



SUMMARY OF THE MEANING OF COMMERCIAL AIR TRANSPORT, PUBLIC TRANSPORT & AERIAL WORK

This paper is a summary of the meaning of commercial air transport, public transport and aerial work in the Air Navigation Order 2009. It is simplified and it is of course the Order itself which must be relied upon

SUMMARY OF THE MEANING OF COMMERCIAL AIR TRANSPORT, PUBLIC TRANSPORT AND AERIAL WORK

1 Commercial air transport and public transport

- 1.1 In the United Kingdom, the term “public transport” has long been used. This is defined in the Air Navigation Order as any flight on which is carried one or more passengers or cargo where valuable consideration has been given or promised for the carriage.
- 1.2 A passenger is defined as meaning anyone who is not a member of the flight crew or cabin crew.
- 1.3 This public transport definition has been interpreted literally as having a very wide scope. This is intentional. It includes the typical commercial passenger carrying flight, where a customer buys a ticket to fly from A to B on holiday or business. But it also captures a variety of other operations. For example, if an operator is paid to carry a police observer, that observer will be a passenger and it will be a public transport flight. Similarly where a power company pays for its observer to be carried to inspect power lines or where a television company pays for its camera crew to be carried it will be a public transport flight. Where an observer or camera operator is employed by the operator, it is quite likely that the customer will not be paying directly for their carriage so that it will not be public transport.
- 1.4 So the term public transport comprises both the typical commercial passenger carrying flight and an extended range of passenger carrying operations.
- 1.5 European law does not use the term public transport. It uses the term commercial air transport (CAT). This is defined as the carriage by air of passengers, mail and/or cargo for remuneration and/or hire.
- 1.6 Any undertaking operating for such a purpose was required by EC Regulation 2407/92 to hold an operating licence¹. This Regulation formed part of the “Third Package” which liberalised air transport within the Community. It requires Community carriers carrying out CAT to hold an operating licence – an economic approval. There are various financial and insurance requirements which must be met to obtain such a licence. (This Regulation has now been revoked and replaced by EC Regulation 1008/2008 but this particular requirement is unchanged.)
- 1.7 Having regard to the purpose of EC Regulation 2407/92, the description of a CAT operation has been interpreted as capturing the typical commercial passenger carrying flight but not the other types of operation coming within public transport. (In most European countries these other types of operation are regulated as “aerial work” rather than as a variety of public transport or CAT.)
- 1.8 So we have two terms – commercial air transport which captures normal commercial passenger operations and public transport which captures both those operations and also a wider range of operations wherever there is payment for the carriage of a person on board an aircraft who is neither a member of the flight crew nor cabin crew.
- 1.9 In the United Kingdom the Air Navigation Order contains a comprehensive set of operating rules applicable to public transport operations. Public transport operators must hold a national air operator’s certificate. This is a safety approval.

¹ There are a couple of exceptions to the requirement to hold an operating licence –
(a) air services performed by non-power-driven aircraft and/or ultralight power-driven aircraft; and
(b) local flights.

- 1.10 The EU has now adopted EU-OPS (formally Annex III to EC Regulation 3922/91). This contains a comprehensive set of operating rules applicable to commercial air transport by aeroplanes. Operators of aeroplanes for CAT must hold an EU-OPS air operator certificate. Again this is a safety approval.
- 1.11 EU-OPS does not apply to other categories of aircraft such as helicopters, balloons and airships.
- 1.12 The Air Navigation Order has been amended to reflect EU-OPS. This means that the operating requirements in the ANO are now disapplied from any CAT operation by an aeroplane which is now regulated by EU-OPS.
- 1.13 This has been achieved in two main ways. First, certain articles contain a specific provision disappling them from any operation which is subject to EU-OPS. Secondly, the definition of public transport has been modified so as to exclude commercial air transport by aeroplanes. This means that any article in the ANO which applies to public transport will, by definition, not apply to an operation which is subject to EU-OPS, i.e. an operation by an aeroplane for commercial air transport.
- 1.14 It may help to consider this in the form of a matrix. There are two sets of requirements – EU-OPS for commercial air transport and ANO for public transport. There are two categories of aircraft – aeroplanes and other aircraft such as helicopters, balloons and airships. EU-OPS now applies to commercial air transport by aeroplanes. The ANO applies to everything else.

	Normal commercial passenger or cargo carrying operations	Other types of operations where passengers carried for payment
<i>Aeroplanes</i>	EU-OPS applies	ANO applies
<i>Helicopters, Balloons and Airships</i>	ANO applies	ANO applies

2 The overall approach

- 2.1 It must first be decided if a flight is commercial air transport, using the criteria described in section 1.

