



Isle of Man
CIVIL AVIATION ADMINISTRATION

Consultation Response on

AIRCRAFT REGISTRATION AND

MARKING LEGISLATION

January 2022

DEPARTMENT FOR
ENTERPRISE 

Rheynn Gastid Dellal



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1. Background

- 1.1 The Isle of Man Civil Aviation Administration consulted between 23 August 2021 and 1 October 2021 on our proposals for the replacement of the aircraft registration and marking provisions currently in the Air Navigation (Isle of Man) Order 2015 (“the IOM ANO”) with a new Civil Aviation (Registration and Marking) Order (“the new Order”).
- 1.2 It was considered that these aviation specific technical proposals would be of relevance to owners or operators of aircraft registered in the Isle of Man and to those persons and companies that support and facilitate the ownership and registration of such aircraft e.g. aircraft management services; corporate service providers; etc. The content of the consultation had no direct effect on the Isle of Man general public.
- 1.3 This Consultation Response Document summarises the comments and responses made and our planned actions in response. Where no comments have been received, the related provisions are not discussed further in this document and it is our intention to progress these as per our consultation proposals.

2. Summary of Responses

- 2.1 A total of 9 responses to the consultation were received from the following categories of respondent:
 - 1 x private individual
 - 3 x aircraft operators
 - 4 x corporate service providers
 - 1 x aviation law specialist organisation
- 2.2 A number of the responses were accompanied by detailed and constructive additional comments with justification provided for where further changes would be beneficial.

3. Detailed Comments & Our Responses

- 3.1 **Transition and implementation timescales.**

A number of comments were made highlighting concerns about the transitional arrangements and need for an appropriate time to be provided for assessment of the new provisions related to commercial air transport, aerial work and the provision of remuneration and valuable consideration before they come into effect. In particular, there were comments raised about the potential need to review aircraft ownership structures to ensure that they would comply with the new provisions and the workload this would generate. Consequently, we have decided that the following transitional provisions will be put in place:

- a. Certificates of registration issued pertinent to article 6(3) of the IOM ANO remaining valid as if issued under the new Order; therefore, there will be no need for currently registered aircraft to be issued with new certificates under the new Order.
- b. Articles 11, 12 and Part 28 of the IOM ANO will continue to have effect for aircraft holding a certificate of registration issued by the Department prior to the effective date of the new Order. This means that operators of such aircraft must continue to follow the IOM ANO requirements relating to commercial air transport, aerial work and the associated provision of remuneration and valuable consideration. If owners of such aircraft wish to take advantage of the new requirements then they will be able to apply for the issuance of a new certificate of registration issued under the new Order.
- c. The new Order will take effect 3 months after it is approved by Tynwald to ensure an appropriate period is provided to facilitate planning for aircraft ownership structures for aircraft intending to be registered in the near future. At this time the anticipated effective date will be 1 August 2022. The IOMAR will be providing advance notification and guidance to support the transition.

3.2 Definition of Commercial air transport.

- a. There were several comments made expressing concern at the proposed use of the phrase "remuneration" in lieu of the current phrase "valuable consideration". These points are accepted and the definition of "commercial air transport" will therefore be amended to also include "valuable consideration". The IOM ANO definition of "valuable consideration" will also be retained in the new Order. Where articles refer to "remuneration" these will be amended to "remuneration or valuable consideration".
- b. There were a number of comments made expressing concern as to the undefined use of the phrase "hire" in the definition of "commercial air transport" and the potential for this to include a private dry lease arrangement. These points were accepted and a new definition of "hire" will be added, meaning "a contract between the aircraft operator and a customer, where the customer has no control over the aircraft operator". Further changes are also set out below (see paragraph 3.5) that will explicitly enable the payment of operating costs relating to a private dry lease without such flights then being construed as being commercial air transport.
- c. Some respondents highlighted that EASA had defined "commercial operation" which included reference to "the public". As set out in our consultation documents, we have undertaken extensive review of the EASA regulatory model, which in addition to "commercial air transport" also defines and regulates "commercial operations". We agree with the respondent that the overarching purpose of our regulations pertaining to commercial air transport should be to protect members of the public. We also recognise the need to ensure that legitimate and reasonable costs can be paid by parties within a private ownership structure. Having reviewed the entirety of the comments received we feel that the following changes made to other aspects of the new

Order mean that it is not necessary to regulate and define "commercial operation":

- i. definition of "hire" added (see 3.2b above);
- ii. re-insertion of the text of article 175(2) of the IOM ANO into the new article 16, along with a change from 'individual' to 'person'(see 3.3 below);
- iii. enablement of payments made by a lessee under a private dry lease arrangement (see 3.5 below).

