

1989 No. 1826

CIVIL AVIATION

The Civil Aviation Authority (Amendment) Regulations
1989

<i>Made - - - -</i>	<i>5th October 1989</i>
<i>Laid before Parliament</i>	<i>11th October 1989</i>
<i>Coming into force</i>	<i>1st November 1989</i>

The Secretary of State for Transport, in exercise of his powers under sections 2(3), 7(1) and (2) and 67(5) of and paragraph 15 of Schedule 1 to the Civil Aviation Act 1982(a) and of all other powers enabling him in that behalf, and after consultation with the Council on Tribunals under section 10 of the Tribunals and Inquiries Act 1971(b), hereby makes the following Regulations:

1. These Regulations may be cited as the Civil Aviation Authority (Amendment) Regulations 1989 and shall come into force on 1st November 1989.

2. The Civil Aviation Authority Regulations 1983(c), shall be amended as follows:

(1) Regulation 3(1) shall be amended:

(a) by substituting for the definition of "hearing"—

“ “hearing” or “preliminary hearing” means a hearing or preliminary hearing at which oral evidence or argument may be heard and “to hear” shall be construed accordingly;”;

(b) by substituting for the definition of “ “party” in relation to a case before the Authority”—

“ “party” in relation to a case before the Authority has, for the purposes of Part II of these Regulations, the meaning assigned to it by regulation 9D(2) and for the purposes of Part III of these Regulations the meaning assigned to it by regulation 19(2);”;

(c) by adding the following definitions at the appropriate places in alphabetical order—

“ “ordinary aerodrome licence” means an aerodrome licence granted under an Air Navigation Order which does not include a public use condition;

“public use condition” means a condition included in an aerodrome licence granted under an Air Navigation Order that the aerodrome shall at all times when it is available for the take off or landing of aircraft be so available to all persons on equal terms and conditions;

“public use aerodrome licence” means an aerodrome licence granted under an Air Navigation Order which includes a public use condition;

“statement of policies” means the publication of the Authority referred to in section 69 of the Act;

(a) 1982 c.16.

(b) 1971 c.62.

(c) S.I. 1983/550, as amended by S.I. 1987/379.

“statutory duties” means the duties of the Authority set out in sections 4 and 68 of the Act;

“to substitute an ordinary aerodrome licence for a public use aerodrome licence” means to vary a public use aerodrome licence by removing the public use condition and “to substitute a public use aerodrome licence for an ordinary aerodrome licence” means to vary an ordinary aerodrome licence by adding a public use condition;”;

(2) in regulation 3(3) the words “working days” shall be inserted after “days” and in regulation 3(4) the words “or working days” shall be inserted after “hours”;

(3) for regulation 4(1) there shall be substituted—

“Anything required to be served on any person under these Regulations or under section 66(4) or 84(1) of the Act shall be set out in a notice in writing which may be served either:

- (a) by delivering it to that person;
- (b) by leaving it at his proper address;
- (c) by sending it by post to him at that address; or
- (d) by sending it to him at that address by telex or other similar means which produce a document containing a text of the communication in which event the document shall be regarded as served when it is received,

and where the person is a body corporate the document may be served upon the secretary of that body.”;

(4) In regulation 6(3) and 6(4) for “Subject to paragraphs (8) and (9) of this regulation” there shall be substituted “Subject to paragraphs (8), (9) and (10) of this regulation” and at the end of regulation 6 there shall be added—

“(10) Nothing in paragraph (3) or (4) of this regulation shall apply where the Authority—

- (a) refuses an application by the holder of an aerodrome licence for the substitution of an ordinary aerodrome licence for a public use aerodrome licence; or
- (b) proposes, otherwise than on the application of the licence holder, to substitute a public use aerodrome licence for an ordinary aerodrome licence.”;

(5) after regulation 9 there shall be added—

“Substitution of a public use aerodrome licence for an ordinary aerodrome licence or of an ordinary aerodrome licence for a public use aerodrome licence

9A.—(1) The Authority shall refuse to consider an application for the substitution of an ordinary aerodrome licence for a public use aerodrome licence unless:—

- (a) the application is made by the holder of the licence;
- (b) it contains a statement of the grounds on which the application is made; and
- (c) the application is accompanied by any applicable charge under section 11 of the Act.