If it is not commercial air transport, is it public transport or aerial work? These terms are defined at Articles 259 and 260 of the Air Navigation Order 2009 using a number of terms which are defined in article 255 (1) of the Order. The general rules are defined at articles 259 to 264. Six exceptions to those general rules are then established in Articles 265 to 270. (See also table at pages 8 & 9 below.)

3 The general rules

3.1 Aerial work (Article 259)

- 3.1.1 A flight is for the purpose of aerial work if payment is made in respect of the flight or the purpose of the flight, unless the flight is in fact for the purpose of public transport (see paragraph 3.2 below).

- 3.1.2 If the only payment involved is the payment of the pilot, the flight is deemed to be private for airworthiness purposes (although it will still be aerial work for other purposes, e.g. flight crew licensing). This enables a private owner to pay a flying instructor for a flying lesson in the owner's aircraft even though the continuing airworthiness requirements that would be applicable to public transport aircraft may not have been applied.
- 3.1.3 Article 259 also defines the term "club environment" which is used elsewhere in the Order.
- 3.2 Public transport (Articles 260, 262 and 263)
- 3.2.1 Public transport flights comprise one major category and two other categories.
- 3.2.2 The major category is when payment is made for the carriage of passengers or cargo in the aircraft on the flight.
- 3.2.3 The second category is when passengers or cargo are carried for no payment by an AOC holder. There is an exception in this second category for employees of the operator and authorised persons making inspections or carrying out tests (i.e. they can be carried for no payment without the flight being deemed to be public transport).
- 3.2.4 The third category of public transport flights, at article 262, relates only to airworthiness. If an aircraft is hired for a flight, e.g. from a flying club, then that flight is deemed to be public transport for airworthiness purposes, i.e. the aircraft must be maintained as a public transport aircraft. The flight will be private for all other purposes (provided no other payments are made in relation to the flight).
- 3.2.5 Article 263 deals with some legal technicalities relating to clubs etc.

4 Definitions (Article 255 (1))

4.1 Passenger

A passenger is defined in the Order as a person other than a member of the crew. Crew means members of the flight crew, cabin attendants and persons authorised to supervise training and carry out tests. It will be appreciated that observers, cameramen and other persons carried to operate particular pieces of equipment on board an aircraft will, if they do not fall within the definition of crew, be passengers. In so far as payment has been made to enable them to be carried it will be a public transport flight.

4.2 Direct costs and annual costs

Direct costs and annual costs are defined in the Order. Direct costs means those directly incurred in relation to a flight (e.g. fuel) but excludes any remuneration payable to the pilot. Annual costs means the cost of keeping, maintaining and operating the aircraft over a period of one year (e.g. maintenance and hangarage). There must be no element of profit in either direct or annual costs.

4.3 Valuable consideration

Throughout this paper, the question of whether a flight is public transport or aerial work is discussed in terms of whether "payment" has been given or promised in respect of the flight. In the Order itself instead of "payment" the term which is used is "valuable consideration". This term has a very wide meaning, including the provision of goods and services.

5 How to determine whether or not a flight which is not commercial air transport is public transport

- 5.1 To determine whether or not a flight which is not commercial air transport is for the purpose of public transport of passengers, the first question is **whether or not there are any passengers on board**. This is not always entirely straightforward as an occupant may claim to be a member of the crew.
- 5.2 Having determined that there is at least one passenger on board, the next question is **whether any payment has been given or promised which, if it had not been given or promised would mean that the passengers would not have been carried**. If there is any payment which could fall into this category, consider what would have happened if the passenger had presented himself for carriage and announced that such a payment would not now be made. Would the passenger still be carried?
- 5.3 If passengers are carried but there appears to be no payment for their carriage, consider whether the operator is an AOC holder. If it is, it will be public transport (subject to certain exceptions - see article 260(3)) even if there is no payment.
- 5.4 Even if no passenger is carried or there is no payment for the carriage of the passenger (and the operator is not an AOC holder) so that it is not a public transport of passengers flight, it may be aerial work if any payment has been made in respect of the flight or for the purpose of the flight.

6 The six exceptions

There are now set out at articles 265 to 270 six exceptions to the general rules and these exceptions are summarised below.

