
STATUTORY INSTRUMENTS

2013 No. 486

The Operation of Air Services ... (Pricing etc.) Regulations 2013

PART 5

Amendments

The Operation of Air Services in the Community Regulations 2009

37.—(1) The Operation of Air Services in the Community Regulations 2009(1) are amended as follows.

(2) After regulation 1, insert—

“Review

1A.—(1) The Secretary of State must from time to time—

- (a) carry out a review of regulations 3 to 32,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how Chapters I to III of the EC Regulation (which is implemented by means of regulations 3 to 32) is implemented in the other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by those regulations,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which the Operation of Air Services in the Community (Pricing etc.) Regulations 2013(2) come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.”

(3) Regulation 15 is renumbered as paragraph (1) of that regulation.

(4) After regulation 15(1), insert—

“(2) The provisions of Schedule 3 apply in relation to an appeal against a decision of the Secretary of State made pursuant to paragraph (1) as to whether one of the conditions in Article 13(3)(b) of the EC Regulation is fulfilled.”

(1) S.I. 2009/41.
(2) S.I. 2013/486.

- (5) Regulation 16 is renumbered as paragraph (1) of that regulation.
- (6) After regulation 16(1), insert—
- “(2) The provisions of Schedule 4 apply to the conduct and procedure of the CAA for the purposes of exercising the functions conferred on it by paragraph (1).”
- (7) After Schedule 2, insert—

“SCHEDULE 3

Regulation 15

Appeal against Secretary of State decisions under regulation 15

1. Subject to paragraphs 3 and 4, an applicant may appeal to a county court from any determination of the Secretary of State under regulation 15 as to whether one of the conditions set out in Article 13(3)(b) of the EU Regulation is fulfilled.
2. If the court is satisfied that on the evidence submitted to the Secretary of State, the Secretary of State’s determination was wrong, the court may reverse the Secretary of State’s determination and the Secretary of State must give effect to the court’s determination.
3. If the appellant resides or has a registered or principal office in Scotland the appeal may be made to the sheriff court within whose sheriffdom the appellant resides or, as the case may be, has a registered or principal office and the appeal must be brought within 21 days from the date of the Secretary of State’s determination, or within such further period as the sheriff may allow.
4. If the appellant resides or has a registered or principal office in Northern Ireland the appeal may be made to the county court held under the County Courts (Northern Ireland) Order 1980(3) for the division in which the appellant resides or, as the case may be, has a registered or principal office.
5. For the purposes of any provision relating to the time within which an appeal may be brought, the Secretary of State’s determination is deemed to have been taken on the date on which the Secretary of State furnished a statement of the reasons for the determination to the applicant for an approval for operation of an aircraft under a wet lease agreement.

SCHEDULE 4

Regulation 16

Conduct and procedure of the CAA for purposes of regulation 16

- 1.—(1) In this Schedule—
- “CAA Member” means a person appointed under section 2 of the Civil Aviation Act 1982(4) to be a member of the CAA;
- “electronic communication” means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa) by means of an electronic communications network (within the meaning set out in section 32(1) of the Communications Act 2003(5));
- “equivalent safety decision” means a decision of the CAA as to whether the condition in Article 13(3)(a) of the EC Regulation is satisfied;

(3) [S.I. 1980/397 \(N.I. 3\)](#), to which there are amendments not relevant to these regulations.

(4) [1982 c.16](#). Section 2 was amended by section 72 of the Airports Act [1986 \(c.31\)](#) and section 95 of the Civil Aviation Act [2012 \(c.19\)](#).

(5) [2003 c.21](#). Section 32(1) was amended by regulation 2(1) and paragraph 9 of schedule 1 of the Electronic Communications and Wireless Telegraphy Regulations 2011 ([S.I. 2011/1210](#)).

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

“lease approval” means an approval—

- (a) under regulation 17; or
- (b) under OPS 1-165 of 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⁽⁶⁾.

(2) Any period of time specified in this Schedule by reference to days—

- (a) where such period is expressed to begin after a particular date, is to begin on the first day after that date, and is inclusive of the last day unless that day falls on a day which is not a business day, in which case the period runs to the next business day; and
- (b) where such period is expressed to run to or expire before a particular date or event, the period is to be calculated to expire on the last business day before the particular date or the date of that event.

(3) A business day is a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971⁽⁷⁾.

2. A notice or other document required to be served by the CAA under this Schedule must be served in accordance with paragraph 3.

3.—(1) A notice or other document is served on a person in accordance with this paragraph if it is set out in writing and—

- (a) is delivered personally to a person specified in sub-paragraph (2); or
- (b) is delivered by posting or transmitting the notice or document by means of electronic communication to, or leaving it at, an address for service set out in sub-paragraph (3) appropriate to the method of communication addressed to the person specified in sub-paragraph (2).

(2) The person to whom the notice or document should be addressed or delivered is—

- (a) for an individual, that person;
- (b) for a body corporate, a director, secretary, chief executive, treasurer, manager or other similar officer of the body corporate;
- (c) for a limited liability partnership, any designated member as defined by section 18 of the Limited Liability Partnerships Act 2000⁽⁸⁾;
- (d) for a partnership, a partner or any person having control or management of the business;
- (e) for an unincorporated body or association, the proprietor or a person concerned in the management or control of the body or association.