(2) The Authority shall refuse to consider an application for the substitution of a public use aerodrome licence for an ordinary aerodrome licence unless:

- (a) it is made by—
 - (i) the holder of the licence;
 - (ii) any other holder of an aerodrome licence granted under an Air Navigation Order;
 - (iii) the holder of any air operator’s certificate granted under an Air Navigation Order;
 - (iv) the holder of any air transport licence granted under the Act; or
 - (v) the operator of any aircraft who satisfies the Authority that an aircraft operated by him has, within 12 months of the date on which the application is made, been granted or refused permission to land at or take off from the aerodrome to which the licence relates;
- (b) it contains a statement of the grounds on which the application is made;

- (c) the application is accompanied by any applicable charge under section 11 of the Act, and
- (d) if made by someone other than the holder of the ordinary aerodrome licence, a copy of the application has been served on the holder within 24 hours after it has been served on the Authority.

(3) The Authority shall as soon as may be after an application has been served upon it in accordance with this regulation publish such particulars of the application as it thinks necessary for indicating the substance of the application and shall make a copy of the application available at its head office for inspection by any person at any reasonable time:

Provided that nothing herein shall require the Authority to publish an application for the substitution of a public use aerodrome licence for an ordinary aerodrome licence which is made by the holder of the licence.

(4) If the Authority proposes to substitute a public use aerodrome licence for an ordinary aerodrome licence it shall serve on the holder of that licence particulars of the proposal and of the reasons for it and shall publish those particulars and reasons.

9B. Any person may serve on the Authority an objection to or representation about an application or proposal published pursuant to regulation 9A if—

- (a) he does so within 21 days of the date of publication;
- (b) he serves a copy of his objection or representation on the applicant and on the holder of the aerodrome licence to which the application or proposal relates within 24 hours after it has been served on the Authority; and
- (c) he states the grounds of his objection or representation.

9C. Before the date fixed for the hearing of a case pursuant to regulation 9D, the Authority shall serve on any person who has the right to be heard in connection with the case or whom the Authority proposes to hear a copy of, or a summary of, any information in the possession of the Authority which has been provided in connection with the case or which the Authority has reason to believe will be referred to at the hearing of the case:

Provided that before serving such information which has been provided by any other person (not being a person who has provided information in connection with the case but does not wish to be heard), the Authority shall consult that person and shall not serve any information which in its opinion relates to the commercial or financial affairs of the person who has provided it and cannot be disclosed to the prospective recipient without disadvantage to the person who has provided it which, by comparison with the advantage to the public and the prospective recipient of disclosure to him, is unwarranted.

9D.—(1) Before any decision is made on an application or proposal published pursuant to regulation 9A the following persons shall have a right to be heard:

- (a) the applicant;
- (b) the holder of any air transport licence granted under the Act;
- (c) the holder of any air operator's certificate granted under an Air Navigation Order;
- (d) the holder of any aerodrome licence granted under an Air Navigation Order;
- (e) such persons (being persons who wish to be heard and who have served objections or representations pursuant to regulation 9B expressing the views of operators of aircraft described in regulations 9A(2)(a)(v)) as appear to the Authority to be representative of those who have served such objections or representations:

Provided that no person (other than the applicant and the holder of the licence to which the decision will relate) shall have a right to be heard unless he has served an objection or representation pursuant to regulation 9B and in so doing has stated that he wishes to be heard.

(2) Any person who has a right to be heard in connection with any case pursuant to paragraph (1) of this regulation shall, for the purposes of these Regulations, be deemed to be a party to that case.

(3) Notwithstanding that a person does not have a right to be heard, the Authority may, if it thinks fit, hear him:

Provided that no person shall be heard pursuant to this paragraph unless he has served an objection or representation pursuant to regulation 9B.