3.3 Groups of companies.

- a. Multiple responses highlighted that the loss of the current article 175(2) to the IOM ANO would be detrimental and that they valued the clarity that this provision brought. We have no objection to the text being retained and welcome the information that has been provided by consultees as to how it is currently utilised. Consequently, this provision will be retained in the new Order.
- b. Several respondents highlighted that the UK Companies Act 2006 definitions of "holding company" and "subsidiary" include supplementary provisions when compared to the Isle of Man's Companies Act 2006, which has no equivalent schedule. Consequently, we have revised the definition so that this reverts to referencing the UK Companies Act 2006.
- c. A comment was made that the use of the phrase "individual" could be replaced with "natural person" to ensure the same person could pay for their flights in addition to the companies they own. We agree with this comment. The Interpretations Act 2015 specifies that "an expression used to denote persons generally includes a reference to a body corporate as well as to an individual". Consequently, the phrase "individual" will be replaced with "person".
- d. Several respondents felt that the article did not go far enough and that it should be extended to provide that the owner(s) should be treated for all purposes as a holding company and that any valuable consideration passing to/from the owner(s) should be disregarded. We agree that valuable consideration made by the owner(s) should be disregarded; however, we feel that this is appropriately enabled by the new provisions provided by the article addressing the payment of operating costs (see 3.5 below).

3.4 Sharing of direct costs.

- a. One respondent commented that the provision was a good idea but there should be measures to prevent such publicly advertised flights as these were considered to be 'de facto public transport' flights. We agree with the spirit of the suggestion; however, the proposed provisions of paragraph (2)(d) of the article already ensure that this is the case.
- b. One respondent disagreed with the "minimum share required". The proposed provision limits the cost share to "no more than six persons (including the pilot)", as per contemporary EASA and UK requirements. Due to there being

no other disagreements received, no changes will be made to this aspect of the proposal.

- c. One respondent felt that the provision had been widened and expressed concern about potential abuse. We note the concern and agree that the number of persons sharing has been slightly increased to align with UK and EASA provisions. However, the article has also been "tightened" by constraining such cost share to other than large and turbojet aircraft and it now requires the pilot to pay his share of the costs along with the other occupants.

Note: On 1 December 2021, the UK CAA initiated their own [consultation](#) on proposed UK changes to their equivalent cost sharing provision. This UK CAA consultation has no direct connection with the Isle of Man's legislative developments. We have reviewed the UK proposals and at this stage we do not propose to make any further changes to our own plans. However, we will review the final UK provisions that result from their consultation and if considered beneficial and appropriate we reserve the right to make further Isle of Man proposals on this subject.

3.5 Payment of operating costs.

- a. There were comments made highlighting the need to enable the payment of costs for a "private dry lease". This aspect has been subject to extensive and detailed further considerations and we have established that the provision can be extended appropriately whilst ensuring that we do not inadvertently open the allowance up to abuse. Consequently, the list of circumstances when remuneration or valuable consideration may be given has been extended to include those made by "the lessee of an aircraft under a private dry leasing arrangement subject to the lessee having: a right to possess the aircraft; and, control of the aircraft operator". The phrase: "private dry leasing arrangement" has been defined as "a leasing arrangement whereby the aircraft is provided by a lessor who is not the operator of the aircraft to a lessee without the provision of any flight crew or ground staff". We also intend to supplement the provision with supporting guidance material.
- b. Comment was received that the costs made by a person with legal ownership of the aircraft should be limited by the specification of a maximum number of persons. This is accepted and we will align the provision with that for jointly owner aircraft by limiting to a 20% share.
- c. It was suggested that the allowance for costs made by the aircraft's registered owner should be extended to also include the aircraft's legal owner where such a person is not the registered owner. Following further analysis we have confirmed that such an addition is not necessary as the preceding allowance of costs to be paid by a person with a legal or beneficial ownership of the aircraft already achieves the aim of the suggestion.
- d. It was suggested that there should be a prohibition on the advertising or offering of shares in the ownership of the aircraft. Having considered this proposal we do not consider it to be necessary as our priority is to ensure that the "end use" of an aircraft operation is private and does not constitute

commercial air transport. Hence, we feel the current prohibition on “holding out for commercial air transport” is sufficient.

