

# **Consultation:**

## UK Cost Sharing Flights: Advertising

CAP 2601

A large, abstract graphic composed of overlapping blue and purple shapes, resembling a stylized wing or a modern architectural element, occupies the lower half of the page. It features a gradient from light blue to dark blue and purple, with curved edges and a layered effect.

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## Chapter 1

# Introduction

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- 1.1 A flight for the transport of passengers, for which remuneration (payment) or other valuable consideration has been made, is defined as a Commercial Air Transport (CAT) flight. Under the ANO, similar circumstances exist where the flight would be defined as a Public Transport (PT) flight. If a flight is CAT or PT, the operator must have an Air Operator's Certificate (AOC); the pilot must hold at least a Commercial Pilot's Licence (CPL); and the aircraft must be certificated and maintained in accordance with the appropriate airworthiness requirements.
- 1.2 The cost sharing rules are a derogation to the Air Operations Regulation (EU) 965/2012 as retained (and amended in UK domestic law under the European Union (Withdrawal) Act 2018 (hereafter referred to as Air Operations regulation), and an exception to the UK Air Navigation Order 2016 (ANO).
- 1.3 The derogation at Article 6.4(a) of the Air Operations regulation allows a flight on UK registered Part-21 aircraft that would otherwise be a CAT flight to be flown in accordance with the operating rules for non-commercial flights (such as cost sharing flights) subject to specific conditions. Although not in full alignment with the Air Operations regulation, Article 13 of the ANO and subsequent Official Record Series (ORS) 4 exemptions also allows cost-sharing for what would otherwise be a PT flight and aligns those aircraft which are not subject to the Air Operations regulation to that derogation.
- 1.4 Cost sharing flights are flights shared by private individuals. The 'cost-share' element refers to the costs of the specific flight which can be shared only between the pilot and others onboard the aircraft. These costs are the 'direct costs' which are the costs directly incurred in relation to a specific flight (e.g. fuel, airfield charges, rental fee for an aircraft).
- 1.5 Cost sharing flights are used by pilots to gain flying experience at a lower cost to themselves by sharing the cost between themselves and their passengers.
- 1.6 There can be no element of profit for the pilot as these flights are not commercial, and if profit is suspected then the flight might be operating outside of the regulations and therefore be illegal. The pilot must pay a contribution to these direct costs.
- 1.7 Cost shared flights can currently be advertised, including the use of online 'flight sharing' platforms. Passengers should be made aware that the pilot may amend or cancel the flight for any reason, including at short notice. Prior to the UK aligning our regulations with the European Union Aviation Safety Agency (EASA), advertising of a cost sharing flight was prohibited outside of the flying club environment.

- 1.8 This prohibition is still contained within Article 13 of the ANO; however, the CAA has since issued a long-standing exemption to this condition to allow cost sharing flights to be advertised outside the flying club environment to keep in alignment with EASA.
- 1.9 We previously consulted on changes to the rules on cost sharing in the UK, which we are pursuing in order to reduce the opportunities for confusion and abuse of the cost-sharing privilege.
- 1.10 Links to our earlier Consultation (CAP 2270) and Comment Response Document (CAP 2391) on the proposed changes to UK Cost Sharing Flights can be found in Chapter 5: Appendices.

## Background

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- 1.11 A derogation to the Commercial Air Transport / Public Transport regulations to introduce cost sharing rules has been a long-standing exemption from the regulation. The original intention of these rules was to allow private pilots to share the cost of a flight with one another on the basis that the pilot in command does not make a profit. EASA introduced greater relaxations of these rules to permit advertising of cost sharing flights online. As a safety regulator, it is right and proper that the CAA review regulations on an ongoing basis to determine whether they are still fit for purpose in protecting the public.
- 1.12 We consulted the General Aviation community on our proposed changes to cost sharing regulation in November 2021. These included proposals related to clarifying the costs pilots can legitimately share and measures to ensure pilots make their passengers aware of the increased risk associated with General Aviation flying compared to Commercial Air Transport flights.
- 1.13 Our subsequent proposals on advertising of cost sharing flights were the result of concerns raised by respondents to the open public consultation, which was well publicised. We published our response to the public consultation in December 2022 which confirmed our position and what changes would be made to the cost sharing regulation. Since then, we have continued to engage with stakeholders whilst we work to finalise our recommendations for legislative change.
- 1.14 This consultation document concentrates **solely on the advertising element** of the proposed changes to the cost sharing rules. We are not consulting on any other changes confirmed in CAP 2391 as we consider that these have already been adequately consulted on.
- 1.15 As our proposals on advertising were created as a result of responses received during our first consultation and differed significantly from the original proposal, the public has not been offered the opportunity to comment on the changes we have suggested. Furthermore, since we published our initial proposals, further proposals have been suggested as part of concurrent CAA projects looking at GA licencing and Pilot Medical Declarations (PMD).