(4) No hearing shall be held pursuant to this regulation unless the Authority has served on all persons having a right to be heard and whom it proposes to hear in connection with the case 14 days' notice of the date, time and place of the hearing, and the notice shall clearly identify the application or proposal to which it relates. A similar notice shall be published not less than 7 days before the date of the hearing, and shall be exhibited in a public place for a like period.

9E.—(1) The function of making a decision on an application or proposal published pursuant to regulation 9A is hereby prescribed for the purposes of section 7(1) of the Act, and for the purpose of making such a decision and of conducting a hearing pursuant to regulation 9D a quorum of the Authority shall be two members, unless the persons having the right to be heard in connection with the case have so consented, in which case the quorum shall be one member.

(2) Hearings shall be conducted by the Authority, sitting with such employees of the Authority as it thinks fit.

(3) At a hearing every party to the case may appear in person or be represented by any other person whom he may have authorised to represent him and may produce oral and written evidence and may examine any other party to the case, any person whom the Authority hears pursuant to regulation 9D(3) and any witnesses produced by any such party or person. The Authority may, to such extent as it thinks fit, permit any person heard by it pursuant to regulation 9D(3) to exercise at the hearing the rights set out in this paragraph of a party to the case.

(4) Any person who has served an objection or representation pursuant to regulation 9B but who does not wish to be heard, may make a written submission which he shall serve on the Authority not less than 72 hours before the date fixed for the hearing of the case.

(5) Every hearing shall be held in public unless the Authority shall otherwise decide in relation to the whole or part of a particular case, but nothing in this regulation shall prevent a member of the Council on Tribunals or of its Scottish Committee from attending a hearing in his capacity as such.

(6) The failure of the Authority or of any person to give notice or publish any particulars in the time or manner provided for in these Regulations or any other procedural irregularity shall not invalidate the action taken by the Authority; and the Authority may, and shall if it considers that any person may have been prejudiced, take such steps as it thinks fit before reaching its decision to cure the irregularity, whether by the giving of notice or otherwise.

(7) All the proceedings at a hearing of the Authority in connection with the case shall be recorded by a shorthand writer or by some other means, and if any person requests a record of the proceedings the Authority shall cause a mechanical recording or transcript of the shorthand or other record to be made available for purchase by that person at a reasonable price:

Provided that—

- (a) the Authority shall not be required to make available a mechanical recording or transcript of the record of the proceedings at any time after the expiry of one year from the day of publication of its decision of the case; and
- (b) a mechanical recording or transcript of the record of proceedings conducted otherwise than in public shall only be required to be made available for purchase by any party to the case or by any other person heard by the Authority at those proceedings.

(8) The Authority shall furnish a statement of its reasons for the decision to the parties to the case and to any person whom it had heard in connection with the case: Provided that no statement of reasons need be furnished when an application is granted on the application of the holder of the licence to which the decision relates and no objections or representations have been served pursuant to regulation 9B.

(9) The Authority may exclude from its statement of reasons furnished to any person (hereinafter referred to as "the relevant person") any matter if it considers it necessary to do so for the purpose of withholding from the relevant person information which in the opinion of the Authority relates to the commercial or financial affairs of another person and cannot be disclosed to the relevant person without disadvantage to the other person which, by comparison with the advantage to the public and the relevant person of disclosure to him, is unwarranted.

(10) The Authority may publish in such manner as it thinks fit particulars of, and its reasons for, any decision taken by it with respect to an application published pursuant to regulation 9A.";

(6) in regulation 10(1) after "vary" in sub-paragraphs (a) and (b) there shall in each case be inserted "otherwise than provisionally" and after sub-paragraph (c) there shall be inserted—

"(d) hold or refuse to hold a preliminary hearing; or

(e) provisionally vary a licence where representations have been served pursuant to regulation 18A(2).";

(7) in regulation 10(2) after "referred to in paragraph (1)" there shall be inserted "(a) to (c)";

