

Consultation: UK Cost Shared Flights

CAP 2270



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CAP 2270 Contents

Contents

Contents	3
Chapter 1	4
Introduction	4
Background	4
How to respond and next steps	6
How to respond	6
Next steps	6
Chapter 2	7
Current cost sharing regulations	7
Air Operations Regulation 965/2012	7
UK Air Navigation Order 2016	7
Chapter 3	9
Proposed changes to cost sharing regulations	9
Table 1 – Current ANO & ORS4 Regulation and proposed changes	10
Table 2 – Current Air Operations Regulation and proposed changes	11
Chapter 4	12
The rationale for change	12
Proposed regulation wording	13
Chapter 5	16
Consultation questions	16
Chapter 6	17
Abbreviations/Definitions	17
Example Passenger Declaration and Consent Form	18

CAP 2270 Chapter 1: Introduction

Chapter 1

Introduction

1.1 Pilots have long used cost sharing flights to reduce some of the high costs of owning and operating aircraft. Examples of these cost sharing flights include sharing aircraft rental costs with friends or family or with a member of a flying club to fly to help build hours. The United Kingdom Civil Aviation Authority (UK CAA) allows pilots to share certain flight expenses with passengers so long as the pilots meet a number of requirements.

- 1.2 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).
- 1.3 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.
- 1.4 One of the main benefits of cost-sharing is the potential for pilots to gain experience at a lower cost to themselves. In non-commercial aviation the safety level of a flight is not determined by the giving of remuneration or other valuable consideration, however, when money changes hands for a service, there is an expectation of a resultant level of safety standards being applied.
- 1.5 One of the problems encountered when dealing with cost sharing flights is where pilots and passengers of Illegal Commercial Air Transport collude to present illegal flights as legal cost shared flights.

Background

- 1.6 In 2021 the UK CAA established an internal working group to review the cost sharing regulations.
- 1.7 The cost sharing rules are contained in a derogation within 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), the UK Air Navigation Order 2016 (ANO) Article 13 and subsequent Official Record Series (ORS) 4 exemptions which aligns those aircraft which were not subjected at the time to the Air Operations regulation to that derogation.

CAP 2270 Chapter 1:

1.8 The working group focused on reviewing the rules of cost sharing flights and whether those current rules are fit for purpose for the dynamic and evolving GA community in accordance with the CAA's regulatory principals below:

- Understanding and addressing risk
- Delivering unique value
- Acting proportionately
- Engaging proactively and transparently
- Acting on our combined insight
- 1.9 This consultation document concentrates on the output of the working group and their recommendations to update the cost shared flights regulations whilst considering these principles which are an articulation of the CAA's regulatory approach, designed to improve safety and consumer protection outcomes.

How to respond and next steps

How to respond

- 1.10 We would welcome your views on the proposed changes to the cost sharing regulations presented within this consultation. A full list of the consultation questions can be found in Chapter 5.
- 1.11 Responses to this consultation can be submitted via our <u>online consultation</u> by no later than 12 January 2022.
- 1.12 Any enquiries regarding this consultation should be submitted via email to ga@caa.co.uk.

Next steps

- 1.13 Following the closure of this consultation, the CAA will review all the comments received. Based on these comments, we will consider any need to amend the cost sharing regulations and will issue a Comment Response Document (CRD) outlining the decision. A summary of the comments received will be provided in the CRD.
- 1.14 A proposal would then be submitted to the CAA's and Department for Transport (DfT)'s joint rulemaking committee, who will use it as a technical basis to decide whether or not to amend the current regulations, taking into account rulemaking priorities.
- 1.15 If the rulemaking committee decides that the regulations should be amended, the CAA will issue an Opinion and Instruction to the DfT in order to amend the applicable regulations at the next available opportunity in Parliament. The Opinion would be published before the amendment is made.

Current cost sharing regulations

2.1 Outlined below are the current regulations within the Air Operations Regulation and the ANO that apply to cost sharing:

Air Operations Regulation 965/2012

ARTICLE 6 (4)(a)

Cost-shared flights by private individuals, on the condition that the direct cost¹ is shared by all the occupants of the aircraft, pilot included and the number of persons sharing the direct costs is limited to six.

