fit for its intended purpose.

(3) An approval pursuant to paragraph (1) shall be granted on such conditions as the Governor shall think fit and he shall cause such procedure to be notified as a procedure available for the landing of aircraft at an aerodrome within the Territory.

(4) No person may use an instrument approach procedure otherwise than in accordance with the published conditions for such use.

(5) For the purposes of this article an “instrument approach procedure” means a series of pre-determined manoeuvres by reference to flight instruments with specified protection from obstacles from the initial approach fix or, where applicable, from the beginning of a defined arrival route, to a point from which a landing can be completed and thereafter if a landing is not completed, to a position at which holding or en-route obstacle clearance criteria apply.

(6) Nothing in paragraph (1) shall apply to any aerodrome in the Territory that is in the occupation of Her Majesty’s naval, military or air force or of any visiting force.”

20. In article 118(2) for “and any authorised person” there shall be substituted “or any authorised person”.

21. In article 130(1):

(1) After the definition of “Declared distances” there shall be inserted:

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

(2) After the definition of “Flight level” there shall be inserted:

““Flight manual” means a manual, associated with the certificate of airworthiness, containing limitations within which the aircraft may be considered airworthy, and instructions and information necessary to the flight crew for the safe operation of the aircraft;”

(3) After the definition of “Logbook” there shall be inserted:

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

(4) After the definition of “Replacement” there shall be inserted:

““Requirements” means requirements published by the Governor pursuant to the provisions of article 135 of this Order;”

(5) After the definition of “Special VFR flight” there shall be inserted:

““Standard instrument approach procedure” means an instrument approach procedure designed in accordance with International Civil Aviation Organisation Procedures for Air Navigation Services (PANS-OPS);”

22. After article 137 there shall be inserted:

“Arrangements for giving effect to the Convention

138.—(1) The Governor shall within the Territory publish such requirements or make such arrangements as are necessary, requisite or expedient for carrying out the Chicago Convention and any Annex thereto relating to international standards and recommended practices and any amendment to the Convention or to any such Annex or generally for regulating and securing the safety of international air navigation.

(2) Pursuant to the provisions of paragraph (1) the Governor shall in particular:

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

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

23. In Schedule 4, paragraph 4 (Table), sub-paragraphs (11)(a) and (11)(b), in the column headed “Circumstances of flight” for “the purpose of public transport” there shall be substituted “purposes other than public transport”.

A.K. Galloway
Clerk of the Privy Council

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”). The following changes are made:

(1) **Type certification.** The adoption of this article enables a Governor to accept onto a Territory register an aircraft that has a Type Certificate issued by a Contracting State in accordance with the Chicago Convention Annex 8 Part II Chapter 1 and to facilitate the issue by the Governor of a Certificate of Airworthiness in accordance with Annex 8 Part II Chapter 3 and the provisions of article 9(1)(a) of the Order (article 3).

(2) **Certification of airworthiness.** This amendment paves the way for the elimination of the various categories of certificate of airworthiness as detailed in Schedule 3 Part B. This is in order to enable an aircraft to be certified according to what it is rather than what it does on the basis of the operating and performance limitations prescribed in the approved flight manual and in conformity with its Type Certificate (article 4).

(3) **Certificate of release to service.** This amendment clarifies an area of uncertainty regarding the reinstatement of a certificate of airworthiness and the associated issue of a certificate of release of an aircraft to service upon completion of maintenance, inspection, repair or other similar activity (article 5).

(4) **Licensing of maintenance engineers.** The amendment expands the scope of restrictions on performing functions whilst under the influence of drink or drugs and brings the provisions more closely into alignment with the requirements of the Chicago Convention Annex 1 Chapter 1 paragraph 1.2.7 (article 6).

(5) **Approval of maintenance organisations.** This article has been added to provide a basis for the grant by the Governor of an approval to a maintenance organisation to undertake maintenance on Territory registered aircraft (article 7).

(6) **Equipment of aircraft.** This amendment facilitates the longer-term objective of removing as many as possible of the schedules to the Order and their replacement by the Requirements specified by the Governor under article 135 of the Order (article 8).

(7) **Flight crew.** The amendments reflect the fact that the number of flight crew will not normally in the future be specified in the Certificate of Airworthiness (article 9).

(8) **Flight crew licences.** The objective of this amendment is to relocate some of the flight crew licensing provisions from Schedules 8 and 10 of the Order to the Requirements published by the Governor under article 135 (article 10).

(9) **Aerodrome operating minima.** This article establishes aerodrome operating minima applicable to non-public transport flights (article 11).

(10) **Commander of an aircraft.** Addition of a new sub-paragraph to article 41(1) to meet the requirements of the Chicago Convention Annex 6 Part III Section III Chapter 2 paragraph 2.17 (article 12).

(11) **Commander’s additional duties.** Requirements applied to international general aviation, in the same way as for public transport flights in article 45, to comply with the Chicago Convention Annex 6 Part II paragraph 4.10 and Annex 6 Part III paragraph 2.10. Consequential amendment to Schedule 4, Paragraph 4 (Table) (article 13).

(12) **Navigation performance capability.** This amendment reflects current international practice in relation to area navigation, required navigation performance and operational approval (article 14).

(13) **Towing of gliders.** This amendment reflects the changes made in respect of certificates of airworthiness and the performance characteristics of aircraft (article 15).

(14) **Towing, picking up and raising of persons and articles.** This amendment reflects the changes made in respect of certificates of airworthiness and the performance characteristics of aircraft (article 16).

(15) **Drunkenness of aircrew.** This amendment expands the scope of restrictions on performing functions whilst under the influence of drink or drugs and brings the provisions more closely into alignment with the requirements of the Chicago Convention Annex 1 Chapter 1 paragraph 1.2.7 (article 17).

(16) **Commander and crew authority.** These amendments impose an obligation to comply with the instructions of a crew member as well as the commander and add specific obligations to comply with instructions concerning mobile phones and similar equipment and to reinforce the authority of the commander in this respect (article 18).

(17) **Approval of instrument approach procedures.** The Order is presently silent with regard to the requirement for approval for the establishment and use of an instrument approach procedure at a Territory aerodrome. The article is designed to require that such a procedure shall be approved before it may be established or used (article 19).

(18) **Power to prevent aircraft flying.** The amendment removes any doubt as to the Governor's power to appoint more than one authorised person and for any such authorised person to inspect an aircraft without the necessity for the presence of the Governor (article 20).

(19) **Interpretation.** Additional definitions inserted as required by other amendments (article 21).

(20) **Arrangements for giving effect to the Convention.** This article empowers and enables Governors to ensure that arrangements are put in place to secure compliance with certain Annexes to the Chicago Convention dealing with meteorology, aeronautical charts, search and rescue and aeronautical information services that are not currently covered in the order (article 22).

(21) **Aircraft equipment.** This amendment achieves compliance with the Chicago Convention Annex 6 Part II paragraph 6.9.7 with regard to the requirement for Terrain Awareness Warning System Class A or B on aircraft used for international general aviation (article 23).

Annexes to the Chicago Convention can be purchased from:

ICAO Document Sales Unit,

999 University Street,

Montreal,

Quebec HC 5H7,

Canada,

Tel: +1 (514) 954-8022; Fax: +1 (514) 954-6769

E-mail: sales@ico.int

STATUTORY INSTRUMENTS

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2005**

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