
STATUTORY INSTRUMENTS

2013 No. 2870

The Air Navigation (Overseas Territories) Order 2013

PART 24

INTERPRETATION OF COMMERCIAL AIR TRANSPORT

Commercial air transport – general rules

195.—(1) For the purposes of this Order, an aircraft in flight is deemed to fly for the purposes of commercial air transport—

- (a) if valuable consideration is given or promised for the carriage of passengers or cargo in the aircraft on that flight;
- (b) if any passengers or cargo are carried gratuitously in the aircraft on that flight by an air transport undertaking, not being persons in the employment of the undertaking (including, in the case of a body corporate, its directors) and persons with the authority of the Governor who are either making any inspection or witnessing any training, practice or test for the purposes of this Order, or cargo intended to be used by any such passengers as aforesaid, or by the undertaking; or
- (c) for the purposes of Part 3 (other than for articles 35(2) and 36(2)), if valuable consideration is given or promised for the primary purpose of conferring on a particular person the right to fly the aircraft on that flight (not being a single-seat aircraft of which the maximum total weight authorised does not exceed 910kg) otherwise than under a hire-purchase or conditional sale agreement.

(2) Notwithstanding that an aircraft may be flying for the purpose of commercial air transport by reason only of paragraph (1)(c), it is not deemed to be flying for the purpose of the commercial air transport of passengers unless valuable consideration is given for the carriage of those passengers.

(3) A glider is not deemed to fly for the purpose of commercial air transport for the purposes of Part 3 by virtue of paragraph (1)(c) if the valuable consideration given or promised for the primary purpose of conferring on a particular person the right to fly the glider on that flight is given or promised by a member of a flying club and the glider is owned or operated by that flying club.

(4) Notwithstanding the giving or promising of valuable consideration specified in sub-paragraph (1)(c) in respect of the flight or the purpose of the flight it shall—

- (a) subject to sub-paragraph (b), for all purposes other than Part 3; and
- (b) for the purposes of articles 35(2) and 36(2);

be deemed to be a private flight.

(5) Where a person is carried in or is given the right to fly an aircraft under a transaction effected by or on behalf of a member of an association of persons on the one hand and the association of persons or any member thereof on the other hand, in such circumstances that valuable consideration would be given or promised if the transaction were effected differently, valuable consideration is, for the purposes of this Part, deemed to have been given or promised, notwithstanding any rule of law as to such transactions.

(6) For the purposes of paragraph (1)(a), there shall be disregarded any valuable consideration given or promised in respect of a flight or the purpose of a flight by one company to another company which is—

- (a) its holding company;
- (b) its subsidiary; or
- (c) another subsidiary of the same holding company.

(7) For the purposes of this article a company is a “subsidiary” of another company, its “holding company”, if that other company—

- (a) holds a majority of the voting rights in it; or
- (b) is a member of it and has the right to appoint or remove a majority of its board of directors; or
- (c) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it, or
- (d) if it is a subsidiary of a company that is itself a subsidiary of that other company.

Commercial air transport – exception for flying displays etc.

196.—(1) For the purposes of Part 4 of this Order, a flight is deemed to be a private flight if—

- (a) the flight is—
 - (i) wholly or principally for the purpose of taking part in an aircraft race, contest or flying display;
 - (ii) for the purpose of positioning the aircraft for such a flight as is specified in sub-paragraph (i) and is made with the intention of carrying out such a flight; or
 - (iii) for the purpose of returning after such a flight as is specified in sub-paragraph (i) to a place at which the aircraft is usually based; and
- (b) the only valuable consideration in respect of the flight or the purpose of the flight other than—
 - (i) valuable consideration specified at article 195(1)(c); or
 - (ii) in the case of an aircraft jointly owned in accordance with article 200(2), valuable consideration which falls within article 200(3);
 falls within paragraph (2)(a) or (2)(b) or both.

(2) Valuable consideration falls within this paragraph if it either is—

- (a) that given or promised to the owner or operator of an aircraft taking part in such a race, contest or flying display and such valuable consideration does not exceed the direct costs of the flight and a contribution to the annual costs of the aircraft which contribution shall bear no greater proportion to the total annual costs of the aircraft than the duration of the flight bears to the annual flying hours of the aircraft; or
- (b) one or more prizes awarded to the pilot-in-command of an aircraft taking part in an aircraft race or contest to a value which shall not exceed £500 in respect of any one race or contest except with the permission in writing of the Governor granted to the organiser of the race or contest which permission may be granted subject to such conditions as the Governor thinks fit.

(3) Any prize falling within paragraph (2)(b) shall be deemed for the purposes of this Order not to constitute remuneration for services as a pilot.

Commercial air transport – exception for charity flights

197.—(1) A flight is deemed to be a private flight if the only valuable consideration given or promised in respect of the flight or the purpose of the flight other than—

- (a) valuable consideration specified at article 195(1)(c); or
- (b) in the case of an aircraft owned in accordance with article 200(2), valuable consideration which falls within article 200(3);

is given or promised to a registered charity which is not the operator of the aircraft and the flight is made with the permission in writing of the Governor and in accordance with any conditions therein specified.