2.2 Article 13 of the ANO also allows for cost-sharing flights on a UK Non-Part 21 aircraft for what would otherwise be a Public Transport (PT) flight:

UK Air Navigation Order 2016

ARTICLE 13

- 1) A flight is a non-commercial flight if—
 - a) there has been no valuable consideration, or the only valuable consideration given or promised for the flight is a contribution to the direct costs² of the flight otherwise payable by the pilot in command: and
 - b) the criteria in paragraph (2) are satisfied.
- 2) The criteria in this paragraph are satisfied if
 - a) no more than four persons (including the pilot) are carried;
 - b) the proportion which the contribution referred to in paragraph (1)(a) bears to the direct costs is not more than the proportion which the number of persons carried on the flight (excluding the

¹ Direct costs are defined in the guidance material (GM2 Article 6.4a) to the Air Operations Regulation as 'the cost directly incurred in relation to a flight, e.g. fuel, airfield charges, rental fee for an aircraft. There is no element of profit.'

² Direct costs are defined in Schedule 1 of the ANO as 'the cost (excluding any element of profit) directly incurred in relation to a flight, including— (a) the cost of fuel; (b) any charges payable in respect of the use of any airfield in connection with the flight; or (c) any rental or hire fees for the use of the aircraft;

- pilot) bears to the number of persons carried (including the pilot);
- c) 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 a case in which all the persons carried on such a flight who are aged 18 years or over are members of that flying club; and
- d) no person acting as a pilot is employed as a pilot by or is a party to a contract for the provision of services as a pilot with, the operator of the aircraft which is being flown.
- 2.3 As per the Air Operations Regulation, 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.
- 2.4 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.
- 2.5 The Air Operations Regulation includes a derogation at Article 6.4(a) that allows a flight on UK registered Part-21 aircraft³ 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:
- 2.6 Although Article 13 of the ANO allows cost-sharing for what would otherwise be a PT flight, it is not in full alignment with the Air Operations regulation. Therefore, in order to provide equivalence with the Air Operations regulation, the CAA issued a General Exemption (currently ORS4 No.1406) which aligns the two together until such time that a more permanent change could be carried out.

November 2021021 Page 8

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³ Aircraft in this category are those that are regulated under UK Regulation (EU) 2018/1139 (known as the UK Basic Regulation) and its implementing regulations covering airworthiness, operations, flight crew licensing, etc.

Proposed changes to cost sharing regulations

- 3.1 A list of the proposed changes to the cost sharing regulations are:
 - Direct costs: a definition of 'direct costs' to be amended where applicable or inserted into both the ANO Article 13 and the Air Operations derogation (Article 6a) to provide clarity on what this includes.
 - Common purpose: If a flight does not start and end at the same site (A to A), the pilot and passengers must have a common purpose for travel to that destination (A to B), other than the payment and receipt of remuneration or other valuable consideration. This proposed change is intended to stop charter flights operating under the guise of cost-shared flights.
 - Equal shares: The total direct costs of the flight must be shared equally between all occupants of the aircraft (including the pilot). However, the pilot can opt to pay more than the equal share if they choose. We hope that this proposed change will provide clarity to both passengers, and the pilot/operator and ensure no profit is made from the flight.
 - Maximum of 6 occupants (including pilot): No more than 6 occupants (including the pilot) are to be carried on a cost sharing flight. The ANO at Article 13 currently only provides for a maximum of 4 occupants (including the pilot). In order to align this with the Air Operations Regulation and the current General Exemption ORS4 1406 we are proposing an amendment to the ANO to allow for a maximum of 6 occupants (including the pilot).
 - Safety standards identified: It will be a requirement on the pilot/operator to identify unequivocally that the flight is a cost sharing rather than public transport flight. It is intended that this proposed change will ensure passengers have sufficient information to make an informed decision whether they will undertake the flight.
 - Acceptance of standards and risks: In order for passengers to be fully informed, a record must be kept for each passenger undertaking a cost shared flight in which they must confirm that they understand the flight is not being operated as a CAT or PT flight. This record must be completed prior to flight, retained for 6 months from the date of the flight and is to be produced when requested by an Authorised Person. An example Passenger Declaration and Consent Form can be found at Appendix A.