(3) Any notice or document may be sent to one of the following addresses as appropriate—

- (a) in the case of an individual, that person’s usual or last known place of business, employment or residence;

⁽⁶⁾ 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.

⁽⁷⁾ 1971 c.80.

⁽⁸⁾ 2000 c.12. Section 18 cross-refers to section 8 of the Limited Liability Partnerships Act 2000 and section 8 has been amended by regulation 85 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (S.I. 2009/1804).

- (b) in the case of a body corporate, its principal or registered office or its principal place of business;
- (c) in the case of a limited liability partnership, the address of its principal or registered office;
- (d) in the case of a partnership or an unincorporated body or association, its principal office or principal place of business;
- (e) in any case, an electronic address which the person on whom the notice or document is to be served has held out as an address at which that person can be contacted.

(4) An “electronic address” includes a fax number and an email address.

4. A decision or proposal to grant, refuse to grant, revoke, suspend or vary a lease approval or an equivalent safety decision may be made on behalf of the CAA by a CAA employee unless paragraph 7 applies.

5. If a CAA employee—

- (a) refuses an application for a lease approval,
- (b) grants an approval but in terms other than those requested by the applicant, or
- (c) makes an equivalent safety decision against the applicant,

the CAA must serve on the applicant a notice stating the reasons for the decision, and the applicant may within 14 days after the date of service of that notice request that the case be reviewed by CAA Members.

6. If a CAA employee proposes to revoke, suspend or vary a lease approval, the CAA must serve on the approval holder notice of the proposal together with the reasons for it, and the approval holder may within 14 days after the date of service of that notice, serve on the CAA a request that the case be decided by CAA Members.

7. Where a request for a decision by the CAA Members has been served on the CAA under paragraph 5 or 6, the decision must be made by at least two CAA Members who were not involved in the original decision or proposal made by the CAA employee.

8. Before making a decision the CAA Members must consider—

- (a) any brief supplied by the CAA employee responsible for the proposal or decision; and
- (b) any representations by the applicant or approval holder, served on the CAA Members within 21 days after the date of service of the notice under paragraphs 5 or 6 or such additional period as the CAA Members may determine.

9. Within 21 days after the date of service of the notice under paragraphs 5 or 6 the applicant or approval holder may request a hearing.

10. If the applicant or the approval holder has requested a hearing under paragraph 9, the CAA Members must before making a decision, conduct a hearing and consider any representations made or evidence submitted at such a hearing.

11.—(1) All hearings must be in public except—

- (a) where the CAA is satisfied that a private hearing is required—
 - (i) in the interests of morals, public order or national security in a democratic society,
 - (ii) in the interests of juveniles or the protection of the private life of the parties, or
 - (iii) to the extent strictly necessary in the opinion of the CAA in special circumstances if publicity would prejudice the interests of justice; or

(b) where the applicant or the approval holder has requested in writing that the hearing be in private and the CAA is satisfied that there is no important public interest consideration that calls for the public to be present.

(2) The CAA may decide under sub-paragraph (1) that part only of the hearing is to be in private or that information about the proceedings before the CAA, the names and identifying characteristics of persons concerned in the proceedings or specified evidence given in the proceedings must not be made public or disclosed to a party or parties.

(3) The following persons are entitled to attend a hearing, whether or not it is in private—

- (a) a member of the Administrative Justice and Tribunals Council or of the Scottish Committee of that Council; and
- (b) any person whom the CAA, with the consent of the applicant or the approval holder permits to attend the hearing.

12.—(1) The CAA must serve on all persons having a right to be heard and all person whom the CAA proposes to hear at least 14 days' notice of the date, time and place of the hearing.

(2) The notice must clearly identify the matter to which it relates.

(3) A similar notice must be published not less than 7 days before the date of the hearing on the CAA's website.

(4) On the day of a hearing, a similar notice must be posted in a visible and accessible place at the venue where the hearing is scheduled to take place.

13. The applicant or approval holder and the CAA employee who made the decision or proposal to be reviewed have a right to be heard at the hearing.

14. At the hearing every person with a right to be heard may appear in person or be represented by any other person whom they have authorised to represent them and may produce oral and written evidence and the person with a right to be heard or their representative may examine any other person being heard and any witness produced by that person.

15. The CAA Members conducting a hearing may sit with such technical assessors to advise them as they may appoint, but the CAA Members must not appoint as an assessor any person who participated in the decision or proposal or the development of any notice or decision which is to be the subject of the hearing.

16. When the CAA makes a decision it must—

- (a) serve notice of the decision and a statement of its reasons for the decision on the applicant or approval holder; and
- (b) publish the decision and a statement of its reasons for the decision.

17. Paragraphs 5 and 6 do not apply where the CAA refuses to grant an approval or grants an approval in terms other than those requested by the applicant or proposes to vary, suspend or revoke an approval pursuant to a direction given by the Secretary of State under section 6 of the Civil Aviation Act 1982(9) (Secretary of State's directions in national interest, etc.).”

Commencement Information

II [Reg. 37](#) in force at 6.4.2013, see [reg. 1](#)

(9) [1982 c.16](#). Section 6 was amended by section 97 of the Transport Act 2000 (c.38).

Changes to legislation:

There are currently no known outstanding effects for the The Operation of Air Services ... (Pricing etc.) Regulations 2013, Section 37.