- e. The exclusion of profit from direct costs and annual costs was identified as being unnecessarily restrictive. We have reviewed the entirety of the article and have concluded that there is no requirement for costs to be limited to “annual” and “direct” costs, as the controlling factor is the list of persons in paragraph 1 of the article. Hence, we will delete the proposed paragraph 2. However, because of other comments pertinent to other articles, the definitions of annual and direct costs will be amended to remove the exclusion of profit (see 3.6a and 3.7c below).
- f. It was identified to us that there are many circumstances in which a payment of operating costs might be made by an “aircraft manager” or other service provider which is not itself classed as the aircraft operator. We agree with this point and as a result we will add to the list of persons who may provide remuneration or valuable consideration: “a person contracted by the aircraft operator to deliver services for the operation, management and control of the aircraft on their behalf”.

3.6 Jointly owned aircraft.

- a. A respondent made comment that this provision was considered to fall short of what was required primarily due to the inclusion of a profit element. We recognise that charges that need to be paid for commercially provided services invariably include a profit element; consequently, the profit exclusion element has been deleted from the definitions of “annual costs” and “direct costs”.
- b. It was questioned by one respondent whether this provision could be construed as a disguised form of fractional ownership. We do not believe this to be the case as this long standing joint ownership article relates to the joint ownership of a specified aircraft registration whereas fractional ownership, which we do not allow, normally relates to access to a pool of aircraft. We have reviewed the changes and concluded that the change in minimum share from 5% to 20% means that the current provision is significantly tightened and more restrictive by limiting the number of joint owners. Consequently, we feel that no further changes are necessary.

3.7 Demonstration flights.

- a. It was opined by a respondent that demonstration flights would be non-passenger carrying. However, we feel that it is important to recognise that in addition to demonstration flights conducted to check the technical condition of an aircraft prior to purchase, other types of demonstration flights are required to enable a future owner to make a choice as to the aircraft required. In the later, the owner would be expected to directly experience (as a passenger) the full capability of the aircraft. The provisions that we have proposed for demonstration flights regularise the policy we have had in place for some time.
- b. There were requests made for the demonstration flight provisions to be extended to include “ferry flights” related to an aircraft sale i.e. to facilitate

inspection or delivery. This has been accepted and the provision will be extended.

- c. It was identified by a respondent that the estimated direct costs are often paid in advance and as such could result in unwittingly including a "profit" element if the actual costs are less. This is accepted and the element of profit exclusion from direct costs (and annual costs) will be removed as we also recognise that costs for commercial services include a natural profit element.

3.8 Annual Costs.

It was suggested that annual costs should include a standard calculation in terms of depreciation and corporate administration costs. These points are accepted and the definition will be amended accordingly.

3.9 Aerial work.

The relevance of aerial work (as defined by ICAO) to aircraft registered in the Isle of Man was questioned by two respondents. This comment is noted but there are aircraft currently registered in the Isle of Man that require to conduct such aerial work and this is an area of our portfolio of services as an aircraft registry that we wish to facilitate further. There was further comment on the definition being too "narrow" and a suggestion that the EASA definition of "commercial operation" be used instead – this point has been answered above in 3.2c.

3.10 Who may register aircraft in the Isle of Man.

Two respondents suggested that the "qualified ownership criteria" was in need of review and potentially removed entirely. The comments and supporting information provided are welcomed as we are in the process of assessing this area and we would like to make proposals for change in due course.

3.11 Documents to be submitted in English.

It was suggested by one respondent that there should be consideration of the legal standards of translation to be met e.g. notarisation/standards of translation provider especially relating to technical translation. A subsequent review of "notarised" and "certificated" translations has identified that the documents we are concerned with are most suited to being a "certified" translation. As such the requirement will be amended to include the need for the applicant to ensure the translation is certified by the translator instead of a declaration being made by the applicant. Guidance material will be provided on the nature of such a certification.

3.12 Notification periods.

The new Order provides the maximum timescales for the notification to the Registry of changes to the details relating to the aircraft registration, and the appointment of a new aircraft operator. It was suggested that account should be taken of the working week rather than specifying the number of days. Another commenter felt that the time proposed was not sufficient; however all other respondents were in agreement. Consequently, we have decided that the originally proposed timescales of "no later than 48 hours" will be replaced with "no later than 2 working days".