- 1.16 We have therefore decided to provide the GA community with this additional opportunity to input their views on the advertising of cost sharing flights through this additional consultation before the policy is finalised.

## How to respond and next steps

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### How to respond

- 1.17 We would welcome your views on the proposed changes to the advertising element of the cost sharing regulations presented within this consultation. A full list of consultation questions can be found in Chapter 4.
- 1.18 Responses to this consultation can be submitted via our online consultation by no later than 30 November 2023.
- 1.19 Any enquiries regarding this consultation should be submitted via email to [ga@caa.co.uk](mailto:ga@caa.co.uk) with the subject line of 'Response to Cost Sharing: Advertising Consultation'.

### Next Steps

- 1.20 We will review all of the comments received following the closure of this consultation. Based on these comments, we will consider any need to amend the proposed changes to the advertising element of the cost sharing regulation. A Comment Response Document (CRD) will be issued outlining the decision and a summary of the comments received will be provided in the CRD.
- 1.21 Please note that the current timeline for the cost sharing regulation changes to come into force is Autumn 2024. We do not plan for this consultation to delay the timeline and are continuing to work with the Department for Transport (DfT) on the relevant rulemaking tasks to ensure the amendment timeline is kept.
- 1.22 As part of this work, it was determined by the Department for Transport (DfT) and the CAA that a De-Minimus Assessment (DMA), which is a lighter touch version of an Impact Assessment, is required for these changes.
- 1.23 The DMA will require the CAA to engage with stakeholders where necessary to gather any data required to understand the full impact the regulatory changes may have. Therefore, the CAA may contact relevant stakeholders in the near future to collaborate on the drafting of this document.

## Chapter 2

## Issue at hand

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- 2.1 We have found that there is considerable confusion between legally conducted cost sharing flights and illegal commercial air transport, with some stakeholders labelling cost shared flights as illegal commercial activity and wishing to see all such flights banned.
- 2.2 This was further reflected by the community in the responses we received to our original consultation where a clear majority of respondents accepted that the cost sharing framework required updating to improve clarity.
- 2.3 The risks associated with cost sharing are difficult to quantify. This is because there is currently no obligation to record cost sharing flights and therefore there is no way of accurately knowing how many cost sharing flights are taking place.
- 2.4 There is also no way to distinguish incidents which occur during cost sharing flights from other private flights in the Mandatory Occurrence Reporting (MOR) system. Again, this was made clear during the consultation process. As part of the original consultation preparation, we requested statistical data from Wingly (a flight sharing platform) regarding the amount of cost sharing flights which took place via their platform in 2019, 2020 and 2021, which we analysed as part of the overall review of the cost sharing regulations.
- 2.5 However, many cost sharing flights are not organised online or through a cost sharing platform and therefore data analysis is currently very difficult to collate. We hope that the addition of a UK Cost Sharing Charter and the introduction of a requirement for record keeping in the form of the Passenger Declaration Form, will offer future insights and analysis of appropriate data.

### Advertising

- 2.6 The advertising of cost sharing flights is permitted under the current cost sharing rules. We do not propose to remove this privilege.
- 2.7 In CAP 2391 we stated the following:

The original EASA regulations removed the previous UK restrictions on advertising which has led to the emergence of cost sharing platforms to introduce pilots and passengers to cost sharing flights. Whilst many have seen the advent of such platforms as a threat, and even suggest they encourage illegal public transport, at their best they do present an opportunity to connect pilots with passengers that would never meet in normal circumstances, increasing opportunities to hours build.

With the growth of online platforms, it's now ever more important that members of the public who take cost sharing flights are fully aware of the circumstances under which they're flying.

When a pilot communicates to the public that they are willing to provide a transportation service to any person who wants it, on any date, at any time, to any destination, this is classed as 'holding oneself out'<sup>1</sup> as defined in Article 104 of the Order. We believe this was not in the spirit of or intent behind the cost sharing derogation. 'Holding oneself out' can also include in-person conversation, advertising in print, on social media, or by using an internet application.

2.8 Cost sharing flights are private flights and therefore may be conducted by a pilot holding a private (non-commercial) licence. A pilot could be flying the general public only having made a Pilot Medical Declaration and not holding a Class 2 (or higher) medical certificate. As these flights are shared by private individuals, they should not be advertised as an offering of a flight to any destination and time at the determination of a passenger and therefore we are seeking changes to legislation to ensure the advertising of cost sharing flights is not abused to offer misleading advertisements, quasi-commercial services (holding out) or other activities not in keeping with the spirit of cost sharing rules.