6.1 Exception No 1 – Flying displays etc. (Article 265)

- 6.1.1 This exception concerns an aircraft taking part in an aircraft race, contest or flying display or on a positioning flight to enable it to carry out such a flight, or returning from such a flight. The owner or operator may now recover from the organiser of the race contest or display: the direct costs and an appropriate contribution to the annual costs of operating the aircraft, but the flight will nevertheless be **a private flight for flight crew licensing purposes**.
- 6.1.2 In addition the pilot is entitled to receive prizes. This means that the aircraft can be flown by a PPL holder since the prizes will be deemed not to be remuneration and the payment of permitted costs will not mean that the flight is for the purposes of aerial work for flight crew licensing purposes.
- 6.1.3 This exception only affects the appropriate flight crew licence. It does not affect any other requirement of the Order (e.g. airworthiness).

6.2 Exception No 2 - Charity flights (Article 266)

- 6.2.1 A flight will be a **private flight for all purposes** if the only payment is to a registered charity which is not the operator of the aircraft and the flight is made with the permission in writing of the CAA. A general permission has been issued in an Aeronautical Information Circular (70/2008 (White 153) Charity Flights) so that pilots do not have to approach the CAA each time, provided the flight will be conducted in accordance with the operating conditions set out in the annexes to the AIC.

6.3 **Exception No 3 - Cost sharing (Article 267)**

6.3.1 A flight will be a private flight for all purposes if the only payment is a contribution to the direct costs of the flight (not annual costs) otherwise payable by the pilot in command. This is provided –

(a) no more than four persons (including the pilot) are carried

(b) the pilot pays at least a proportionate share (e.g. if four persons are carried the pilot must pay at least 25% of the direct costs) and

(c) the flight has not been publicised in any way except within the premises of a flying club (in which case all the adult persons being carried in the aircraft must be members of that flying club).

6.3.2 There is a further proviso that a pilot cannot take advantage of this exception if employed as a pilot by the operator of the aircraft. This is intended to deter flying instructors from abusing the exception by offering quasi-public transport flights in aircraft of the flying club for which they work.

6.4 **Exception No 4 – Recovery of direct costs (motor mileage) (Article 268)**

6.4.1 In the past PPL holders have queried whether they are entitled to recover from their employers the costs of running their own aircraft or hiring an aircraft to fly themselves on business, e.g. to a business meeting. As they have reasonably argued, they would be entitled to travel by train or car and recover their expenses of so travelling and wish instead to recover some or all of the costs of flying. Insofar as the employer has an interest in the employee travelling to a particular location at a particular time, then any payment made by the employer (even a contribution to costs) in relation to the flight will be in respect of the flight or the purpose of the flight. Thus the flight would be for the purpose of aerial work and outside the privileges of a PPL. However, an exception has been established permitting a PPL holder to recover the direct costs (but not the annual costs) in such a situation the flight being private for all purposes.

6.4.2 There is a proviso ensuring that on such a flight no one is carried who is under any legal or contractual obligation to be carried, e.g. the boss cannot order members of staff to travel with a PPL holder but must permit the option of an alternative means of travel.

6.5 **Exception No 5 - Jointly owned aircraft (Article 269)**

6.5.1 Many aircraft are jointly owned by groups of persons. All the members may pay into a central fund a contribution related to the number of hours they fly, so as to ensure that the central fund has sufficient money to pay the costs of operating the aircraft over a period of time. Such a contribution by a group member to that central fund is, however, in law equivalent to the payment made by a person hiring an aircraft from, e.g. a flying club. This payment has the effect of making a flight public transport for airworthiness purposes so that the group owned aircraft ought to be maintained to the public transport requirements.

6.5.2 An exception has been established so that the continuing airworthiness requirements applicable to public transport aircraft do not have to be complied with. This is provided -

(a) payments are made by members of the group to a central fund which amount to no more than direct and annual costs of operating; and

(b) the group comprises no more than 20 persons (each with at least 5% share) whose names have been notified to the CAA.

6.5.3 This exception applies whether the aircraft is jointly owned directly by no more than 20 persons or by a company which is owned by no more than 20 shareholders. The shareholders must be individuals and not companies.

6.5.4 It should be noted that this exception can only be relied upon if the only payments are those made within the group relating to the direct and annual costs of operation. No other payments can be made if it is wished to rely on this exception. In particular, a member of the group cannot pay an instructor to train the group member in the group-owned aircraft. However, see AIC W 071/2009 (Remunerated Flying Training and Flying Tests in Private Aircraft) and Official Record Series 4 No. 784 (Flying Training/Checking) at www.caa.co.uk/ors4 which allows a joint owner to undertake flight tests and pilot licence renewal/revalidation flights.

6.6 Exception No 6 - Parachuting (Article 270)

6.6.1 Where a person pays to be carried up in an aircraft for the purpose of parachuting out of that aircraft then the flight is clearly for the purpose of public transport of passengers, notwithstanding that those passengers will not be on board the aircraft when it lands. An exception has been established so that provided the flight is carried out in accordance with article 130 of the Order or the flight is positioning for such a flight or returning after such a flight then the carriage of parachutists (and other authorised persons, e.g. a jump master) will not mean that the flight is public transport. The flight will be aerial work.

