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STATUTORY INSTRUMENTS

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**2016 No. 765**

**The Air Navigation Order 2016**

**PART 10**

**Prohibited behaviour, directives, rules, powers and penalties**

**CHAPTER 4**

**Powers and penalties**

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

**253.**—(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the possession or custody of any certificate, licence, approval, permission, exemption or other document which has been revoked, suspended or varied under this Order must surrender it to the CAA within a reasonable time after being required to do so by the CAA.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 any permission to which article 255 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 certificates, licences and other documents**

**254.**—(1) The CAA may, subject to and in accordance with article 14(1) of the Basic EASA Regulation, provisionally suspend or vary any certificate, licence, rating, endorsement, approval, authorisation or other document which it has issued to a person under an EASA Regulation, 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- (a) it is withdrawn by the CAA; or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 250 or article 252**

**255.**—(1) This article applies to any permission granted by the Secretary of State under article 250 or by the CAA under article 250 or article 252.

(2) Subject to paragraph (7), the Secretary of State or the CAA may revoke, suspend or vary any permission to which this article applies after having given notice to the other and considered representations from the operator or charterer concerned.

(3) Subject to paragraph (7), the Secretary of State or the CAA may without notice revoke, suspend or vary any permission to which this article applies for reasons of urgency, in which case paragraph (4) applies.

(4) Where this paragraph applies, the person who revoked, suspended or varied any permission without notice under paragraph (3) must consider any representations made subsequently by the operator or charterer concerned and in response to such representations may—

- (a) confirm, vary or lift the suspension;
- (b) confirm the revocation of permission; or
- (c) reinstate the permission with or without additional or varied conditions.

(5) In acting under paragraph (4), the Secretary of State or the CAA must act as soon as reasonably practicable.

(6) In particular, and without limitation, the Secretary of State may exercise the powers under paragraphs (2) and (3) if it appears that—

- (a) the operator or charterer has committed a breach of any condition to which the permission is subject;
- (b) any agreement between Her Majesty's Government in the United Kingdom and the Government of any other country pursuant to which the permission was granted is no longer in force or that the other Government has breached the agreement;
- (c) the operator or charterer who has been granted permission, 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 or a route licence in the operation of air services; or
- (d) the operator or charterer, having been granted permission as a result of being designated by the Government of any other country for the purposes of an agreement referred to in sub-paragraph (b)—
  - (i) is no longer so designated; or
  - (ii) has conducted itself in such a way or is involved in such circumstances that the Secretary of State considers the exercise of those powers to be necessary or expedient.

(7) The CAA may only exercise the powers in paragraph (2) or (3) if it considers it necessary or expedient to do so for reasons of aviation safety.

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

**256.**—(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 an EASA Regulation 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 an EASA Regulation 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; or
- (d) make any false representation in connection with the making of a declaration to the CAA required by or under this Order or by or under an EASA Regulation.

(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 an EASA Regulation or by or under EU-OPS; or
- (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, an EASA Regulation 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**

**257.**—(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 24, 32, 33, 66, 97, 98, 99, 101, 102, 103, 122, 136, 137, 231 or 242(2) 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 an EASA Regulation 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 an EASA Regulation or of EU-OPS.

(3) If paragraph (1) applies, the CAA or that authorised person may direct the operator or the pilot in command 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.

### **Grounded aircraft not to fly**

**258.** An aircraft which has been grounded in accordance with paragraph ARO.RAMP.140 of Part-ARO and which has not subsequently been permitted to fly must not be flown.

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

**259.**—(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 247, 250 or 252 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 pilot in command 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**

**260.**—(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**

**261.**—(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.

(2) Access to a Government aerodrome may only be obtained with the permission of the person in charge of the aerodrome.

### **Access and inspection for airworthiness purposes**

**262.**—(1) The CAA may cause such inspections, investigations, tests, experiments and flight trials to be made as it deems necessary for the purposes of Part 4 of this Order or for the purposes of Part 21, Part 145 or Part M.

(2) Any person authorised to do so by the CAA may at any reasonable time inspect any part of, or material intended to be incorporated in or used in the manufacture of any part of, an aircraft or its equipment or any documents relating to the aircraft and may for that purpose go onto any aerodrome or enter any aircraft factory.

### **Obstruction of persons**

**263.** A person must not intentionally obstruct or impede any person who is exercising a power or performing a duty under this Order, under EU-OPS or under an EASA Regulation.

### **Directions and directives**

**264.**—(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 265 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**

**265.**—(1) Subject to paragraph (2), if any provision of this Order, any regulations made under this Order, an EASA Regulation or EU-OPS is contravened in relation to an aircraft, the operator of that aircraft and the pilot in command and, in the case of a contravention of article 250, 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, an EASA Regulation 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 commercial operation, 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 1 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 2 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 3 of Schedule 13 is guilty of an offence and punishable—

(a) on summary conviction—

(i) in England and Wales by a fine; or

(ii) in Scotland or Northern Ireland by a fine not exceeding the statutory maximum; or

(b) on conviction on indictment by a fine or by imprisonment for a term not exceeding two years, or to both.

(8) Any person who contravenes the provision specified in Part 4 of Schedule 13 is guilty of an offence and punishable—

(a) on summary conviction—

(i) in England and Wales by a fine; or

(ii) in Scotland or Northern Ireland by a fine not exceeding the statutory maximum; or

(b) on conviction on indictment by a fine or by imprisonment for a term not exceeding five years, or to both.

## **Exemption from Order**

**266.** The CAA may exempt from any of the provisions of this Order (other than articles 179, 230, 247, 250, 251, 252, 255, and 267) or any regulations made under this Order, any aircraft or persons or classes of aircraft or persons, subject to such conditions it deems appropriate.

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

**267.**—(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.

(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.

(6) The CAA is 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**

**268.** 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**

**269.** 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 253, for such periods as the CAA thinks fit.

### **Competent authority**

**270.**—(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;
- (b) the EASA Aircrew Regulation;
- (c) the EASA Continuing Airworthiness Regulation;
- (d) the EASA Air Operations Regulation;
- (e) the EASA Aerodromes Regulation;
- (f) the Standardised European Rules of the Air Regulation; and
- (g) the Occurrence Reporting Regulation.

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

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

(5) The CAA is the national supervisory authority and the competent authority of the United Kingdom for the purposes of Article 4 and Article 27 of the EASA Air Traffic Controllers' Licensing Regulation.

### **Functions under the Basic EASA Regulation to be exercised by the CAA**

**271.**—(1) Subject to paragraph (2), the functions conferred on the United Kingdom by Article 14(4) of the Basic EASA Regulation are to be exercised by the CAA.

(2) The CAA must obtain the consent of the Secretary of State prior to granting any exemption in accordance with Article 14(4) of the Basic EASA Regulation which—

- (a) is repetitive; or
- (b) is for more than two months.



**Functions under the EASA Aircrew Regulation to be exercised by the CAA**

**272.** The function conferred on the United Kingdom by Article 4(8) of the EASA Aircrew Regulation is to be exercised by the CAA.

**Functions under the Occurrence Reporting Regulation to be exercised by the CAA**

**273.** The functions conferred on the United Kingdom by Articles 3(2), 4(3), 5(2), 5(6), 5(7), 6(3), 7(3), 8(2), 9, 13(6), 13(7), 13(8), 13(10), 13(11), 13(12), 15(1), 15(2), and 16(3) of the Occurrence Reporting Regulation are to be exercised by the CAA.