2.9 The following advertisement is of a type which the CAA does not consider is in keeping with the original intent of cost sharing flights:

'If you're interested in experiencing the thrill of flying with me, I invite you to browse through the flights I have available. However, I understand that everyone is unique and may have different preferences or scheduling constraints. Therefore, if you're looking for something slightly different or a specific date that is not listed, please don't hesitate to send me a message. I'll do my best to accommodate your needs and provide you with an unforgettable flying experience.'

2.10 This advertisement is inviting the passenger to dictate the destination or date/time of the flight in the same way a passenger would do for a commercial service. Whilst it is accepted that a pilot can advertise their availability for flights they plan to take and ask for passengers to join them to share the direct costs, we do not believe that flights which are solely arranged at the passenger's request, are in keeping with the original intent of cost sharing flights.

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<sup>1</sup> i.e. represent oneself as a person who may offer flights in an aircraft registered in the United Kingdom 'for the purpose of public transport or commercial air transport'. See Article 104 of the Air Navigation Order 2016



## Chapter 3

## Proposed Regulation

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3.1 Our proposed changes to the advertising element of the regulation are as follows: (please note this is not actual regulation wording, but the CAA's proposal to the DfT. The DfT are responsible for drafting the actual regulation wording).

Cost sharing flights may be advertised. The advertisement must be placed by the pilot intending to operate the flight and it must relate to a specific flight that the pilot intends to take place, regardless of whether passengers are available for carriage. The advertisement must include the start and end locations, as well as the dates when the pilot intends to conduct the flight.

3.2 These changes will not make online advertising or flight sharing platforms unlawful as pilots will still be able to advertise their flights for cost sharing purposes. In addition, there will be no limit on the number of times a pilot can legitimately advertise. However, what we seek to address is patterns of behaviour which suggest that cost sharing rules are being abused and those who are 'holding themselves out' as a commercial air transport service.

3.3 It is important that private pilots who want to share the direct costs of a flight do not "hold out" to the public, as willing to furnish transportation to any person who wants it, at any time, to any destination. "Holding out" is accomplished by any means that communicates to the public that a transportation service is indiscriminately available to the members of the public that it is designed to attract.

3.4 Advertising in any form raises the question of holding out. Historically, pilots have been found to be holding out in some cases when advertising services via brochures, newspapers, magazines, posters, and website/internet postings.

3.5 In non-commercial aviation the safety of a flight is not determined by the exchange of funds, however, when money changes hands for a service, there is generally an expectation of greater safety standards being applied.

3.6 Holding out to the public may suggest to unsuspecting passengers that the pilot has met the higher regulatory requirements to carry passengers. Commercial aviation conducted by AOC<sup>2</sup> holders involves higher standards of safety regulation. Cost sharing flights

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<sup>2</sup> Any UK established individual, organisation or Company that wishes to operate an aircraft for the purpose of commercial air transport must, by law, first obtain an Air Operator Certificate (AOC) and Operating Licence from the Civil Aviation Authority.

An Operating Licence and AOC allows the holder to charge to fly passengers and / or cargo on their aircraft, whether this is a jet airliner operating on a trans-continental scheduled service or a helicopter flying passengers to oil platforms in the North Sea.

within the regulations are not commercial aviation and are not *regulated* as such by the CAA.

- 3.7 There remain associated risks to cost sharing that are not present in other areas of non-commercial aviation. One such risk is the added pressure on the pilot to complete the flight, having agreed to fly passengers. It is understood that there may be occasions when a pilot has advertised a flight which they intend to conduct, however due to operational conditions, weather, personal circumstances etc, they are no longer able to continue with the planned flight. On such occasions, pilots can cancel a flight without contravening the proposed advertising cost sharing regulations.
- 3.8 A pilot is under no obligation to continue with a flight if the conditions are not satisfactory, or it is unsafe to do so or for any other reason. This will be clearly detailed in any Guidance Material (GM), or Alternative Means of Compliance (AMC) attached to the regulation.
- 3.9 However, flights that are advertised that would clearly not take place without a paying passenger such as:
- (i) flights to multiple destinations on the same day all departing the same airport; or
  - (ii) flights advertised every day repeatedly,  
and which regularly do not take place;
- may result in the CAA exploring the circumstances with the pilot.