3.13 Withholding services.

A respondent suggested that withholding services to "outstanding debtors" should not be undertaken unless the payment terms were overdue. We have concluded that

the phrase 'outstanding debtors' is consistent with its use in Isle of Man Financial Regulations (FPN F.01). For aircraft remaining registered, a debtor would not be considered to be 'outstanding' if the payment was not yet overdue. Consequently, no changes will be made to this proposed provision.

3.14 Cape Town Convention.

A respondent suggested that in the event that another registry does not fulfil its legal obligations to deregister under the Cape Town Convention, the Isle of Man should continue to register the aircraft where the "authorised party (creditor)" requests it. We do not agree with this proposal. We cannot register an aircraft if it is registered elsewhere – to do otherwise would be in breach of the Chicago Convention.

3.15 Appointment of the Aircraft Operator.

- a. A respondent highlighted text from the Registry's Form 20 (Operator Declaration of Compliance & Delegated Authority Form) which was felt to contain some degree of contradiction with regards to the role of the Nominated Airworthiness Technical Representative versus that of the Aircraft Operator. We do not feel that the text is contradictory; as specified in the draft Order, and currently in RP4, the operator is accountable for the safe operation, management and control of the aircraft. To fulfil these responsibilities the operator must nominate persons to deliver other specific roles, including the NATR. However, we accept that the wording could be standardised; therefore, a review and update to RP4 and Form 20 will be undertaken as part of implementing the new Registration and Marking Order.
- b. A commenter highlighted their concerns pertaining to "issues surrounding the identity of the operator, as defined in both UK and Isle of Man aviation law". This is noted. The definition of "aircraft operator" (as per that published in the Annexes to the Chicago Convention) remains unchanged at this time; however, the IOMAR will review and draft further guidance material where necessary.

3.16 Legal or Beneficial Interest by Way of Aircraft Ownership

As part of our own internal review during the consultation period, we identified that the phrase "legal or beneficial interest by way of ownership" (in an aircraft), as inherited from the IOM ANO, was used in a number of articles pertaining to the registration of aircraft. Consequently, we sought clarity the intent of the phrase, in particular with regard to the inclusion of the word "beneficial". It was concluded that the normal requirement for registered owner details was to look for evidence of "legal ownership", as opposed to "beneficial ownership". Legal drafting advice was that the intent of the original legislation was considered to be for ordinary legal ownership to be recorded. Consequently, in the articles of the new Order pertaining to registration, apart from the item set out immediately below, the phrase will be amended to: "legal interest by way of ownership".

Article 9(2) of the draft Order, as provided in the consultation package, set out the particulars that must be included in the aircraft register in respect of registered aircraft as per the IOM ANO. This included "the name and address of every person who is entitled as owner to a legal interest in the aircraft or in a share in the aircraft or, in the case of an aircraft that is the subject of a charter by demise, the name and address of the charterer by demise". Having considered this article further, we have concluded that this item should

purely list “the registered owner” as identified from the information provided in the application for registration, as is the reality of current process. Prior to such registration, the phrase “legal interest by way of ownership” is appropriate as there is not at that point a “registered owner” in the Isle of Man aircraft register. The aspects in the same item of the IOM ANO and our original proposal that relate to registering in the name of the “charterer by demise” are already appropriately enabled in preceding articles. Additionally, the subsequent need to indicate on the certificate of registration that the aircraft is registered in the name of the charterer by demise is maintained.

As a consequence of the above, in articles of the new Order relating to the “payment of operating costs” and “jointly owned aircraft”, the use of the terms “beneficial share/ownership” is adjusted to “share of ownership”.

4. Next Steps

An amendment is being progressed to the IOM ANO to revoke those provisions that will be replaced by the new Order and to establish the continued applicability of specified provisions for aircraft registered in accordance with the IOM ANO. This amendment is expected to be made in February 2022 but it will only take effect on the date that the new Order takes effect.

The new Order will also now be progressed through the Island’s secondary legislation process. It is currently planned to submit the Order for Tynwald Court approval in April 2022. Consequently, as a result of our intended 3 month lead time to support transition, the date on which the new Order and the IOM ANO amendment is expected to come into effect will be 1 August 2022.

The Isle of Man Aircraft Registry is now developing guidance material to assist our clients in transitioning to the new requirements and will communicate the effective date of the new Order as soon as approval by the Tynwald Court has been completed.