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STATUTORY INSTRUMENTS

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**2009 No. 3015**

**The Air Navigation Order 2009**

**PART 31**

**Powers and Penalties**

**Revocation, suspension and variation of certificates, licences and other documents**

**228.**—(1) Subject to paragraphs (5) and (6), the CAA may provisionally suspend or vary any certificate, licence, approval, permission, exemption, authorisation or other document issued, granted or having effect under this Order, pending inquiry into or consideration of the case.

(2) The CAA may, on sufficient ground being shown to its satisfaction after due inquiry, revoke, suspend or vary any such certificate, licence, approval, permission, exemption, authorisation or other document.

(3) The holder or any person having the possession or custody of any certificate, licence, approval, permission, exemption or other document which has been revoked, suspended or varied under this Order must surrender it to the CAA within a reasonable time after being required to do so by the CAA.

(4) The breach of any condition subject to which any certificate, licence, approval, permission, exemption or other document, other than an aerodrome licence, has been granted or issued or which has effect under this Order, in the absence of provision to the contrary in the document, renders the document invalid during the continuance of the breach.

(5) The provisions of this article do not apply in relation to permits to which article 230 applies.

(6) A flight manual, performance schedule or other document incorporated by reference in a certificate of airworthiness may be varied on sufficient ground being shown to the satisfaction of the CAA, whether or not after due inquiry.

**Provisional suspension or variation of EASA airworthiness certificates**

**229.**—(1) The CAA may, subject to and in accordance with article 14(1) of the Basic EASA Regulation, provisionally suspend or vary any EASA certificate of airworthiness, EASA restricted certificate of airworthiness or EASA permit to fly which it has issued to an EASA aircraft pending inquiry into or consideration of the case.

(2) A provisional suspension or variation under paragraph (1) ceases to have effect where—

(a) it is withdrawn by the CAA; or

(b) it is revoked by the CAA following a finding, in accordance with article 14(3) of the Basic EASA Regulation, that it is not justified.

(3) The CAA must revoke a provisional suspension or variation if it is found not to be justified under Article 14(3) of the Basic EASA Regulation.

## **Revocation, suspension and variation of permissions, etc. granted under article 223 or article 225**

**230.**—(1) The permits to which this article applies are permissions granted by the Secretary of State under article 223 or article 225 and any approvals or authorisations of, or consents to, any matter which the Secretary of State has granted, or is deemed to have granted, in pursuance of a permission which he has so granted.

(2) Subject to the provisions of this article, the Secretary of State may revoke, suspend or vary any permit to which this article applies.

(3) Subject to paragraph (4), the Secretary of State may exercise the powers under paragraph (2) only after notifying the permit holder of the intention to do so and after due consideration of the case.

(4) If, by reason of the urgency of the matter, it appears to the Secretary of State to be necessary to do so, the Secretary of State may provisionally suspend or vary a permit to which this article applies without complying with the requirements of paragraph (3); but the Secretary of State must in any such case comply with those requirements as soon as is reasonably practicable and must then, in the light of due consideration of the case, either—

- (a) revoke the provisional suspension or variation of the permit; or
- (b) substitute a definitive revocation, suspension or variation, which, if a definitive suspension, may be for the same or a different period as the provisional suspension (if any) or, if a definitive variation, may be in the same or different terms as the provisional variation (if any).

(5) The powers vested in the Secretary of State by paragraphs (2) and (4) may be exercised when in the judgement of the Secretary of State and whether or not by reason of anything done or omitted to be done by the permit holder or otherwise connected with the permit holder, it is necessary or expedient that the permit holder should not enjoy, or should no longer enjoy, the rights conferred by a permit to which this article applies or should enjoy them subject to such limitations or qualifications as the Secretary of State may determine.

