

2009 No. 41

CIVIL AVIATION

**The Operation of Air Services in the Community Regulations
2009**

<i>Made</i> - - - -	<i>15th January 2009</i>
<i>Laid before Parliament</i>	<i>19th January 2009</i>
<i>Coming into force</i> -	<i>26th January 2009</i>

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The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972^(a) in relation to measures relating to air transport^(b).

In exercise of the powers conferred by that section the Secretary of State makes the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Operation of Air Services in the Community Regulations 2009 and come into force on 26th January 2009.

Revocation

2. The Regulations listed in Schedule 1 are revoked to the extent there specified.

Interpretation

3.—(1) In these Regulations—
“the CAA” means the Civil Aviation Authority;

(a) 1972 c. 68. Section 2(2) has been amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51).
(b) S.I. 1993/2661.

“the EC Regulation” means Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24th September 2008 on common rules for the operation of air services in the Community(a);

“United Kingdom national” has the same meaning as in section 105(1) of the Civil Aviation Act 1982(b).

(2) The expressions “Community air carrier”, “competent licensing authority”, “dry lease agreement”, “operating licence”, “scheduled air service”, “traffic right” and “wet lease agreement” have the meanings given by Article 2 of the EC Regulation.

PART 1

Operating licences

Existing operating licences

4. A licence granted by the CAA under Council Regulation (EC) 2407/92 of 23rd July 1992 on licensing of air carriers(c) shall, in relation to times on or after 26th January 2009, be deemed for all purposes (including for the purposes of any enactment) to be an operating licence granted by the CAA under the EC Regulation.

Competent licensing authority in relation to operating licences

5. The CAA is the competent licensing authority for the United Kingdom for the purposes of Articles 3 to 11, 14 and 15(3) of the EC Regulation.

Proof of good repute etc.

6. For the purpose of ensuring that an applicant for or holder of an operating licence granted by the CAA complies with Article 4(i) and 7 of the EC Regulation, the CAA may require proof that the person who continuously and effectively manages that undertaking—

- (a) is not an undischarged bankrupt, and
- (b) is otherwise of good repute.

Suspension and revocation

7.—(1) The CAA may revoke or suspend an operating licence that it has granted.

(2) The CAA may exercise its powers under paragraph (1) only after notifying the licence holder of its intention to do so and after due consideration of the case and any representations made by the licence holder.

Date of revocation or suspension of an operating licence

8.—(1) Where the CAA revokes or suspends an operating licence that it has granted—

- (a) on the application of the holder, or
- (b) in consequence of a request made by the Commission under Article 15(3) of the EC Regulation,

unless otherwise specified by the CAA the revocation or suspension has effect on and from the day after the date on which the holder is notified of the decision.

(a) OJ L 293, 31.10.08, p. 3.

(b) 1982 c.16. Section 105(1) has been amended by S.I. 1986/948 and by virtue of section 2(3) of the British Overseas Territories Act 2002 (c. 8).

(c) OJ L 240, 24.8.1992, p. 1.

(2) In all other cases a revocation or suspension does not take effect before the expiry of the 14-day period specified in paragraph 3 of Schedule 2.

(3) If an appeal in accordance with regulation 9(1) is brought within the 14-day period specified in paragraph 3 of Schedule 2, the revocation or suspension does not take effect before the determination or abandonment of the appeal.

Appeal to the Secretary of State

9.—(1) Where the CAA—

- (a) refuses to grant an operating licence, or
- (b) decides to revoke or suspend a licence that it has granted,

the applicant for or the holder of the licence may appeal to the Secretary of State.

(2) Paragraph (1) does not apply if the reason for the CAA's decision is a request by the Commission under Article 15(3) of the EC Regulation.

(3) If the CAA decides that the holder of a licence that it has granted has not implemented corrective measures specified in a request made by the Commission under Article 15(3) the licence holder may appeal to the Secretary of State.

(4) The provisions of Schedule 2 apply to any appeal.

Restriction on carriage of passengers by an air carrier

10.—(1) Where this paragraph applies a Community air carrier must not carry by air on a flight a passenger for remuneration or hire.

(2) Paragraph (1) applies where a person has made accommodation for carriage on that flight available to that passenger in circumstances where that person is obliged to but does not hold a licence required by the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995(a).

