



Secretary and Legal Adviser's Office

Our Ref: 13-1-9-8-1

21 October 2010

LETTER OF CONSULTATION

PROPOSAL TO REVOKE AND REPLACE THE CIVIL AVIATION AUTHORITY REGULATIONS 1991

This letter concerns the replacement of the Civil Aviation Authority Regulations 1991. A draft of the proposed Civil Aviation Authority Regulations 2010 is attached. A number of changes are to be made but none are major substantive changes.

The Civil Aviation Authority Regulations 1991

The Civil Aviation Authority Regulations 1991 contain provisions which deal with disclosure of information and formal decision making procedures. A consolidated version of these Regulations (incorporating all the amendments which have been made to them) can be found at Section 6 of CAP 393 at <http://www.caa.co.uk/docs/33/CAP393.pdf>.

Disclosure of information

Section 23 of the Civil Aviation Act 1982 prohibits the CAA from disclosing information which relates to a particular person and has been supplied to it under a duty contained in the Air Navigation Order. Section 23 also sets out a number of exceptions to this prohibition. One such exception is where regulations require the CAA to disclose specified information.

The Civil Aviation Authority Regulations 1991 contain at Regulation 8 a requirement to make the register of aircraft maintained by the CAA available for inspection.

Regulation 9 requires the CAA to make available reports of reportable occurrences or a summary of such reports to any person coming within one of the categories specified in that Regulation.

Regulation 32 provides for disclosure of information by the CAA in civil proceedings the disclosure of which would otherwise be prohibited by section 23.

The information contained in the aircraft register and in occurrence reports is supplied to the CAA under a legal duty contained in the Air Navigation Order 2009 at Articles 6 and 226 respectively. The effect of Regulations 8 and 9 therefore is to bring the aircraft register and occurrence reports within the section 23 exception described above. Regulation 32 covers the disclosure of any information where required for the purposes of civil proceedings.

These provisions are replaced by Part 2 of the attached draft Regulations.

Decision making procedures

The core of the current CAA Regulations comprises four separate sets of decision making procedures.

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The first, at Regulation 6, deals with reviews of decisions made or to be made under the Air Navigation Order. The second, at Regulations 10-14, deals with public use aerodrome licences. The third, at Part III, deals with reviews of air transport and route licensing decisions. The fourth, at Part IIIA, deals with reviews of decisions in connection with an air traffic services licence.

Safety regulatory decisions (Regulation 6)

A Regulation 6 review will occur when officials of the CAA's Safety Regulation Group consider that an individual or organisation ought not to be granted or permitted to retain an approval of some kind. This may be a pilot licence, an air operator's certificate or one of a number of other licences, certificates, permissions and approvals which are granted under the Air Navigation Order. A Regulation 6 review may also occur when officials of the Safety Regulation Group or the CAA's Directorate of Airspace Policy propose to issue an Air Traffic Direction or an Airspace Policy Direction.

The individual or organisation concerned may require the case to be referred to a panel of Members of the CAA who sit in a quasi-judicial capacity. The Members hear arguments from the officials and from the individual or organisation and determine the outcome. The conduct of these hearings takes account of the Human Rights Act.

See Schedule 2 to the draft Regulations.

Public use and ordinary aerodrome licences (Regulations 10-14)

The CAA may grant a public use aerodrome licence, which is subject to a condition that the aerodrome is to be available to all persons on equal terms and conditions at all times when it is available for the take-off or landing of aircraft. Or it may grant an ordinary aerodrome licence which is not subject to such a condition.

This procedure applies where an ordinary aerodrome licence is to replace a public use licence or vice versa.

See Schedule 3 to the draft Regulations.

Route licensing and air transport licensing (Part III)

A route licence authorises a United Kingdom airline to fly on a route between the UK and a non-EU destination. An air transport licence authorises an airline based in a Crown Dependency to fly on a specified route.

A variety of parties may have an interest in the matter. The process is designed to produce a CAA decision by the Members rather than a review by Members of a proposal or decision made by officials. For an air transport licence there is an appeal to the Secretary of State. There is no such appeal for route licence decisions.

See Schedule 4 to the draft Regulations.

Air traffic services licensing (Part IIIA)

Under the Transport Act 2000, an air traffic service provider must hold a licence issued by the Secretary of State for Transport or operate under an exemption. Where a licence contains a condition for the referral of a disputed proposal to Members of the CAA, the matter will be dealt with in accordance with this Part.

See Schedule 5 to the draft Regulations.