- Advertising: Removal of the restriction on advertising cost sharing flights from the ANO. This proposed change will align the ANO with the Air Operations Regulation.
- Age limits: The removal of age limits from ANO Article 13. This proposed change will align the ANO with the Air Operations Regulation.
- 3.2 The tables below illustrate the proposed changes and how they compare to the current regulations on cost sharing. Table 1 shows what is currently contained within the ANO and the ORS4 General Exemption with a yes/no entry to signify whether it is already provided, alongside the proposed changes to the ANO regulation.

Table 1 – Current ANO & ORS4 Regulation and proposed changes

	CURRENT ANO REGULATION	ANO ORS4 GENERAL EXEMPTION	PROPOSED ANO REGULATION
DIRECT COSTS ONLY (NO PROFIT)	YES	YES	YES
DIRECT COSTS CORRECTLY DEFINED	NO	NO	YES
COMMON PURPOSE	NO	NO	YES
RESTRICTED TO NON- COMPLEX AIRCRAFT	NO	NO	NO
EQUAL SHARES	YES	NO	YES
MAXIMUM OF 6 (INCLUDING PILOT) OCCUPANTS	NO (MAX 4)	YES	YES
SAFETY STANDARDS IDENTIFIED	NO	NO	YES
ACCEPTANCE OF STANDARDS & RISKS LOGGED AND RECORDED	NO	NO	YES
CLARIFICATION ON RENTAL FEES	NO	NO	YES
PRIVATE INDIVIDUALS ONLY - NO ORGANISATIONS OR	YES	YES	YES

OPERATORS			
ALLOWS ADVERTISING	NO	YES	YES
AGE LIMITS	YES (18)	NO	NO

Table 2 shows the current Air Operations Regulations alongside the proposed changes for each element with a yes/no entry.

Table 2 – Current Air Operations Regulation and proposed changes

	CURRENT AIR OPERATONS REGULATION	PROPOSED AIR OPERATIONS REGULATION
DIRECT COSTS ONLY (NO PROFIT)	YES	YES
DIRECT COSTS CORRECTLY DEFINED	NO	YES
COMMON PURPOSE	NO	YES
RESTRICTED TO NON-COMPLEX AIRCRAFT	YES	YES
EQUAL SHARES	NO	YES
MAXIMUM OF 6 (INCLUDING PILOT) OCCUPANTS	YES	YES
SAFETY STANDARDS IDENTIFIED	NO	YES
ACCEPTANCE OF STANDARDS & RISKS LOGGED AND RECORDED	NO	YES
CLARIFICATION ON RENTAL FEES	NO	YES
PRIVATE INDIVIDUALS ONLY – NO ORGANISATIONS OR OPERATORS	YES	YES
ALLOWS ADVERTISING	YES	YES
AGE LIMITS	NO	NO

The rationale for change

- 4.1 Now that the UK has left the EU and is no longer an EASA Member State there will be opportunities to improve safety, clarity and guidance on current regulation.
- 4.2 The CAA's primary obligation is to ensure the safety of consumers and other members of the public. The CAA internal working group decided that there should be some strengthening of the cost sharing regulations to minimise the potential for both misunderstanding and abuse.
- 4.3 The working group reviewed the current cost sharing regulations, acknowledged the need for greater clarity and identified the following issues:
 - The regulations could be enhanced to improve safety without having a detrimental effect on the GA community.
 - The regulations could be adapted to improve the safety of passengers.
 - The current guidance could be improved upon to help pilots understand the regulations.
 - The guidance could be improved upon to ensure potential passengers better understand the type of flight and risks involved.
 - The current regulations fall short of allowing the CAA to enforce clear and deliberate breaches of legislation.
- 4.4 We have found that there has been considerable confusion between legally conducted cost shared 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. However, cost shared flights make it more affordable for pilots to fly more hours and gain more experience. Safety data does not indicate that properly and legally conducted cost shared flights carry any more risk than similar non-commercial flights conducted without costs being shared.
- 4.5 Cost sharing platforms can help to bring some self-regulation to the market and the CAA will introduce a UK cost sharing charter for those online platforms. The CAA will continue to work with online cost sharing platforms to investigate claims of excessive costs and unusual behaviour, whilst also encouraging best practice.
- 4.6 Where cost shared flights are arranged through online platforms the CAA recommends the use of only websites that have signed up to the UK Charter to promote the safety of non-commercial General Aviation flight with light aircraft by flight sharing companies. Platforms that sign up to this charter will support the