Offences relating to operating licences

11.—(1) It is an offence for a person knowingly or recklessly to carry by air passengers, mail or cargo for remuneration or hire without an appropriate operating licence granted by the CAA in circumstances where such a licence is required by the EC Regulation.

(2) For the purposes of determining whether an offence has been committed under paragraph (1), it is immaterial that such carriage occurred outside the United Kingdom if when it occurred the person—

- (a) was a United Kingdom national,
- (b) was a body incorporated under the law of any part of the United Kingdom, or
- (c) was a person (other than a United Kingdom national or such a body) maintaining a place of business in the United Kingdom.

12. A Community air carrier is guilty of an offence if it knowingly or recklessly carries by air any passenger in breach of regulation 10.

13. It is an offence for a person knowingly or recklessly to provide information that is false in a material particular, for the purpose of—

- (a) obtaining an operating licence for that person,
- (b) procuring an operating licence for another person, or
- (c) maintaining an operating licence.

(a) S.I. 1995/1054, as amended by S.I. 1997/2912, S.I. 2003/1741 and S.I. 2007/2999.

PART 2

Leased aircraft

Registration of aircraft

14.—(1) For the purposes of Article 12(1) of the EC Regulation the Secretary of State must decide whether aircraft used by an air carrier that holds an operating licence issued by the CAA are to be registered in the United Kingdom national register or within the Community.

(2) The CAA must, at the request of the Secretary of State, publish in its Official Record the decision taken by the Secretary of State under paragraph (1).

(3) The CAA is the competent licensing authority for the United Kingdom for the purposes of Article 12(2).

Approval for and restriction on use of leased aircraft

15. The Secretary of State is the competent licensing authority for the purposes of granting an approval under Article 13(3) of the EC Regulation, for determining whether one of the conditions set out in Article 13(3)(b) is fulfilled and for the purposes of Article 13(4).

16. The CAA is the competent licensing authority for the purposes of granting safety approvals in accordance with Article 13(2) and for the purposes of Article 13(3)(a) of the EC Regulation.

17.—(1) Save as provided in paragraph (3), where this paragraph applies the CAA must, subject to any conditions it thinks fit, issue an approval to an air carrier that holds an operating licence that it has granted.

(2) Paragraph (1) applies where such an air carrier intends to enter into—

- (a) a dry lease agreement as lessor,
- (b) a dry lease agreement as lessee in circumstances where the CAA is satisfied that the aircraft may be used safely, or
- (c) a wet lease agreement in respect of an aircraft registered in the Community as lessee with a Community air carrier.

(3) No approval is required under paragraph (1) where the CAA is required to approve the use of an aircraft pursuant to Annex III of Council Regulation (EEC) No 3922/91 of 16th September 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation(a).

18.—(1) Subject to paragraph (2), an operating licence is not valid for the purpose of enabling an air carrier that holds an operating licence granted by the CAA to use an aircraft that is not registered according to the decision of the Secretary of State under regulation 14.

(2) Paragraph (1) does not apply where—

- (a) a Community air carrier has obtained prior approval for the use of an aircraft pursuant to a dry lease agreement or a wet lease agreement in accordance with regulation 17 or Article 13 of the EC Regulation, or
- (b) by virtue of regulation 17(3) an approval is not required.

Offences relating to leased aircraft

19. An air carrier which without reasonable excuse fails to obtain the necessary approval for the use of a leased aircraft is guilty of an offence.

(a) OJ No. L 373, 31.12.91, p. 4. Annex III was inserted by Commission Regulation (EC) No 8/2008 of 11th December 2007 amending Council Regulation (EEC) No 3922/91 as regards common technical requirements and administrative procedures applicable to commercial transportation by aeroplane, OJ No. L 10, 12.1.08, p. 1.

20. An air carrier which without reasonable excuse fails to comply with conditions of any necessary approval is guilty of an offence.

21. For the purposes of regulations 19 and 20 the necessary approval is the approval specified in regulation 17 or in Article 13(3) of the EC Regulation.

PART 3

Access to routes

Competent authority in relation to access to intra-Community air services

22. The Secretary of State is the competent authority for the purposes of Articles 16 to 21 of the EC Regulation.

Secretary of State's duty

23.—(1) The obligation of the Secretary of State, when taking any decision under Article 16, 17 or 18 of the EC Regulation, to comply with—

- (a) the provisions of the applicable 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 Community air carriers.

