

2014 No. 508

CIVIL AVIATION

The Air Navigation (Amendment) Order 2014

Made - - - - *5th March 2014*

Laid before Parliament *12th March 2014*

Coming into force - - *6th April 2014*

At the Court at Buckingham Palace, the 5th day of March 2014

Present,

The Queen's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by sections 60(1), (2), (3)(e), (3)(f), (3)(n), (3)(q) and (4) and 61(1)(a) of the Civil Aviation Act 1982(a).

Her Majesty, by and with the advice of Her Privy Council, orders as follows:

Citation and Commencement

1. This Order may be cited as the Air Navigation (Amendment) Order 2014 and comes into force on 6th April 2014.

Amendment of the Air Navigation Order 2009

2. The Air Navigation Order 2009(b) is amended as follows.

Restriction on carriage, where valuable consideration is given or promised, in aircraft registered elsewhere than in the United Kingdom

3.—(1) For article 223 (Restriction on carriage for valuable consideration in aircraft registered elsewhere than in the United Kingdom) substitute—

(a) 1982 c.16; section 60(3)(f) was amended by the Maritime Security Act 1990 (c.31), sections 47, 53(2) and Schedule 4. There are other amendments but none is relevant.

(b) S.I. 2009/3015; article 225 has been amended by the Air Navigation (Amendment) Order 2011 (S.I. 2011/2432). There are other amendments but none is relevant.

“Restriction on carriage, where valuable consideration is given or promised, in aircraft registered elsewhere than in the United Kingdom

223.—(1) Unless paragraph (2) or (6) applies, an aircraft registered elsewhere than in the United Kingdom must not take on board or discharge any passengers or cargo in the United Kingdom where valuable consideration is given or promised for the carriage of such persons or cargo.

(2) This paragraph applies if—

(a) the operator or charterer of the aircraft (a) the Government of the country in which the aircraft is registered has been granted permission to take on board or discharge any passengers or cargo in the circumstances described in paragraph (1) by—

(i) the Secretary of State; or

(ii) the CAA; and

(b) any conditions, to which such permission may be subject, are satisfied.

(3) Where the Secretary of State decides to determine an application for permission under paragraph (2), the Secretary of State must notify both the CAA and the applicant.

(4) The CAA must not determine an application for permission where the Secretary of State has notified it pursuant to paragraph (3).

(5) In exercising a function under this article, the CAA must take account of any guidance given to it by the Secretary of State (including as to the circumstances in which the Secretary of State expects to determine an application for permission).

(6) This paragraph applies if—

(a) the aircraft is flying pursuant to traffic rights conferred by Chapter III of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24th September 2008 on common rules for the operation of air services in the Community(a); or

(b) an air operator’s certificate has been issued to the operator of the aircraft pursuant to the Air Navigation (Overseas Territories) Order 2013(b).

(7) No operator or charterer of an aircraft in relation to which the prohibition in paragraph (1) applies may hold itself out as a person who may offer to take on board or discharge any passenger or cargo in the United Kingdom where valuable consideration is given or promised except where that person reasonably believes that paragraph (2) or (6) will apply in relation to the relevant aircraft, operator or charterer by the time the relevant flight is made.”

(2) In Section 1 of Part C of Schedule 13 (Penalties), for the row relating to article 223 substitute the following rows—

“223(1)	Restriction on carriage, where valuable consideration is given or promised, in aircraft registered elsewhere than in the United Kingdom
223(7)	Restriction on holding self out as a person offering carriage by air”.

Filing and approval of tariffs

4. In article 224 omit paragraph (3).

(a) O.J. No L 293, 31.10.08, p. 3.

(b) S.I. 2013/2870. Air operator’s certificates are issued under article 94.

Restriction on aerial photography, aerial survey and aerial work in aircraft registered elsewhere than in an EEA State

5. For article 225, substitute—

“(1) Subject to paragraph (2), an aircraft registered elsewhere than in the United Kingdom must not fly over the United Kingdom for the purpose of aerial photography or aerial survey or for the purpose of any other form of aerial work unless—

- (a) the CAA has granted permission to do so to the operator or charterer of the aircraft; and
- (b) any conditions, to which such permission may be subject, are satisfied.