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Draft Civil Aviation Authority Regulations 2010

A draft of the Civil Aviation Authority Regulations 2010 is attached.

Changes included in the draft

As noted above, no major substantive changes are proposed.

(1) The draft Regulations consolidate all the changes made to the 1991 Regulations over the years. These changes include –

- a. the omission of the reference to an appeal to the Secretary of State in relation to route licensing. This appeal was abolished by the Civil Aviation Act 2006;
- b. the omission of references to scarce capacity cases. A scarce capacity case arises where the relevant traffic rights between the UK and another country are insufficient for all the carriers who would wish to operate services on the route. Such cases are now dealt with under the Civil Aviation (Allocation of Scarce Capacity) Regulations 2007.

(2) The list of approvals which will be subject to review under the replacement for Regulation 6 will include approval of instrument flight procedures under article 176 of the Air Navigation Order and the approval of courses of training.

(3) Regulation 19 of the new draft Regulations contains a procedure for dealing with requests for an extension of a time limit contained in the Regulations.

(4) Regulation 20 contains a procedure to be followed at a hearing conducted under the Regulations which reflects current practice.

(5) Where rights are accorded to the holder of an air operator's certificate at paragraph 3 of Schedule 3, paragraph 11 of Schedule 3 and paragraph 4 of Section 6 of Schedule 4, the rights may be exercised by any qualifying carrier¹.

(6) They apply the decision making procedures to decisions made under the European Aviation Safety Agency Regulations, EU-OPS (formally Annex III to the EU Technical Harmonisation Regulation which contains rules for commercial air transport by aeroplanes) and the Single European Sky Regulations² as well as the Air Navigation Order 2009.

(7) They provide that any decision on a medical certificate must be made by an employee or Member. The procedures themselves are not included in the Regulations; they are to be published in the CAA's Official Record on the CAA Website. This provision reflects a requirement in the EU Air Traffic Controller's Directive³.

(8) Service and publication of documents may be done electronically. Something "in writing" includes electronic documents.

(9) Hearings will usually be held in public subject to the criteria set out in the Human Rights Act for determining when a hearing ought to be held in private.

¹ The Civil Aviation (Allocation of Scarce Capacity) Regulations 2007 defines a qualifying air carrier as—

(a) an undertaking which has been granted an air transport licence in accordance with section 65 of the Civil Aviation Act 1982; or
(b) a community air carrier as defined in section 69A(8) of the Act, which has either obtained its operating licence from the CAA, or is established in the United Kingdom in accordance with Article 43 of the Treaty establishing the European Community;

² Links to all these Regulations may be found at <http://www.caa.co.uk/default.aspx?catid=503&pagetype=90>

³ Directive 2006/23/EC of the European Parliament and Council on a Community air traffic controller licence, O.J. No. L114, 27.4.2006, p.22

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(10) Regulation 14 and Part III of the current Regulations provide for transcripts to be made available "at a reasonable price". Regulation 6 is silent on the question of a transcript although in practice one is always produced and is made available at no charge which may be the correct approach where the appellant is a private individual. The draft Regulations now provide that in every case the CAA has discretion as to whether or not to make a reasonable charge for a transcript.

(11) Regulation 18(3) in the 1991 Regulations is omitted, as the CAA no longer produces the United Kingdom Cabotage Air Passenger Tariff.

(12) The provision at Regulation 26(6) of the 1991 Regulations (procedural irregularity not to invalidate CAA action) is applied to all of the review procedures in the draft Regulations.

(13) The draft Regulations adopt some significant changes in layout and style –

- (a) standard provisions applicable to all types of appeal are included in the main body of the Regulations at Part 3;
- (b) the detailed procedures are placed into a series of Schedules, one for each type of decision;
- (c) changes are made to reflect the current drafting style for secondary legislation. In particular, the recommended style is for shorter regulations and paragraphs (and so there are more regulations and paragraphs than before);
- (d) the Regulations are gender neutral and the language has been modernised.

Consultation

This consultation has been sent to representative bodies and legal practitioners who have appeared at hearings held under the current Regulations. It is also posted on the CAA's website at <http://www.caa.co.uk/default.aspx?gid=1351>.

No Impact Assessment is being prepared as it is considered that the changes being made will have no impact on costs.

Request for comments

Please send your comments by email to legal@caa.co.uk. It will be helpful if you head your message "CAA Regs Consultation".

I would be grateful for responses by **31 January 2011**.

Yours sincerely



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