
STATUTORY INSTRUMENTS

1992 No. 2993

CIVIL AVIATION

**The Access for Community Air Carriers to
Intra- Community Air Routes Regulations 1992**

<i>Made</i>	- - - -	<i>1st December 1992</i>
<i>Laid before Parliament</i>		<i>4th December 1992</i>
<i>Coming into force</i>	- -	<i>1st January 1993</i>

The Secretary of State for Transport, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to matters relating to access by air carriers established in the Community to intra-Community air routes, in exercise of the powers conferred by that section, hereby makes the following Regulations:—

1. These Regulations may be cited as the Access for Community Air Carriers to Intra-Community Air Routes Regulations 1992 and shall come into force on 1st January 1993.

2.—(1) In these Regulations “the Council Regulation” means Council Regulation 2408/92 on access for Community air carriers to intra-Community air routes⁽³⁾.

(2) Other expressions used in these Regulations have, in so far as the context admits, the same meanings as in the Council Regulation.

3. The Secretary of State shall be the competent authority for the purposes of the Council Regulation.

4. Community air carriers are hereby permitted to exercise traffic rights on routes—

- (a) within the United Kingdom,
- (b) between the United Kingdom and Gibraltar, and
- (c) between the United Kingdom and another member State,

and in operating air services may combine air services and use the same flight number on combined air services.

5. Nothing in regulation 4 of these Regulations permits the exercise of traffic rights—

(1) S.I.1992/1711.

(2) 1972 c. 68.

(3) O.J. No. L240 of 24 August 1992, page 8.

- (a) on routes to or from airports that are for the time being suspended or exempted from the Council Regulation by article 1 thereof;
- (b) on air services for the transport of passengers on routes that the Secretary of State is not required to authorise by virtue of paragraph 2 of article 3 of the Council Regulation;
- (c) on routes where access is regulated by the Secretary of State by virtue of paragraph 4 of article 3 of the Council Regulation except as so regulated;
- (d) on air services for the transport of passengers on routes subject to a public service obligation imposed by the Secretary of State or by another member State by virtue of paragraph 1(a) of article 4 of the Council Regulation except in accordance with the obligations so imposed and, in a case where access is limited by the imposer of the public service obligation by virtue of paragraph 1(d) of article 4 of that Regulation, by the Community air carrier selected to operate the route;
- (e) on routes for which an exclusive concession continues by virtue of article 5 of the Council Regulation except by the air carrier entitled to that concession;
- (f) on scheduled air services for the transport of passengers on routes where the Secretary of State or another member State has refused a scheduled air service, otherwise than on condition that it is operated with aircraft of not more than 80 seats, or it is operated in such a way that not more than 80 seats are available for sale between the two airports in question, by virtue of article 6 of the Council Regulation except in accordance with that condition; or
- (g) on a new service or by way of an increase in the frequency of an existing service in circumstances where paragraph 8 of article 9 of the Council Regulation applies and, in consequence of that paragraph, that new service or increased frequency, as the case may be, is not authorised.

6. A Community air carrier which knowingly or recklessly exercises traffic rights on routes within the United Kingdom or between the United Kingdom and Gibraltar or between the United Kingdom and another member State in the absence of a permission so to do, which shall include exercising such rights—

- (a) in breach of any access regulation imposed by virtue of paragraph 4 of article 3 of the Council Regulation;
- (b) in breach of obligations required by a public service obligation imposed by virtue of paragraph 1(a) of article 4 of the Council Regulation;
- (c) in breach of an access limitation imposed by virtue of paragraph 1(d) of article 4 of the Council Regulation;
- (d) in breach of an exclusive concession which continues in force by virtue of article 5 of the Council Regulation;
- (e) in breach of conditions imposed by virtue of article 6 of the Council Regulation; or
- (f) in circumstances where paragraph 8 of article 9 of the Council Regulation applies and, in consequence of that paragraph, the new service or increased frequency, as the case may be, is not authorised;

shall be guilty of an offence.

7. A Community air carrier which knowingly or recklessly exercises traffic rights in breach of traffic distribution rules made by the Secretary of State by virtue of section 31 of the Airports Act 1986(4) and relating to an airport system shall be guilty of an offence.

(4) 1986 c. 31.

8. A Community air carrier which knowingly or recklessly exercises traffic rights in breach of rules referred to in paragraph 2 of article 8 of the Council Regulation or of conditions, limitations or refusals imposed by the Secretary of State by virtue of paragraph 1 of article 9 of that Regulation shall be guilty of an offence.

