



3 January 2013

BASP BRIEFING NOTE

VALIDATION OF LICENCES FOR AIRCRAFT REGISTERED IN THIRD COUNTRIES BUT BASED IN THE EU

Commission Regulation (EU) 1178/2011 as amended by Commission Regulation (EU) 290/2012 (the Aircrew Regulation) came into force on 8 April 2012. The UK applied the flexibility provisions within the Aircrew Regulation to delay the implementation of Part-FCL until 17 September 2012. The new regulations impact on the validation of licences for flying aircraft registered in third countries but based in the EU.

Prior to the implementation of European legislation, pilot licensing in the UK (and elsewhere in Europe) was subject to national legislation. Under UK legislation a UK or JAR-FCL licence was required to fly any aircraft registered in the UK, but a provision of the Air Navigation Order (ANO) (now Article 62) made a pilot's licence of any country valid for UK-registered aircraft being flown for private purposes only (provided that the pilot was not paid). The ANO also specified (and continues to specify) that an aircraft must not fly in the UK unless it carries the crew required and licensed in accordance with the law of the country in which the aircraft is registered.

The effect of these UK rules was that:

- A pilot holding a valid licence of any country could fly a UK-registered aircraft for private purposes only, provided that the pilot was not paid. If the pilot was paid then a validation was required for any non-UK or non-JAR-FCL licence regardless of the purpose of the flight.
- The holder of a UK commercial licence, a JAR-FCL commercial licence or the commercial licence of another country with a validation issued by the CAA could fly a UK-registered aircraft for commercial purposes.
- An aircraft registered in another country could fly in the UK if the pilot held a licence that was valid for the flight under the law of the country in which the aircraft was registered. No validation was required.

It is believed that the domestic legislation of other European States was similar in that, generally, the validation of pilot licences was not required for flights by foreign-registered aircraft.

The new European legislation specifies that for any aircraft whose operator is based within the EU the Aircrew Regulation applies, regardless of where the aircraft is registered. The EU definition of 'Operator' is 'any legal or natural person operating or proposing to operate one or more aircraft' which appears to include anyone from a private owner to a major airline.

It has been pointed out to the Commission that there are large numbers of third country-registered aircraft based in the EU that are owned by EU citizens who hold third country licences, and that these owners would need time to obtain European Part-FCL

licences. The Commission, therefore, agreed to include in the Aircrew Regulation a derogation that individual States could decide to apply (or not) as follows:

‘Article 12: Entry into force and application 4. By way of derogation from paragraph 1, Member States may decide not to apply the provisions of this Regulation to pilots holding a licence and associated medical certificate issued by a third country involved in the non-commercial operation of aircraft specified in Article 4(1)(b) or (c) of Regulation (EC) 216/2008 until 8 April 2014.’

The UK has elected to apply this derogation, and believes that the effect is that UK national law continues to apply to:

- flights for non-commercial purposes of UK-registered aircraft wherever they may be; and
- aircraft registered elsewhere when they are flying **within the UK**.

This means that until 8 April 2014 aircraft registered in other countries may continue to be flown **within the UK** using licences that are valid under the law of their States of Registry. However, the ability to fly foreign-registered aircraft throughout the European Aviation Safety Agency (EASA) States with third country licences depends upon whether or not those other States have also applied this derogation. If a European State has not applied the derogation then they are likely to take the view that the pilot of an aircraft that is registered in a third country must hold a Part-FCL licence, or a European validation of their third country licence, if the operator of the aircraft is based within the EU.

Each of the European States has notified their use of the various derogations to the European Commission and EASA has published a table based on this information on their website. This indicates that the following states:

- Czech Republic;
- Iceland;
- Latvia;
- Lichtenstein; and
- Slovenia

have **NOT** applied the derogation which negates the requirement to validate third country licences for aircraft registered in third countries but based in the EU.

The legal position that arises from the combination of the new legislation, the selective application of the derogation by the different States and the consequent effect (or non-effect) of national law is complex. Without validations, licences of third country operators based in the EU would be acceptable for flights within the UK, but may not be valid for other European States, depending upon how those States interpret the legislation and the manner in which they are applying the permitted derogation – if they are, in fact, applying the derogation.

The provision for derogation from the requirement for validation has an end date set out in the Aircrew Regulation of 8 April 2014. Pilots of aircraft whose operators are located within the EU will require EASA Part-FCL licences or validations of those licences for all flights from that date. This will be the case unless there are changes to the EU legislation in the meantime.

QUERIES

Any queries or further guidance required as a result of this communication should be addressed to CAA Flight Operations Policy at the following e-mail address: FOP.Admin@caa.co.uk.

CANCELLATION

This Briefing Note shall remain in force until 31 December 2013.