- provision of appropriate information to both pilots and passengers and help to ensure that cost-shared flights are conducted within the scope of the regulation.
- 4.7 The CAA are hoping to improve clarity and guidance on cost sharing flights we are already acting to improve our webpages and Civil Aviation Publication (CAP) documents. This also goes together with our ambition to simplify and rationalise regulation.
- 4.8 Concerns over the current cost sharing regulations have been expressed by representative bodies/associations and individual pilots due to potential abuse and the increased risk to unsuspecting parties.
- 4.9 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. The misconception of the type of flight and the relevant standards that apply are an area that needs further clarification and education.
- 4.10 Commercial aviation conducted by AOC holders involves higher standards of safety regulation. Cost sharing flights within the regulations are not commercial aviation and are not regulated as such by the CAA and the passengers must understand and accept this.
- 4.11 The CAA currently spends a significant amount of time responding to reports of Illegal Commercial Air Transport and investigating cases where cost sharing regulations have allegedly been breached. It is intended that the proposed changes would enable legitimate cost sharing flights to continue to operate and allow appropriate action to be taken against those who break the law.
- 4.12 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 to complete the flight on the pilot, having agreed to fly other people this always remains to a degree, but with the addition of the common purpose condition, this risk is reduced. The passengers must be aware that the pilot's decision is final to reinforce the responsibility and control of the pilot in command.
- 4.13 It is accepted that excessive or unclear regulation could deter pilots from undertaking cost sharing flights. That is not the aim of these proposals. Cost sharing can help reduce pilots' costs, enhance the enjoyment and safety of private flying through additional experience, provide positive economic benefits for other areas of UK general aviation and create a pool of future commercial pilots.

Proposed regulation wording

4.14 Below is a draft of the proposed changes to the ANO and the derogation contained within the Air Operations Regulation:

AIR NAVIGATION ORDER

- 1) A flight is a non-commercial flight if
 - a) there has been no remuneration or other valuable consideration, or the only remuneration or other valuable consideration given or promised for the flight to the pilot by the passengers is a contribution to the **direct costs** of the flight which would otherwise be payable by the pilot in command; and
 - b) the conditions in paragraph (2) are satisfied.
- 2) The conditions in this paragraph are satisfied if
 - a) no more than **six** persons (including the pilot) are carried;
 - b) the contribution referred to in paragraph (1)(a) towards the direct costs as defined in paragraph (2)(c) is an amount not more than the total of the direct costs divided equally by the number of persons carried (including the pilot);
 - c) the direct costs referred to in paragraph (1)(a) are those only directly incurred for that flight and **include only** fuel; oil; airfield charges; rental fees at current market rate. There is no element of profit. Any expenses not specified in this paragraph must be paid by the pilot with no contribution from the passengers;
 - d) the flight must be operated by a **private individual**. A person acting as a pilot must not be employed as a pilot by, or be a party to a contract for the provision of services as a pilot with, the operator of the aircraft which is being flown on that flight;
 - e) a flight under this article does not meet the Commercial Air Transport (CAT) or Public Transport (PT) standards. This must be clearly **identified** to, **accepted** by and **recorded** as such for each passenger undertaking the flight(s), so that the passengers are able to make a fully informed decision whether or not to accept these different standards. The identification of these standards must be included in any promotional material. These records must be completed prior to flight, retained for 6 months from the date of the flight and are to be produced when requested by an Authorised Person;
 - f) if the flight does not start and end at the same location the pilot and passengers must have a **common purpose** for travel to the destination, other than the payment and receipt of remuneration or other valuable consideration.