(6) In particular, and without limitation, the Secretary of State may exercise the powers under paragraphs (2) and (4) if it appears that—

- (a) the permit holder has committed a breach of any condition to which it is subject;
- (b) any agreement between Her Majesty's Government in the United Kingdom and the Government of any other country in pursuance of which or in reliance on which the permit was granted is no longer in force or that that other Government has committed a breach of the agreement;
- (c) the permit holder, or a Government of another country which is a party to an agreement referred to in sub-paragraph (b), or the aeronautical authorities of the country concerned, has—
  - (i) acted in a manner which is inconsistent with or prejudicial to the operation in good faith, according to its object and purpose, of any such agreement; or
  - (ii) engaged in unfair, discriminatory or restrictive practices to the prejudice of the holder of an Air Transport Licence granted under section 65 of the Civil Aviation Act 1982(1) or the holder of a route licence granted under that section as applied by section 69A of that Act in the operation of air services to or from points in the country concerned; or
- (d) the permit holder, having been granted the permit as a person designated by the Government of a country other than the United Kingdom for the purposes of an agreement referred to in sub-paragraph (b), is no longer so designated or that permit holder's conduct,

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(1) 1982 c. 16.

or circumstances which have arisen in relation to the permit holder, make it necessary or expedient to disregard or qualify the consequences of being so designated.

(7) The permit-holder or any person having the possession or custody of any permit which has been revoked, suspended or varied under this article must surrender it to the Secretary of State within a reasonable time of being required by him to do so.

(8) The breach of any condition subject to which any permit to which this article applies has been granted renders the permit invalid during the continuance of the breach.

(9) References in this article to the 'permit holder' are references to the person to whom any permit to which this article applies has been granted or is deemed to have been granted.

### **Prohibitions in relation to documents and records**

**231.**—(1) A person must not with intent to deceive—

- (a) use any certificate, licence, approval, permission, exemption or other document issued or required by or under this Order, by or under Part 21, 66, 145, 147 or M or by or under EU-OPS which has been forged, altered, revoked or suspended, or to which the person is not entitled;
- (b) lend any certificate, licence, approval, permission, exemption or any other document issued or having effect or required by or under this Order, by or under Part 21, 66, 145, 147 or M or by or under EU-OPS to, or allow it to be used by, any other person; or
- (c) make any false representation for the purpose of procuring for any person the grant, issue, renewal or variation of any such certificate, licence, approval, permission, exemption or other document.

(2) In paragraph (1), a reference to a certificate, licence, approval, permission, exemption or other document includes a copy or purported copy.

(3) A person must not intentionally damage, alter or render illegible—

- (a) any log book or other record required to be maintained by or under this Order, by or under Part 21, 66, 145, 147 or M or by or under EU-OPS.
- (b) any entry made in such a log book or record.

(4) A person must not—

- (a) knowingly make, or procure or assist in the making of, any false entry in or material omission from any log book or record referred to in paragraph (3); or
- (b) destroy any such log book or record during the period for which it is required under this Order to be preserved.

(5) All entries made in writing in any log book or record referred to in paragraph (3) must be made in ink or indelible pencil.

(6) A person must not knowingly make in a load sheet any entry which is incorrect in any material particular, or any material omission from such a load sheet.

(7) A person must not purport to issue any certificate for the purposes of this Order, any regulations made under this Order, Part 21, 66, 145, 147 or M or EU-OPS unless authorised to do so by the relevant legislation.

(8) A person must not issue any certificate referred to in paragraph (7) unless satisfied that all statements in the certificate are correct.

### **CAA's power to prevent aircraft flying**

**232.**—(1) If it appears to the CAA or an authorised person that any aircraft is intended or likely to be flown in any of the circumstances specified in paragraph (2), the CAA or that authorised person may direct in accordance with paragraph (3).

(2) The circumstances referred to in paragraph (1) are—

- (a) where any provision of article 3, 10, 11, 12, 16, 42, 50, 98, 132, 133, 134, 139(2) or 152 would be contravened in relation to the flight;
- (b) where the flight would be in contravention of any other provision of this Order, of any regulations made under this Order, of Part 21, 145 or M or of EU-OPS and be a cause of danger to any person or property whether or not in the aircraft; or
- (c) where the aircraft is in a condition unfit for the flight, whether or not the flight would otherwise be in contravention of any provision of this Order, of any regulations made under this Order, of Part 21, 145 or M or of EU-OPS.