9.—(1) The Secretary of State may, by notice in writing served in a manner set out in regulation 4 of the Civil Aviation Authority Regulations 1991⁽⁵⁾ on a Community air carrier with a valid operating licence granted by the Civil Aviation Authority require that carrier to furnish to him, in such form and at such times as may be specified in the notice, information of such descriptions as may be so specified, being descriptions of information—

- (a) necessary for the implementation of paragraph 3 of article 3 of the Council Regulation, or
- (b) required by the Commission for it to carry out its duties under the Council Regulation.

(2) A Community air carrier which fails without reasonable excuse to comply with the requirements of a notice served on it under paragraph (1) above shall be guilty of an offence.

(3) A Community air carrier which, in purported compliance with the requirements of any such notice, knowingly or recklessly furnishes information which is false in a material particular shall be guilty of an offence.

10. A Community air carrier guilty of an offence under these Regulations shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

11.—(1) Where an offence under these Regulations has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where a Scottish partnership is guilty of an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

12.—(1) Subject to paragraph (2) below, summary proceedings for an offence under these Regulations may be commenced in Scotland within a period of 6 months from the date on which evidence sufficient in the opinion of the procurator fiscal to warrant proceedings came to his knowledge.

(2) No such proceedings shall be commenced by virtue of this regulation more than 3 years after the commission of the offence.

(3) For the purposes of this regulation, a certificate signed by or on behalf of the procurator fiscal and stating the date on which evidence sufficient in his opinion to warrant the proceedings came to his knowledge shall be conclusive evidence of that fact.

(4) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

(5) S.I. 1991/1672.

(5) Subsection (3) of section 331 of the Criminal Procedure (Scotland) Act 1975 (date of commencement of proceedings)(6) shall apply for the purposes of this regulation as it applies for the purposes of that section.

13.—(1) The obligation of the Secretary of State, when taking any decision under article 4 of the Council Regulation, to comply with—

- (a) the provisions of that article, and
- (b) any enforceable Community obligation applicable to the imposition of a public service obligation concerning a scheduled air service,

is a duty owed to air carriers.

(2) A breach of the duty owed pursuant to paragraph (1) above shall not be a criminal offence but any breach of the duty shall be actionable by any air carrier which, in consequence, suffers, or risks suffering, loss or damage.

(3) Proceedings under this regulation shall be brought in England and Wales and in Northern Ireland in the High Court and, in Scotland, before the Court of Session.

(4) Proceedings under this regulation may not be brought unless they are brought promptly and in any event within 3 months from the date when grounds for the bringing of proceedings first arose unless the Court considers that there is good reason for extending the period within which proceedings may be brought.

(5) Subject to paragraph (6) below, but otherwise without prejudice to any other powers of the Court, in proceedings brought under this regulation the Court may—

- (a) by interim order suspend the implementation of any decision taken under article 4 of the Council Regulation; and
- (b) if satisfied that a decision taken by the Secretary of State is in breach of the duty owed pursuant to paragraph (1) above—
 - (i) order the setting aside of that decision, or
 - (ii) award damages to an air carrier which has suffered loss or damage as a consequence of the breach, or
 - (iii) do both of those things.

(6) In proceedings under this regulation the Court shall not have power to order any remedy other than an award of damages in respect of a breach of the duty owed pursuant to paragraph (1) above if the contract to operate services on the route subject to a public service obligation, being the contract in relation to which the breach has occurred, has been entered into.

14. At the end of paragraph (1) of article 88 of the Air Navigation Order 1989(7) there shall be added the words—

“unless that aircraft is exercising traffic rights permitted by virtue of Council Regulation 2408/92 on access for Community air carriers to intra-Community air routes.”.

(6) 1975 c. 21.

(7) S.I. 1989/2004 to which there are amendments not relevant to these Regulations.

Signed by authority of the Secretary of State for Transport

1st December 1992

Caithness
Minister of State,
Department of Transport

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for implementing the Community obligations of the United Kingdom provided for in Council Regulation 2408/92 on access for Community air carriers to intra-Community air routes and matters arising out of or related thereto.

The Secretary of State is specified as the competent authority for the purposes of the Council Regulation (regulation 3).

Permission to operate intra-Community air routes is conferred on Community air carriers (regulation 4).

The foregoing permission is expressed not to apply in a number of instances including in particular cabotage routes and routes subject to a public service obligation limited to one carrier (regulation 5).

Operating on routes without permission or in breach of traffic distribution rules is made an offence as is operating in breach of rules, conditions, limitations or refusals that the Council Regulation permits may apply (regulations 6 to 8). Failing to give, or giving false, information also becomes an offence (regulation 9).

Provision is made for review of the decisions of the Secretary of State relating to public service obligations (regulation 13).

Article 88 of the Air Navigation Order 1989 is amended to disapply the requirement for a permit in cases where a permission to operate exists by virtue of the Council Regulation (regulation 14).