7 Application of the exceptions to hired aircraft or jointly owned aircraft

7.1 The four exceptions relating to flying displays etc., charity flights, cost sharing and recovery of direct costs (motor mileage) are so defined that they are still available to an aircraft which has been hired or a group-owned aircraft operated in accordance with the group aircraft exception of article 269.

7.2 The four exceptions provide that flights coming within them will be private flights for the purposes of one or more Parts of the Order if the only payment in respect of the flight falls within the specified category of payment, e.g. in the case of flying displays the costs of the flight and prize money. However, if an aircraft has been hired then there will be another form of payment in respect of the flight, i.e. the payment for the hire of the aircraft. Similarly, if the aircraft is group owned, there may well be some payment by the group member to the group for the use of the aircraft. Thus two types of payment (group and hire) are discounted when applying the four exceptions (although if the aircraft is hired it will still need to be maintained as a public transport aircraft).

8 Conclusion

8.1 The above is intended to be a summary of the effects of Articles 259 to 270. It is somewhat simplified and it is the Order itself which must be relied upon.

PUBLIC TRANSPORT AND AERIAL WORK – THE SIX EXCEPTIONS

Type of Flight	What money * can change hands	What special conditions apply	Status of Flight
A. Flying Display (or positioning to or from)	a) Hire of aircraft or a contribution to flying group falling within category E below. b) Direct costs.** c) Proportion *** of Annual costs.** d) Prizes up to £500.	A prize of more than £500 may be paid with the permission of the CAA.	Private for FCL purposes i.e. may be flown by a PPL. (N.B. An appropriate airworthiness certificate or Permit to Fly will still be required.)
B. Charity Flights	a) Hire of aircraft or contribution to flying group falling within Category E below. b) Payment to a registered Charity (not being the operator). N.B. No costs may be recovered.	Permission of the CAA required for a charity flight.	Private in all respects. See AIC 70/2008 (White 153) Charity Flights.
C. Cost Sharing	a) Hire of aircraft or contribution to flying group falling within category E below. b) Contribution to Direct costs.** N.B. No costs ** recoverable.	a) Not more than four persons carried including the pilot. b) Pilot must pay proportionate share of costs, e.g. if four persons carried pilot must pay 25%. c) Passengers can meet their costs as they like, e.g. if three passengers carried one passenger can pay for all of them. d) No advertising (except within a flying club operating the flight in which all adult persons carried must be a member).	Private in all respects.
D. Motor Mileage	a) Hire of aircraft or contribution to flying group falling within Category E below. b) All of the Direct costs ** paid by employer of the pilot. N.B. No annual costs ** recoverable.	No-one may be carried who is under any obligation to fly, e.g. boss must not say to either the pilot or any passenger that as part of their job they must fly.	Private in all respects.

Type of Flight	What Money * can change hands	What special conditions apply	Status of Flight
E. Co-Ownership Group	a) Payment by a member of the direct costs. b) Payment by a member of a proportion *** of the Annual costs **.	a) The group may have a maximum of 20 members who each own at least 5% or it must be a Company with not more than 20 shareholders who each own 5% of the Company. b) If owned by a number of individuals the aircraft must be registered in their joint names or a list of all their names must have been filed with CAA. c) If owned by a Company it must be registered in the name of the Company.	Private in all respects.
F. Parachuting (or a positioning flight to or from)	Payment for the carriage of passengers.	a) It is a parachute flight in accordance with a written permission from the CAA (or the flight is positioning to or from such a flight). b) No-one is carried who is not permitted on the parachute flight or who it is not intended to carry on the parachute flight.	Aerial Work.

* Although "money" and "payment" are referred to in this table, the Order in fact refers to "valuable consideration" which is a wide term including provision of goods and services.

** "Direct costs" and "Annual costs" are defined in the Order.

*** "Proportion" essentially means the same proportion of annual costs may be recovered as the flight in question bears to the annual flying hours of the aircraft. The anticipated annual costs and annual flying hours must be estimated for the current calendar year in order to make the necessary calculation.

Notes

The table is a simplified summary - It is the Order which must be relied upon.

With one exception a private pilot may not receive remuneration for flying (prize money flying within Category A does not count as remuneration). The exception is that UK and JAR PPL holders who instruct on SLMGs or microlights and UK PPL holders who instruct on helicopters can be remunerated for giving instruction within a club environment.