(2) A breach of that duty shall be actionable by any Community air carrier which, in consequence, suffers, or risks suffering, loss or damage.

(3) Any proceedings under this regulation must be brought in the High Court in England, Wales or Northern Ireland, or before the Court of Session in Scotland.

(4) Proceedings under this regulation must be 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), 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 16, 17 or 18; and
- (b) if satisfied that a decision taken by the Secretary of State is in breach of the duty under paragraph (1) do either or both of the following—
 - (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.

(6) If the breach of the duty under paragraph (1) occurred in relation to an existing contract to operate services on a route subject to a public service obligation, the Court may only award damages in respect of that breach.

Restriction on the operation of air services

24. Where a public service obligation has been imposed on a route under Article 16(1) of the EC Regulation, a Community air carrier may only operate a scheduled air service on that route—

- (a) in accordance with the obligation, and
- (b) in a case where access to that route has been limited under Article 16(9), if it has been selected to operate that route.

Offences

25. A Community air carrier is guilty of an offence if it knowingly or recklessly exercises traffic rights—

- (a) on routes within the United Kingdom, between the United Kingdom and Gibraltar or between the United Kingdom and another Member State in breach of regulation 24;
- (b) in breach of—
 - (i) any traffic distribution rules imposed by the Secretary of State under Article 19(2) of the EC Regulation, or
 - (ii) any conditions, limitations or refusals imposed by the Secretary of State under Article 20(1).

PART 4

Provision of information

Requirement to provide information

26. The Secretary of State may, by written notice served in accordance with regulation 4 of the Civil Aviation Authority Regulations 1991^(a) on an air carrier with an operating licence issued by the CAA, require that carrier to provide, in such form and at such times as may be specified in the notice, information required by the Commission under Article 26 of the EC Regulation.

Offences

27. Such an air carrier is guilty of an offence if—

- (a) it fails, without reasonable excuse, to comply with the requirements of a notice served on it under regulation 26;
- (b) in purported compliance with the requirements of any such notice it knowingly or recklessly provides information that is false in a material particular.

PART 5

Penalties etc.

Penalties

28. A person guilty of an offence under these Regulations is 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.

Offences by body corporate or Scottish partnership

29.—(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 purporting to act in any such capacity, that officer or person as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.

(a) S.I. 1991/1672, as amended by S.I. 2001/2448.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with that member's functions of management as if that member were a director of the body.

(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, that partner as well as the partnership is guilty of that offence and is liable to be proceeded against and punished accordingly.

Proceedings in Scotland

30.—(1) Subject to paragraph (2), 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 may 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 the procurator fiscal's opinion to warrant the proceedings came to the knowledge of the procurator fiscal is conclusive evidence of that fact.

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

(5) Subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995(a) (date of commencement of proceedings) applies for the purposes of this regulation as it applies for the purposes of that section.

Power to direct that an aircraft must not fly

31.—(1) Where this paragraph applies the CAA may—

- (a) direct the person appearing to it to be in command of an aircraft not to permit the aircraft to take off until it has informed that person that the direction is cancelled,
- (b) whether or not it has given such a direction, detain the aircraft until it is satisfied that the aircraft will not take off.

(2) Paragraph (1) applies where the CAA has reason to believe that an aircraft is intended to be used by—

- (a) a person without an appropriate operating licence in circumstances where such a licence is required, or
- (b) an air carrier in breach of the restrictions set out in regulation 10 or 18.

32. It is an offence for a person, without reasonable excuse, to fail to comply with a direction given under regulation 31.

PART 6

Consequential amendments

The Civil Aviation Act 1982

33. In each of sections 17(1)(c), 64(2)(d) and 84(1)(a) of the Civil Aviation Act 1982(a) for “the Community licensing Regulation” substitute “the Operation of Air Services in the Community Regulation”.

(a) 1995 c. 46.

34. In section 69A of that Act—

- (a) in subsection (2)(d) for “the Community access Regulation” substitute “the Operation of Air Services in the Community Regulation”;
- (b) in subsection (3) for “articles 3 to 6 of the Community access Regulation” substitute “article 16 of the Operation of Air Services in the Community Regulation”;
- (c) in subsection (8) —
 - (i) the definition of “the Community access Regulation” is omitted;
 - (ii) in the definition of “Community air carrier” for “the Community access Regulation” substitute “the Operation of Air Services in the Community Regulation”; and
 - (iii) in the definition of “operating licence” for “Community licensing Regulation” substitute “the Operation of Air Services in the Community Regulation”.