AIR OPERATIONS REGULATION

4a. By way of derogation from Article 5(1) and (6), the following operations with other-than complex motor-powered aeroplanes and helicopters, may be conducted in accordance with Annex VII:

- a) A cost-shared flight is a non-commercial flight if there has been no remuneration or other valuable consideration, or the only remuneration or other valuable consideration given or promised for the flight to the pilot by the passengers is a contribution to the **direct costs** of the flight which would otherwise be payable by the pilot in command; and
- b) the conditions in paragraph (4b) are satisfied.
- 4b. The conditions in this paragraph are satisfied if
 - a) no more than **six** persons (including the pilot) are carried;
 - b) the contribution referred to in paragraph (4a)(a) towards the direct costs as defined in paragraph (4b)(c) is an amount not more than the total of the direct costs divided equally by the number of persons carried (including the pilot);
 - c) the direct costs referred to in paragraph (4a)(a) are those only directly incurred for that flight and **include only** fuel; oil; airfield charges; rental fees at current market rate. There is no element of profit. Any expenses not specified in this paragraph must be paid by the pilot with no contribution from the passengers;
 - d) the flight must be operated by a **private individual**. A person acting as a pilot must not be employed as a pilot by, or be a party to a contract for the provision of services as a pilot with, the operator of the aircraft which is being flown on that flight;
 - e) a flight under this article does not meet the Commercial Air Transport (CAT) or Public Transport (PT) standards. This must be clearly **identified** to, **accepted** by and **recorded** as such for each passenger undertaking the flight(s), so that the passengers are able to make a fully informed decision whether or not to accept these different standards. The identification of these standards must be included in any promotional material. These records must be completed prior to flight, retained for 6 months from the date of the flight and are to be produced when requested by any person defined as an Authorised Person under the Air Navigation Order;
 - f) if the flight does not start and end at the same location the pilot and passengers must have a **common purpose** for travel to the destination, other than the payment and receipt of remuneration or other valuable consideration.

Consultation questions

We are now seeking feedback from stakeholders on the proposed changes to 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 support the alignment and improvement of the regulations in order to improve the safety of cost sharing flights and to make it more difficult for them to be used as a cover for illegal CAT or PT flights?

YES NO NO OPINION / DON'T KNOW

Question 2

Do you support the proposal to amend both the ANO and the Air Operations Regulation to include a 'common purpose of travel' requirement for each cost shared flight if not A to A?

YES NO NO OPINION / DON'T KNOW

Question 3

Do you support the proposal to amend both the ANO and the Air Operations Regulation to include an 'equal shares' requirement for each cost shared flight?

YES NO NO OPINION / DON'T KNOW

Question 4

Do you support the proposal that all passengers should complete a Passenger Declaration and Consent Form to ensure they are fully aware that cost sharing flights differ from CAT and PT pilot qualifications and maintenance standards?

YES NO NO OPINION / DON'T KNOW

Question 5

Do you think that the proposed amendments to both the ANO and the Air Operations Regulation will have a financial impact on cost sharing flight platforms?

YES NO NO OPINION / DON'T KNOW

Abbreviations/Definitions

Term	Abbreviation/Definition
ANO	Air Navigation Order
CAA	Civil Aviation Authority
DfT	Department for Transport
CAT	Commercial Air Transport
PT	Public Transport
ORS4	Official Record Series 4
EASA	European Aviation Safety Agency
AOC	Air Operator Certificate
CPL	Commercial Pilot Licence
PPL	Private Pilot Licence
Authorised Person	means—
(Defined in Schedule 1 of the	(a) any constable;
ANO 2016)	(b) in any article other than article 259, any person authorised by the CAA (whether by name or by class or description) either generally or in relation to a particular case or class of cases; and
	(c) in article 259, any person authorised by the Secretary of State (whether by name, or by class or description) either generally or in relation to a particular case or class of cases.

