



SUMMARY OF THE MEANING OF PUBLIC TRANSPORT & AERIAL WORK

This paper is a summary of the meaning of the definitions of public transport and aerial work contained in the Air Navigation Order 2005. It is simplified and it is of course the Order itself which must be relied upon

SUMMARY OF THE MEANING OF PUBLIC TRANSPORT AND AERIAL WORK

1. The Overall Approach

Public transport and aerial work are defined at Article 157 of the Air Navigation Order 2005 using a number of terms which are defined in Article 155 (1) of the Order. The general rules are defined at Article 157 (1)-(8). Six exceptions to those general rules are then established in Articles 158 to 163. (See also table at pages 6 & 7 below).

2. The General Rules

2.1 Aerial Work (Article 157 (1) and (2))

2.1.1 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 para 2.2 below).

2.1.2 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 his own aircraft even though the continuing airworthiness requirements that would be applicable to public transport aircraft may not have been applied.

2.2 Public Transport (Article 157 (3))

2.2.1 Public transport flights comprise one major category and two other categories.

2.2.2 The major category is when payment is made for the carriage of passengers or cargo in the aircraft on the flight.

2.2.3 The second category is when passengers or cargo are carried gratuitously by an air transport undertaking. An air transport undertaking is defined as an organisation whose business includes the carriage by air of passengers or cargo. An AOC holder is almost bound to be an air transport undertaking. There is an exception in this second category for employees of the undertaking and authorised persons making inspections or carrying out tests (i.e. they can be carried gratuitously without the flight being deemed to be public transport).

2.2.4 The third category of public transport flights 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).

2.2.5 Article 157 (3), (4) and (5) deal with some legal technicalities relating to clubs etc.

3 Definitions(Article 155 (1))

3.1 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. Insofar as payment has been made to enable them to be carried it will be a public transport flight.

3.2 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.

3.3 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.

4 How to determine whether or not a flight is public transport.

4.1 To determine whether or not a flight 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.

4.2 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 he still be carried?

4.3 If passengers are carried but there appears to be no payment for their carriage consider whether the operator is an air transport undertaking. If it is, even gratuitous carriage will be public transport (subject to certain exceptions - See Article 157 (3) (b)).

4.4 Even if no passenger is carried or there is no payment for the carriage of the passenger (and the operator is not an air transport undertaking) so that it is not a public transport of passengers flight, it may of course be aerial work if any payment has been made in respect of the flight or for the purpose of the flight.

5. THE SIX EXCEPTIONS

There are now set out at Articles 158 to 163, six exceptions to the general rules and these exceptions are summarised below.

5.1 Exception No 1. – Flying displays etc (Article 158)

5.1.1 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: his direct costs and an appropriate contribution to his annual costs of operating the aircraft, but the flight shall nevertheless be deemed to be a private flight for flight crew licensing purposes.

5.1.2 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.

5.1.3 This exception only affects the appropriate flight crew licence. It does not affect any other requirement of the Order (e.g. airworthiness).

5.2 Exception No 2 - Charity flights (Article 159)

A flight will be deemed to 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 Authority. (A general permission has been issued in an Aeronautical Information Circular (79/2005 (White 114)) 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.)

5.3 **Exception No 3 - Cost sharing (Article 160)**

5.3.1 A flight will be deemed to 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 that (a) no more than four persons (including the pilot) are carried, (b) the pilot pays at least his 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).

5.3.2 There is a further proviso that a pilot cannot take advantage of this exception if he is 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.

5.4 **Exception No 4 – Recovery of direct costs (motor mileage) (Article 161)**

5.4.1 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 now been established permitting a PPL holder to recover the direct costs (but not the annual costs) in such a situation the flight being deemed private for all purposes.

5.4.2 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 his staff to travel with a PPL holder but must permit the option of an alternative means of travel.

5.5 **Exception No 5 - Jointly owned aircraft (Article 162)**

5.5.1 Many aircraft are jointly owned by groups of persons. The most sensible way of operating such a group owned aircraft is for all the members to 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.

5.5.2 An exception has been established so that the continuing airworthiness requirements applicable to public transport aircraft do not have to be applied. 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. The 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.

5.5.3 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 exemption. In particular, a member of the group cannot pay an instructor to train him in the group owned aircraft. (However, see AIC 7/2004 (White 94) which allows a joint owner to undertake flight tests and pilot licence renewal/revalidation flights.)

5.6 **Exception No 6 - Parachuting (Article 163)**

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 67 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 deemed instead to be aerial work.

6 **Application of the exceptions to hired aircraft or jointly owned aircraft.**

6.1 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 162.

6.2 The four exceptions provide that flights coming within them will be deemed to 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).

7. **Conclusion**

The above is intended to be a summary of the effects of Articles 157 to 163. It is somewhat simplified and it is the Order itself which must be relied upon.

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The SIX EXCEPTIONS

TABLE (Page 6 & 7)

- * 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.

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

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| 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 79/2005 (White 114). |
| 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 he 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. |

| Type of Flight | What Money * can change hands | What special conditions apply | Status of Flight |
|--|--|--|--------------------------|
| 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 his job he must fly. | Private in all respects. |
| 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. |

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 PPL HOLDERS WHO INSTRUCT ON SLMGS, MICROLIGHTS OR HELICOPTERS CAN BE REMUNERATED FOR GIVING INSTRUCTION WITHIN A CLUB ENVIRONMENT.