



Canadian  
Transportation  
Agency

Office  
des transports  
du Canada

# Requirement to Hold an Air Service Licence

## *Interpretation Note*

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The Canadian Transportation Agency (Agency) publishes Interpretation Notes to provide information and guidance on provisions of the [Canada Transportation Act](#), S.C. 1996, c. 10 ([Act](#)) and associated regulations administered by the Agency. Should there be any discrepancy between an Interpretation Note and the [Act](#) or associated regulations, the Act and regulations will prevail.

## I. Purpose

This Interpretation Note provides guidance on whether an Agency licence is required to operate an air service, including the key factors the Agency may consider in its assessment of whether that service is “publicly available”.

## II. Context

A person is required to hold an Agency licence to operate a service that is:

- provided by means of an aircraft,
- for the transportation of passengers or goods or both, and
- publicly available.

## III. Legislative References

Paragraph 57(a) of the Act provides that no person shall operate an air service unless, in respect of that service, the person holds a licence issued under Part II of the Act.

Subsection 55(1) of the Act defines “air service” as a service, provided by means of an aircraft, that is *publicly available* for the transportation of passengers or goods, or both.

Section 2 of the [Air Transportation Regulations](#), SOR/88-58 ([ATR](#)) defines:

- “passenger” as a person, other than a member of the air crew, who uses an air carrier’s domestic service or international service by boarding the air carrier’s aircraft pursuant to a valid contract or arrangement; and
- “goods” as anything that can be transported by air, including animals.

## IV. Objective of Air Licensing Requirement

The requirement to hold an Agency licence subjects the licensee to a number of consumer and industry economic protection provisions. For example, Canada's airline ownership rules ensure that strategic decisions regarding air services within Canada, or operated in the right of Canada under an air transport agreement or arrangement, are conducted by Canadians. Licence applicants that are Canadian and propose to operate

certain air services using medium and large aircraft must also meet prescribed financial requirements.

The Agency cannot issue a licence unless the air carrier meets the prescribed liability insurance requirements and holds a Canadian aviation document pursuant to the [Aeronautics Act](#), R.S.C., 1985, c. A-2, which ensures that the operation of an aircraft in Canada is subject to safety and security requirements administered by Transport Canada.

Licensees also must:

- have, display and apply a clear, reasonable and non-discriminatory tariff that addresses certain prescribed matters;
- notify the public when discontinuing certain domestic air services; and
- provide for the protection of monies paid in advance by Canadian originating passengers for international charter flights.

Licensees are also subject to the Agency's complaint adjudication mandate and its dispute resolution mechanisms.

## V. When is a Service “Publicly Available”?

While the phrase “publicly available” is not defined in the [Act](#), it has been reviewed by the courts and addressed in Agency decisions. The following sections explain the general principles and main factors the Agency considers in determining whether a service is publicly available.

### Terminology

“Private” refers to a service that is not publicly available.

“Public” represents the population as a whole or the community at large, or any grouping of persons within the general population or community that, as a group or segment, can be differentiated from family and personal acquaintances.

### General Principles

#### Each case is unique

Whether a service is publicly available is a factual question that can only be answered by examining the individual facts of each case.

#### All the facts are weighed together

Any number of facts can dictate whether a service is publicly available. The Agency considers and weighs all relevant facts when making a determination.

### **The service can be available to only a segment of the public**

Not all members of the public need to have access to a service for it to be considered publicly available. To ensure that an air service reaches an intended user group, a service provider may impose eligibility conditions on users. While these conditions may be restrictive, it may still be considered a publicly available service if it is available to a segment of the public.

### **Indifference as to who uses the service generally means the service is publicly available**

A service is generally considered publicly available if the person offering the service is indifferent as to which members of the public use the service, whether or not any pre-defined conditions are imposed.

### **Requiring compensation for a service does not necessarily make it publicly available**

Compensation paid for a service (either directly or indirectly) does not necessarily mean that the service is publicly available. A private service may also be subject to some form of compensation, such as inter-company charges for the use of a corporate aircraft or payment made for the use of a private aircraft.

### **Any person can operate a publicly available service**

A service can be publicly available irrespective of whether it is operated by an individual, a commercial undertaking, a not-for-profit entity, or any other type of organization.

## **Factors Considered**

The Agency has developed a number of factors that it uses to assess whether a service is publicly available. The Agency reviews each applicable factor to determine if an individual factor, or a combination of factors, results in a service being publicly available.

The following describes three main factors the Agency considers:

### **1. Offering or advertising an air service to the public**

It is generally expected a service is publicly available if this fact is communicated to the public so that they become aware of its existence and availability. This is normally accomplished through some form of promotion, advertisement or solicitation. The public can be informed by any means, including by voice, print, electronic media or word of mouth. For example, if a person makes public representations or publicly offers and undertakes to transport passengers or goods by aircraft, it is indicative of a publicly available service.