APPENDIX A

Example Passenger Declaration and Consent Form

COST SHARING FLIGHT - ESSENTIAL PASSENGER INFORMATION & DECLARATION FORM

FLIGHT DETAILS (To be completed by Pilot in Command)

Date	
Aircraft Type & Registration	
Pilot in Command Name	
Pilot in Command Licence Number	
Take Off Location and Estimated Time	
En-Route Landing Location(s) (if any)	
Final Landing Location and Estimated Time	

ESSENTIAL PASSENGER INFORMATION

The following information is essential reading if you are considering flying as a passenger on a cost sharing flight. Please ensure you have read and understood this information before commencing your cost sharing flight. In signing this declaration, you are confirming that you fully understand and accept in full the risks that can be involved in flying as a passenger in a cost sharing flight.

Cost sharing flights are flights shared by private individuals. The 'cost-shared' part is in reference 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). 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 an amount at least equal to that paid by each of the passengers towards these direct costs.

The risks encountered are considerably greater than those associated with flying in an airliner. Commercial aviation in large passenger carrying aircraft has now achieved exceptional safety standards, a standard that would be unachievable by lighter sport, recreational and personal transport aircraft. The safety of non-commercial light aircraft is more comparable to other recreational activities than the much higher standard achieved in commercial aviation.

Today you are undertaking a flight for which the safety rules are not as strict as they are for commercial air transport flights. This means that there is more risk involved in taking a cost-shared flight than buying a ticket

from a commercial airline operator, where much stricter safety rules apply and where the aircraft, pilots and the operator are subject to continuous checks and strict oversight rules from the authority.

The safety and conduct of any flight including cost-shared flights is the responsibility of the pilot in command of the aircraft. The pilot must conduct the flight in accordance with the applicable regulation for non-commercial flights with light aircraft by private pilots. It is also the pilot's responsibility to ensure the flight is appropriately insured, although as a passenger you should to check that any personal life, accident and/or health insurance you have is valid for non-commercial flights.

Please Turn Over for Passenger and Pilot in Command Declarations

PASSENGER DECLARATION(S)

Please	Tick
	I/we understand that the flight is carried out under the cost sharing regulations as a recreational flight and is not subject to the same safety standards as commercial operators such as airlines and I accept the risks associated with this type of flying.
	I/we understand that the aircraft may not be maintained to the same airworthiness standards as commercial operators.
	I/we understand that the pilot may not hold a commercial pilot's licence (CPL) and may hold a private pilot licence (PPL), I/we also understand that the pilot may not hold a current medical certificate that is required by commercial operators.
	The pilot has fully briefed me/us on the certain risks and dangers which are applicable to recreational aviation.
	I/we have read and understood the Essential Passenger Information on this form and the UK Cost Sharing Charter.
	I/we have received and understood all the pre-flight briefs and I/we am/are happy to accept and fly on this cost sharing flight.

Passenger 1	Signature		
	Name		Date
Passenger 2	Signature		
	Name		Date
Passenger 3	Signature		
	Name		Date
Passenger 4	Signature		
	Name		Date
Passenger 5	Signature		
	Name		Date

PILOT IN COMMAND DECLARATION

Please	Tick			
	I confirn flight.	I confirm that my licence, associated type/class rating and aircrew medical are all current for this flight.		
	I confirm the aircraft shown above holds a valid Certificate of Airworthiness or UK National Permit to Fly and the Aircraft Insurance includes cover for Cost Sharing Flights.			
	I confirm that I am paying the appropriate share of the Direct Costs of this flight as required by the Cost Sharing Regulations.			
	I confirm that I have provided the passenger(s) with a copy of the UK Cost Sharing Charter to read and that I have explained the risks and dangers which are applicable to recreational aviation.			
	☐ I confirm that I have given the passenger(s) a full pre-flight Safety Brief.			
Pilot in	_	Signature		
Commar	nd			
		Name	Date	