35. In section 105(1) of that Act—

- (a) the definition of “the Community licensing Regulation” is omitted; and
- (b) after the definition of “modifications” there is inserted ““the Operation of Air Services in the Community Regulation” means Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24th September 2008 on common rules for the operation of air services in the Community;”.

The Civil Aviation Authority Regulations 1991(b)

36. In regulation 3(1) for the definition of “operating licence” substitute—

““operating licence” means an operating licence granted by the CAA under Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24th September 2008 on common rules for the operation of air services in the Community(c);”.

The Air Navigation Order 2005(d)

37. In article 138(1) for sub-paragraph (b) substitute—

“(b) it is exercising traffic rights permitted by Chapter III of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24th September 2008 on common rules for the operation of air services in the Community(e).”.

Signed by authority of the Secretary of State

15th January 2009

Paul Clark
Parliamentary Under Secretary of State
Department for Transport

(a) 1982 c. 16, Sections 17, 64, 84 and 105 have been amended by S.I. 1992/2992, S.I. 1993/3039, S.I. 1994/1732 and 2004/1256. Section 69A was inserted by S.I. 1992/2992 and has been amended by S.I. 1993/3039, S.I. 1994/1732 and 2004/1256.

(b) S.I. 1991/1672, as amended by S.I. 1992/2992, S.I. 1993/3039 and S.I. 1994/1732.

(c) OJ L 293, 31.10.08, p. 3.

(d) S.I. 2005/1970, to which there are amendments not relevant to this instrument.

(e) OJ L 293, 31.10.08, p. 3.

SCHEDULE 1

Regulation 2

Revocations

<i>SI number</i>	<i>Title</i>	<i>Extent of revocation</i>
1992/2992	The Licensing of Air Carriers Regulations 1992	The whole instrument
1992/2993	The Access for Community Air Carriers to Intra-Community Air Routes Regulations 1992	The whole instrument
1992/2994	The Air Fares Regulations 1992	The whole instrument
1993/100	The Air Fares (Amendment) Regulations 1993	The whole instrument
1993/101	The Licensing of Air Carriers (Amendment) Regulations 1993	The whole instrument
1993/3039	The Licensing of Air Carriers (Second Amendment and Other Provisions) Regulations 1993	The whole instrument
1993/3040	The Access for Community Air Carriers to Intra-Community Air Routes (Amendment and Other Provisions) Regulations 1993	Regulations 2 and 3
1993/3041	The Air Fares (Second Amendment) Regulations 1993	The whole instrument
1994/1731	The Access for Community Air Carriers to Intra-Community Air Routes (Second Amendment and Other Provisions) Regulations 1994	Regulations 2 and 3
1994/1732	The Licensing of Air Carriers (Third Amendment and Other Provisions) Regulations 1994	The whole instrument
1994/1735	The Air Fares (Second Amendment) Regulations 1994	The whole instrument
2004/1256	The EC/Swiss Air Transport Agreement (Consequential Amendments) Regulation 2004	Regulations 2(b), 3, 4, 5, 6 and 10

SCHEDULE 2

Regulation 9

Appeal to the Secretary of State

1. When the CAA provides to a person having a right of appeal written notification of
 - (a) its decision to refuse, revoke or suspend an operating licence, or
 - (b) its decision in relation to the completion of corrective measures specified in a request made by the Commission under Article 15(3)

the notification must specify the date on which the decision takes effect.

2. An appeal to the Secretary of State must—
 - (a) be made by written notice signed by or on behalf of the appellant,

- (b) clearly identify the case to which it relates,
- (c) state the grounds on which the appeal is based, and
- (d) state the arguments on which the appellant relies.

3. The appellant must serve a notice of appeal on the Secretary of State and the CAA within 14 days after the date on which the appellant was notified of the CAA's decision.

4. Within 14 days after receiving notice of an appeal, the CAA must—

- (a) serve on the Secretary of State any submission it wishes to make in connection with the appeal and may include in it an amplification and explanation of the reasons for its decision, and
- (b) serve a copy of any such submission on the appellant.