(3) If paragraph (1) applies the CAA or that authorised person may direct the operator or the commander of the aircraft not to permit the aircraft to make the particular flight or any other flight of such description as may be specified in the direction, until the direction has been revoked by the CAA or by an authorised person.

(4) If the CAA or an authorised person has directed under paragraph (3), the CAA or an authorised person may take such steps as are necessary to detain the aircraft.

(5) For the purposes of this article the CAA or any authorised person may enter and inspect any aircraft.

### **Power to prevent third-country aircraft taking off**

**233.** If it appears to an authorised person that a third-country aircraft—

- (a) has a safety deficiency and does not comply with international safety standards;
- (b) would obviously be hazardous to flight safety; and
- (c) is intended or is likely to be flown without completion by the operator of the appropriate corrective action,

that authorised person must give to the person appearing to be in command of the aircraft a direction in writing not to permit the aircraft to take off until further notice and take such steps as may be necessary to detain that aircraft.

### **Notifying competent authority of the detention of a third-country aircraft**

**234.** If an authorised person detains a third-country aircraft that person must immediately inform the competent authority of the State of the operator of the detention and, where necessary, of the State in which the aircraft is registered.

### **Revocation of article 233 direction when validity of certificate of airworthiness affected**

**235.** If an aircraft has been prohibited from taking off pursuant to article 233 and—

- (a) the safety deficiency affects the validity of the certificate of airworthiness of the aircraft; and
- (b) the CAA has granted the operator of the aircraft an exemption from the requirement that the aircraft must have a valid certificate of airworthiness,

an authorised person must not revoke a direction issued pursuant to article 233 without first being satisfied that the operator has obtained permission for the flight from all States over which it is intended to fly the aircraft.

### **Secretary of State's power to prevent aircraft flying**

**236.**—(1) If it appears to the Secretary of State or an authorised person that any aircraft is intended or likely to be flown in any of the circumstances specified in paragraph (2), the Secretary of State or that authorised person may make a direction in accordance with paragraph (3).

(2) The circumstances referred to in paragraph (1) are where any provision of article 120, 223 or 225 would be contravened in relation to the flight.

(3) If paragraph (1) applies the Secretary of State or that authorised person may direct the operator or the commander of the aircraft not to permit the aircraft to make a particular flight or any other flight of such description as may be specified in the direction until the direction has been revoked by the Secretary of State or by an authorised person.

(4) The Secretary of State or any authorised person may take such steps as are necessary to detain an aircraft concerning which a direction has been made under paragraph (1).

(5) For the purposes of paragraph (1) the Secretary of State or any authorised person may enter any aerodrome and may enter and inspect any aircraft.

### **Directions to operators of aircraft to make data available**

**237.**—(1) The Secretary of State may give a direction to any person who is an operator of an aircraft referred to in paragraph (2) requiring the operator to take the action referred to in paragraph (3).

(2) The aircraft is one which (alone or in combination with one or more other aircraft operated by the operator) is flown for the carriage of passengers from the United Kingdom (directly or via another country) to a country which is outside the European Economic Area and is specified in the direction.

(3) The action is the making available electronically of data in respect of all passengers and crew on the aircraft or expected to be on the aircraft.

(4) A direction may be given in respect of—

- (a) all aircraft;
- (b) any aircraft; or
- (c) any class of aircraft,

of which (at the time when the direction is given or at any subsequent time) the person is the operator and which is or are specified in the direction.

(5) A direction must specify—

- (a) the competent authorities of the country to whom the data are to be made available electronically; and
- (b) the types of data to which the direction relates.

(6) A direction only has effect in relation to data which are collected and contained in the operator's automated reservation system or departure control system.

