

2008 No. 3125

CIVIL AVIATION

**The Air Navigation (Overseas Territories) (Amendment) Order
2008**

Made - - - - - *10th December 2008*

Laid before Parliament *17th December 2008*

Coming into force - - - *7th January 2009*

At the Court at Buckingham Palace, the 10th day of December 2008

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) and 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, is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation and Commencement

1. This Order may be cited as the Air Navigation (Overseas Territories) (Amendment) Order 2008 and shall come into force on 7th January 2009.

Amendment of the Air Navigation (Overseas Territories) Order 2007

2. The Air Navigation (Overseas Territories) Order 2007(e) shall be amended as follows.

3. In article 19 after the words “or other premises” there shall be inserted, “including premises used for any of the purposes of the maintenance, overhaul, repair or modification of an aircraft or of any of the material, parts or equipment installed or to be installed in an aircraft”.

4. After article 64(3) there shall be inserted:

“(4) No person shall hold himself or any other person out as being a person who may offer flights on an aircraft registered in the Territory for the purpose of commercial air

(a) 1949 c. 67.
(b) S.I. 1969/592.
(c) S.I. 2001/1452.
(d) 1982 c. 16.
(e) S.I. 2007/3468.

transport unless he or (as the case may be) that other person holds a valid air operator's certificate granted under this article."

5. In article 73, paragraph (8) shall be deleted.

6. For article 74 there shall be substituted:

"Commercial air transport operations at night or in Instrument Meteorological Conditions by single engine aeroplanes

74. An aeroplane that is powered by one engine only shall not fly for the purpose of commercial air transport at night or in instrument meteorological conditions unless it is flying on a special VFR flight in a control zone."

7. In article 104(1) for "flights for the purpose of the commercial air transport of passengers or for the purpose of instruction in flying or of any classes of such aircraft" there shall be substituted "flights in any of the categories referred to in paragraph (2) of article 103".

8. After article 105(12) there shall be inserted:

"(13) The Governor may, on such conditions as he shall think fit, direct the operator of an aerodrome in the Territory that is not certificated under paragraph (2) of this article to make available at the aerodrome such rescue and fire fighting services as he shall specify having regard to the nature and scope of the aircraft operations undertaken at such aerodrome."

9. After article 107(3) there shall be inserted:

"(4) For the purposes of this article an aerodrome in respect of which a licence for public use has been granted shall mean an aerodrome to which the Governor or the Government of the Territory has issued a licence under regulations or bylaws made in the Territory for the use of the aerodrome for the purposes of commercial air transport or flying training."

10. After article 135(3) there shall be inserted:

"(4) No operator or charterer of an aircraft to which this article applies shall hold himself out as a person who may offer to take on board or discharge any passenger or cargo in the Territory for valuable consideration unless:

- (a) he does so in accordance with a permission granted under this article; and
- (b) he does so in accordance with any conditions to which such permission may be subject."

11. In article 141, paragraph (1)(a) the words "or 127(2)" shall be substituted for the words "127(2), 135, 137 or 138" and after paragraph (2) there shall be inserted:

"(3) If it appears to the Secretary of State or to the Governor or to an authorised person that any aircraft is intended or is likely to be flown in such circumstances that any provision of article 135 or 137 would be contravened in relation to the flight, the Secretary of State or Governor or that authorised person may direct the pilot in command of the aircraft that he is not to permit the aircraft to make the particular flight or any other flight of such description as may be specified in the direction until the direction has been revoked by the Secretary of State, the Governor or by an authorised person and the Secretary of State or Governor or any authorised person may take such steps as are necessary to detain the aircraft.

(4) For the purposes of paragraph (3) the Secretary of State or Governor or any authorised person may enter upon any aerodrome and may enter upon and inspect any aircraft."

12. In article 142(1)(d)(ii) there shall be deleted the words "it or".

13. In article 155, paragraph (1) after the words "such instructions" there shall be inserted "or publish such requirements".

14. In article 156(1) for the definition of "Authorised person" there shall be substituted:

““Authorised person” means any person authorised by the Governor or, as the case may be, the Secretary of State, either generally or in relation to a particular case or class of cases, and references to a person so authorised include references to the Director of Civil Aviation or the holder for the time being of any office designated by the Governor under article 153 of this Order or any officer of the Police Authority of the Territory acting in the course of his duty.”

15. In article 156(1) in the definition of “Governor” after the words “those functions” there shall be added “and if no person has been designated to carry out that function, ASSI”.

16. In article 156(1) in the definition of “State of the operator”:

- (a) after the word “means” there shall be inserted “for the purposes of articles 7(1), 16(1), 21(3) and 49(1)”;
- (b) in paragraph (c) for “8(1)” there shall be substituted “7(1)”; and
- (c) in paragraph (d) the words “or the existence and scope of the agreement have been directly communicated to the Governor” shall be deleted.

17. In Schedule 9 in Regulation 2(1) there shall be deleted all of the words after “commercial air transport of passengers”.

18. In Schedule 11 in the first line of the first paragraph for the word “he” there shall be substituted the word “be”.

Judith Simpson
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Air Navigation (Overseas Territories) Order 2007 (referred to below as “the Order”). In addition to minor corrective amendments, the following changes are made:

(1) Articles 64 and 135 of the Order are supplemented by new provisions introducing a prohibition against the advertising of flights for the purpose of commercial air transport unless the advertiser, or the operator on whose behalf the advertisement is placed, holds either an air operators certificate issued by the Governor under article 64 or a foreign aircraft permit issued by the Secretary of State under article 135. These provisions are intended to facilitate action against the operators of aircraft who undertake illegal commercial air transport flights.

(2) In article 73, paragraph (8) is deleted as there is no longer a requirement to specify the performance limitations of certain categories of helicopter as these are detailed in the relevant parts of the Overseas Territories Aviation Requirements.

(3) Article 74 is replaced by a revised article to provide a clearer definition of the prohibition on the use of a single engine aeroplane for the purpose of commercial air transport at night or in instrument meteorological conditions.

(4) The amendment to article 104 is to align the conditions for the use of a notified Government aerodrome with the categories of aircraft operations set out in article 103(2).

(5) The insertion of the additional paragraph in article 105 is to enable a Governor to stipulate the level of rescue and fire fighting services available at an aerodrome that is not subject to certification under the provisions of paragraph 105(2) of the same article.

(6) The insertion of the additional paragraph in article 107 is for the purpose of providing a definition of an aerodrome licensed for public use.

(7) The amendment to article 141 is for the purpose of separating out from the area of safety the ability to ground a foreign aircraft that does not have a permit issued by the Secretary of State.

(8) The amendment to article 155 is to enable the Governor to publish requirements in respect of the provision of a meteorology service, the provision of an aeronautical information service, the publication of charts and the arrangements for undertaking search and rescue.

(9) The amendment to the definition of “authorised person” in article 156 is to include persons authorised by the Governor and the Secretary of State. This amendment also aligns with the changes to article 141 referred to under (7) above.

(10) The amendment to the definition of “State of the operator” is intended to make clear that the term as used in the Order is restricted to circumstances covered by an agreement for the transfer of responsibilities between the State of registry and the State of operator.

(11) A full regulatory impact assessment has not been produced for this instrument as no impact on the voluntary or private sector is foreseen.

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