## Other Conditions

- 3.10 As part of our continued discussions to finalise the advertising element of the cost sharing regulations, we are also considering what, if any, conditions should be placed on advertisements to ensure they are transparent and clear to the public so that the public are fully informed before they choose to undertake a cost sharing flight. We are therefore proposing that a pilot should have to include in any advertisements: their licence and medical held, as well as their current flying experience.
- 3.11 This information and explanation of terms will also need to be included in the Passenger Declaration Form to ensure that passengers are able to formally accept the type of flight being undertaken.

## Examples

- 3.12 Here are some examples of what would and would not be acceptable under the proposed cost sharing regulations:

Example A: a pilot who is retired and therefore has an open diary of availability to cost share with potential passengers:

- 3.13 This pilot should decide on which days they legitimately are able to and intend to take a flight (i.e. they may be available every Tuesday and Wednesday, but that does not mean that they will fly every Tuesday and Wednesday) and the start and end locations of such flight. This pilot should not set their availability as every Tuesday and Wednesday, as realistically they do not intend to conduct these flights to and from X daily and may not have the resource to do so.
- 3.14 If the flight would not be going ahead without a passenger joining to share the costs, this flight should not be advertised.

Example B: a pilot is planning to fly from X to Y next Saturday and asks on social media if any of their friends would like to join and share the direct costs. A friend agrees but falls ill at the last moment and the flight is postponed by a week:

- 3.15 At the time the pilot advertised the flight they fully intended the flight would take place and as such this would not contravene the regulation. Unforeseen circumstances arose which meant that the pilot felt it was appropriate to cancel the flight and reschedule, but this does not affect the original intention of the pilot.
- 3.16 Pilots should not feel under pressure to complete a flight due to cost-sharing advertising restrictions.

Example C: a pilot advertises online for a specific time and date they are traveling to X location and back and wishes to share the direct costs of the flight with any available passengers. No passengers are available, and the flight still takes place.

- 3.17 This advertisement would be acceptable under the proposed regulation changes as the pilot is advertising where they intend to fly, on what date and is asking for passengers to join them. This flight is not being passenger led; the pilot intends to take the flight regardless of whether passengers join them.

## Chapter 4

## Consultation Questions

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- 4.1 We are now seeking feedback from stakeholders on the proposed changes to the advertising element of the cost sharing regulations outlined in this consultation. We welcome your responses to the questions below via the online consultation tool. The overall feedback from these questions will help determine our next steps.

**Question 1**

Do you currently or have you ever advertised a cost sharing flight online?

**Yes**

**No**

**Prefer not to say**

**Question 2**

Do you agree that the advertising element of the current cost sharing regulations should be reviewed and amended?

**Yes**

**No**

**Prefer not to say**

**Question 3**

Prior to the UK joining EASA, the advertising of a cost sharing flight was prohibited outside of a flying club environment. Would you support a return to those requirements regarding the advertising of cost sharing flights?

This required that:

"no information has been published or advertised before the commencement of the flight other than, in the case of an aircraft operated by a flying club, advertising wholly within the premises of such a flying club in which case all the persons carried on such a flight who are aged 18 years or over must be members of that flying club".

**Yes**

**No**

**Prefer not to say**

**Question 4**

In relation to the below proposed amendments:

Cost sharing flights may be advertised. The advertisement must be placed by the pilot intending to operate the flight and it must relate to a specific flight that the pilot intends to take place, regardless of whether passengers are available for carriage. The advertisement must include the start and end locations, as well as the dates when the pilot intends to conduct the flight.

To what extent do you agree that this proposed amendment is clear and easy to follow?

**Strongly agree**

**Agree**

**Neither agree nor disagree**

**Disagree**

**Strongly disagree**

**Question 5**

In relation to the below proposed amendments:

Cost sharing flights may be advertised. The advertisement must be placed by the pilot intending to operate the flight and it must relate to a specific flight that the pilot intends to take place, regardless of whether passengers are available for carriage. The advertisement must include the start and end locations, as well as the dates when the pilot intends to conduct the flight.

To what extent do you agree that this proposed amendment is appropriate?

**Strongly agree**

**Agree**

**Neither agree nor disagree**

**Disagree**

**Strongly disagree**

**Question 6**

Do you believe that a pilot should have to include any of the following information in their advertisement to ensure passengers are fully aware of a pilot's credentials before booking to join a cost sharing flight?  
(Please select all that apply)

**Licence type held (i.e. PPL)**

**Medical held (i.e. Class 2, PMD)**

**Flying experience**

**Pilot Recency**

**None of the above**

**No opinion/Don't know**

## Chapter 5

# Appendices

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Appendix	Location
CAP 2270	<a href="#">Consultation: UK Cost Shared Flights</a>
CAP 2391	<a href="#">Comment Response Document: UK Cost Sharing Flights</a>