(8) after regulation 10(2) there shall be inserted the following—

"(2A) For the purpose of making such a decision as is referred to in paragraph (1)(d) or (e) of this regulation and of conducting a preliminary hearing pursuant to regulation 18A a quorum of the Authority shall be one member.";

(9) at the beginning of regulation 11(1)(a) there shall be inserted "subject to regulation 18A";

(10) after regulation 11(3) there shall be inserted the following—

"(3A) If within 12 months of the date on which objections to and representations about an application for the grant, variation, suspension or revocation of an air transport licence must have been served on the Authority pursuant to regulation 15, the Authority has neither made a decision on the application nor given notice pursuant to regulation 19(4) of the date, time and place of the hearing of such application, it shall as soon as may be republish such particulars of the application as it thinks necessary for indicating the substance of the application and shall republish such particulars at 12 monthly intervals thereafter until such time as a decision has been made on the application or notice has been given as aforesaid pursuant to regulation 19(4).";

(11) in regulation 15(1) after "grant, revocation or variation" there shall be inserted "(other than the provisional variation)";

(12) after regulation 15(4) there shall be inserted the following—

"(5) References in this regulation to publication include references to republication pursuant to regulation 11(3A), but when an application is republished, nothing in this regulation shall require a person who has served an objection to or representation about the application when it was previously published to re-serve that objection or representation.";

(13) After regulation 18 there shall be inserted the following—

"Preliminary hearings of allegations of behaviour damaging to a competitor

18A.—(1) This regulation applies where the holder of any air transport licence (hereinafter in this regulation referred to as "the applicant")—

(a) has applied to the Authority for the variation of an air transport licence held by another person (hereinafter in this regulation referred to as "the respondent") for the purpose of restraining the respondent from engaging in behaviour damaging to the applicant's business;

- (b) has included in his application a statement giving particulars of the behaviour complained of and of the extent to which the applicant's business is being or is likely to be damaged thereby;
- (c) has asked for a preliminary hearing of the application with a view to the respondent's air transport licence being provisionally varied pending a hearing pursuant to regulation 19, and
- (d) has served a copy of his application on the respondent on the same day as he has served it on the Authority.

(2) The respondent shall, within 5 working days of the date of service of the application, serve on the Authority and on the applicant any representations he may wish the Authority to take into account in determining whether to hold a preliminary hearing.

(3) The Authority shall within 10 working days of the date of service of the application notify the applicant, the respondent and any person it is obliged by regulation 16 to consult in respect of the application of the date (which shall be within 20 working days of the date of service of the application) time and place of the preliminary hearing or of the fact that it has decided not to hold a preliminary hearing.

(4) Notice of the date, time and place of a preliminary hearing shall be of such length as is reasonably practicable and shall be given by such means (whether oral or written) as the Authority thinks fit.

(5) The Authority shall hold a preliminary hearing only if, having considered the terms of the application and of any representations served on it pursuant to paragraph (2) of this regulation, it is of the opinion that—

- (a) there is prima facie evidence that the behaviour complained of by the applicant is being engaged in by the respondent and that behaviour has or is likely to have the effect of seriously damaging the business of the applicant, and
- (b) having regard to its statutory duties, its statement of policies and to the urgency of the matter such a hearing is warranted.

(6) The applicant and the respondent shall have a right to be heard at a preliminary hearing and the Authority may hear such other persons as it thinks fit.

(7) Regulations 16, 17, 20(1), (4), (6) and (7) shall apply in relation to a preliminary hearing as they apply in relation to a hearing pursuant to regulation 19.

(8) At a preliminary hearing the applicant and the respondent shall have the same rights as a party to a case in a hearing pursuant to regulation 19 and the Authority may, to such extent as it thinks fit, permit any other person whom it decides to hear to exercise the same rights.

(9) Where any person whom the Authority is obliged by regulation 16 to consult in respect of the application attends the preliminary hearing the Authority shall give him opportunity at the preliminary hearing to make observations on the evidence and arguments advanced by the applicant and the respondent and by any other person whom the Authority has decided to hear: and where any such observations are made the Authority shall give the applicant, the respondent and any other person it has decided to hear opportunity at the preliminary hearing to respond to them.