### **Right of access to aerodromes and other places**

**238.**—(1) Subject to paragraph (2), the CAA and any authorised person has the right of access at all reasonable times—

- (a) to any aerodrome for the purpose of inspecting the aerodrome;

- (b) to any aerodrome for the purpose of inspecting any aircraft on the aerodrome or any document which it or the authorised person has power to demand under this Order, or for the purpose of detaining any aircraft under the provisions of this Order;
  - (c) to any place where an aircraft has landed, for the purpose of inspecting the aircraft or any document which it or the authorised person has power to demand under this Order and for the purpose of detaining the aircraft under the provisions of this Order;
  - (d) to any building or place from which an air traffic control service is being provided or where any air traffic service equipment requiring approval under article 205 is situated for the purpose of inspecting—
    - (i) any equipment used or intended to be used in connection with the provision of a service to an aircraft in flight or on the ground; or
    - (ii) any document or record which it or the authorised person has power to demand under this Order; and
  - (e) to any building or place from which a certified training provider is carrying on business for the purpose of inspecting—
    - (i) any facilities, equipment or accommodation used or intended to be used in connection with the provision of training; and
    - (ii) any document or record which it or the authorised person has power to demand under article 199.
- (2) Access to a Government aerodrome may only be obtained with the permission of the person in charge of the aerodrome.

### **Obstruction of persons**

**239.** A person must not intentionally obstruct or impede any person who is exercising a power or performing a duty under this Order.

### **Directions and directives**

**240.**—(1) Any person who without reasonable excuse fails to comply with any direction or directive given to that person under any provision of this Order or any regulations made under this Order is deemed for the purposes of article 241 to have contravened that provision.

(2) Where any provision of this Order or any regulations made under this Order gives to a person the power to direct, the person to whom such a power is given also has the power to revoke or vary any such direction or directive.

### **Offences and penalties**

**241.**—(1) Subject to paragraph (2), if any provision of this Order, any regulations made under this Order, Part 21, Part 145, Part M or EU-OPS is contravened in relation to an aircraft, the operator of that aircraft and the commander and, in the case of a contravention of article 223, the charterer of that aircraft, is (without prejudice to the liability of any other person for that contravention) deemed for the purposes of the following provisions of this article to have contravened that provision.

(2) A person will not be deemed to have contravened a provision specified in paragraph (1) if the person proves that the contravention occurred without that person's consent or connivance and that that person exercised all due diligence to prevent the contravention.

(3) If it is proved that an act or omission of any person which would otherwise have been a contravention by that person of a provision of this Order, any regulations made under this Order, Part 21, Part 145, Part 147, Part M or EU-OPS was due to any cause not avoidable by the exercise

of reasonable care by that person, the act or omission will be deemed not to be a contravention by that person of that provision.

(4) If a person is charged with contravening a provision of this Order or any regulations made under this Order by reason of that person having been a member of the flight crew of an aircraft on a flight for the purpose of commercial air transport, public transport or aerial work, the flight is to be treated (without prejudice to the liability of any other person under this Order) as not having been for that purpose if the person proves that they neither knew nor suspected that the flight was for that purpose.

(5) Any person who contravenes any provision specified in Part A of Schedule 13 is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) Any person who contravenes any provision specified in Part B of Schedule 13 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(7) Any person who contravenes any provision specified in Part C of Schedule 13 is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both.

(8) Any person who contravenes any provision specified in Part D of Schedule 13 is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine or imprisonment for a term not exceeding five years or both.

### **Exemption from Order**

**242.** The CAA may exempt from any of the provisions of this Order (other than articles 120, 149, 151, 223, 224, 225, 230, and 243) or any regulations made under this Order, any aircraft or persons or classes of aircraft or persons, subject to such conditions as it thinks fit.