(2) If valuable consideration specified at article 195(1)(c) is given or promised the flight is, for the purposes of Part 3 of this order (other than for articles 35(2) and 36(2)), deemed to be for the purposes of commercial air transport.

Commercial air transport – exception for cost sharing

198.—(1) A flight is deemed to be a private flight if the only valuable consideration given or promised in respect of the flight or the purpose of the flight falls within paragraph (2) and the criteria in paragraph (3) are satisfied.

- (2) Valuable consideration falls within this paragraph if it is—
- (a) valuable consideration specified at article 195(1)(c);
 - (b) in the case of an aircraft owned in accordance with article 200(2), valuable consideration which falls within article 200(3); or
 - (c) a contribution to the direct costs of the flight otherwise payable by the pilot-in-command.
- (3) The criteria in this paragraph are satisfied if—
- (a) no more than 4 persons (including the pilot) are carried on such a flight;
 - (b) the proportion which the contribution referred to in paragraph (2)(c) bears to the total direct costs of the flight shall not exceed the proportion which the number of persons carried on the flight (excluding the pilot) bears to the number of persons carried on the flight (including the pilot);
 - (c) no information concerning the flight has been published or advertised prior to the commencement of the flight other than, in the case of an aircraft operated by a flying club, advertising wholly within the premises of such a flying club in which case all the persons carried on such a flight who are aged 18 years or over must be members of that flying club; and
 - (d) no person acting as a pilot on such a flight shall be employed as a pilot by or be a party to a contract for the provision of services as a pilot with the operator of the aircraft being flown on the flight.

(4) If valuable consideration specified in article 195(1)(c) is given or promised the flight is, for the purposes of Part 3 of this Order (other than for articles 35(2) and 36(2)), deemed to be for the purposes of commercial air transport.

Commercial air transport – exception for recovery of direct costs

199.—(1) A flight is deemed to be a private flight if the only valuable consideration given or promised in respect of the flight or the purpose of the flight other than—

- (a) valuable consideration specified in article 195(1)(c); or

- (b) in the case of an aircraft owned in accordance with article 200(2), valuable consideration which fails within article 200(3);

is the payment of the whole or part of the direct costs otherwise payable by the pilot-in-command by or on behalf of the employer of the pilot-in-command, or by or on behalf of a body corporate of which the pilot-in-command is a director, provided that neither the pilot-in-command nor any other person who is carried is legally obliged, whether under a contract or otherwise, to be carried.

(2) If valuable consideration specified in article 195(1)(c) is given or promised the flight is, for the purposes of Part II of this Order (other than for articles 35(2) and 36(2)), deemed to be for the purposes of commercial air transport.

Commercial air transport – exception for jointly owned aircraft

200.—(1) A flight is deemed to be a private flight if the aircraft falls within paragraph (2) and the only valuable consideration given or promised in respect of the flight or the purpose of the flight falls within paragraph (3).

- (2) An aircraft falls within this paragraph if it is owned—
- (a) jointly by persons (each of whom is a natural person) who each hold not less than a 5% beneficial share and—
 - (i) the aircraft is registered in the names of all the joint owners; or
 - (ii) the aircraft is registered in the name or names of one or more of the joint owners as trustee or trustees for all the joint owners, and written notice has been given to the Governor of the names of all the persons beneficially entitled to a share in the aircraft; or
 - (b) by a company in the name of which the aircraft is registered and the registered shareholders of which (each of whom is a natural person) each hold not less than 5% of the shares in that company.
- (3) Valuable consideration falls within this paragraph if it is either—
- (a) in respect of and is no greater than the direct costs of the flight and is given, or promised by one or more of the joint owners of the aircraft or registered shareholders of the company which owns the aircraft; or
 - (b) in respect of the annual costs and given by one or more of such joint owners or shareholders.

Commercial air transport and aerial work – carriage of persons

201. A flight is an aerial work flight if it is a flight in respect of which valuable consideration has been given or promised for—

- (a) the conduct of an aerial work activity during which, excluding crew members, no more than six persons indispensable to that aerial work activity are carried in the aircraft; and
- (b) flights immediately before and after an aerial work activity, provided that such flights are connected with that aerial work activity and the persons carried are as specified in paragraph (a).

Commercial air transport and aerial work – parachuting

202. Notwithstanding article 201, a flight is an aerial work flight if it is a flight in respect of which valuable consideration has been given or promised for—

- (a) the dropping of persons by parachute and which is made under and in accordance with the terms of a parachuting permission granted by the Governor under article 131; and

- (b) associated positioning and return flights on which the persons carried are those who may be carried on such a flight in accordance with the terms of a parachuting permission granted by the Governor under article 131.