5. Within 14 days after the expiry of that period the appellant—

- (a) may serve on the Secretary of State a reply to any submission made by the CAA under paragraph 4, and
- (b) must serve a copy of any such reply on the CAA.

6. Before deciding an appeal the Secretary of State may ask the appellant or the CAA any question the answer to which appears to the Secretary of State necessary to enable the determination of the appeal. The Secretary of State must give the appellant and the CAA an opportunity to reply to any such answer.

7. No person may submit to the Secretary of State evidence that was not before the CAA when it decided the case.

8. The Secretary of State may uphold the decision of the CAA or direct it to reverse or vary its decision.

9. The Secretary of State must notify the CAA and the appellant of the Secretary of State's decision and of the reasons for it. Where as a consequence the CAA is required to grant or revoke an operating licence the CAA must take the steps necessary to cause the decision to be published in the Official Journal of the European Union.

10. An appeal to the Secretary of State does not preclude consultations with the competent authorities of any country or territory outside the United Kingdom for the purposes of section 6(2)(a) to (d) of the Civil Aviation Act 1982^(a) (Secretary of State's decision in national interest, etc.) even though the consultation may relate to matters affecting the appeal.

11. Subject to paragraph 12, the failure of any person to serve any document, or copy of a document, or to provide information in the time provided for in this Schedule or any other procedural irregularity does not invalidate the decision of the Secretary of State. The Secretary of State may, and if it is considered that any person may have been prejudiced by such an irregularity, must take such steps as are thought fit before deciding the appeal to cure the irregularity.

12. Paragraph 11 does not apply where an appellant has failed to serve a notice of appeal within the period set out in paragraph 3.

(a) 1982 c. 16. Section 6 has been amended by section 97 of and paragraph 17 of Schedule 8 to the Transport Act 2000 (c. 38).

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations make provision for implementing Chapters I to III of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24th September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.08, p. 3).

2. Regulations 5, 14, 15 and 16, and 23 specify the competent authority in relation to operating licences, aircraft leasing and access to intra-Community air services respectively.

3. In relation to operating licences provision is made for—

- (a) the provision by an applicant for an operating licence of proof that he is of good repute: *regulation 6*;
- (b) the power of the CAA to revoke or suspend an operating licence, the date on which a decision to revoke or suspend a licence has effect and the right of appeal: *regulations 7 to 9*;
- (c) the restriction on an air carrier's ability to carry passengers in certain circumstances: *regulation 10*; and
- (d) enforcement measures where the CAA believes that an aircraft may be flown by a person without an operating licence or in breach of the restriction in regulation 10: *regulation 31*.

4. In relation to leased aircraft provision is made for—

- (a) publication by the CAA of the Secretary of State's decision on whether an air carrier licensed by the CAA may operate aircraft registered in the UK or in another member State: *regulation 14*; and
- (b) the approvals necessary for the operation of leased aircraft and use of an aircraft that is not registered in accordance with the Secretary of State's decision: *regulations 17 and 18*.

5. Regulations 11 to 13 and 19 to 21 respectively provide for offences relating to operating licences and aircraft leases.

6. In relation to access to intra-Community air services provision is made for—

- (a) the enforcement action that may be taken in respect of a decision by the Secretary of State relating to a public service obligation: *regulation 23*;
- (b) restrictions on the right of an air carrier to operate on certain routes: *regulation 24*; and
- (c) offences relating to the operation of air services without regard to the existence of public service obligations, traffic distribution rules and restrictions on traffic rights: *regulation 25*.

7. Regulations 26 and 27 set out requirements relating to the provision of information to the Secretary of State by an air carrier licensed by the CAA.

8. Regulations 28 to 30 set out the penalties that apply in relation to the offences in regulations 11 to 13 and 19 to 21, and regulations 31 and 32 make provision for the detention of aircraft in certain circumstances.

9. In regulations 33 to 37 the Civil Aviation Act 1982, the Civil Aviation Authority Regulations 1991 and the Air Navigation Order 2005 are amended so as to refer to the EC Regulation.

10. Schedule 1 lists the regulations revoked by these regulations and Schedule 2 sets out the appeal process in relation to decisions made by the CAA.

STATUTORY INSTRUMENTS

2009 No. 41

CIVIL AVIATION

The Operation of Air Services in the Community Regulations
2009

£5.00