(2) This article does not apply to an aircraft—

- (a) registered in an EEA State;
- (b) registered in a territory to which the Air Navigation (Overseas Territories) Order 2013 applies; or
- (c) registered in the Isle of Man or Bailiwicks of Jersey or Guernsey.”

Revocation, suspension and variation of certificates, licences and other documents

6. In article 228(5) for “permits” substitute “any permission”.

Revocation, suspension and variation of permissions, etc granted under article 223 or article 225

7.—(1) For article 230 substitute—

“(1) This article applies to any permission granted by the Secretary of State under article 223 or by the CAA under article 223 or article 225.

(2) Subject to paragraph (7), the Secretary of State or the CAA may revoke, suspend or vary any permission to which this article applies after having given notice to the other and considered representations from the operator or charterer concerned.

(3) Subject to paragraph (7), the Secretary of State or the CAA may without notice revoke, suspend or vary any permission to which this article applies for reasons of urgency, in which case paragraph (4) applies.

(4) Where this paragraph applies, the person who revoked, suspended or varied any permission without notice under paragraph (3) must consider any representations made subsequently by the operator or charterer concerned and in response to such representations may —

- (a) confirm, vary or lift the suspension;
- (b) confirm the revocation of permission; or
- (c) reinstate the permission with or without additional or varied conditions.

(5) In acting under paragraph (4), the Secretary of State or the CAA must act as soon as reasonably practicable.

(6) In particular, and without limitation, the Secretary of State may exercise the powers under paragraphs (2) and (3) if it appears that—

- (a) the operator or charterer has committed a breach of any condition to which the permission is subject;
- (b) any agreement between Her Majesty’s Government in the United Kingdom and the Government of any other country pursuant to which the permission was granted is no longer in force or that the other Government has breached the agreement;
- (c) the operator or charterer who has been granted permission, or a Government of another country which is a party to an agreement referred to in sub-paragraph (b), or the aeronautical authorities of the country concerned, has—

- (i) acted in a manner which is inconsistent with or prejudicial to the operation in good faith, according to its object and purpose, of any such agreement; or
 - (ii) engaged in unfair, discriminatory or restrictive practices to the prejudice of the holder of an air transport licence or a route licence in the operation of air services; or
- (d) the operator or charterer, having been granted permission as a result of being designated by the Government of any other country for the purposes of an agreement referred to in sub-paragraph (b)—
- (i) is no longer so designated; or
 - (ii) has conducted itself in such a way or is involved in such circumstances that the Secretary of State considers the exercise of those powers to be necessary or expedient.
- (7) The CAA may only exercise the powers in paragraph (2) or (3) if it considers it necessary or expedient to do so for reasons of aviation safety.”

Richard Tilbrook
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes further changes to the Air Navigation Order 2009 (the “ANO 2009”) to enable the Civil Aviation Authority (“CAA”) to grant permission for foreign aircraft to carry out specified operations in the United Kingdom.

Article 3 substitutes Article 223 of the ANO 2009 so as to give the CAA for the first time the power to grant permission for foreign aircraft to take on board or discharge passengers and cargo for consideration. This power remains exercisable by the Secretary of State who may exercise it to the exclusion of the CAA, subject to notification procedures.

Article 4 amends article 224 of the ANO 2009 such that certain functions of the CAA in relation to tariffs are exercisable by the CAA on its own account.

Article 5 substitutes article 225 of the ANO 2009 such that it is the CAA rather than the Secretary of State which has the function of granting permission for foreign aircraft to undertake aerial work.

Article 7 substitutes article 230 of the ANO 2009 such that the CAA for the first time, in addition to the Secretary of State, has the function of revoking, suspending or varying permission granted under article 223 or 225 of the ANO 2009.

An impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR. It is also available alongside this instrument at www.legislation.gov.uk.

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