(10) Within 5 working days of the end of the preliminary hearing the Authority shall notify the applicant and the respondent and any person it is obliged by regulation 16 to consult in respect of the application—

- (a) whether or not it has decided provisionally to vary the respondent's licence;
- (b) if so, the terms of the provisional variation, and
- (c) the date, time and place of the hearing to be held pursuant to regulation 19,

and shall furnish its reasons for the decision, as required by section 67(2) of the Act within 10 working days of the end of the preliminary hearing.

(11) The only decision which may be taken by the Authority after a preliminary hearing is a decision provisionally to vary or to refuse provisionally to vary the respondent's air transport licence: and if the Authority provisionally varies the

respondent's licence it shall in so doing provide that the provisional variation will cease to have effect when the decision reached by the Authority following a hearing pursuant to regulation 19 takes effect.”;

(14) In regulation 19(1) after “suspend or vary” there shall be inserted “(other than provisionally)”;

(15) After regulation 21 there shall be inserted the following—

“Appeals from decisions after preliminary hearings of allegations of behaviour damaging to a competitor

21A.—(1) Regulation 21 shall apply in relation to appeals from decisions of the Authority after preliminary hearings of allegations of behaviour damaging to a competitor as it applies in relation to any other case but with the modifications herein set out.

(2) Those modifications are—

- (a) in paragraph (1) the reference to every party shall be taken as a reference to the applicant and the respondent;
- (b) in paragraph (3) the reference in sub-paragraph (c) to each of the parties shall be taken as a reference to the applicant or respondent, as the case may be, and the reference in sub-paragraph (d) to regulation 19(3) shall be taken as a reference to regulation 18A(6);
- (c) in paragraph (4) the first reference to 21 days shall be taken as a reference to 5 working days and the reference to the decision date shall be taken as a reference to the date upon which the Authority furnished its reasons for its decision; and all the subsequent words in that paragraph (which relate to a request for a transcript and a time from the transcript date) shall be deleted;
- (d) in paragraph (6) the reference to 14 days shall be taken as a reference to 5 working days;
- (e) in paragraph (7) the reference to 28 days shall be taken as a reference to 8 working days;
- (f) in paragraph (8) for “Within 14 days of the expiry of the period of 28 days” there shall be substituted “Within 4 working days of the expiry of the period of 8 working days.” ”;

(16) After regulation 22(2) there shall be inserted the following—

“(2A) Where the Secretary of State directs the Authority to re-hear a case he shall at the same time notify the Authority and persons referred to in paragraph (2) of this regulation whether the Authority's decision is to have effect pending the further decision of the Authority.”.

Signed by authority of the Secretary of State.

5th October 1989

Patrick McLoughlin
Parliamentary Under Secretary of State,
Department of Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Civil Aviation Authority Regulations 1983. The principal changes are—

- (1) Documents may now be served by telex or similar means (regulation 2(3));
- (2) Procedures are laid down for dealing with cases where an application is made for the substitution of a public use aerodrome licence for an ordinary aerodrome licence or of an ordinary aerodrome licence for a public use aerodrome licence (regulation 2(1), (4) and (5));
- (3) An application for the grant, variation, suspension or revocation of an air transport licence must now be republished at 12 monthly intervals if the case has not been set down for hearing: further objections and representations can be made on republication (regulation 2(10) and (12));
- (4) Provision is made for preliminary hearings of allegations of behaviour by the holder of an air transport licence which is damaging to a competitor, for provisional variation of the licence pending a substantive hearing and for an appeal to the Secretary of State against the Civil Aviation Authority's decision following a provisional hearing (regulation 2(1), (2), (6), (7), (8), (9), (11), (13), (14) and (15));
- (5) When the Secretary of State, in determining an appeal from a decision of the Civil Aviation Authority in an air transport licensing case, directs the Authority to re-hear the case, he may now determine whether the Authority's decision is to have effect pending the further decision (regulation 2(16)).

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