Similarly, the public that the service is being offered to should generally be able to contact the service provider and arrange for air transportation, based upon an agreed contract or arrangement. The method used to obtain the service could be by telephone, Internet, sales office or any other means. Use of any of these methods is indicative of a service that is publicly available, as is the existence of agreements, routes, fares, terms and conditions or a ticketing distribution system.

## **2. Number of persons to whom the service is offered**

The number of persons to whom the service is offered is indicative of whether the service is offered to the public. While it is not necessary for a service to be offered to a large number of persons, the larger the group, the greater the likelihood that the service is being offered to the public.

However, a service that is available to only a segment or even a small segment of the public is still considered to be publicly available.

## **3. Nature of the relationship between the service provider and user**

In general, a service provider is dealing with the public if the relationship between the user and service provider is not close or intimately associated. If the sole nature of the relationship between the service provider and the user is the provision of air transportation services at market terms and conditions, the service is likely publicly available.

Conversely, the closer the relationship between the service provider and the user of the service, the more likely such service will be private in nature and not publicly available. For example, the operation of an aircraft exclusively for personal use, including the transportation of family, friends and other personal acquaintances, would generally not be a publicly available service.

Similarly, the operation of corporate aircraft by an organization for the exclusive use and transportation of its officials, directors, employees, contractors, suppliers, and goods (or those of any of its parent, affiliated or subsidiary companies) in the conduct of company business would also be indicative that the service is not publicly available (provided the company business is other than offering transportation to the public).

## **VI. Specific Types of Services**

The Agency, through its ongoing interpretation of the law and its decisions, has addressed whether certain types of services are required to hold a licence. The following table provides a summary of some common types of services. However, every case needs to be considered on its own merits, as even minor variations regarding user restrictions, considerations, advertising and business relationships can have a bearing on whether or not a service is publicly available.

Type of Service	Whether an Agency licence is required
Commercial and charter services	Scheduled and non-scheduled services are generally considered to be publicly available.
Hotels, casinos, resorts, and lodge operators	The transportation of guests to and from hotels, casinos, resorts, commercial camps and lodges and other similar establishments is generally considered to be a publicly available service. The fact that the service may be restricted to its guests and that the primary purpose of the business is not to provide an air transportation service does not alter the nature of the service, which is to transport passengers pursuant to a contract or arrangement.
Corporate aircraft (including government / non-profit)	The operation of corporate aircraft by an organization for the exclusive use and transportation of its officials, directors, employees, contractors, suppliers, and goods (or those of any parent, affiliated or subsidiary companies) in the conduct of company business is generally considered not to be a publicly available service. This also applies in the same circumstances to aircraft owned and operated by a government or non-profit organization.
Personal aircraft	The operation of personal aircraft to transport family, friends, and other personal acquaintances is generally considered not to be a publicly available service.
Air ambulance	The operation of an air ambulance service is generally considered to be a publicly available service. Whether the service is paid directly by the passenger or by some other person does not alter the fact that the service is for the transportation of passengers.
Fractional ownership	Fractional ownership programs allow more than one party (i.e., program participant) to acquire an interest in a specific serial-numbered aircraft. While the program itself would not likely be considered a publicly available service, if a fractional owner offers a service to the public using that aircraft then that service would probably be publicly available. More information about fractional ownership programs can be found in the Agency's publication <a href="#">Fractional Ownership: Is a licence required from the Agency?</a> .

If a person has any question or doubt as to whether they are required to hold an Agency licence to operate an actual or proposed service, they should contact the Agency to discuss their situation and, where required, to seek an Agency determination.

## **VII. Excluded Services**

The [Act](#) and the [ATR](#) specifically exclude certain services from the Agency's air licensing requirement, regardless of whether the service is publicly available. This includes carrying persons on board who are not part of the air crew, but are required for the conduct of the air service.

The following air services are excluded from the [Act](#)'s licensing requirements:

- aerial advertising services
- aerial construction service
- aerial fire-fighting services
- aerial forest fire management service
- aerial inspection service
- aerial photography service
- aerial reconnaissance services
- aerial sightseeing services
- aerial spraying service
- aerial spreading services
- aerial survey services
- aerial weather altering services
- air cushion vehicle services
- air flight training service
- aircraft demonstration services
- external heli-transport services
- glider towing services
- hot air balloon services
- parachute jumping services
- rocket launching

- transportation services for the retrieval of human organs for human transplants

Definitions of some of the above services are provided by Transport Canada in the Air Operator Certification Manual, Section 2.9: [Aerial Work Operations](#).

An Agency licence is also not required by a person who uses an aircraft on behalf of the Canadian Armed Forces or any other armed forces cooperating with the Canadian Armed Forces.

Additionally, a licence is not required for the provision of an air service if a level of government (federal, provincial or municipal) declares an emergency under federal or provincial law, and that government directly or indirectly requests that the air service be provided to respond to the emergency.

## **VIII. Additional Information**

Visit the Agency's Web site for licence application guidelines, as well as additional information about requirements and [licensing for publicly available air services](#).

## **IX. Contact Us**

All questions should be directed to the Agency c/o the [Manager, Financial Evaluation](#).

### **For further information:**

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