### **Appeal to County Court or Sheriff Court**

**243.**—(1) Subject to paragraphs (3), (4) and (5), an appeal lies to a county court from any decision of the CAA that a person is not a fit person to hold a licence to act as—

- (a) an aircraft maintenance engineer;
- (b) a member of the flight crew of an aircraft;
- (c) an air traffic controller;
- (d) a student air traffic controller; or
- (e) a flight information service officer.

(2) If the court is satisfied that on the evidence submitted to the CAA it was wrong in deciding that a person is not a fit person to hold a licence, the court may reverse the CAA's decision and the CAA must give effect to the court's determination.

(3) An appeal does not lie from a decision of the CAA that a person is not qualified to hold the licence by reason of a deficiency in that person's knowledge, experience, competence, skill, physical or mental fitness.

(4) If the appellant resides or has its registered or principal office in Scotland the appeal lies to the sheriff within whose jurisdiction the appellant resides and the appeal is by way of summary application<sup>(2)</sup>.

(5) Notwithstanding any provision to the contrary in rules governing appeals to the county court in Northern Ireland, if the appellant resides or has its registered or principal office in Northern Ireland the appeal lies to a county court held under the County Courts (Northern Ireland) Order 1980<sup>(3)</sup>.

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(2) Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules) 1999 S.I. 1999/929.

(3) S.I. 1980/397 (N.I. 3).

(6) The CAA will be a respondent to any appeal under this article.

(7) For the purposes of any provision relating to the time within which an appeal may be brought, the CAA's decision is deemed to have been taken on the date on which the CAA supplied a statement of its reasons for the decision to the applicant for the licence or the holder or former holder of it.

(8) In the case of an appeal to the sheriff—

- (a) the sheriff may, if the sheriff thinks fit, and on the application of any party, appoint one or more persons of skill and experience in the matter to which the proceedings relate to act as assessor;
- (b) where it is proposed to appoint any person as an assessor, an objection to the proposed assessor, either personally or concerning the proposed assessor's qualification, may be stated by any party to the appeal and must be considered and disposed of by the sheriff.

(9) The assessors for each sheriffdom must be appointed from a list of persons approved for the purposes by the sheriff principal and—

- (a) such a list must be published in such manner as the sheriff principal directs;
- (b) such a list will be in force for three years only, but persons entered in any such list may be again approved in any subsequent list; and
- (c) it is lawful for the sheriff principal to defer the preparation of such a list until application has been made to appoint an assessor in an appeal in one of the courts in their sheriffdom.

(10) The sheriff before whom an appeal is heard with the assistance of an assessor must make a note of any question submitted by the sheriff to such assessor and of the answer to that question.

(11) An appeal lies on a point of law from any decision of a sheriff under this article to the Court of Session.

#### **Approval of persons to supply reports**

**244.** In relation to any of its functions under any of the provisions of this Order the CAA may approve a person as qualified to supply reports to it and may accept such reports.

#### **Certificates, authorisations, approvals and permissions**

**245.** Wherever in this Order there is provision for the issue or grant of a certificate, authorisation, approval or permission by the CAA, unless otherwise provided, such a certificate, authorisation, approval or permission—

- (a) must be in writing;
- (b) may be issued or granted subject to such conditions as the CAA thinks fit; and
- (c) may be issued or granted, subject to article 228, for such periods as the CAA thinks fit.

#### **Competent authority**

**246.—(1)** The CAA is the national aviation authority of the United Kingdom for the purposes of the Basic EASA Regulation.

(2) The CAA is the competent authority of the United Kingdom for the purposes of—

- (a) the EASA Aircraft Certification Regulation; and
- (b) the EASA Continuing Airworthiness Regulation.

(3) The CAA is the competent authority of the United Kingdom for the purposes of EU-OPS.

(4) The CAA is the national supervisory authority for the purposes of article 3 of the air traffic controller's directive.

(5) The Secretary of State is the competent authority under article 15 of Council Directive 96/29/Euratom for the purposes of article 42 of the Directive<sup>(4)</sup>.

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(4) O.J. No. L 159, 29.6.1996, p.1.